

# FEDERAL TRADE COMMISSION DECISIONS



FINDINGS, ORDERS, AND STIPULATIONS

DECEMBER 1, 1939, TO MAY 31, 1940

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MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF  
MAY 31, 1940

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**EWIN L. DAVIS, *Chairman.***

Took oath of office May 26, 1933, and August 31, 1939.<sup>1</sup>

**GARLAND S. FERGUSON.**

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

**CHARLES H. MARCH.**

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

**WILLIAM A. AYRES.**

Took oath of office August 23, 1934. Appointment for second term confirmed May 8, 1940.

**ROBERT E. FREER.**

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

**OTIS B. JOHNSON, *Secretary.***

Took oath of office August 7, 1922.

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<sup>1</sup> Second term.

<sup>2</sup> Recess appointment.

<sup>3</sup> Third term.

## **ACKNOWLEDGMENT**

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



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<sup>1</sup> Interline 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 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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<sup>4</sup> For interlocutory order, see "Memoranda," 28-1965= or 1938 S. & D. 485.

<sup>5</sup> For interlocutory matter, see "Memoranda," 28-1968 or 1938 S. & D. 489.

<sup>6</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

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<sup>10</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

<sup>11</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

<sup>12</sup> For final decree of Supreme Court of the District of Columbia, see footnote, 3-542 et seq., S. & D. 190.

<sup>13</sup> For interlocutory order, see "Memoranda," 28-1966 or 1938 S. & D. 485.

<sup>14</sup> For interlocutory order, see "Memoranda," 20-744, or S. & D. 720.

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<sup>15</sup> For interlocutory matter, see "Memoranda," 28-1954 or 1938 S. & D. 485.

<sup>16</sup> For interlocutory order, see "Memoranda," 20-746, or S. & D. 724.

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<sup>17</sup> For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 480.

<sup>18</sup> For certain prior interlocutory proceedings, see also "Memoranda," 29-1967 or 1938 S. & D. 483

<sup>19</sup> For interlocutory order, see "Memoranda," 20-745 or S. & D. 722.

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U. S. 369; 45 S. Ct. 517).	
Leisenring, Edwin L., et al. (U. S. Drug & Sales Co., etc.).	(D. C.) 30-1701.
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.	

<sup>20</sup> For interlocutory order, see "Memoranda," 20-745 or S. & D. 723.

<sup>21</sup> For interlocutory order, see "Memoranda," 20-745 or S. & D. 721.

<sup>22</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 721.

- 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.<sup>23</sup>----- (C. A. of D. C.) 13-605.  
37 F. (2d) 822.
- Maisel Trading Post, Inc.----- (C. C. A.) 20-725, 21-1212,  
77 F. (2d) 246, 79 F. (2d) 127, 84 F. (2d) 23-1381.  
768.
- Maison Pichel.----- (D. C.) footnote, 18-663.
- Maloney Oil & Mfg. Co. (Sinclair Refining Co. et al.). (C. C. A.) 4-552; (S. C.) 6-587.  
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).
- 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 Durableather Co., et al.----- (C. C. A.) 13-567.  
34 F. (2d) 733.
- Mayers Co., Inc., L. & C.----- (C. C. A.) 27-1675.  
97 F. (2d) 365.
- Maynard Coal Co.<sup>24</sup>----- (S. C. of D. C.) 3-555, 6-575;  
22 F. (2d) 873. (C. A. of D. C.) 11-698.
- May's Cut Rate Drug Co.----- (D. C.) 30-1713.
- May's Cut Rate Drug Co. of Charleston----- (D. C.) 30-1710.
- McLean & Son, A., et al.----- (C. C. A.) 22-1149; 26-1501.  
84 F. (2d) 910; 94 F. (2d) 802.
- Mennen Co.<sup>25</sup>----- (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  
23 F. (2d) 968; 47 F. (2d) 428. D. C.) 11-705 (S. C. of D. C.)  
14-675 (footnote); (C. A. of  
D. C.) 14-712.
- Millinery Creators' Guild, Inc., et al.----- (C. C. A.) 30-1619.  
109 F. (2d) 175.
- Mills Novelty Co. et al., U. S. ex rel.----- (S. C. of D. C.) 22-1137.
- Minneapolis, Chamber of Commerce, of, et al.<sup>26</sup> (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).

<sup>23</sup> For order of the Supreme Court of the District of Columbia, denying petition for writ of mandamus, etc., see "Memoranda," 20-742 or S. & D. 704.

<sup>24</sup> For order of the Supreme Court of the District of Columbia on mandate from Court of Appeals of the District of Columbia, see "Memoranda," 20-742 or S. & D., footnote, 650.

<sup>25</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 715.

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

M. J. Holloway & Co., et al.-----	(C. C. A.) 22-1149.
84 F. (2d) 910.	
Moir, John, et al. (Chase & Sanborn) <sup>27</sup> -----	(C. C. A.) 10-674.
12 F. (2d) 22.	
Morrissey & Co., Chas. T., etc.-----	(C. C. A.) 14-716.
47 F. (2d) 101.	
Morton Salt Co.-----	(C. C. A.) 30-1666.
National Association of Counter Freezer Manufacturers et al.	(S. C. of D. C.) 22-1137.
National Biscuit Co. <sup>28</sup> -----	(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 Cream 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; 30-1675.
88 F. (2d) 425.	
New Jersey Asbestos Co.-----	(C. C. A.) 2-553.
264 Fed. 509.	
Non-Plate Engraving Co. <sup>29</sup> -----	(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. <sup>30</sup> -----	(C. C. A.) 4-699.
45 F. (2d) 39.	
Oliver Brothers, Inc., et al.-----	(C. C. A.) 28-1926.
102 F. (2d) 763.	
Omega Manufacturing Co., Inc. et al.-----	(D. C.) 30-1717.
Oppenheim, Oberndorf & Co. (Sealpax Co.) <sup>31</sup> --	(C. C. A.) 9-629.
5 F. (2d) 574.	
Ostermoor & Co., Inc. <sup>32</sup> -----	(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; 4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255); (C. C. A.) 24-1631.
88 F. (2d) 1009.	

<sup>27</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.

<sup>28</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

<sup>29</sup> For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.

<sup>30</sup> For interlocutory order, see "Memoranda," 20-745 or S. & D. 724.

<sup>31</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

<sup>32</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.

Paramount Famous-Lasky Corp. <sup>33</sup> .....	(C. C. A.) 16-660. 57 F. (2d) 152.
Pearsall Butter Co., B. S. <sup>34</sup> .....	(C. C. A.) 6-605. 292 Fed. 720.
Petrie, John (B-X Laboratories and Purity Products Co.), U. S. v.	(D. C.) 29-1643; 30-1727.
Philip Carey Mfg. Co. et al.....	(C. C. A.) 12-726. 29 F. (2d) 49.
Pittsburgh Cut Rate Drug Co.....	(D. C.) 30-1707.
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.
Progressive Medical Co., etc. (Blanche Kap- lan).	(D. C.) 30-1690.
Pure Silk Hosiery Mills, Inc.....	(C. C. A.) 8-595. 3 F. (2d) 105.
Q. R. S. Music Co. <sup>35</sup> .....	(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. <sup>36</sup> .....	(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).
Real Products Corp. et al.....	(C. C. A.) 25-1685. 90 F. (2d) 617.
Republic Iron & Steel Co.....	(D. C.) (S. C. of D. C.), foot- note, 3-543.
Research Products Co. (Robert C. Oberlin)---	(D. C.) 29-1626.
Ritholz, Benjamin D. et al.....	(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.....	(C. C. A.) 28-1894. 101 F. (2d) 718.
Ron-Al Medicine Co., Dr., etc. (Irving Sofronski).	(D. C.) 29-1624.
Royal Baking Powder Co. <sup>37</sup> .....	(C. C. A.) 4-614; (S. C. of D. C.) 11-677, 701; (C. A. of D. C.) 12-740.

<sup>33</sup> For interlocutory order, see "Memoranda," 28-1967 or 1938 S. & D. 487.

<sup>34</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

<sup>35</sup> For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.

<sup>36</sup> For interlocutory order of lower court see "Memoranda," 28-1966 or 1938 S. & D. 486.

<sup>37</sup> 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.

Royal Milling Co. et al. <sup>38</sup> -----	(C. C. A.) 16-679; (S. C.) 17-664.
58 F. (2d) 581; 288 U. S. 212 (53 S. Ct. 335).	
Ryan Candy Co. (Southern Premium Manufacturing Co., etc.)-----	(C. C. A.) 22-1143.
83 F. (2d) 1008.	
Savage Candy Co.-----	(C. C. A.) 25-1705.
92 F. (2d) 1003.	
Sea Island Thread Co., Inc.-----	(C. C. A.) 11-705.
22 F. (2d) 1019.	
Sealpax Co. (Oppenheim, Oberndorf & Co.) <sup>39</sup> -----	(C. C. A.) 9-629.
5 F. (2d) 574.	
Sears, Roebuck & Co.-----	(C. C. A.) 1-562, 2-536.
258 Fed 307.	
Sekov Corp. et al.-----	(D. C.) 30-1705.
Shade Shop, etc., Alfred Klesner doing business under name of, see Klesner, Alfred.	
Shakespeare Co.-----	(C. C. A.) 15-609.
50 F. (2d) 758.	
Sheffield Silver Co., Inc.-----	(C. C. A.) 27-1689.
98 F. (2d) 676.	
Sherwin et al. v. U. S. (Lee, U. S. v.)-----	(D. C.); (C. C. A.), footnote,
290 Fed. 517; 297 Fed. 704 (affirmed, 268 U. S. 369); (45 S. Ct. 517).	6-559.
Shupe-Williams Candy Co.-----	(C. C. A.) 29-1584.
106 F. (2d) 962.	
Sifers Confection Co. (H. I. Sifers, etc.)-----	(C. C. A.) 22-1147.
84 F. (2d) 999.	
Silver Co., L. B.-----	(C. C. A.) 6-559, 608.
289 Fed. 985; 292 Fed. 752.	
Sinclair Refining Co.-----	(C. C. A.) 4-552; (S. C.) 6-587.
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).	
Smith, A. E., et al., and Electric Bond and 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;
14 F. (2d) 974; 86 F. (2d) 692; 302 U. S. 112 (58 S. Ct. 113); 97 F. (2d) 513.	(S. C.) 25-1715; (C. C. A.) 26-1524; (C. C. A.), 27-1680.
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.	

<sup>38</sup> For interlocutory order of lower court, see "Memoranda," 28-1966 or 1938 S. & D. 486.

<sup>39</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

Sweet Candy Co.....	(C. C. A.) 30-1682.
112 F. (2d) 168.	
Sweets Co. of America, Inc.....	(C. C. A.) 30-1625.
109 F. (2d) 296.	
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).	
Thomsen-King & Co., Inc., et al.....	(C. C. A.) 30-1642; (D. C.) 30-1692.
109 F. (2d) 516.	
Thyrole Products Co. (I. Ralph Weinstock)....	(D. C.) 30-1722.
Toledo Pipe-Threading Machine Co. <sup>40</sup> .....	(C. C. A.) 9-652, 10-664.
6 F. (2d) 876; 11 F. (2d) 337.	
United Corporation et al.....	(C. C. A.) 30-1659.
110 F. (2d) 473.	
U. S. Drug & Sales Co., etc. (Edwin L. Leisen- ring et al.)	(D. C.) 30-1701.
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. Deran Confectionery Co.....	(D. C.) 30-1729.
U. S. v. Elmer Candy Co.....	(D. C.) 30-1729.
U. S. v. Hamilton-Brown Shoe Co.....	(D. C.); footnote, 26-1495.
U. S. v. Holst Publishing Co. et al.....	(D. C.) 30-1728.
U. S. v. John Petrie (B-X Laboratories and Purity Products Co.).	(D. C.) 29-1643; 30-1727.
U. S. v. K. & S. Sales Co. et al.....	(D. C.) 30-1727.
U. S. v. Klimate-Pruf Manufacturing Co.....	(D. C.) 30-1730.
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. <sup>41</sup> .....	(C. C. A.) 20-713.
75 F. (2d) 733.	
Ward Baking Co.....	(C. C. A.) 2-550.
264 Fed. 330.	
W. B. Caldwell, Inc., Dr.....	(C. C. A.) 30-1670.
111 F. (2d) 889.	
Webb-Crawford Co. et al.....	(C. C. A.) 30-1630.
109 F. (2d) 268.	
Weinstock, I. Ralph (Thyrole Products Co.)..	(D. C.) 30-1722.
Western Chemicals, Inc. et al.....	(D. C.) 28-1939.

<sup>40</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.

<sup>41</sup> For interlocutory order, see "Memoranda," 28-1968 or 1938 S. & D. 490.

Western Meat Co.....	(C. C. A.) 8-589, 623; (S. C.)
1 F. (2d) 95; 4 F. (2d) 223; 272 U. S. 554	11-629; (C. C. A.) 13-559.
(47 S. Ct. 175); 33 F. (2d) 824.	
Western Sugar Refinery Co. et al.....	(C. C. A.) 4-557.
275 Fed. 725.	
Wholesale Grocers' Assn. of El Paso et al.....	(C. C. A.) 4-595.
277 Fed. 657.	
Winship Corp. et al.....	(D. C.) 30-1697.
Winslow et al.....	(C. C. A.) 4-578.
277 Fed. 206.	
Winsted Hosiery Co. <sup>42</sup> .....	(C. C. A.) 3-618; (S. C.) 4-610.
272 Fed. 957; 258 U. S. 483 (42 S. Ct. 184).	
Winston Co., John C. <sup>43</sup> .....	(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.	

<sup>42</sup> For interlocutory order, see "Memoranda," 20-742 or S. & D. 715.

<sup>43</sup> For interlocutory order, see "Memoranda," 20-743 or S. & D. 715.



# FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, DECEMBER 1, 1939, TO MAY 31, 1940

## IN THE MATTER OF

### STAFFORD T. MITCHELL, JANET M. MITCHELL, AND OTIS S. MITCHELL, DOING BUSINESS AS THE ARVIL COM- PANY

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

*Docket 3472. Complaint, July 7, 1938—Decision, Dec. 6, 1939*

Where three individuals engaged in compounding two hair preparations, and in distributing and selling same to purchasers at various points in other States, in substantial competition with others also engaged in sale and distribution of similar preparations or other products designed and intended for similar usage, in commerce among the various States and in the District of Columbia; in advertising their said preparations in publications of general circulation, and in bulletins and other advertising folders distributed to members of the purchasing public situated in various States—

- (a) Represented that their product "Arvil" restored or replaced pigment in the hair shaft, and that use thereof caused hair to assume a natural or youthful color, and that graying hair was an indication that hair or scalp was not in normal health, facts being said "Arvil" did not restore or replace pigment as above set forth, but acted as a dye to color surface of hair, color of which is dependent upon pigment deposited in shaft thereof and which was not restored or replaced as aforesaid by use of such preparation, and graying hair was not indication that hair or scalp was not in normal health;
- (b) Represented that it was the consensus of scientific opinion that dandruff is caused by a germ, and represented that said "Arvil" was effective as antiseptic or astringent, applied to hair or scalp, and that it and their "Dawn Shampoo" preparation would permanently relieve dandruff or itching scalp and constituted effective treatments therefor and cures or remedies for baldness and for falling hair and cause or causes of such condition, facts being cause of dandruff is not definitely known, and it is not consensus of scientific opinion that it is caused by germ, as above set forth, and said preparations would not permanently relieve said condition or itching scalp, and did not constitute cure or remedy or effective treatment for former, or for baldness or cause or causes of falling hair; and
- (c) Represented that application of said "Arvil" to skin was always safe, facts being such application was not safe under all conditions, but use of said product, by virtue of lead acetate therein contained, might be injurious when so applied, and particularly where there was any injury, trauma, abrasion, or inflammatory or eczematous condition of the scalp, and, continued over a period of time, might result in lead poisoning;

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With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said representations were true, and into purchase of substantial volume of said products because of such belief, and with effect of thereby unfairly diverting trade to them from those also engaged in sale and distribution in commerce of similar preparations or other products designed and intended for similar usage, and who truthfully advertise the same:

*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, Mr. Charles F. Diggs, and Mr. Webster Ballinger*, trial examiners.

*Mr. Merle P. Lyon, Mr. George Foulkes, and Mr. Donovan Divet* for the Commission.

*Mr. Otis S. Mitchell*, in behalf of himself and other 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 Stafford T. Mitchell, Janet L. Mitchell, and Otis S. Mitchell, individuals, trading as The Arvil 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, Stafford T. Mitchell, Janet L. Mitchell, and Otis S. Mitchell, are individuals, trading under the name and style of The Arvil Co., with their office and place of business located at 1700 Wilson Avenue, Chicago, Ill. Respondents are now, and for more than 1 year last past have been, engaged in the business of compounding, distributing, and selling in commerce, as herein set out, hair preparations designated "Arvil" and "Dawn Shampoo."

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

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals, corporations, and firms likewise engaged in the business of

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selling and distributing similar preparations, or other preparations or products designed and intended 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 operation of their business and for the purpose of inducing individuals to purchase their line of products, respondents made, published, or caused to be published, in advertising folders and other literature, the following statements and representations:

You can, by the knowledge at hand, do much that will safely help you to retain the charm and vital appearance of youth.

So we conclude that this missing pigment or color must be replaced, either by the hair itself or some outside agency, for until this is done the hair will look gray in color.

The graying of the hair is a distinct sign that the hair and scalp is not in a normal, youthful health.

It has been accepted that dandruff is caused by a germ. A germ that must be eliminated before permanent relief from the dangers of the disease and the annoyance of the itching scalp that goes with it usually can be attained. You have probably noticed that for a limited time after a shampoo that your hair seems free from dandruff scales—but they appear later. This indicates that more than mere washing is necessary to effect any permanent good.

Both Stitson and Solis-Cohen agree that when the hair is falling out badly or baldness has already appeared that a specially prepared dilute solution of Tincture of Cantharides is often used to stimulate the scalp and thus encourage hair growth.

It provides lac sulphur for the treatment of dandruff Tincture of Cantharides to promote hair vigor, Plumbi Acetas as an astringent, antiseptic and protective element and glycerine as a lubricant and carrying agent to spread the preparation over the whole scalp and hair evenly. Its manner of application is by massage. **AND—IT BRINGS TO GRAY HAIR A YOUTHFUL, NATURAL COLOR.**

And the youthful color that will come to your hair, so natural to look upon, will be a reward to you I know.

Dawn Shampoo is a delightful product that cleans the hair and scalp thoroughly and healthfully. By itself it is a real hair health aid, used with ARVIL, each helps the other on your hair.

Offer No. 1—1 bottle ARVIL and  
1 bottle Shampoo FREE.

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

- (a) The application of Arvil to the skin is always "safe."
- (b) Arvil replaces missing pigment in the hair shaft proper.
- (c) Greying hair is a sign that the hair and scalp are not in normal health.

(d) It is the consensus of scientific opinion that dandruff is caused by a germ.

(e) Both "Arvil" and "Dawn Shampoo" will give "permanent" relief from dandruff or itching scalp and that both or either of respondents' products are a competent treatment for dandruff.

(f) Both products, or either of them, are competent treatments or effective remedies for conditions responsible for hair falling out, and will encourage hair growth, promote hair vigor and are effective remedies for baldness.

(g) Arvil has an antiseptic effect on the hair and scalp.

(h) Arvil causes hair to assume a "natural" and "youthful" color.

(i) The ingredient Plumbi Acetas in Arvil acts as an astringent, antiseptic, or protective element, and is present in the preparation because of these properties and not because of its dyeing effect on the hair.

PAR. 5. The aforesaid representations by respondents with respect to the therapeutic properties of their products, and the results obtained from the use thereof, are exaggerated, false, misleading, and untrue. In truth and in fact respondents' preparation "Arvil" is not safe to use in all cases, because it contains lead acetate, which is in some cases dangerous to use on the skin. Arvil does not replace pigment in the hair shaft proper, but as a dye it colors the surface of the hair. Graying hair is not a sign that the hair and scalp are not in normal health. Gray hair appears with age, and in many cases, on scalps that are in normal health. It is not the consensus of scientific opinion that dandruff is caused by a germ. Respondents' product will not give permanent relief from dandruff or itching scalp, or cause dandruff scales to disappear after treatment is discontinued. Said products are not competent treatments for dandruff or baldness, and they are not an effective remedy for conditions responsible for falling hair. Arvil does not have an antiseptic effect on the hair and scalp and will not cause hair to assume a "natural" or "youthful" color. Plumbi Acetas, the Latin words for lead acetate, does not act as an astringent, antiseptic, or protective element when applied to the scalp or hair, but acts as a dye leading to the formation of dark lead compounds on the hair, and, as set forth above, may, in some cases, cause lead poisoning.

PAR. 6. Each and all of the false and misleading statements made by respondents as hereinabove set forth in their advertising folders and other literature, in offering for sale and selling their products, had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the

erroneous belief that all of said representations are true, and into the purchase of a substantial volume of respondents' products on account of such beliefs. As a result, trade is unfairly diverted to respondents from individuals, firms, and corporations likewise engaged in the business of selling similar preparations, or other preparations or products designed or intended for similar usage, and who truthfully advertise their products. As a consequence thereof substantial injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and to respondents' competitors, and constitute unfair methods of 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 7, 1938, issued, and on July 11, 1938, served its complaint in this proceeding upon the respondents Stafford T. Mitchell, Janet M. Mitchell, and Otis S. Mitchell, individuals trading as The Arvil 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 (respondents not having filed answer), testimony, and other evidences in support of the allegations of said complaint were introduced by Merle P. Lyon, Esq. and George Foulkes, Esq., attorneys for the Commission, and in opposition to the allegations of the complaint by Otis S. Mitchell, attorney per se and for the remaining respondents, before William C. Reeves, Charles F. Diggs, and Webster Ballinger, 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, testimony, and other evidence, brief in support of the 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, Stafford T. Mitchell, Janet M. Mitchell, and Otis S. Mitchell, are individuals trading under the name and style of The Arvil Co., with their office and place of business located at 1700 Wilson Avenue, Chicago, Ill. Respondents are now, and for more than 1 year prior to the issuance of the complaint herein were engaged in the business of compounding, distributing, and selling hair preparations designated "Arvil" and "Dawn Shampoo."

PAR. 2. Respondents being engaged in business as aforesaid cause said products, when sold, to be transported from their place of business in Chicago, Ill., to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said products, distributed and sold by them between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, respondents are now, and have been, in substantial competition with other individuals, and with corporations and firms also engaged in the business of selling and distributing similar preparations, or other preparations or products designed and intended 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 operation of their business and for the purpose of inducing the purchase of their said products, respondents caused various statements and representations relative to said products to be inserted in advertisements in publications having a general circulation and in bulletins and other advertising folders distributed to members of the purchasing public situated in various States of the United States. Among and typical of said statements and representations are the following:

You can, by the knowledge at hand, do much that will safely help you to retain the charm and vital appearance of youth.

So we conclude that this missing pigment or color must be replaced, either by the hair itself or some outside agency, for until this is done the hair will look gray in color.

The graying of the hair is a distinct sign that the hair and scalp is not in a normal, youthful health.

It has been accepted that dandruff is caused by a germ. A germ that must be eliminated before permanent relief from the dangers of the disease and the annoyance of the itching scalp that goes with it usually can be attained. You have probably noticed that for a limited time after a shampoo that your hair seems free from dandruff scales—but they appear later. This indicates that more than mere washing is necessary to effect any permanent good.

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## Findings

Both Stitson and Solis-Cohen agree that when the hair is falling out badly or baldness has already appeared that a specially prepared dilute solution of Tincture of Cantharides is often used to stimulate the scalp and thus encourage hair growth.

It provides lac sulphur for the treatment of dandruff Tincture of Cantharides to promote hair vigor, Plumbi Acetas as an astringent, antiseptic and protective element and glycerine as a lubricant and carrying agent to spread the preparation over the whole scalp and hair evenly. Its manner of application is by massage. AND—IT BRINGS TO GRAY HAIR A YOUTHFUL, NATURAL COLOR.

And the youthful color that will come to your hair, so natural to look upon, will be a reward to you I know.

Dawn Shampoo is a delightful product that cleans the hair and scalp thoroughly and healthfully. By itself it is a real hair health aid, used with ARVIL, each helps the other on your hair.

Offer No. 1—1 bottle ARVIL and  
1 bottle Shampoo FREE.

Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondents represent directly or by implication that:

- (a) The application of Arvil to the skin is always "safe."
- (b) Arvil replaces missing pigment in the hair shaft proper.
- (c) Greying hair is a sign that the hair and scalp are not in normal health.
- (d) It is the consensus of scientific opinion that dandruff is caused by a germ.
- (e) Both "Arvil" and "Dawn Shampoo" will give "permanent" relief from dandruff or itching scalp and that both or either of respondents' products are a competent treatment for dandruff.
- (f) Both products, or either of them, are competent treatments or effective remedies for conditions responsible for hair falling out, and will encourage hair growth, promote hair vigor and are effective remedies for baldness.
- (g) Arvil has an antiseptic effect on the hair and scalp.
- (h) Arvil causes hair to assume a "natural" and "youthful" color.
- (i) The ingredient Plumbi Acetas in Arvil acts as an astringent, antiseptic or protective element, and is present in the preparation because of these properties and not because of its dyeing effect on the hair.

PAR. 5. The aforesaid statements and representations by respondents with respect to the therapeutic properties of said products and the results obtained from the use thereof are exaggerated, false, and misleading. In truth and in fact, respondents' preparation "Arvil" is not safe for application to the skin in all cases. Said preparation contains lead acetate in an amount which may be in-

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jurious when applied to the skin, particularly if there is any injury, trauma, abrasion, or inflammatory or eczematous condition of the scalp. The use of said preparation over a period of time may result in lead poisoning. The use of said preparation "Arvil" does not restore or replace pigment in the hair shaft but acts as a dye to color the surface of the hair. The color of the hair is dependent upon the pigment deposited in the hair shaft and the pigment of the hair is not restored or replaced by the use of "Arvil."

Graying hair is not an indication that the hair or scalp is not in normal health. The graying of the hair of aged persons is a natural process. Premature graying of the hair is not a physiological process and the cause thereof is not definitely known. Graying hair appears with age and in many cases on scalps that are in normal health. It is not the consensus of scientific opinion that dandruff is caused by a germ. Dandruff results from the scaling of the superficial layers of the epidermis of the scalp which is constantly being replaced by new growing cells from underneath which process to a certain extent is normal. The cause of dandruff is not definitely known.

There are two types of dandruff, to wit: The dry and the wet or oily types. Dry dandruff exists where there is an atrophied condition; wet dandruff exists where there is an inflammatory condition of the skin. A drug or combination of drugs which may be helpful in the dry type of dandruff may be harmful when used in the treatment of the wet type of dandruff and vice versa. The principal constituents of "Arvil" are sulphur, cantharides, and lead acetate. Sulphur is a mild germicide and a mild skin irritant. The quantity of sulphur in said preparation is insufficient to be of any substantial therapeutic value. Cantharides is a skin irritant and the use thereof may, in some cases, improve the circulation in the scalp. The preparation "Arvil" does not have an appreciable antiseptic or astringent effect when applied to the hair or scalp.

The use of neither one nor both of said preparations will permanently relieve dandruff or itching scalp, or is a cure or remedy or an effective treatment for dandruff, or is a cure or remedy or an effective treatment for baldness or for the cause or causes of falling hair. The most common form of baldness is the ordinary ideopathic or premature form, the cause of which is not known. There are various pathological causes of baldness and falling hair, such as ringworm and eczema of the scalp and various constitutional diseases. The preparation Arvil is essentially a hair dye. The effectiveness of the preparation Arvil in dyeing the hair is due to the plumbi acetate (lead acetate) contained therein, which combines with the sulphur to form a lead sul-

phide. Lead acetate is seldom prescribed in the treatment of scalp diseases because the use thereof may result in lead poisoning.

PAR. 6. The complaint in this proceeding incorrectly referred to respondent Janet M. Mitchell as Janet L. Mitchell. The complaint was duly served on respondent Janet M. Mitchell and the respondents herein stipulated and agreed, at a hearing duly called and held in this proceeding that respondent Janet M. Mitchell is the individual referred to in the complaint as respondent Janet L. Mitchell and the respondents further stipulated and agreed that the record herein show the true name of said respondent, to wit: Janet M. Mitchell. The Commission, therefore, finds that for all purposes in this proceeding, respondent Janet M. Mitchell and Janet L. Mitchell is one and the same person.

PAR. 7. Each and all of the false and misleading statements and representations made by respondents as hereinabove set forth had, and now has, the tendency and capacity to, and does, and did, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are and were true, and into the purchase of a substantial volume of respondents' products because of such erroneous and mistaken belief. As a result, trade is now, and has been, unfairly diverted to respondents from individuals, firms, and corporations also engaged in the business of selling and distributing in commerce among and between the various States of the United States similar preparations, or other preparations or products designed or intended for similar usage, and who truthfully advertise their products.

#### CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice of the public and to respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of 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 respondents not having filed answer), testimony and other evidence taken before William C. Reeves, Charles F. Diggs, and Webster Ballinger, examiners 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 allegations of the complaint (respondents 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 respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That respondents, Stafford T. Mitchell, Janet M. Mitchell, and Otis S. Mitchell, individually, and trading as The Arvil Co. 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, or distribution of their hair preparations designated as "Arvil" and "Dawn Shampoo," or any other preparation composed of substantially similar ingredients, or possessing substantially similar properties whether sold under those names 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 "Arvil" restores or replaces pigment in the hair shaft or that the use thereof causes the hair to assume a natural or youthful color or that said product produces color by any means other than dyeing the hair shaft.

2. Representing that graying hair is an indication that the hair or scalp is not in normal health.

3. Representing that it is the consensus of scientific opinion that dandruff is caused by a germ.

4. Representing that "Arvil" is effective as an antiseptic or astringent when applied to the hair or scalp.

5. Representing that either "Arvil" or "Dawn Shampoo," or both of said products, will permanently relieve dandruff or itching scalp or that either, or both of said products is an effective treatment for dandruff.

6. Representing that either "Arvil" or "Dawn Shampoo," or both of said products, is a cure or remedy for baldness or is a cure or remedy or an effective treatment for falling hair or the cause or causes thereof.

7. Representing, through failure to reveal that the use of "Arvil" on the skin is not wholly safe, particularly if there is any injury, abrasion or inflammatory or eczematous condition thereon, or through any other means or device or in any other manner, that "Arvil" contains no harmful or dangerous drugs, or that the use of said preparation will have no ill effects upon the human body.

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

## Syllabus

## IN THE MATTER OF

INTERNATIONAL PRESS SERVICE, INC. (FORMERLY  
BERKELEY STUDIOS INTERNATIONAL PRESS SERVICE,  
INC.), AND FRED FRIEWALD

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

*Docket 3618. Complaint, Oct. 1, 1938—Decision, Dec. 6, 1939*

Where a corporation engaged, as International Press Service, Inc., in sale in commerce among the various States of photographs of members of the public, posed, taken, developed, and finished by it and its agents and representatives, and an individual who was and had been president and treasurer thereof since its incorporation and had been participant in organization thereof and was one of its three stockholders and in direction and control of its sales activities and policies as below set forth, and who acted as photographer in its business and in the development, etc., of photographs taken by its agents and representatives of members of the public contacted by such agents and representatives; and as aforesaid engaged, in substantial competition with others similarly engaged in sale and distribution in commerce of photographs of members of the public, posed, taken, developed, and finished by such competitors;

In soliciting, through their "booker" or salesman, members of the public, usually selected from among those who had received publicity in newspapers or other publications and who, by reason of their business, professional, or other activities, were of news interest—

Represented to such persons, contacted usually by phone, that salesman or solicitor was a representative of Berkeley Studios, International Press Service, or of International Press Service, or of the Press Service or the International, and advised prospect thus approached that a photograph was desired for the press library of such corporation, and solicited appointment, without expense to one solicited, to permit making of photograph of such person for filing in such press library for release to any newspaper or other news publication which might call upon them for the furnishing of such a photograph, and advised inquiring prospect as to cost to him of one or more of the photographs thus taken on completion thereof, and invited person thus contacted, and to whom in due course they sent proofs, to "kindly approve one for press release and return it to our representative who will call \* \* \*," and sought, at said time and irrespective of making of inquiries by prospects thus approached, to sell to said persons quantities of the finished photographs thus taken;

Notwithstanding fact corporation in question had no direct connection with any newspaper publication in the United States or in other countries, did not advertise its services to newspapers, had as its principal purpose the obtaining of the opportunity to photograph members of public and sell to said members such photographs, and purpose was not, primarily, to offer or cause to be published photographs solicited, as was case with the news

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services, such as International News Service or Associated Press, and they had no interest in and took no steps to cause publication of photographs taken by them;

With result that through use of words "press service" and word "International," they created false impression in minds of members of public, thus approached, that such members were being interviewed by a representative of a regular press or news photo service organization or by International News Photos or International News Service, and that they were being asked for permission to have their photographs taken for publication in regular course of the services rendered by said organizations in connection with some present or future news item, and caused belief on part of such members that purchase of a photograph or photographs, if made, was only incidental to seller's occupation, and that such purchase, if it could then be made, would perhaps be more favorable and convenient to purchaser, and secured thereby initial contact, and usually overcame normal sales resistance on part of prospective purchasers, met with by competitors, and placed with purchasers instead of seller, and members of public solicited, initiative, and such members were deceived into erroneous and mistaken belief aforesaid and into purchase of pictures from them as and from a regular press or news photo service organization and International News Photos, and trade was thereby diverted unfairly to them from their competitors who do not falsely represent identity, nature or character of their respective businesses:

*Held*, That such acts and practices, and each of them, 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. Edward E. Reardon*, trial examiner.

*Mr. Jay L. Jackson* and *Mr. John M. Russell* for the Commission.

*Mr. Morton M. Lewis*, 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 Berkeley Studios International Press Service, Inc., a corporation, and Fred Friedwald, 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. The respondent, Berkeley Studios International Press Service, Inc., is a corporation organized, existing, and doing business under the laws of the State of Massachusetts and having its office and principal place of business at 36 Newbury Street in the city of Boston, State of Massachusetts. Respondent, Fred Friedwald is an individual having his office and principal place of business at 36

Newbury Street in the city of Boston, State of Massachusetts, and is president and treasurer of said corporation and directs and controls the sales activities and policies of said corporation with respect to the acts and practices herein set forth.

PAR. 2. The respondents are now, and have been, for more than two years last past engaged in the business of photographing persons, and in the sale and distribution of said photographs. Respondents sell said photographs to members of the purchasing public situated in various States of the United States and in the District of Columbia and cause the said photographs, when sold by them, to be transported from their aforesaid place of business in the State of Massachusetts to the purchasers thereof at their respective points of location in various States of the United States, other than the State of Massachusetts, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said photographs 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 individuals, and with partnerships and firms taking, selling, and distributing photographs. Among such competitors in said commerce are many who do not in any manner misrepresent the identity, nature, and character of their business, and who do not make any other false statements in connection with the sale and distribution of their said photographs.

PAR. 4. International News Service is a company existing and doing business for many years last past in the State of New York as a news gathering organization, with its principal place of business located at 235 East Forty-fifth Street in the city of New York, State of New York, and having branch offices in the various States of the United States and in many foreign countries. An associate company, International News Photos, cooperates with the International News Service throughout the United States and in foreign countries by taking pictures of many of the persons who are the subjects of its news items which, with said pictures, it furnishes to the newspapers in the United States and foreign countries. The International News Service has a valuable good will and prestige because of the interest in and accuracy of its news and is well and favorably known to the reading public throughout the United States.

PAR. 5. In the course and conduct of their said business, and for the purpose of inducing the purchase of their photographs, respondents

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have caused false and misleading statements and representations with respect to the identity, nature, and character of their business to be disseminated in commerce, as defined in the Federal Trade Commission Act. Respondents or their agents call on members of the purchasing public, situated in various States of the United States and in the District of Columbia, who have prior thereto received publicity in newspapers or other publications, and represent to such persons: That they are from the International Press Service or Press Service and that they desire a recent photograph of the person for the press or for publication therein; that they are representatives of the International, which desires a recent photograph of such person to be used with an article for an early edition or for its press library; and otherwise, directly or by implication, represent that they are representatives of the aforesaid International News Service, its associate, International News Photos, or one of the recognized news or photographic news services, desiring to procure the photograph of such person for the purpose of publishing the same.

By means of the use of such statements and representations, disseminated as aforesaid, the respondents or their agents procure permission from such persons to take their photographs. Respondents or their agents cause photographs of such persons to be taken, and thereafter request such persons to select and approve one of the negatives, which respondents or their agents represent is to be released to the press. After such selection is made by the prospective purchaser, respondents, or their agents attempt to sell, and sell, to such persons quantities of the finished photographs at prices greatly in excess of those prices at which photographs of a similar kind and quality are customarily and ordinarily sold by competitors of the respondents.

PAR. 6. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are deceptive, false, misleading, and untrue. In truth and in fact, respondent corporation is not a news or press photographic agency. Neither the respondents nor their agents or representatives have any connection, direct or indirect, with any newspaper or other publication. The respondents do not take the photographs of the aforesaid members of the purchasing public for the purpose of distributing such photographs to newspapers or for the press library of the corporate respondent. The respondents take such photographs for the purpose of selling the same to such members of the purchasing public at exorbitant prices. The said corporate respondent receives very few, if any, calls for any of its said photographs from newspapers or other publications, and it does not have or maintain a press library. The re-

spondents have no connection, direct or indirect, with the International News Service or International News Photos.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to the identity, nature, and character of the business of the corporate respondent 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 and representations are true, and into the belief that the respondents or their agents represent the International News Service, International News Photos, or one of the recognized news or photographic news services, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondents' photographs.

As a result, trade has been diverted unfairly to the respondents from their competitors in said commerce who truthfully advertise the identity, character, and nature of their business 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. 8. 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 October 1, 1938, issued its complaint in this proceeding and caused it to be served on the respondents' International Press Service, Inc., a corporation (formerly Berkeley Studios International Press Service, Inc., a corporation), and Fred Friewald (referred to in said complaint as Fred Friedwald), an individual, charging the 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.

The respondents filed a joint answer to the complaint on October 8, 1938. Thereafter, testimony and other evidence in support of the complaint was introduced by Jay L. Jackson, attorney for the Commission, and in opposition to the allegations of the complaint by Morton M. Lewis, attorney for the respondents, before Edward E. Reardon, an examiner of the Commission theretofore duly desig-

nated by it. The testimony and other 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 on the complaint, the answer of the respondents, the testimony and other evidence, brief in support of the complaint, and brief of respondents in opposition thereto, and upon oral arguments of John M. Russell, counsel for the Commission, and Morton M. Lewis, counsel 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. The respondent International Press Service, Inc. is a corporation organized, existing, and doing business under the laws of the State of Massachusetts since its incorporation in 1934. Its name was changed to Berkeley Studios International Press Service, Inc. in about 1935. Thereafter on or about December 28, 1937, its name was changed back to International Press Service, Inc. Its office and principal place of business is at 36 Newberry Street, Boston, Mass.

The respondent Fred Friewald is and has been president and treasurer of the respondent International Press Service, Inc. since its incorporation. He participated in the organization of the corporate respondent and he holds a stock interest therein and is one of its only three stockholders. He directs and controls the sales activities and policies of said corporation with respect to the acts and practices herein set forth. His office and principal place of business is located at 36 Newberry Street in the city of Boston, Mass. The complaint herein incorrectly referred to respondent Fred Friewald as Fred Friedwald. Said complaint was duly served on respondent Fred Friewald. Respondent Fred Friewald and the Fred Friedwald referred to in the complaint herein are, for all purposes in this proceeding, one and the same person.

PAR. 2. The respondent International Press Service, Inc., during various times since in or about the year 1934, has been engaged in the business of the sale in commerce among and between the various States of the United States of photographs of members of the public that were posed, taken, developed and finished by the corporate respondent, its agents, and representatives, as hereinafter set forth.

In the course and conduct of their aforesaid business, respondents, during the times mentioned herein, caused said photographs, when

sold by them, to be transported from their aforesaid place of business in the State of Massachusetts to the purchasers thereof at their respective points of location in various States of the United States other than the State of Massachusetts.

PAR. 3. The respondents in the business of the sale and distribution, as aforesaid, of photographs of individuals, posed, taken, developed, and finished by respondents, are and have been, during the times above mentioned, in substantial competition with other individuals, firms, and corporations who are and have been engaged in the business of the sale and distribution in commerce among and between various States of the United States of photographs of members of the public which were posed, taken, developed, and finished by such competitors.

Among such competitors are many who do not in any manner misrepresent the identity, nature, and character of their business, and who do not make any other false statements in connection with the sale and distribution of their said photographs.

PAR. 4. There is in the United States, among other news services, a well-known news service designated the International News Service, which is and has been for a number of years past, engaged in supplying news items to newspapers and other publications in the various States of the United States. It is a recognized news agency, such as the Associated Press.

International News Service does not take photographs or pictures but in connection with its news service, it is, and has been, its regular practice to secure from the International News Photos copies of pictures or photographs, on its own account and at the request of newspapers and publications.

PAR. 5. The International News Photos is a subsidiary corporation of King Features Syndicate. Its business is the distribution of news photos, and the sale of photographs to newspapers both by free sale and under contracts in which it agrees to supply photographs to a paper for a certain period of time and for a certain price. It has representatives throughout the United States and elsewhere in the world.

The International News Photos does not take posed pictures. The pictures it takes are action pictures.

PAR. 6. The metropolitan newspapers, such as the Boston Herald, the Boston Globe, and the Boston Traveler, of Boston, Mass., each, keeps a library of files of pictures, containing photographs of individuals to the number of several hundred thousands, which each obtains and has obtained from a variety of sources, including its own staff photographers, the Associated Press, International News Photos, and occasionally from local photographers, and including such pictures as the

newspaper's own reporters may take in the course of getting the day's news.

PAR. 7. The corporate respondent, International Press Service, Inc., has a library of files in which it has about 12,000 photographs, 97 per cent of which are photographs of residents of Boston, Mass.

The corporate respondent has no direct connection with any newspaper publication in the United States and no direct connection with any newspaper or other publication in other countries. It does not advertise, and it has not advertised, its services to newspapers, but the corporate respondent has, however, on occasions serviced newspapers, including The Boston Herald and The Boston Traveler, with photographs from respondent's library or photographs, and photographs of individuals taken by the corporate respondent have been published in the Boston Daily Globe.

The corporate respondent has also, on occasion, supplied glossy prints, or proofs of photographs, from its library files to the subjects of the photographs for publication in newspapers.

PAR. 8. The sale of photographs taken by the corporate respondent has been mostly to the subjects of the photographs. About 30 percent of the persons photographed by the corporate respondent, and whose consent to be photographed has been obtained upon the solicitation of respondent's representatives, as hereinafter described, purchase from the corporate respondent from one to a dozen photographs. The corporate respondent did a gross business of \$9,000, approximately, in the sale of photographs in 1938.

PAR. 9. The price charged by respondents for photographs bought by a subject whose photograph has been taken by their photographer varies as to quality, size, etc. The top price is, and has been, \$5 a print, or \$60 per dozen, but respondents sell more of their photographs for which their price is \$30 per dozen or \$2.50 a print, than they sell of the higher priced photographs.

The prices of the finished photographs taken by the respondents are approximately the same as the prices at which photographs of a similar kind and quality are customarily sold by competitors of the respondents.

PAR. 10. Respondent Friewald, the president and treasurer of the corporate respondent, acts in the business of the corporate respondent as a photographer and in the developing, finishing, and dark room work in the completion of the photographs taken by the corporate respondent's agents and representatives of members of the public contacted by them. The corporate respondent also employs a "booker," a salesman whose duties are to make appointments with members of the public to have their photographs taken.

PAR. 11. The corporate respondent's "booker," or salesman, is one Herbert Pusick, who is one of the three stockholders of the corporate respondent. As a booker, he has charge of the sales and solicitations of appointments with members of the public for the taking of their photographs by the corporate respondent.

In the course of the respondents' business, their employee Pusick, or other employee acting as a solicitor, usually contacts members of the public by telephone to request the privilege of taking a photograph of the member of the public so approached. In contacting members of the public, the respondents select such persons from among those who have received publicity in newspapers or other publications, and those who by reason of their business, professional or other activities are of news interest. Having contacted a member of the public on the telephone, the respondents' employee, in the usual course of his procedure, states that he is a representative of Berkeley Studios, International Press Service, or that he is a representative of the International Press Service, and sometimes states that he is a representative of the Press Service, or the International, and inquires whether the person he has telephoned has a recent photograph, stating that such a photograph is desired for the press library of the corporate respondent. The member of the public telephoned is solicited to make an appointment for the taking of his photograph by the photographer of the respondents, which, it is stated, is to be without expense to the person solicited and to be for the purpose of being filed in the corporate respondent's press library to be released to any newspaper or other news publication who may call upon the respondents to furnish such a photograph.

After an appointment has been made for the taking of the photograph, the person solicited is told that within 2 or 3 days several proofs of the photograph will be submitted to him for the purpose of having his approval of one of the proofs. Usually at this stage of the transaction, or at its beginning, the person solicited asks the respondents' representative if he may purchase one or more of the photographs if he is pleased with them when the proofs have been submitted to him. Thereupon, the respondents' agent states the prices at which the completed photographs may be obtained in quantities of one or more, and some sales result from this procedure. Respondents have a card they enclose with the proofs which states "enclosed are proofs of the negatives for which you recently posed. Will you kindly approve one for press release and return it to our representative who will call within the next few days." Respondents' representative, when he calls, endeavors to sell prospects quantities of the finished photographs, even when prospect has not inquired concerning same. Respondent Fred Friewald testified that

the respondents when they call upon prospects "have about the same approach as one to another."

PAR. 12. Members of the public generally, especially those members of the public who are subject to being solicited by the respondents' agents, are familiar with the fact that there are newspaper services whose sole activities consist of supplying items of news to newspapers and other news publications, and many of the public know of such associations as the Associated Press and the International News Service as such news gathering organizations, and that in the course of their supplying news items to the news publishers, it is their custom to deliver photographs of persons and places along with the news items furnished to news publications.

Members of the public know or have the impression that the obtaining and publishing of photographs by such news service organizations are incidental matters in connection with their news gathering activities.

On the other hand, the obtaining of the opportunity to photograph members of the public, and to sell such photographs to them, is the principal purpose and result of the aforesaid acts and practices of respondents. The respondents have no interest in and take no steps to cause the publication of photographs taken by them, while on the other hand, whenever a photograph is solicited by the news services, such as the International News Service or the Associated Press, the purpose is primarily to offer or cause the photographs in question to be published.

In soliciting members of the public to make appointments for the taking of their photographs, the respondents, by the use of the words "press service" and by the use of the word "International," which words are a part of the corporate name of the corporate respondent, create the false impression in the minds of the members of the public so approached that they are being interviewed by the representative of a regular press or news photos service organization, or by the International News Photos or International News Service, and that they are being asked for permission to take their photographs for publication in the regular course of the services rendered by such organizations in connection with some present or future news item.

By such solicitation the members of the public so approached are caused to believe that a purchase of a photograph or photographs, if made, is only incidental to the seller's occupation, and that a purchase of a photograph or photographs, if it can be then made, will be perhaps more favorable and convenient to the purchaser.

By such means, and by such false impression created, the respondents, through their agents and representatives, secure the initial con-

tact and overcome the normal sales resistance on the part of prospective purchasers, which is met with by competitors in the taking and selling of photographs to members of the public and the initiative, a most influential element in the purchase and sale transaction of the photographs is usually thus, by the false impression created, placed with the purchasers, the members of the public solicited by the respondents, instead of remaining with the seller, the corporate respondent.

PAR. 13. 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 members of the purchasing public into the erroneous and mistaken belief that the corporate respondent is and was a regular press or news photos service organization or is and was the International News Photos and into the purchase of pictures from respondents because of such erroneous and mistaken belief. In consequence thereof trade has been diverted unfairly to the respondents from their said competitors who do not falsely represent the identity, nature or character of their respective businesses.

#### CONCLUSION

The aforesaid acts and practices of the respondents, and each of them, are all to the injury and 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 of the Commission, the answer of 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 said complaint and in opposition thereto, briefs filed herein and oral arguments by John M. Russell, counsel for the Commission, and by Morton M. Lewis, 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 respondent International Press Service, Inc., a corporation, its officers, representatives, agents, and employees, and respondent Fred Friewald, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of photographs in com-

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

Representing through the use of the term "International Press Service," or any part thereof, or any other term of similar import or meaning, in any corporate or trade name, or in any other manner or through any other means or device, that respondents, or either of them, form a part of, or have any connection with, the International News Service or International News Photos; or that respondents, or either of them, operate a press photographic service, or have any connection therewith, unless and until respondents, or such respondent, are, or is, regularly engaged in the business of selling a substantial percentage of the photographs taken by respondents, or such respondent, to the press for publication.

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

## Syllabus

IN THE MATTER OF  
W. R. YOUNG, DOING BUSINESS AS NATIONAL  
EMPLOYEES TRAINING SERVICE

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

*Docket 3331. Complaint, Feb. 10, 1938—Decision, Dec. 7, 1939*

Where an individual engaged, as National Employees Training Service, in sale and distribution of correspondence course lessons for persons expecting to take civil service examinations to qualify for appointment to positions in the United States classified civil service, and, as thus engaged, in selling his said courses and lessons to purchasers in other States, in active competition with others also engaged in sale of courses of instruction of same general nature in commerce among the several States—

- (a) Represented, directly or through agents, that he and his said agents were employed by the United States Government and represented the United States Civil Service Commission, and set forth on postal cards, containing various statements with respect to available Government positions and also words "Government positions \$105 to \$175 per month," and inviting inquiry on the attached prepaid reply card, but without advising recipient that he was in business of selling courses of instruction, trade name, National Employees Training Service, facts being neither he nor any of his agents were in the employ of the United States Government and in no way represented the United States Civil Service Commission;
- (b) Represented that his business had been in existence for many years and was an old established one, and that prospective students solicited would have to enroll immediately in order to get within the quota of Government positions allotted to said individual, and which was practically filled, facts being his business had not been in existence for many years, but only for a period of a few years, no such quota had been allotted for the benefit of any of the persons who might purchase courses of instruction which he sold, and he did not confine his soliciting to students of high scholastic standing, but solicited all persons who were willing to subscribe to the course;
- (c) Represented that jobs with the United States Government would be secured for the students taking the course of instruction offered by him, or that the money paid for such courses would be refunded, facts being he could guarantee no positions to any person completing his course, and, with few exceptions, did not refund price of tuition after being unable to secure a position for any student who had completed same; and
- (d) Represented that he was able to get advance information concerning examinations to be conducted by the Civil Service Commission, and that students who had completed his courses had preference over other applicants for positions in the classified civil service, facts being he could in no way influence or control such appointments, persons who completed his courses had no preference over others and he could 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 examination to have their names placed upon

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the eligibility roll, and he had, as aforesaid indicated, no advance information concerning examinations to be held by such commission, except such information as was given to public at large;

With the result that persons were misled through said cards and caused to believe that he was in some way connected with the United States Government, and with capacity and tendency to confuse, mislead, and deceive members of the public through practices aforesaid, and induce them to purchase his said courses in the erroneous belief that he in some way controlled appointments to positions in said classified civil service, and was in some way connected with the Civil Service Commission aforesaid, and with the result that patronage was diverted unfairly to him from schools conducted by competitors who did not make same or similar claims or representations concerning their said schools or the courses of instruction which they sold:

*Held*, That such claims and representations, under the circumstances set forth, 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.

## COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that W. R. Young, an individual, doing business under the name and style of National Employees Training Service, 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, W. R. Young, an individual, doing business under the name and style of National Employees Training Service, is now, and has 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 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 respondent in the conduct of said business is and has been located at 456 Book Tower Building, 1250 Washington Boulevard, Detroit, Mich. Said respondent, in the

course and conduct of said business, during the time aforesaid, caused and does now cause, his said courses of study and instruction to be transported from his said place of business in Michigan to, into, and through States of the United States other than Michigan 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 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 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 his said courses of study and instruction with such other individuals, firms, and corporations.

PAR. 3. Said respondent, directly or through representatives and agents designated and appointed by him, has 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 representative soliciting students for said courses was in the employ of or otherwise represented or was connected with the United States Government.

2. That respondent in conducting his business as aforesaid was an agency of or representative of or connected with the United States Government, or the United States Civil Service Commission.

3. That the business of respondent was an old established business or that it had been in existence for many years.

4. That the prospective students solicited would have to enroll for instruction immediately in order to come within a definite quota, and that the quota was practically filled.

5. That a Government job was guaranteed to the student taking the course offered and if not obtained, money paid would be refunded.

6. That the school conducted by respondent had means of securing advance information concerning examinations held by the United States Civil Service Commission.

7. That respondent's students received preference over other candidates in securing appointments to Government positions.

8. That only a limited number of students was to be enrolled in a certain locality.

9. That the prospect solicited had been selected to take the training offered because of high standing in the community or because of superior education or because of other special qualifications.

10. That jobs were offered or that students taking the courses were placed in government positions by respondent school.

11. That a large number of respondent's former students had been placed in or had secured Government positions.

12. That personal help would be given to students taking the courses offered.

13. That the student solicited would be trained for a specific, designated Government position or appointment.

14. That prospective students solicited for said courses and whose contracts and payments were accepted, but who were not qualified by prior education or were not physically or otherwise qualified for Government positions for which training was offered, were properly qualified in such respects.

15. That the nature, character or extent of courses offered was other than that given.

The use by respondent of the word "National" in the name under which said business has been conducted, when used in connection with the sale of correspondence courses intended for preparing students thereof for positions in the classified civil service under the United States Government with other misrepresentations of Government connection by salesmen, as aforesaid, is misleading in that it serves to create an erroneous impression of Government connection and encourages misrepresentations by salesmen as aforesaid.

The term "National Employees" in the name of said school is also misleading in that it tends to create the erroneous impression that said school is an organization composed of employees of the National Government or that it is an official institution for training persons selected for appointment to Government positions.

In truth and in fact, neither respondent, nor the school conducted by him, nor anyone connected with said school, had any connection whatever with the United States Government or with the United States Civil Service Commission. Respondent's school is not an old established one but is a comparatively new institution. Respondent cannot and does not guarantee Government appointments, nor do students of such school receive any preference in appointments to Government positions. Neither respondent nor anyone connected with said school had any advance knowledge in regard to examinations conducted by the United States Civil Service Commission. Refunds are not made as a general thing if Government jobs are not

obtained. Prospective students solicited or accepted for training were not limited by a definite quota or otherwise and were not specially selected but all available prospects were solicited and accepted. Respondent had no Government job to offer and could not place his students in Government jobs. Comparatively few, if any, of respondent's former students have been placed in or have secured Government positions. No personal help was given students taking respondent's courses but all instruction was by correspondence. All of respondent's instruction was general in character and was not for any specific or designated Government position or appointment.

PAR. 4. Respondent, in the sale of his said courses of study and instruction as aforesaid, through use of a so-called "Refund Agreement" as well as by direct representations of salesmen, has represented to students and prospective students that money paid for instruction will be refunded in the event Government positions are not obtained. The "Refund Agreement" used by respondent, as aforesaid, read as follows:

#### REFUND AGREEMENT

It is understood that I am to be trained for each Civil Service Examination covered by this contract until I have received a passing grade. Then, if I fail to receive an appointment during the period my name remains on the Government eligible list, I am upon written application to receive a refund of the entire amount paid for this training.

The implication of said agreement is that civil service examinations for which respondent's students prepare will be held within a reasonable time after such students have completed their courses and that Government appointments will be available within a reasonable time.

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 has offered courses, no examinations are held for long periods of time and as to certain local examinations none is likely to be held in the locality where respondent's students are located. Moreover, even if an examination should be held and a student's name placed on an eligible list, the chances of appointment are and have been remote or, if an appointment is 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 and in regard to which respondent offers instruction, great numbers of eligibles are and have been available for comparatively few appointments.

PAR. 5. The use by respondent of the foregoing practices and representations and others similar thereto, in offering for sale and selling his 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 3 and 4 hereof are true, and induces them to purchase such courses of study and instruction on account thereof. Thereby trade is unfairly diverted to respondent 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 those who, in the sale of their respective courses of study and instruction, do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices as herein set forth, 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.

PAR. 6. The above acts and things done by respondent are all to the injury and prejudice of the public and of competitors of respondent, 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 February 10, 1938, issued its complaint in this proceeding and caused same to be served upon the respondent W. R. Young, an individual doing business under the name and style of National Employees Training Service, charging him with the use of unfair methods of competition in commerce in violation of said act. No answer to said complaint was filed by said respondent and thereafter testimony and other evidence was introduced in support of the allegations of said complaint at Detroit, Mich., on July 5, 1938, and at Columbus, Ohio, on July 7, 1938, by Harry D. Michael, counsel 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 re-

ceived as exhibits. No testimony or other evidence was tendered by or on behalf of the respondent. Thereafter said proceeding regularly came on for final hearing before the Commission on the said complaint, the testimony taken and evidence received and the brief of counsel for the Commission in support of the complaint. No brief was filed by or on behalf of respondent and no request was made by him for permission to present 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, W. R. Young, is an individual and for a number of years carried on business at Detroit, Mich., under the name and style of National Employees Training Service, during which time he was engaged in the business of the sale and distribution of courses of home study instruction conducted by correspondence and intended for use in the instruction of persons who expected to take examinations to be conducted by the Civil Service Commission of the United States for the purpose of creating registers of eligibles 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 divided into lessons and were in printed form and were sent by the United States mail by respondent from his place of business in Detroit in the State of Michigan through and into other States of the United States to the respective purchasers thereof. In the conduct of his said business, respondent was in active competition with various partnerships and corporations and other persons also engaged in the sale of courses of instruction of the same general nature as those sold by respondent, 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 offering for sale and selling courses of instruction, either directly or through agents appointed by him, has made numerous statements and representations concerning such courses of instruction and the benefits to be derived from same, among which were statements and representations to the effect that respondent and his said agents were employed by the United States Government and represented the United States Civil Service Commission; that the business conducted by respondent was an old established business and had been in existence for many years; that prospective students solicited would have to enroll immediately in order to get within the quota of Govern-

ment positions allotted to respondent, which quota was practically filled; that jobs with the United States Government would be secured for the students taking the courses of instruction offered by respondent or that the money paid for such courses would be refunded by respondent; that respondent was able to get advance information concerning examinations to be conducted by the United States Civil Service Commission; that students who completed the courses of instruction sold by respondent had preference over other applicants for positions in the classified civil service of the United States. Other statements and representations of similar import were made by respondent and his agents concerning said courses of instruction.

PAR. 3. As a means of contacting prospective purchasers of the courses of instruction offered for sale by him, respondent mailed to numerous unnamed box holders on rural free delivery routes in various States of the United States, postal cards which had printed thereon numerous statements among which were statements to the effect that due to death, retirement, and normal Government expansion many thousands of Government positions are opened for the trained man or woman each year; that American citizens of good health and character could qualify for Government positions and the request was made that the attached reply card be mailed for free samples of actual questions given in recent civil service examinations, but said cards contained no mention of the fact that respondent was in the business of selling courses of instruction. Attached to each of these cards was a business reply card which could be detached and mailed under the provisions of the United States Postal Laws and Regulations and was addressed to the National Employees Training Service, the trade name under which respondent carried on business. Each of these cards had printed thereon the request that it be detached and mailed. Also there was printed on each of said reply cards the following:

Government positions \$105 to \$175 per month.

Also the statement that no postage stamp was necessary and that the postage would be paid by the addressee. Respondent also caused like cards to be distributed by the Western Union Messenger Service from house to house in various cities of the United States. The evidence shows, and the Commission finds, that many persons who received these cards and detached the return portion and mailed same to respondent were influenced in so doing by the fact that the cards could be sent by mail without attaching a postage stamp thereto and the name of the addressee printed thereon, "National Employees Training Service," caused them to believe that respondent was in some way connected with the United States Government.

PAR. 4. The statements and representations made by respondent, either directly or by his agents, concerning the courses of instruction offered for sale and sold by him, and the benefits to be derived therefrom, as set out in paragraph 2 hereof, were false, misleading, and deceptive in that neither the respondent nor any of his agents was an employee of the United States Government; none of them in any way represented the Civil Service Commission of the United States; no quota of positions in the classified civil service of the United States had been allotted to respondent for the benefit of any of the persons who might purchase the courses of instruction sold by respondent; respondent could in no way influence or control appointments to positions in the classified civil service of the United States, and the persons who completed the courses of instruction sold by respondent had no preference over other applicants for said positions; respondent could 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, and respondent had no advance information concerning examinations to be held by the Civil Service Commission of the United States except such information as was given to the public at large. Respondent could guarantee no positions to any person completing his course of study. With few exceptions, respondent did not refund the price of tuition after being unable to secure a position for any student who had completed the course of instruction. Respondent's school is not an old established institution but had been in existence only for a period of a few years. The respondent did not confine his soliciting to students of high scholastic standing but solicited all persons who were willing to subscribe to the course, without making any discrimination with respect to their scholastic attainments. Such claims and representations have and have had the capacity and tendency to confuse, mislead and deceive members of the public and to induce them to purchase the courses of instruction sold by respondent in the erroneous belief that respondent in some way controlled appointments to positions in the classified civil service of the United States and was in some way connected with the Civil Service Commission of the United States, and as a result, patronage has been diverted unfairly to respondent from schools conducted by competitors, which competitors have not made the same or similar claims and representations concerning the schools conducted by them or the courses of instruction sold by them.

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## CONCLUSION

The claims and representations made by the respondent as hereinbefore set out are all to the injury of the public and to 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, 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, brief filed on behalf of the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That W. R. Young, an individual, doing business under the name and style of National Employees Training Service, his 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 courses of home study instruction designed for the preparation for civil service examinations, do forthwith cease and desist from representing:

1. Through the use of the word "National" or any similar word or words in the trade name, advertising literature, or in any other manner, that he has any connection with or is an agency of the United States Government or the United States Civil Service Commission.

2. That his business has been in existence for many years.

3. That the enrollment of students is limited by a definite quota, or that only a small number of students are accepted in any given territory, or that only persons with high scholastic attainments are accepted by respondent as prospective students for said course of instruction.

4. That civil service positions in the United States Government are guaranteed to students who have completed respondent's course of instruction.

5. That the price of tuition will be refunded if respondent fails to secure positions for students who have completed the course of instruction unless and until such refunds are in fact made in accordance with respondent's agreement.

6. That respondent has any advance information with respect to available positions in the civil service, which information cannot be secured from the United States Civil Service Commission, or that respondent has any additional or confidential information with respect to such positions which is not available to the public.

7. That respondent has any control of positions available in the civil service or that respondent's students are preferred by the United States Civil Service Commission over other students who have not taken respondent's course of instruction.

*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

## GENERAL MOTORS CORPORATION, CHEVROLET MOTOR COMPANY, OLDS MOTOR WORKS, PONTIAC MOTOR COMPANY, BUICK MOTOR COMPANY, CADILLAC MOTOR CAR COMPANY, AND GENERAL MOTORS ACCEPTANCE CORPORATION

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

*Docket 3001. Complaint, Nov. 30, 1936—Decision, Dec. 8, 1939*

Where a corporation engaged in manufacture of a line of motor vehicles and in sale thereof, under various brand names, to public through a number of corporate subsidiaries and, after said subsidiaries' dissolution, through selling subsidiary, and a second concern which it organized to furnish credit to dealers in its said cars and to purchasers at retail buying same from dealer on a deferred payment or credit base, and which concern it entirely owned and controlled—

Featured, or caused to be featured, in numerous and extended advertisements of various kinds and in descriptions therein of their new "6%" plan, as published, directly and through said corporate subsidiaries and through neon lights, mats, and sample advertisements made available to their dealers for use in local advertising, symbol "6%," and so featured same in most of said advertising or advertisements, and in most of which there was not set forth extended explanation found in initial announcement of plan, that attention of purchaser was immediately drawn to said symbol or term and impression gained that there was meant 6 percent simple interest per annum, computed on declining balance as reduced by monthly payments;

Facts being that under method employed of applying charge of one-half of 1 percent per month for period of contract to initial unpaid balance and dividing by number of months involved sum of said balance and figure secured as aforesaid to derive monthly payment of customer, latter paid at rate in excess of 11 percent simple interest on amounts owed on transaction, as reduced by contract's monthly payments;

With effect of causing trade to be unfairly diverted to said corporation and, prior to their dissolution, to its various said subsidiaries, and to said concern, from competitors who did not in any manner misrepresent cost of credit charge for purchasing motor vehicles on installment or deferred payment plan in offer for sale or sale of their said products; to the substantial injury of competitors in commerce among the various States and in the District of Columbia:

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

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

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

*Mr. John Thomas Smith*, 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 General Motors Corporation, Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., Cadillac Motor Co., and General Motors Acceptance 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, General Motors Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its principal place of business at Detroit, in the State of Michigan.

The respondents, Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Co. are all corporations respectively, organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with their principal place of business at Detroit, in said State.

Respondent, General Motors Acceptance Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, having its principal place of business located in the city of New York, in said State.

PAR. 2. Respondent, General Motors Corporation, for several years last past has been engaged in the business of manufacturing motor vehicles. Said manufacturing business is conducted through its several operating divisions producing Chevrolet, Oldsmobile, Pontiac, Buick, Cadillac, and LaSalle motorcars. The products thus manufactured are sold and shipped by the said General Motors Corporation either directly, or through its wholly owned respondent subsidiary selling corporations, to wit: Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Co. These said motor vehicles, when so sold, are transported from the State or States in which they are manufactured to the purchasers thereof located in a State or States other than the State in which such shipment or shipments originate. Said products also are extensively sold and shipped to various foreign countries.

The said respondent, General Motors Corporation, also owns the respondent, General Motors Acceptance Corporation, which was

organized by the said respondent, General Motors Corporation, to provide a time-payment plan offered exclusively by dealers in General Motors products. The officers and directors of respondent, General Motors Corporation, are in some instances officers and directors of the respondent subsidiary selling corporations, and also of the respondent, General Motors Acceptance Corporation.

In the course and conduct of business, the respondents have been, and are in competition with other corporations, individuals, firms, and partnerships likewise engaged in similar businesses involving the offering for sale, the sale and distribution of motor vehicles in commerce among and between the various States of the United States and with foreign countries.

PAR. 3. In the course and conduct of business as described in paragraph 2 hereof, the respondent, General Motors Corporation, acting concertedly and in combination and cooperation with each of its respondent subsidiary selling corporations, and with respondent, General Motors Acceptance Corporation, devised, worked out, effectuated, adopted, and used a plan or method of financing the purchase of motor vehicles on a deferred or time payment plan, in connection with the offering for sale and the sale of motor vehicles in commerce among and between the various States of the United States and with foreign countries. The said respondent, General Motors Corporation, and its said respondent subsidiary selling corporations, and their authorized dealers, and the said respondent, General Motors Acceptance Corporation, acting concertedly and in cooperation each with the other, caused advertising matter to be distributed, or circulated between and among the various States of the United States, and also internationally, and through the media of newspapers, magazines, trade journals, circulars, posters, and other printed matter. In such advertising, said plan or method of financing was represented, designated, and referred to as a "6% Plan" and "New GMAC 6% Time Payment Plan."

PAR. 4. In truth and in fact, the aforementioned plan or method of financing the purchase of motor vehicles is not properly, truthfully, or accurately referred to in the advertising as represented in the preceding paragraph in that it tends to convey and conveys to purchasers and prospective purchasers of motor vehicles that said plan or method is a 6 percent simple interest plan of financing, whereas it actually refers to a plan of financing involving a 6 percent interest charge on the full amount of the account originally financed from the date it begins to run to the date the account is closed, regardless of the fact that the account is divided into, and amortized gradually and regularly by, monthly payments of equal amounts. For that

reason, the said plan or method actually is a financing plan which involves the payment of interest at a rate much in excess of, or substantially 100 percent greater than the "6%" feature in the aforesaid advertising.

PAR. 5. The advertising matter as represented in paragraph 3 has the capacity and tendency to mislead and deceive, and does mislead and deceive a substantial part of the purchasing public into the erroneous belief that the said finance plan or method as above set forth contemplates a simple interest charge at the rate of 6 percent per annum upon the deferred and unpaid balances of the purchase price of motor vehicles and tends to and causes such purchasing public to buy motor vehicles in that belief. The interest rate of said finance plan or method actually amounts to almost 12 percent.

PAR. 6. The acts and practices of the several respondents, as herein set out, including the use of such advertising, as above set forth, have the capacity and tendency to, and do, serve to cause trade to be unfairly diverted to respondent, General Motors Corporation, its respondent subsidiary companies and authorized dealers, and to the respondent, General Motors Acceptance Corporation, and its affiliated companies, from competitors who do not adopt or use equivalent methods of advertising in the offering for sale or sale of motor vehicles. As a result thereof, substantial injury has been and is now being done by each and all of the respondents to competition in commerce among and between the various States of the United States.

PAR. 7. The aforementioned methods, acts, and practices of respondents 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 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 November 30, 1936, against the respondents in this proceeding, General Motors Corporation, Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., Cadillac Motor Car Co., and General Motors Acceptance Corporation, and caused the complaint to be served upon the respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act.

The respondents, General Motors Corporation, Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Car Co., filed their joint answer to the complaint on December 23, 1936.

The respondent, General Motors Acceptance Corporation, filed its separate answer to the complaint on December 23, 1936.

Thereafter, testimony and other evidence in support of the allegations of the complaint were introduced by James M. Hammond, attorney for the Commission, before Edward E. Reardon, theretofore duly designated an examiner of the Commission. At the conclusion of the taking of testimony and other evidence in support of the allegations of the complaint, the respondents, by their attorney John Thomas Smith, represented by Anthony J. Russo of counsel, rested the case without the introduction of testimony or evidence in opposition to the allegations of the complaint.

The testimony and other evidence introduced 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 complaint; the joint answer of the respondents, General Motors Corporation, Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Car Co.; the separate answer of respondent, General Motors Acceptance Corporation; the testimony and other evidence; brief in support of the complaint and brief of respondents 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, General Motors Corporation (hereinafter referred to as General Motors) was organized pursuant to the laws of the State of Delaware in 1916.

At all times since its incorporation it has been engaged in the manufacture and sale of motor vehicles. Its products are sold under the names and are commonly referred to as Chevrolets, Oldsmobiles, Pontiacs, Buicks, Cadillacs, and various and sundry other names. Its extended interests are administered through the medium of a number of subsidiaries by which means it promotes its various activities involving the sale of its cars, accessories, and parts to the purchasing public and the financing of credit transactions pertaining to those sales. Its principal office and place of business is at Detroit,

Mich., in which State its principal factories also have their situs. It operates other factories and a considerable number of assembly plants in various other States. Its products are shipped from the State of Michigan and from its assembly plants to points throughout the United States and into the District of Columbia, for sale to the purchasing and consuming public through subsidiary corporations organized for that purpose.

PAR. 2. The respondent, Chevrolet Motor Co. (hereinafter referred to as the Chevrolet Co.) was incorporated under the laws of New Jersey prior to 1916. The respondents, Olds Motor Works (hereinafter referred to as the Olds Co.), the Pontiac Motor Co. (hereinafter referred to as the Pontiac Co.), the Buick Motor Co. (hereinafter referred to as the Buick Co.), and the Cadillac Motor Car Co. (hereinafter referred to as the Cadillac Co.), were each incorporated under the laws of Michigan prior to 1920, except the Pontiac Co., which was organized as a Michigan corporation prior to 1933. The principal place of business of all five of these companies was, prior to their dissolution at Detroit, Mich.

All of the capital stock of these five subsidiaries prior to their dissolution, except the necessary qualifying shares held in the names of individuals, was owned by General Motors. The functions of these five subsidiaries in the General Motors organization for a long time prior to the issuance of the complaint herein and up to the time of their dissolution consisted solely in marketing the cars manufactured by General Motors.

PAR. 3. At about the time of the issuance of the complaint herein, the Chevrolet, Pontiac, Olds, Buick, and Cadillac companies were dissolved and their assets transferred to General Motors. All of their functions were immediately assumed by a single corporation newly organized for that purpose known as the General Motors Sales Corporation. The new company was incorporated in 1936, pursuant to the laws of the State of Delaware and is a wholly owned subsidiary of General Motors with its principal office and place of business in the General Motors Building, Detroit, Mich. It is now, and has been since its organization, engaged in selling substantially all of the cars manufactured by General Motors for domestic consumption. It exercises within the General Motors organization all of the functions of the now dissolved Chevrolet, Pontiac, Olds, Buick, and Cadillac companies. At all times since it commenced operating it has exercised the same duties as the pre-existing Chevrolet, Pontiac, Olds, Buick, and Cadillac companies to whose functions it succeeded in the General Motors organization.

PAR. 4. The respondent, General Motors Acceptance Corporation (hereinafter referred to as GMAC), was incorporated in 1919 in the State of New York. It is entirely owned and controlled by General Motors and was organized by that company for the purpose of furnishing credit to dealers when purchasing cars from General Motors or its subsidiaries, and to retail purchasers when cars are bought by them on a deferred payment or credit basis.

Its credit facilities are made available to retail purchasers by furnishing a ready means whereby the retail dealer may dispose of the installment contracts given him by retail purchasers. By this process the retail purchaser may contract to buy a car manufactured by General Motors on a deferred-payment basis. The dealer in turn is at liberty to assign this contract to GMAC, if acceptable to that company, and receives the approximate value therefor, whereupon GMAC collects the monthly installments from the retail purchaser as they become due. GMAC functions exclusively in connection with sales negotiated by authorized dealers in cars manufactured by General Motors except as to used cars of other makes taken by those dealers in trade.

PAR. 5. At all times since 1934 General Motors has manufactured all of its cars regardless of the type or brand name under which they are commonly sold. Immediately following their manufacture these cars were sold to the Chevrolet, Olds, Pontiac, Buick, and Cadillac companies up to the time of their dissolution as above stated. These companies functioned only as selling agencies and, except for the small percentage of cars sold by them at their own retail stores, or sold by General Motors itself, as hereinafter described, disposed of the entire General Motors production of cars to authorized retail dealers in General Motors' cars, of whom there are several thousand located in all parts of the United States. The retail dealers in turn sold these cars to the public, being aided in that respect by the entire General Motors corps of subsidiaries named as respondents herein and the General Motors Sales Corporation following its organization.

Since dissolution of the Chevrolet, Olds, Pontiac, Buick, and Cadillac companies in the fall of 1936, the General Motors Sales Corporation has taken title to substantially all cars manufactured by General Motors for domestic distribution and disposed of them to the public through the medium of its authorized dealers in the same manner as the dissolved subsidiaries carried out their functions in this respect prior to their dissolution. The names of the dissolved corporations were continued as division names in the new selling company, such as Chevrolet division, General Motors Sales Corporation. The retail stores formerly maintained by the dissolved

companies continued to be and still are operated by the General Motors Sales Corporation.

PAR. 6. All of the respondents named in this proceeding, including the five dissolved selling subsidiaries, at the time of the institution of this proceeding and for a long time prior thereto, were in competition with other companies likewise engaged in the sale of motor vehicles in commerce among and between the various States of the United States and in the District of Columbia. The General Motor Sales Corporation has been likewise engaged in competition in said commerce since it took over the functions of the five dissolved selling subsidiaries as above described.

PAR. 7. Prior to their dissolution the Chevrolet, Pontiac, Buick, and Cadillac companies maintained several retail stores wherein cars manufactured by General Motors were sold direct to the public. Two of these stores were maintained by the Chevrolet Co. in Michigan. The Cadillac Co. maintained retail stores in New York, Michigan, and Illinois, which sold both Cadillac and LaSalle cars. The Buick Co. and the Pontiac Co. both maintained retail stores in Michigan. All of the balance of the cars manufactured by General Motors, except a few sold by General Motors itself, passed through the hands of its selling subsidiaries direct to the public through the medium of the authorized dealers in General Motors products. General Motors does not deal with these dealers direct, but through its selling subsidiaries.

The relationship between the dealer and the selling subsidiary of General Motors with whom he dealt was and is established by contract which was subject to cancellation on short notice. These contracts outline generally the way in which the dealer shall conduct his business and the manner in which he may purchase and sell the type of car in which he deals. Respondents furnished, or made available to the dealers, the necessary forms for keeping their accounts, making reports, purchasing and selling cars and computing the charges under the "6%" plan hereinafter described.

General Motors Sales Corporation now sells, and prior to its organization the five dissolved companies sold, the cars manufactured by General Motors either to the dealer for cash or on credit arranged through General Motors Acceptance Corporation. The dealer in turn sold to the retail purchaser for cash or on credit. In the latter case a conditional sales contract, chattel mortgage, or similar credit device, was executed by the retail purchaser, depending upon the law of the State in which the transaction occurred, providing for the discharge of the debt in monthly payments, usually over a period of 12, 18, or 24 months.

PAR. 8. The control of General Motors over its subsidiaries, to wit, Chevrolet, Olds, Pontiac, Buick, Cadillac, GMAC, and General Motors Sales Corporation, was and is complete, both through stock control and through the medium of an interlocking directorate. Directors and officers of General Motors were likewise officers and directors of each of these subsidiaries.

PAR. 9. In the fall of 1935 the respondent General Motors, through its various subsidiaries, announced a plan of financing the purchase of the several brands of motor vehicles manufactured and distributed by it, as aforesaid, on a deferred or installment payment plan which was referred to and described as the "6%" or "Six Per Cent" plan. This plan was first advertised by General Motors through its subsidiary GMAC in an advertisement which appeared in newspapers of wide and general circulation on October 2, 1935. The initial advertisement was as follows:

GMAC

GENERAL MOTORS ACCEPTANCE CORPORATION

REDUCES TIME PAYMENT COSTS ON NEW CARS

With a new 6% Plan

SIMPLE AS A, B, C

A—TAKE YOUR UNPAID BALANCE

B—ADD COST OF INSURANCE

C'—MULTIPLY BY 6%—12 months' plan

(One-half of one percent per month for periods more or less than 12 months)

That's your *whole* financing cost. No extras. No service fees. No other charges.

GMAC announces today a new, economical way to buy any new General Motors car from General Motors dealers all over the United States.

It's the plan you've been waiting for—a plan you can understand at a glance. It is far simpler and more economical than any other automobile time payment arrangement you've ever tried.

Actually as simple as A, B, C—this new plan provides for convenient time payments of the unpaid balance on your car—including cost of insurance and a financing cost of 6%. This represents a considerable reduction in the cost of financing car purchases. It is not 6% interest, but simply a convenient multiplier anyone can use and understand. Nothing is added in the way of so-

<sup>1</sup> In some States a small legal documentary fee is required.

called *service* or *carrying* charges. There are no extras. Simply a straight forward, easy-to-understand transaction.

This simple step brings the world's finest cars within reach of thousands who have long needed new cars. When you buy a new Cadillac or Buick, Chevrolet or Pontiac, Oldsmobile or LaSalle, on this new plan, you actually save money!

And finally—buyers under this new plan receive an insurance policy in the *General Exchange Insurance Corporation* which protects them against Fire, Theft, and Accidental Damage to their cars.

(Block here asking owners to make comparison with other finance plans.)

OFFERED ONLY BY DEALERS IN

CHEVROLET CARS & TRUCKS—PONTIAC—OLDSMOBILE—  
BUICK—LaSALLE—CADILLAC

\* \* \* \* \*

Following the appearance of this advertising matter many similar advertisements were published both by GMAC and by the other five selling subsidiaries of respondent, to wit, the Chevrolet, Pontiac, Olds, Buick, and Cadillac companies. Some of them gave an extended explanation of the "6%" plan, such as is given in the advertisement quoted in full above, but most of them did not and confined themselves to a short reference to the "6%" plan. Typical references to the "6%" plan in these advertisements are as follows:

**Chevrolet:**

Compare Chevrolet's low delivered prices and the new, greatly reduced GMAC 6% Time Payment Plan.

**Pontiac:**

All Pontiac cars can be bought on GMAC's new 6% Plan which greatly reduces the cost of buying on time.

**Olds:**

New 6% GMAC Time Payment Plan.

**Buick:**

The new GMAC 6% TIME PAYMENT PLAN not only simplifies financing but actually cuts the cost of buying a car on time.

**LaSalle:**

Available on GMAC's new 6% Time Payment Plan.

**Cadillac:**

Available on GMAC's new 6% time payments.

In addition to these advertisements, the "6%" plan was highly publicized by the use of billboards and window posters. In many of these advertisements the symbol "6%" was featured in a size far greater than most of the other lettering in the advertisement. All of these advertisements were paid for by GMAC or the other selling subsidiaries of General Motors as indicated herein, entirely from their

## Findings

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own funds or from a fund known as the "dealers' fund," which was collected and controlled by the selling subsidiaries. Money for the "dealers' fund" was raised by billing the dealers a specified amount in the invoice pertaining to each car sold to them. This charge was in turn passed along to the retail purchaser by the dealer. Neon signs featuring the term "6%" were also made available by said subsidiaries to dealers as were mats and sample advertisements for use in inserting advertisements in local newspapers, magazines, or circulars, at the dealer's expense.

The function and purpose of all this advertising, including that published by GMAC, was to promote and further the sale to the purchasing public of new cars manufactured by General Motors.

PAR. 10. The announcement and use of the "6%" plan by General Motors gave that company such an advantage over competitive motorcar manufacturers that all of its principal competitors promptly announced similar plans for financing the sale of new cars on a deferred-payment basis, and by the middle of January 1936, all of these competitors had announced similar "6%" financing plans. Complaints were issued by the Commission against all of these manufacturers. The names of the principal respondents and the docket numbers of these cases are as follows:

Docket 3000—Nash Motors Co.

Docket 3002—Chrysler Corporation, et al.

Docket 3003—Graham-Paige Motors Corporation, et al.

Docket 3004—Hudson Motor Car Co., et al.

Docket 3005—Ford Motor Co., et al.

Docket 3006—Reo Motor Car Co.

Docket 3007—Packard Motor Car Co.

The complaints in these cases were substantially similar to the complaint in the instant proceeding. All of these respondents, with the exception of the Ford Motor Co., chose to stipulate the facts and agreed to cease and desist from the acts and practices alleged in these complaints. These agreements were executed at various dates during the spring and summer of 1936. These companies were forced to adopt the "6%" plan to promote the sale of motor vehicles because of the competitive disadvantage at which they were placed in view of the prior adoption and advertisement of such plan by General Motors and its subsidiaries.

PAR. 11. The respondent General Motors and its subsidiaries discontinued advertising the "6%" plan during the spring or summer of 1936. The General Motors Sales Corporation never published a "6%" plan advertisement although General Motors through its subsidiaries

has placed in the hands of its dealers the requisite contract forms, tabulations, and data necessary to compute the "6%" plan, which plan is still used by the respondent General Motors and its subsidiaries although not publicly advertised by them.

PAR. 12. In most of the "6%" advertising sponsored by the respondents herein, the term "6%" was featured in such a way that the attention of the purchaser or prospective purchaser was immediately drawn to it. The testimony of the members of the public who were called to explain the impression they gained from these advertisements shows, and the Commission finds, that when the term "6%" is used in connection with monthly payments, it is understood to mean 6 percent simple interest per annum computed on the declining balance as reduced by said monthly payments.

As actually carried out in practice by the respondent General Motors and its subsidiaries the "6%" plan was computed by multiplying the unpaid balance on the car purchased by 6 percent in cases where the balance was to be paid in monthly installments over a period of 1 year. If for a shorter or longer period, the charge was one-half of 1 percent per month, so that for a period of 18 months the multiplier was 9 percent and for 24 months it was 12 percent. The sum thus obtained by this computation was then added to the original unpaid balance of the purchase price of the car and the total divided by the number of months over which the contract extended, for the purpose of obtaining the amount of each monthly installment. By this means there was no reduction of the amount charged under the "6%" plan to correspond with the diminution of the original unpaid balance by the monthly installments paid by the retail purchaser. The purchaser paid 6 percent, 9 percent, or 12 percent as the case might be, on the total amount originally owed which resulted in a charge of approximately 11½ percent simple interest per annum on an original balance as reduced by monthly payments instead of 6 percent interest as was generally implied. An example showing the difference in the amount paid by the purchaser under the 6 percent-plan and the amount that would have been paid at 6 percent simple interest per annum computed on the declining balance as reduced by the monthly installment payments made is as follows:

On an original unpaid balance of \$400 amortized in equal monthly installments over a period of 18 months, the total charge for financing under the 6-percent plan was \$36, which amounts to 11.3684 percent simple interest per annum. If the \$400 balance were amortized in a like manner in equal monthly installments over 18 months, the charge

for this credit computed at the rate of 6 percent interest per annum on the declining balance as reduced by the monthly payments would amount to a total of only \$19 or \$17 less than that charged under the "6%" plan. Other computations show that on an original balance of \$300 paid in monthly installments over 1 year the "6%" plan charge was at the rate of 11.0769 percent interest per annum; on a 24-month debt of \$600 the charge was equivalent to 11.52 percent interest.

The advertisements published by GMAC all furthered the sale of cars manufactured by General Motors. It was financially interested in promoting these sales. It was a subsidiary of General Motors and dealt exclusively with General Motors dealers. The record shows that during 1936 alone, it purchased 710,924 installment contracts covering new cars sold by General Motors dealers and that the unpaid balance on these contracts averaged \$550 each. This business represented between 65 percent and 70 percent of all time-payment contracts on new cars negotiated by General Motors retail dealers during that year. Although GMAC was organized primarily as a finance company, to furnish credit to dealers and retail purchasers of General Motors cars, its activities in promoting the sales of General Motors cars, at retail as herein found, places it in the same category as the other sales subsidiaries of General Motors and it has and does promote the sale of such motor vehicles through such advertising matter. Other companies engaged in automobile financing of a general nature found a considerable reduction in business following the announcement of respondents' "6%" plan.

PAR. 13. There was, and is, a regular flow of commerce in said motor vehicles from the factories of the respondent General Motors in the State of Michigan to the retail purchasers thereof in other States, through retail dealers and, prior to their dissolution, through the Chevrolet, Pontiac, Olds, Buick, and Cadillac companies, and subsequently through their successor, General Motors Sales Corporation and this movement of motor vehicles manufactured by General Motors from the factories maintained by it in the State of Michigan, to said retail purchasers in other States was furthered, aided and assisted by the acts and practices of the respondent GMAC. General Motors and its subsidiaries, including GMAC, aided and assisted in the promotion and sale of motor vehicles by retail dealers through the medium of said "6%" or "six per cent" plan of financing deferred or installment payments on new motor vehicles and the advertisement and use of this plan by General Motors and its subsidiaries, including GMAC, increased the retail sale of new motor vehicles manufactured by General Motors to the benefit of it and its subsidiaries.

PAR. 14. The advertisements of the respondents herein as outlined in paragraph 9 hereof have the capacity and tendency to mislead and deceive, and have misled and deceived, a substantial part of the purchasing public into the erroneous and mistaken belief that the said "6%" or "six per cent" finance plan, as above set forth, contemplates a simple interest charge of 6 percent per annum upon the deferred and unpaid balance of the purchase price of the motor vehicles sold by the respondents, and tends to cause, and has caused, such purchasing public to buy motor vehicles manufactured by General Motors because of that erroneous and mistaken belief, when in truth and in fact the total of the credit charge, computed in accordance with said "6%" or "six per cent" plan, amounts to approximately 11½ per cent simple interest per annum upon the deferred and unpaid balance, as diminished by the installment payments made, of the price of the motor vehicles sold to the purchasing public.

PAR. 15. The acts and practices of the several respondents herein had the capacity and tendency to and did, cause trade to be unfairly diverted to respondents General Motors, GMAC, and, prior to their dissolution, to the Chevrolet, Pontiac, Olds, Buick, and Cadillac companies, from competitors who did not, and who (including those stipulating to cease and desist) do not, in any manner misrepresent the cost of the credit charge for purchasing motor vehicles on the installment or deferred-payment plan in the offering for sale or sale of motor vehicles. As a result thereof, substantial injury has been done by the 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 respondent General Motors Corporation and its subsidiary, the respondent General Motors Acceptance Corporation, and prior to their dissolution, the respondents Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Car Co., were and are all to the prejudice and injury of the public and of competitors of said 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 joint answer of respondents, General Motors Corporation, Chevrolet Motor Co., Olds

Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Car Co., and the separate answer of the General Motors Acceptance Corporation, 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 James M. Hammond, counsel for the Commission, and by John Thomas Smith, represented by Anthony J. Russo, of counsel, attorneys 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 respondent General Motors Corporation, directly or through its subsidiary, General Motors Sales Corporation, or any other subsidiary, and respondent General Motors Acceptance Corporation, their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of motor vehicles or any other products in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "six per cent" or the figure and symbol "6%" or any other words, figures or symbols indicating percentage, in connection with the cost of, or the additional charge for, the use of a deferred or installment payment plan of purchasing motor vehicles or any other product, when the amount of such cost or charge collected from, or to be paid by, the purchaser of a motor vehicle or any other product under such plan is in excess of simple interest at the rate of 6 percent per annum, or at the rate indicated by such words, figures, or symbols, calculated on the basis of the unpaid balance due as diminished after crediting installments as paid;

2. Acting concertedly or in cooperation with any company, firm, or individual, or with any of their agents or dealers, in a way calculated to further the sale of motor vehicles or any other product through use of the methods referred to in paragraph 1 of this order.

*It is further ordered,* That the complaint be, and the same hereby is, dismissed as to the respondents Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co., and Cadillac Motor Car Co., in view of the dissolution of these corporations since the institution of this proceeding.

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

## Syllabus

IN THE MATTER OF  
FORD MOTOR COMPANY AND UNIVERSAL CREDIT  
CORPORATION

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

*Docket 3005. Complaint, Dec. 1, 1936—Decision, Dec. 8, 1939*

Where a corporation engaged, as one of largest producers and with wide influence, in manufacture of all types of automobiles, including trucks, and in transportation and sale of its said products and parts from its place of business and assembly plants at various points in the United States to several thousand retail dealer outlets throughout the United States;

Acting concertedly and in cooperation with a concern which it originally organized and incorporated to furnish credit to its dealers and retail purchasers, and which concern confined its business entirely to financing sale of cars, accessories, and parts made by said corporation and sold to its dealers and to financing retail sales of said corporation's cars by dealers to public, excepting only such used cars of other makes as were taken in trade by dealers, and which simultaneously published advertisements similar to those hereinbelow set forth, and following the announcement and adoption of similar plans by various competitors of such corporation—

Announced, through press release and in newspaper advertisements, its "\$25-A-MONTH TIME PAYMENTS AND A NEW UCC 6% FINANCE PLAN," and referred thereto in many other advertisements, some of which, like original announcement, contained explanatory data with reference to working of plan in question, and others of which merely referred to so-called "6%" plan in some such way as "new UCC 6% finance plan" and "6% Plan of Financing. Total cost of credit is only ½% monthly on original unpaid balance and insurance. (6% for 12 months);"

Facts being plan in question, under which there was added to the original unpaid balance charge amounting to one-half of 1 percent a month for the number of months provided for payment thereof in particular contract, and sum thus arrived at, together with insurance coverage, was divided by said number of months to arrive at amount of customer's monthly payment, did not result in charge of 6 percent simple interest on amount owed under contract by customer as reduced from month to month by payments made, but amounted to approximately 11½ percent simple interest per annum on indebtedness as provided by customer's contract;

With effect of misleading and deceiving substantial part of purchasing public into erroneous belief that said finance plan or method, as above set forth contemplated a simple interest charge at the rate of six percent per annum upon the deferred and unpaid balance of the purchase price of motor vehicles, and of causing such public to buy said products from it through its authorized dealers and agents because of such belief, and of causing trade to be unfairly diverted to it and to its authorized dealers from competitors who did not in any manner misrepresent the cost of the credit charge for

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purchasing motor vehicles on installment or deferred payment plan in offer or sale thereof; to the substantial injury of competitors in commerce among the various States and in the District of Columbia:

*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.

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

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

*Bodman, Longley, Bogle, Middleton & Farley*, of Detroit, Mich., for Ford Motor Co.

*Davies, Richberg, Beebe, Busick & Richardson*, of Washington, D. C. and *Mr. Phillip W. Haberman*, of New York City, for Universal Credit Corp.

## 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 Ford Motor Co. and Universal Credit Corporation, hereinafter named and 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, Ford Motor 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 at Dearborn, in the State of Michigan. It is now, and for a number of years last past has been engaged in the business of manufacturing motor vehicles and in the sale and transportation thereof in commerce between and among various States of the United States, in Canada, and in other foreign countries. It causes and has caused said motor vehicles, when sold, to be shipped from its place of business in the State of Michigan to purchasers thereof located in different parts of the United States, in Canada, and in other foreign countries.

Universal Credit Corporation is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located in the city of Detroit, in the State of Michigan. It is now, and for some time past, has been concertedly and cooperatively engaged with the said respondent, Ford Motor Co., in the offering for sale and sale of motor vehicles manufactured by the said respondent, Ford Motor Co., in

commerce between and among the various States of the United States and with foreign countries.

In the course and conduct of their business, respondents, Ford Motor Co., and Universal Credit Corporation, have been at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in similar businesses involving the sale and distribution of motor vehicles in commerce as hereinabove set out.

PAR. 2. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents, Ford Motor Co. and Universal Credit Corporation, acting concertedly and in cooperation each with the other, and with the authorized dealers of the said respondent, Ford Motor Co., devised, worked out, effectuated, adopted, and used in connection with the offering for sale and sale of motor vehicles manufactured by the said respondent, Ford Motor Co., in commerce as herein set out, a plan or method of financing the purchase of such vehicles on a deferred- or time-payment plan. The said respondent, Ford Motor Co., its authorized dealers, and the said respondent, Universal Credit Corporation, acting concertedly and in cooperation each with the other, caused advertising matter to be distributed or circulated, between and among the various States of the United States and also internationally, through the media of newspapers, trade journals, circulars, posters, and other printed matter. In such advertising, said plan or method of financing was variously represented, designated, and referred to as follows:

With the usual low down-payment, \$25 a month buys any type of new Ford car. Financing at  $\frac{1}{2}$  of 1% a month, or 6% for 12 months. You receive insurance at conference rates. Complete fire and theft insurance—and \$50 deductible collision, and protection against accidental physical damage to your car. The Universal Credit Company offers exclusively the Authorized Ford Finance Plan.

\$25 a month buys any model 1936 Ford V-8. Usual low down-payment.  $\frac{1}{2}$ % per month, or 6% per year, includes insurance. Ask any Ford dealer about the Universal Credit Company \$25-a-month 6% Finance Plans.

\$25 a month with the usual low down-payment, buys any new Ford V-8 car on new U. C. C.  $\frac{1}{2}$ % per month finance plans.

Ask about the \$25-a-month and  $\frac{1}{2}$ % per month Finance Plans of the Universal Credit Company.

Ask your Ford dealer about the new \$25-a-month and U. C. C. 6% finance plan.

PAR. 3. In truth and in fact, the aforementioned plan or method of financing the purchase of motor vehicles is not properly, truthfully, or accurately referred to in the advertising matter as set forth in the preceding paragraph, in that it tends to convey and conveys to purchasers and prospective purchasers of motor vehicles the

impression and belief that said plan or method is a 6 percent simple interest plan of financing, whereas it actually refers to a plan of financing involving a 6 percent interest charge on the full amount of of the account originally financed from the date it begins to run to the date the account is closed, regardless of the fact that the account is divided into, and amortized gradually and regularly by, monthly payments of equal amounts. For that reason, the said plan or method actually is a financing plan which involves the payment of interest at a rate much in excess of, or substantially 100 percent greater than, the "6%" feature in the aforesaid advertising.

PAR. 4. The representations contained in the advertising matter as set forth in paragraph 2 have the capacity and tendency to mislead and deceive, and do mislead and deceive a substantial part of the purchasing public into the erroneous belief that the said finance plan or method as above set forth contemplates a simple-interest charge at the rate of 6 percent per annum upon the deferred and unpaid balances of the purchase price of motor vehicles and tends to and causes such purchasing public to buy motor vehicles from respondents and their duly authorized agents in that belief. The interest rate of said finance plan or method actually amounts to almost 12 percent.

PAR. 5. The acts and practices of the respondents as herein set out, including the use of such advertising, as above set forth, have a capacity and tendency to, and do serve to cause trade to be unfairly diverted to respondent, Ford Motor Co., and its authorized dealers and to the respondent, Universal Credit Corporation, and its affiliated companies, from competitors who do not adopt or use equivalent methods of advertising in the offering for sale or sale of motor vehicles. As a result thereof, substantial injury has been, and is now being, done by each and all of the respondents to competition in commerce among and between the various States of the United States.

PAR. 6. The aforementioned methods, acts, and practices of respondents 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 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 December 1, 1936, against the respondents in this proceeding, the Ford Motor Co.

and the Universal Credit Corporation and caused the complaint to be served upon the respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act.

After the service of the complaint, and after the filing of a separate answer thereto by the respective respondents, and before the taking of testimony in support of the complaint, as to the Ford Motor Co., the Commission on April 9, 1937, approved a stipulation as to the facts, and agreement to cease and desist, executed by the respondent Universal Credit Corporation. Thereafter and on the 5th day of May 1937, the Commission issued an order dismissing the complaint, as to that respondent.<sup>1</sup>

The respondent, Ford Motor Co., on January 10, 1938, filed a motion to dismiss the complaint, as to it, and the motion was denied by the Commission by an order issued on January 11, 1938.

Thereafter, testimony and other evidence in support of the allegations of the complaint, as to the respondent, the Ford Motor Co., were introduced by James M. Hammond, attorney for the Commission, before Edward E. Reardon, an examiner of the Commission theretofore duly designated by the Commission.

At the conclusion of the introduction of testimony and evidence in support of the allegations of the complaint, the respondent, the Ford Motor Co., by its attorneys, Bodman, Longley, Bogle, Middleton & Farley, rested the case without the introduction of testimony or other evidence on the part of the Ford Motor Co. in opposition to the allegations of the complaint.

The testimony and other evidence introduced 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 complaint; the answer of the respondent, the Ford Motor Co.; the testimony and other evidence; brief in support of the complaint and brief of respondent, the Ford Motor Co., in opposition thereto; and, upon oral arguments of counsel for the Commission and counsel for the respondent, the Ford

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<sup>1</sup> Such order was as follows:

This matter coming on to be heard by the Commission and it appearing that the respondent Universal Credit Corporation has entered into a stipulation [See 24 F. T. C. 1399] whereby it agreed to cease and desist from separately, concertedly, cooperatively, or otherwise using any advertising matter or furnishing to authorized dealers or distributors any advertising matter in which the expression "6%" is used, without equally prominent use, in direct conjunction therewith, of explanatory language which makes it clear that the said 6 percent does not refer to or indicate 6 percent per annum, simple interest, 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 as to the respondent Universal Credit Corporation.

Motor 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. The respondent, Ford Motor Co., is a corporation organized and existing pursuant to the laws of the State of Delaware, having its principal office and place of business at Dearborn, Mich., at which point it engages in the business of manufacturing all types of automobiles, including trucks. Its products are shipped from its place of business, and from the assembly plants hereinafter referred to located at various points in the United States, to the purchasers thereof located in the various States of the United States and in the District of Columbia. To assist in carrying out the distribution of its products it maintains a number of assembly plants at points located in States other than the State of Michigan. Parts manufactured at the principal factory in Michigan are shipped to these assembly plants and there assembled into completed automobiles, including trucks, which are in turn shipped to purchasers or prospective purchasers in zones covering various States within shipping radius of said assembly plants.

The respondent, Ford Motor Co., is one of the largest producers of automobiles in the United States and has wide influence in the automobile manufacturing industry as a whole. During the calendar year 1935 it sold 1,065,000 automobiles in the United States including cars and trucks, 963,000 in 1936, and 975,000 in 1937.

PAR. 2. There are other corporations in the United States which are also engaged in the manufacture of automobiles in competition with respondent Ford Motor Co. and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Some of these competitors are as follows:

Chrysler Corporation, a Delaware corporation, having factories in the State of Michigan and other places. This corporation manufactures the Chrysler, DeSoto, Dodge, and Plymouth cars;

Nash-Kelvinator Corporation, having its factory and principal place of business at Kenosha, Wis.;

Graham-Paige Motors Corporation, having its principal place of business at Detroit, Mich.;

Hudson Motor Car Co., having its office and principal place of business located at Detroit, Mich.;

Reo Motor Car Co., having its office and principal place of business at Lansing, Mich.;

Packard Motor Car Co., having its office and principal place of business at Detroit, Mich.

All of these companies are now and have been for a long time last past engaged in the manufacture and sale of all types of automobiles in competition with respondent Ford Motor Co. Cars manufactured by these companies are shipped from their factories in the State of Michigan and elsewhere, to all parts of the United States for sale to the purchasing public.

In order to facilitate the sale of its cars to the purchasing public the respondent, Ford Motor Co., maintains several thousand retail dealer outlets throughout the United States. The relationship between the Ford Motor Co. and these dealers is established by contract. The manufacturer agrees to sell and the dealers agree to buy Ford cars at prices fixed by the manufacturer. The dealers agree to maintain places of business of a definite kind and nature and agree to sell the cars in the manner specified by the manufacturer. They purchase their cars from the Ford Motor Co. either for cash, sight draft, or through the Universal Credit Corporation on a credit basis. The dealers agree to take retail orders for new cars on a specified order blank and in other ways to operate their dealerships in the manner outlined in their contracts.

The respondent, Ford Motor Co., does not sell cars direct to the public. All of its products are sold to its dealers, who in turn deal with the public. The title passes first to the dealer, then to the retail purchaser from the dealer. The Ford Motor Co., however, aids, assists, and promotes the sale of its automobiles by the dealers through wide and extensive advertising in newspapers, magazines, billboards, and in other ways.

PAR. 3. The Universal Credit Corporation is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal office and place of business in Detroit, Mich. It was originally incorporated and organized in 1928 by the Ford Motor Co. for the purpose of furnishing credit to its dealers and retail purchasers. In May 1933, the entire stock of the Universal Credit Corporation was sold by the Ford Motor Co. to the Commercial Investment Trust Co., of New York.

The business of the Universal Credit Corporation is confined entirely to financing the sale of cars, accessories and parts manufactured by the Ford Motor Co. and sold to Ford dealers and to the financing of retail sales of Ford cars by Ford dealers to the public, with the exception that in instances where a Ford dealer in the sale of new Ford cars takes a used car of another make in trade, the Universal Credit Corporation will finance the sale by the dealer of said cars of such other make. These dealer retail purchase contracts are entered into between the retail buyer and the dealer. Pursuant to the provisions of these contracts the retail buyer makes a down payment either in cash or by trading in a used car, or both, thus leaving an unpaid balance which the purchaser agrees to pay over a period extending, usually, for 12, 18, or 24 months.

The Universal Credit Corporation pursuant to its arrangement with the Ford Motor Co. will, if the dealer desires, and the same is acceptable, purchase this installment contract from the dealer and collect the payments from the retail purchaser.

PAR. 4. The Ford Motor Co. sells its cars only at wholesale to dealers. In some instances the sales of its cars are made direct to the dealer on a cash and delivery basis, the payment for the cars being made by the dealer direct to the Ford Motor Co. at time of delivery.

In instances other than through cash sales to dealers the Ford Motor Co. receives payment for the cars sold to dealers through transactions such as bill of sale and trust receipt, conditional sale contract, lease, or chattel mortgage depending upon the State in which the dealer is located. Through the medium of these credit transactions the Ford Motor Co. transfers its interest and title in the cars sold dealers on a credit basis to the Universal Credit Corporation, receives cash therefor and the dealer thereafter deals direct with that company in making payment for the cars. The bulk of the cars manufactured by the Ford Motor Co. is sold to dealers in this manner.

PAR. 5. What is commonly known to the public and to the automobile industry as the "six percent plan" of financing the retail sale of automobiles was first featured by the General Motors Corporation through its wholly owned subsidiary, the General Motors Acceptance Corporation, by the publication of advertisements on October 21, 1935, reading as follows:

## Findings

GENERAL MOTORS ACCEPTANCE CORPORATION  
REDUCES TIME PAYMENT COSTS ON NEW CARS

With a new 6% plan

SIMPLE AS A, B, C

- A—TAKE YOUR UNPAID BALANCE  
B—ADD COST OF INSURANCE  
C<sup>1</sup>—MULTIPLY BY 6%—12 months' plan.

(One-half of one percent per month for periods more  
or less than 12 months)

That's your *whole* financing cost. No extras. No  
service fees. No other charges.

GMAC announces today a new, economical way to buy any new General Motors car from General Motors dealers all over the United States.

It's the plan you've been waiting for—a plan you can understand at a glance. It is far simpler and more economical than any other automobiles time payment arrangement you've ever tried.

Actually as simple as A, B, C—this new plan provides for convenient time payments of the unpaid balance on your car—including cost of insurance and a financing cost of 6%. This represents a considerable reduction in the cost of financing car purchases. It is not 6% interest, but simply a convenient multiplier anyone can use and understand. Nothing is added in the way of so-called *service* or *carrying* charges. There are no extras. Simply a straight forward, easy-to-understand transaction.

This simple step brings the world's finest cars within reach of thousands who have long needed new cars. When you buy a new Cadillac or Buick, Chevrolet or Pontiac, Oldsmobile or LaSalle, on this new plan, you actually save money!

And finally—buyers under this new plan receive an insurance policy in the *General Exchange Insurance Corporation* which protects them against Fire, Theft and Accidental Damage to their cars.

(Block here asking owners to make comparison with other finance plan.)

OFFERED ONLY BY DEALERS IN

CHEVROLET CARS & TRUCKS—PONTIAC—OLDSMOBILE—BUICK—  
LASALLE—CADILLAC

Thereafter the General Motors Corporation through its subsidiaries published many thousands of advertisements featuring the "6%" plan. Some with the explanation as given above and others merely referred to a "6%" plan, without any explanation whatsoever.

<sup>1</sup> In some States a small legal documentary fee is required.

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In order to meet the selling advantage gained by the General Motors Corporation as a result of this highly publicized scheme of financing new car purchases, all other leading automobile manufacturing concerns promptly announced similar plans. All of these advertisements featured a "6%" plan computed approximately in the same manner as that described by the General Motors Corporation in the advertising as quoted above.

The first competitor to publish a similar plan was the Chrysler Corporation whose advertisements first appeared on November 10, 1935, to be followed in rapid succession by similar advertisements by the Nash Motors Co., Reo Motor Car Co., Hudson Motor Car Co., Graham-Paige Motors Corporation, Ford Motor Co., and Packard Motor Car Co. In order of appearance of these "6%" plan advertisements the respondent Ford Motor Co., was next to last with its first advertisement appearing on January 5, 1936, to be followed by the Packard Motor Car Co. on January 11, 1936. All of these advertisements appeared in newspapers of wide and general circulation.

All of these so-called "6%" plans featured in an outstanding manner the symbol "6%" or the words "Six Percent" and were computed in the same manner as that described hereinafter for the respondent, Ford Motor Company.

PAR. 6. Following the appearance of the "6%" plan advertisements, certain independent finance companies engaged primarily in the financing of retail sales of automobiles, were obliged to abandon their pre-existing methods of computing their charges in order to meet the competitive disadvantage to which they were put by the publication and operation of these "6%" plans. Prior to that time their charges and the charges of all automobile finance companies were slightly higher than those put into effect by the introduction of the "6%" plan. These pre-existing finance plans were predicated upon a flat charge for a specified credit over a definite period.

PAR. 7. On January 2, 1936, the Ford Motor Co. announced the adoption of a "6%" plan in a press release of that date, followed on January 5, 1936, by the issuance of a full page advertisement in Sunday newspapers throughout the country reading as follows:

F O R D  
ANNOUNCES \$25-A-MONTH  
TIME PAYMENTS  
AND A  
NEW UCC 6% FINANCE PLAN  
Any New Ford V-8 Car  
Can Now Be Purchased for \$25 a Month  
with Usual Low Down-Payment

This \$25-a-month time payment plan enables you to buy a New Ford V-8 car through your Ford dealer on new low monthly terms.

After the usual low down-payment is made, \$25 a month is all you have to pay for any type of new car, including insurance and financing.

Your cost for this extension of credit is only one-half of 1 percent a month on your original unpaid balance and insurance. This plan reduces financing charges for twelve months to 6 percent. For example, if you owe a balance of \$400 for your car and in-

surance, you pay \$24 for the year of credit; if the balance is \$200 you pay \$12. Your credit cost for one year is the original unpaid balance multiplied by 6 percent.

UCC plans provide you with insurance protection at regular conference rates. You have not only fire and theft insurance, but \$50 deductible collision, and protection against other accidental physical damage to your car.

The Universal Credit Company has made these plans available through Ford dealers in the United States.

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Many other similar advertisements were published by Ford Motor Co. Some of these advertisements contained the explanatory data set forth in the advertisement quoted above, others merely referred to the "6%" plan in this manner:

Ask your Ford dealers about the new \$25-a-month new UCC 6% finance plan. 6% Plan of Financing. Total cost of credit is only ½% monthly on original unpaid balance and insurance. (6% for 12 months)

The advertisements quoted above were all paid for in their entirety by the Ford Motor Co. Many similar advertisements were inserted and paid for by the Ford Motor Co. from a fund collected and controlled by it called the "Local or Dealers' Fund." This fund was created by collecting from the local dealers a fixed charge for advertising on each car sold by them. It was charged the dealer on the invoice to him; he in turn passed it on to the public. They were substantially the same as those quoted above. The advertisement of the "6%" plan was entirely discontinued by the Ford Motor Co. about the middle of 1936.

PAR. 8. Simultaneous with the appearance of the advertisements of the Ford Motor Co. as above outlined, similar advertisements were published by the Universal Credit Corporation entirely at its own expense. These advertisements were substantially the same as the Ford Motor Co.'s advertisements quoted above. All of the Universal Credit Co.'s advertisements referred to and promoted the sale of Ford cars and were designed to further the sale of these cars.

PAR. 9. The Ford Motor Co. and the Universal Credit Corporation were acting concertedly and in cooperation each with the other in the publication and operation of the "6%" plan for the purpose

of furthering the sale of motor vehicles manufactured by the Ford Motor Co.

PAR. 10. Approximately simultaneous with the issuance of the complaint in this case, similar complaints were issued by the Commission against all the other larger automobile manufacturing companies in the United States. The docket number and the name of the principal respondent in each of these cases are as follows:

- Docket 3000—Nash Motors Company;
- “ 3001—General Motors Corp., et al.;
- “ 3002—Chrysler Corporation, et al.;
- “ 3003—Graham-Paige Motors Corp., et al.;
- “ 3004—Hudson Motor Car Company, et al.;
- “ 3006—Reo Motor Car Company;
- “ 3007—Packard Motor Car Company.

All of these cases, except those pertaining to the General Motors Corporation and the respondent Ford Motor Co., were disposed of by the Commission by accepting from the respondents stipulations as to the facts and agreements to cease and desist from the practices with which they were charged in these complaints. All of these agreements are substantially the same in context. The following statement, quoted from Comm. Ex. 75, pertaining to the Packard Motor Car Co. is exemplary:

Certain purchasers and prospective purchasers did interpret and understand that the advertising of said finance plan or method as above set forth did contemplate a simple interest charge at 6% per annum upon the deferred and unpaid balance of the purchase price of motor vehicles, and this did cause such members of the purchasing public to buy motor vehicles in that belief.

For competitive reasons the type of advertising above quoted was discontinued before the issuance of the complaint herein.

*The respondent hereby stipulates and agrees, To cease and desist from separately, concertedly, cooperatively, or otherwise using any advertising matter or furnishing to authorized dealers or distributors any advertising matter in which the expression “6%” is used without equally prominent use, in direct conjunction therewith, of explanatory language which makes it clear that the said 6% does not refer to or indicate 6% per annum simple interest.*

*And it is further stipulated and agreed, That the respondent will not at any time use or employ any advertising which, regardless of lack of any deceptive intent, may reasonably be construed as indicating that the additional cost of purchasing on time payments is only 6% or any other percent simple interest per annum on unpaid balances of the purchase price of motor vehicles, if such is not the fact.*

PAR. 11. The Universal Credit Corporation, co-respondent with Ford Motor Co. in this proceeding, entered into a similar stipulation and agreement to cease and desist on April 9, 1937, and thereafter on

May 5, 1937, the case was dismissed as to that company. This stipulation and agreement contains provisions substantially the same as that quoted hereinabove in reference to the agreements with the other companies.

All of the concerns which executed these agreements to cease and desist have carried the same into effect. The testimony establishes, and the Commission finds, that in the event the respondent herein, Ford Motor Co., should again commence the advertisement of a "6%" plan, in the manner hereinabove described, it would result in placing the companies who have heretofore agreed to cease and desist from this practice at a competitive disadvantage in the industry.

PAR. 12. The manner in which the "6%" plan was computed in actual practice is exemplified by the following example deduced from the testimony and exhibits introduced in this case. Assume a time payment purchase and sale transaction of a new Ford car under the 6-per cent plan as advertised by the Ford Motor Co. between a member of the public and an authorized Ford dealer, in which the cash delivered price of the new car is \$643 and the purchaser is credited with a payment of \$243 in cash, or with the trade-in value of a used car received by the dealer as a down payment in a like sum. This leaves an unpaid balance of \$400 on the purchase price of the car.

To the above unpaid balance, which the purchaser must pay over a period of months, assume there is added a charge for insurance coverage for the same period. This insurance is not sold by the Ford Motor Co. but is arranged for by the dealer to protect the car until paid for by the purchaser. If the retail buyer furnishes his own insurance, which he is at liberty to do, the cost of such insurance would not enter into the computation of the 6-percent plan. Where the amount for insurance coverage in the above transaction is \$15, and the premium is paid by the dealer, the total amount to be paid by the retail purchaser to the retail dealer in deferred payments is, therefore, \$415. Where this amount is paid in accordance with the so-called "6%" plan (one-half of 1 percent per month) in 18 consecutive monthly payments of substantially \$25 each, the charge of one-half of 1 percent a month for 18 months, or 9 percent of the sum of \$415, amounts to \$37.35. This sum added to the original balance of \$415 makes a total sum of \$452.35 which must be paid by the purchaser to obtain title to the car.

If this same transaction with an unpaid balance of \$415 were paid in a like manner at \$25 per month over a period of 18 months, on a straight 6 percent simple interest per annum basis, computed on the declining balance as reduced by the monthly installments, the total

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interest charge would only amount to \$19.34, or \$18.01 less than the charge made pursuant to respondent's "6%" plan. Comparative tables, prepared by an expert accountant, in evidence in this case, indicate that the credit charge under respondent's "6%" plan amounted to approximately 11½ percent simple interest per annum.

The 6 percent plans of the competitors of the Ford Motor Co. were all computed in the manner described above. The average member of the public construed the "6%" plan, as advertised by the Ford Motor Co., to mean six per cent simple interest per annum of the unpaid balance remaining after the deduction of each successive monthly payment. The "6%" plan of the respondent Ford Motor Co. or that of its competitors was not computed at the rate of 6 percent simple interest per annum on the unpaid balance as reduced by the monthly payments of retail purchasers.

PAR. 13. There is a regular flow of commerce from Dearborn, Mich., in the cars manufactured by Ford Motor Co., through said retail dealers, to the retail purchasers thereof, located in the various states of the United States and in the District of Columbia.

The Ford Motor Co. aided and assisted the promotion and sale of its cars by said dealers through the medium of the said "6%" or "six per cent" plan of financing deferred or installment payments on new cars, and the advertisement of this plan by the Ford Motor Co. individually and in cooperation with its dealers and Universal Credit Corporation, as hereinabove described, increased the retail sale of cars so manufactured by the Ford Motor Co., to its benefit.

PAR. 14. The representations contained in the advertising matter of the respondent Ford Motor Co., as set forth in paragraph 7 hereof, have the capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial part of the purchasing public into the erroneous belief that the said finance plan or method as above set forth contemplates a simple interest charge at the rate of 6 percent per annum upon the deferred and unpaid balance of the purchase price of motor vehicles and tends to cause, and has caused, such purchasing public to buy motor vehicles from the respondent Ford Motor Co., through its authorized dealers and agents, because of this erroneous and mistaken belief, when in truth and in fact the total of the credit charge, computed in accordance with said "6%" or "six per cent" plan, amounts to approximately 11½ percent simple interest per annum upon the deferred and unpaid balance, as diminished by the installment payments made, of the price of the motor vehicles sold to the purchasing public.

PAR. 15. The acts and practices of the respondent Ford Motor Co., as herein set out, including the use of the advertising described in paragraph 7 hereof, had the capacity and tendency to, and did serve to, cause trade to be unfairly diverted to respondent Ford Motor Co. and its authorized dealers from competitors who did not, and who (including those stipulating to cease and desist) do not, in any manner misrepresent the cost of the credit charge for purchasing motor vehicles on the installment or deferred-payment plan in the offering for sale or sale of motor vehicles. As a result thereof, substantial injury has been done by the respondent Ford Motor Co. to competitors in commerce among and between the various States of the United States and in the District of Columbia.

#### CONCLUSION

The aforesaid acts and practices of the respondent, Ford Motor Co., as herein found, were all to the prejudice of the public, and of competitors of the respondent Ford Motor Co., 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 stipulation as to the facts, agreement to cease and desist and dismissal heretofore entered herein as to the respondent, Universal Credit Corporation, the answer of respondent, Ford Motor Co., the 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, briefs filed herein and oral arguments by James M. Hammond, counsel for the Commission, and by Henry C. Bogle, counsel for the respondent, Ford Motor Co., and the Commission having made its findings as to the facts and its conclusion that said respondent Ford Motor Company, has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, Ford Motor Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of motor vehicles in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "six per cent" or the figure and symbol "6%," or any other words, figures, or symbols indicating percentage, in connection with the cost of, or the additional charge for, the use of a deferred

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or installment payment plan of purchasing motor vehicles, when the amount of such cost or charge collected from, or to be paid by, the purchaser of a motor vehicle under such plan is in excess of simple interest at the rate of 6 percent per annum, or at the rate indicated by such words, figures or symbols, calculated on the basis of the unpaid balance due as diminished after crediting installments as paid.

2. Acting concertedly or in cooperation with any company, firm, or individual, or with any of its agents or dealers, in a way calculated to further the sale of motor vehicles through use of the methods referred to in paragraph 1 of this order.

*It is further ordered,* That the respondent Ford Motor 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.

## Syllabus

## IN THE MATTER OF

BEN BRAUDE, TRADING AS SALES STIMULATORS AND  
GLOBE CLOCK COMPANY

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

*Docket 3873. Complaint, Aug. 18, 1939—Decision, Dec. 9, 1939*

Where an individual engaged in sale and distribution of a sales stimulator plan and, in connection therewith, in sale and distribution of tableware, electric shavers, clocks, and other merchandise, to purchasers thereof in various States other than the State of origin of shipment and in District of Columbia, in substantial competition with others engaged in sale and distribution of such plans or merchandise as above-described;

In selling, through salesmen or distributors, said plan to retail merchants and said articles or merchandise to such merchants for distribution to their customers as premium merchandise, for sale to customers of such merchants at prices represented by said individual, and by such merchants to their customers, as substantially lower than ordinary retail value thereof when customers had been credited on cards, supplied to merchant under plan and by merchant to customer, with the \$5, \$10, or \$20, or other sum, in trade as marked thereon—

- (a) Represented, in periodicals and other publications of general circulation among the various States, in furtherance of sale of his said plan and merchandise and in order to procure salesmen or distributors to sell same, that his salesmen were making up to \$32 daily and approximately \$350 a month in the ordinary course of their business of selling said plan and merchandise, through such statements as "Brand new guaranteed business plan \* \* \* Sweeping the country. Inexperienced salesmen cleaning up \* \* \*," "This means that the least you should make from an original \$4.95 sale is \$8.64 for repeat commissions plus \$2 original commission, or a total of \$10.64. Three sales a day should mean total earnings of \$32 daily for you," and "WHAT SALESMEN SAY. Thanks for the commission check for \$175.86. I know these twice-a-month checks are going to grow," facts being said distributors did not make any such sums in the ordinary course of their business of selling his plan and other merchandise, but amounts set forth were gross exaggerations of earnings made by his said salesmen in the ordinary course of their said business; and
- (b) Represented as the customary or regular prices for or values of premiums used by him in connection with his said plan, prices, or values which were fictitious and substantially exaggerated, through such statements as "\$2.50 value silverware set for only 59¢," "Guaranteed time piece, \$7.50 value," and statement that jewelers and department store executives had valued clock involved "all the way from \$25 down to \$10," and "Guaranteed. Has the quality, appearance, and performance of any \$15 shaver," facts being ordinary retail value of the set of premium merchandise known as "Lady Esther Silverware" was substantially less than \$2.50,

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as were ordinary retail values of "Globe Pendulum Clock" and dry shaver involved substantially less than \$7.50 and \$15, respectively;

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 said plan and merchandise by reason thereof, and with result that trade in commerce among the various States and in the District of Columbia was diverted unfairly to him from his said competitors who do not misrepresent to purchasers value of their merchandise or cost of their plans:

*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. Donovan Divet* for the Commission.

*Ryan, Condon & Livingston* and *Mr. Henry Junge*, 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 Ben Braude, an individual trading as Sales Stimulators and as Globe Clock 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 and states its charges in that respect as follows:

PARAGRAPH 1. The respondent, Ben Braude, is an individual trading as Sales Stimulators and as Globe Clock Co. and having his office and principal place of business at 337 West Madison Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of the sale and distribution of a sales stimulator plan and in the sale and distribution of tableware, electric shavers, clocks, and other merchandise in connection with the sale of said sales stimulator plan. Respondent causes said sales stimulator plan and the aforesaid various items of merchandise, when sold by him to be transported from his aforesaid place of business in the State of Illinois, or from the State or 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 sales stimulator plan and the said

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

PAR. 3. In the course and conduct of his aforesaid business, the respondent is now, and has been during all the times mentioned herein, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other persons and with firms, corporations, and partnerships, some of whom are engaged in the sale and distribution of sales stimulator plans and others in the sale and distribution of tableware, electric shavers, or clocks or all of such merchandise.

PAR. 4. Respondent sells said sales stimulator plan to retail merchants and sells said tableware, electric shavers, clocks, and other merchandise to said retail merchants for distribution to their customers as premium merchandise in connection with the operation of said sales stimulator plan. The retail merchants who purchase said plan from the respondent, pay \$4.95 for advertising and other printed matter used in the operation of such plan, which includes cards bearing figures totaling \$5, \$10, \$20, or other sums. Customers of the merchants are credited on such cards with the amounts of their purchases from the merchant, and when such purchases total the sum of the figures on the cards, the customers may purchase the aforesaid premium merchandise from the retail merchant at a price or prices which respondent represents to the merchants who in turn represent to their customers, is substantially lower than the ordinary retail value of such merchandise.

PAR. 5. Respondent sells said sales stimulator plan and the various items of merchandise to retail merchants by means of distributors or salesmen. In the course and conduct of his aforesaid business and in furtherance of the sale of said sales plan and merchandise, and in order to procure salesmen or distributors to sell said sales plan and merchandise, respondent has caused various statements and representations relative to said sales plan and to the earnings of respondent's salesmen or distributors to be inserted in periodicals and other publications having a general circulation among and between various States of the United States. Among and typical of such representations are the following:

Brand new guaranteed business plan for gasoline stations. Sweeping the country. Inexperienced salesmen cleaning up. Big sales outfit free. Stimulators, 337 W. Madison St., Chicago.

This means that the least you should make from an original \$4.95 sale is \$8.64 for repeat commissions plus \$2 original commission, or a total of \$10.64. Three sales a day should mean total earnings of \$32 daily for you.

WHAT SALESMEN SAY—Thanks for the commission check for \$175.80. I know these twice-a-month checks are going to grow.

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In various other of said advertisements the names of businesses other than gasoline stations are inserted.

In the course and conduct of his aforesaid business, the respondent has caused various other statements and representations relative to said sales plan and merchandise to be inserted in periodicals and other publications having a general circulation among and between various States of the United States and in circulars and other bulletins disseminated to members of the public situated in various States of the United States. Among and typical of the statements and representations relative to the premium merchandise known as "Lady Esther Silverware," and concerning that part of said sales plan under which said tableware is distributed, are the following:

Here is the most sensationally successful sales stimulator plan we have ever created and which actually puts \$5 into the cash register of any retailer at a total cost to him of only 1¢.

The merchant pays only \$4.95 for the complete campaign. And here's the best part. He gets his money back when he has purchased just a few dozen silverware sets.

Sales Stimulators guarantees to refund to the dealer the Entire Cost of this advertising campaign, less the resale value of the silverware sets furnished, as soon as a total of 8 dozen silverware sets has been purchased by the dealer.

\$2.50 value silverware set for only 59¢.

Among and typical of the statements and representations relative to the premium merchandise designated as Globe Pendulum Clock, and concerning that part of said sales plan under which said clocks are distributed, are the following:

Guaranteed time piece. \$7.50 value.

The Globe Pendulum Clock is the combined product of the most talented artists, engineers and skilled craftsmen. It's new. It's different. It's sensational.

There is no clock even remotely resembling it in all the world. The nearest thing to it is a French clock that retails at from \$125 upwards.

What do you think a clock like this would sell for? I asked this question of several jewelers and department store executives. The estimates ran all the way from \$25 down to \$10.

Under our plan, the retailer offers his customers an opportunity to secure a Globe Pendulum Clock for only \$1.99 after purchasing \$5 worth of merchandise. As the retailer pays only \$2 for the clock the actual cost of the plan to him is just 1¢ for each \$5 worth of business.

Retail value \$7.50.

Sales Stimulators agrees to refund to the dealer the Entire Cost of the advertising campaign, less the resale value of the Globe Pendulum Clock furnished, as soon as a total of 4 dozen clocks has been purchased.

Among and typical of the statements and representations relative to the electric dry shaver which is distributed as premium merchandise

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## Complaint

and concerning that part of said sales plan under which said electric dry shaver is distributed, are the following:

Guaranteed. Has the quality, appearance, and performance of any \$15 shaver.

Sales Stimulators guarantees to refund to the dealer the Entire Cost of this advertising campaign less the resale value of the electric dry shaver furnished, as soon as a total of three dozen electric dry shavers has been purchased by the dealer.

PAR. 6. 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 respondent's salesmen or distributors make up to \$32 daily and approximately \$350 a month in the ordinary course of their business of selling said sales plan and merchandise, that said sales plan costs the retail merchant only 1 cent for each \$5 worth of business which the merchant receives from his customers under such plan, that the respondent refunds to the retail merchant the purchase price of said sales plan, less the value of the two initial sets of silverware, when the merchant has purchased just a few dozen silverware sets, that the aforesaid set of Lady Esther silverware has an ordinary retail value of \$2.50, that the aforesaid Globe pendulum clock has an ordinary retail value of from \$7.50 to \$25, and that the aforesaid electric dry shaver has an ordinary retail value of \$15.

PAR. 7. The aforesaid statements and representations by the respondent are false and misleading. In truth and in fact the respondent's salesmen or distributors do not make up to \$32 a day or \$350 monthly in the ordinary course of their business of selling said sales plan and other merchandise. Such amounts are gross exaggerations of the earnings made by said salesmen or distributors in the ordinary course of their business of selling said sales plan and merchandise. The cost of said sales plan to the retail merchant is in excess of 1 cent for each \$5 worth of business received by the merchant from his customers under such plan. The said 1 cent represents the difference between the cost of the various items of merchandise to the merchant and the price for which the merchant sells said merchandise to his customers. The merchant is required to pay to the respondent \$4.95 for the advertising matter and other literature relative to such plan in addition to losing 1 cent on each item of premium merchandise which he sells to his customers in connection with such plan. The respondent does not refund the purchase price of said sales plan, less the value of the initial sets of tableware, to the merchant when the merchant has purchased just a few dozen sets of tableware. In fact the

merchant is required to purchase 18 dozen sets of silverware before such amount is refunded.

In truth and in fact the ordinary retail value of the aforesaid set of Lady Esther silverware is substantially less than \$2.50. The ordinary retail value of the aforesaid Globe pendulum clock is substantially less than \$7.50 and substantially less than \$25, and the ordinary retail value of the aforesaid electric dry shaver is substantially less than \$15.

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 the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said sales stimulator plan and merchandise 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 his said competitors who do not misrepresent the value of their merchandise, or the cost of their respective sales plans, to the purchasers thereof. In consequence thereof, substantial injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 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 18, 1939 issued and on August 21, 1939 served its complaint in this proceeding upon respondent Ben Braude, an individual trading as Sales Stimulators and as Globe Clock 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 except a portion of the allegations of paragraph 7 of said complaint, with

respect to which no findings are made herein, 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, Ben Braude, is an individual trading as Sales Stimulators and as Globe Clock Co. and having his office and principal place of business at 337 West Madison Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of the sale and distribution of a sales stimulator plan and in the sale and distribution of tableware, electric shavers, clocks, and other merchandise in connection with the sale of said sales stimulator plan. Respondent causes said sales stimulator plan and the aforesaid various items of merchandise, when sold by him to be transported from his aforesaid place of business in the State of Illinois, or from the State or 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 sales stimulator plan and the said various items of merchandise in commerce among and between the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of his aforesaid business, the respondent is now, and has been during all the times mentioned herein, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia with other persons and with firms, corporations, and partnerships, some of whom are engaged in the sale and distribution of sales stimulator plans and others in the sale and distribution of tableware, electric shavers, or clocks or all of such merchandise.

PAR. 4. Respondent sells said sales stimulator plan to retail merchants and sells said tableware, electric shavers, clocks, and other merchandise to said retail merchants for distribution to their customers as premium merchandise in connection with the operation of said sales stimulator plan. The retail merchants who purchase

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said plan from the respondent, pay respondent \$4.95 for advertising and other printed matter used in the operation of such plan, which includes cards bearing figures totalling \$5, \$10, \$20 or other sums. Customers of the merchants are credited on such cards with the amounts of their purchases from the merchant, and when such purchases total the sum of the figures on the cards, the customers may purchase the aforesaid premium merchandise from the retail merchant at a price or prices which respondent represents to the merchants who in turn represent to their customers, is substantially lower than the ordinary retail value of such merchandise.

PAR. 5. Respondent sells said sales stimulator plan and the various items of merchandise to retail merchants by means of distributors or salesmen. In the course and conduct of his aforesaid business and in furtherance of the sale of said sales plan and merchandise, and in order to procure salesmen or distributors to sell said sales plan and merchandise, respondent has caused various statements and representations relative to said sales plan and to the earnings of respondent's salesmen or distributors to be inserted in periodicals and other publications having a general circulation among and between various States of the United States. Among and typical of such representations are the following:

Brand new guaranteed business plan for gasoline stations. Sweeping the country. Inexperienced salesmen cleaning up. Big sales outfit free. Stimulators, 337 W. Madison St., Chicago.

This means that the least you should make from an original \$4.95 sale is \$8.64 for repeat commissions plus \$2 original commission, or a total of \$10.64. Three sales a day should mean total earnings of \$32 daily for you.

WHAT SALESMEN SAY—Thanks for the commission check for \$175.86. I know these twice-a-month checks are going to grow.

In various other of said advertisements the names of businesses other than gasoline stations are inserted.

In the course and conduct of his aforesaid business, the respondent has caused various other statements and representations relative to said sales plan and merchandise to be inserted in periodicals and other publications having a general circulation among and between various States of the United States and in circulars and other bulletins disseminated to members of the public situated in various States of the United States. Among and typical of the statements and representations relative to the premium merchandise known as "Lady Esther Silverware," and concerning that part of said sales plan under which said tableware is distributed, are the following:

\$2.50 value silverware set for only 59¢.

Among and typical of the statements and representations relative to the premium merchandise designated as Globe pendulum clock, and concerning that part of said sales plan under which said clocks are distributed, are the following:

Guaranteed time piece. \$7.50 value.

What do you think a clock like this would sell for? I asked this question of several jewelers and department store executives. The estimates ran all the way from \$25 down to \$10.

Retail value \$7.50.

Among and typical of the statements and representations relative to the electric dry shaver which is distributed as premium merchandise and concerning that part of said sales plan under which said electric dry shaver is distributed, are the following:

Guaranteed. Has the quality, appearance, and performance of any \$15 shaver.

PAR. 6. 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 respondent's salesmen or distributors make up to \$32 daily and approximately \$350 a month in the ordinary course of their business of selling said sales plan and merchandise, that the aforesaid set of Lady Esther silverware has an ordinary retail value of \$2.50, that the aforesaid Globe pendulum clock has an ordinary retail value of from \$7.50 to \$25, and that the aforesaid electric dry shaver has an ordinary retail value of \$15.

PAR. 7. The aforesaid statements and representations by the respondent are false and misleading. In truth and in fact the respondent's salesmen or distributors do not make up to \$32 a day or \$350 monthly in the ordinary course of their business of selling said sales plan and other merchandise. Such amounts are gross exaggerations of the earnings made by said salesmen or distributors in the ordinary course of their business of selling said sales plan and merchandise.

In truth and in fact the ordinary retail value of the aforesaid set of Lady Esther silverware is substantially less than \$2.50. The ordinary retail value of the aforesaid Globe pendulum clock is substantially less than \$7.50 and the ordinary retail value of the aforesaid electric dry shaver is substantially less than \$15.

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

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the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's said sales stimulator plan and merchandise 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 his said competitors who do not misrepresent the value of their merchandise, or the cost of their respective sales plans, to the purchasers thereof.

## CONCLUSION

The aforesaid acts and practices of the respondent as herein set forth 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 except a portion of the allegations of paragraph 7 of said complaint, with respect to which no order is made herein, 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 respondent Ben Braude, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of any sales stimulator plan, or any merchandise for use in connection therewith, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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

2. 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.

3. Representing as the customary or regular prices or values for premiums used by respondent in connection with any sales stimulator plan, prices or values which are in fact fictitious and substantially in excess of the actual prices or values of such premiums.

*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  
ARABIAN TOILET GOODS COMPANY, INC.

MODIFIED CEASE AND DESIST ORDER

*Docket 2981. Order, Dec. 16, 1939*

Order, in response to motion, modifying cease and desist order of January 20, 1938, 26 F. T. C. 441, so as to require respondent, its officers, etc., in connection with offer, etc., in interstate commerce or in District of Columbia, of cosmetics, to cease and desist from using term "Certified Cosmetics," and from misrepresenting qualities or composition of its said products, or Government guarantee, or use thereof as in said order set forth.

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

*Mr. DeWitt T. Puckett* for the Commission.

*Mr. George J. Crane*, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter having been heard by the Federal Trade Commission upon the motion of W. T. Kelley, chief counsel for the Federal Trade Commission, to modify the order to cease and desist issued in this proceeding on January 20, 1938, and it appearing to the Commission that the respondent was given proper notice and an opportunity to be heard on said motion, and the matter being now properly before the Commission for determination and the Commission having considered said motion and the record, and being now fully advised in the premises.

*It is ordered*, That the motion to modify the order to cease and desist issued herein on January 20, 1938, be, and the same hereby, is, granted.

*It is further ordered*, That the order to cease and desist issued herein on January 20, 1938, 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 complaint of the Commission, the answer of respondent, testimony and other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs in support of the complaint and in opposition thereto (no oral argument having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of an act of Congress approved Septem-

ber 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

*It is further ordered,* That the respondent, Arabian Toilet Goods Co., Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of cosmetics in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the term "Certified Cosmetics" or any other term of similar import or meaning to describe or refer to cosmetic products which have not been certified by some governmental or official authority.

2. Representing that its skin cream now designated as Wrinkle Creme, or any other cream containing substantially the same ingredients or possessing the same properties, sold under that name or any other name

(a) Will nourish or rejuvenate the skin.

(b) Will remove wrinkles and lines from the skin.

(c) Contains turtle oil or is guaranteed by the United States Government to contain pure turtle oil.

3. That turtle oil has been successfully used by the United States Government in removing scar tissue and wrinkles from wounded soldiers.

4. That the use of turtle oil has been indorsed or approved by the United States Government as a skin food and rejuvenator.

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

IN THE MATTER OF  
**SAM LUBER, TRADING AS DEARBORN 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 3870. Complaint, Aug. 15, 1939—Decision, Dec. 18, 1939*

Where an individual engaged in sale and distribution of radios, coffee sets, roasters, and other articles of merchandise, to purchasers in various other States and in the District of Columbia; in soliciting and selling and distributing his said products—

Furnished customers and prospective customers with various devices, use of which, in connection with sale and distribution of said merchandise to purchasing public by method or plan suggested, involved sale and distribution thereof to such public by game of chance, gift enterprise, or lottery scheme, and distribution to purchasing public of pull cards, together with certain literature and instructions, including order blanks, depictions of products concerned, and circulars explaining plan in question, under which person selecting by chance, from list of 66 feminine names displayed on card, name corresponding with that concealed under card's large master seal, received choice of radio, coffee set, roaster, "34 piece set Wm. A. Rogers and Chest," waffle iron, or sandwich toaster tray set, and person securing two certain numbers concealed under card's various tabs received fountain pen desk set, and amount paid by customers was contingent upon numbers secured under tabs, as above set forth, and operator of card was compensated by same choice secured by person selecting winning feminine name, as above described; and

Supplied thereby to, and placed in hands of others, means of conducting lotteries in the sale of his said merchandise in accordance with aforesaid or similar sales plan, varying only in detail therefrom, and under which articles in question were distributed to purchasing public wholly by lot or chance, and amount which customer paid was similarly determined, and involving game of chance or sale of chance to procure 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 similar or any plan or method involving game of chance or sale of a chance to win something by chance, or any other sales plan or method contrary to public policy, and refrain therefrom;

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

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*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. D. C. Daniel* for the Commission.

*Mr. Jacob J. Chapman*, 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 Sam Luber, individually and trading as Dearborn Sales Co., 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, Sam Luber, is an individual trading under the name of Dearborn Sales Co., with his principal office and place of business located at 711 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, coffee sets, roasters, silverware, waffle irons, toaster tray 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 Illinois to purchasers thereof at their respective points of location in the various States of the United States other than the State of Illinois, and in the District of Columbia. There is now, and for some time last past has been, a course of trade by respondent in said 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 said business as described in paragraph 1 hereof, the respondent, in soliciting the sale of, and in selling and distributing his said merchandise, has furnished his customers and prospective customers with various devices, the use of which in connection with the sale and distribution of said mer-

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chandise to the purchasing public by the method or plan suggested by respondent involves the sale and distribution of said merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public devices commonly known as pull cards, together with certain literature and instructions, including among other things order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said pull cards. One of respondent's pull cards bears 66 feminine names with ruled columns for writing in the name of the customer opposite the feminine name selected. Said pull card has 66 small pull tabs on the face of each of which is printed a feminine name which appears elsewhere on said pull card. Concealed underneath each said pull tab is a number which is disclosed when that tab is pulled or separated from the card. The pull card also has a large master seal and concealed within the master seal is a feminine name which corresponds to one of the feminine names which appear elsewhere on said card. The pull card bears legends or instructions as follows:

Name Under Seal Receives Choice of  
 ANY ILLUSTRATED ARTICLE  
 Nos. 1 to 29 pay what you draw  
 Nos. over 29 pay only 29  
 2 Additional Awards  
 Nos. 29 and 33 each receive Beautiful Fountain Pen  
 Desk Set in Attractive Gift Box. Lifetime Guarantee Pen.  
 Write your name opposite name you select

Additional instructions are printed on an order blank which accompanies said pull card and such instructions are as follows:

SUGGESTIONS FOR USING SALES CARD

This Salesbook consists of 66 girls' names; under each girl's name is a concealed number. This number represents the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from Number 1 upwards but your customers pay only 1¢ to 29¢, according to the number disclosed under the name pulled. For instance, if customer pulls Number 1, he pays 1¢. If Number 11 is pulled he donates 11¢, or if number 32 is pulled he pays only 29¢. NOTHING HIGHER THAN 29¢—29¢ is the maximum cost. (Total \$16.95.)

Be sure to write in person's name opposite name they have selected on opposite page in corresponding place.

When all names have been pulled and collections made, you then remove the large seal and disclose the winner—the person who pulled the corresponding name is awarded their choice of either the 5-TUBE ELLIS RADIO, CALIENTE

## Complaint

COFFEE SET, NESCO ROASTER, 34 PIECE SET WM. A. ROGERS AND CHEST, AUTOMATIC TWIN WAFFLE IRON, SANDWICH TOASTER TRAY SET. Numbers 29 and 33 each receive Combination Fountain Pen Desk Set with Manufacturers Life-time Guarantee.

AND FOR YOUR EFFORTS YOU RECEIVE YOUR CHOICE OF ANY OF THE ABOVE MENTIONED ITEMS WITHOUT COST.

Sales of respondent's merchandise by means of said pull cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legends or instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance and the amount which the customer pays for a chance is determined wholly by lot or chance.

Respondent furnishes and has furnished various pull cards, accompanied by said order blanks, instructions, and other printed matter for use in the sales 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 pull 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 pull cards use and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. 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 or method hereinabove set forth. The use by the 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 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 sell or distribute merchandise in competition with the respondent as above alleged are unwilling to adopt and use said sales plan or method, or any sales plan or method involving a game of chance, or the sale of a chance to win something by chance, or any other sales plan or 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 dis-

tribution of his merchandise and by the element of chance involved therein, and have been and are 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 sales plan or method. The use of said sales plan or method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade to respondent from his said competitors who do not use the same or an equivalent sales plan or 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 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 15, 1939, issued and thereafter served its complaint in this proceeding upon respondent, Sam Lubber, individually and trading as Dearborn 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 November 28, 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, Sam Lubber, is an individual trading under the name of Dearborn Sales Co., with his principal office and place of business located at 711 South Dearborn Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, coffee sets, roasters, silverware, waffle irons, toaster tray 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 Illinois to purchasers thereof at their respective points of location in the various States of the United States other than the State of Illinois, and in the District of Columbia. There is now, and for some time last past has been, a course of trade by respondent in said 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 said business as described in paragraph 1 hereof, the respondent, in soliciting the sale of, and in selling and distributing his said merchandise, has furnished his customers and prospective customers with various devices, the use of which in connection with the sale and distribution of said merchandise to the purchasing public by the method or plan suggested by respondent involves the sale and distribution of said merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method adopted and used by respondent was and is substantially as follows:

Respondent distributes and has distributed to the purchasing public devices commonly known as pull cards, together with certain literature and instructions, including among other things order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said pull cards. One of respondent's pull cards bears 66 feminine names with ruled columns for writing in the name of the customer opposite the feminine name selected. Said pull card has 66 small pull tabs on the face of each of which is printed a feminine name which appears elsewhere on said pull card. Concealed underneath each said pull tab is a number which is disclosed when the tab is pulled or separated from the card. The pull card also has a large master seal and concealed within the master seal is a feminine name which corresponds to one of the feminine names which appear elsewhere on said card. The pull card bears legends or instructions as follows:

Name Under Seal Received Choice of

ANY ILLUSTRATED ARTICLE

Nos. 1 to 29 pay what you draw

Nos. over 29 pay only 29

## Findings

30 F. T. C.

*2 Additional Awards*

Nos. 29 and 33 each receive Beautiful Fountain Pen. Desk Set in Attractive Gift Box. Lifetime Guarantee Pen. Write your name opposite name you select

Additional instructions are printed on an order blank which accompanies said pull card and such instructions are as follows:

## SUGGESTIONS FOR USING SALES CARD

This Salesbook consists of 66 girls' names; under each girl's name is a concealed number. This number represents the amount the person selecting that particular name is to pay for participating in this opportunity.

These concealed numbers range from number 1 upwards but your customers pay only 1¢ to 29¢, according to the number disclosed under the names pulled. For instance, if customer pulls Number 1, he pays 1¢. If Number 11 is pulled he donates 11¢, or if number 32 is pulled he pays only 29¢. NOTHING HIGHER THAN 29¢—29¢ is the maximum cost. (Total \$16.95.)

Be sure to write in person's name opposite name they have selected on opposite page in corresponding place.

When all names have been pulled and collections made, you then remove the large seal and disclose the winner—the person who pulled the corresponding name is awarded their choice of either the 5-TUBE ELLIS RADIO, CALIENTE COFFEE SET, NESCO ROASTER, 34-PIECE SET WM. A. ROGERS AND CHEST, AUTOMATIC TWIN WAFFLE IRON, SANDWICH TOASTER TRAY SET. Numbers 29 and 33 each receive Combination Fountain Pen Desk Set with Manufacturers Life-time Guarantee.

AND FOR YOUR EFFORTS YOU RECEIVE YOUR CHOICE OF ANY OF THE ABOVE MENTIONED ITEMS WITHOUT COST

Sales of respondent's merchandise by means of said pull cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legends or instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance and the amount which the customer pays for a chance is determined wholly by lot or chance.

Respondent furnishes and has furnished various pull cards, accompanied by said order blanks, instructions, and other printed matter for use in the sales and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sale plan or method involved in connection with the sale of all of said merchandise by means of said pull 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 pull cards use and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan or method. 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 or method hereinabove described. The use by the 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 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 sell or distribute merchandise in competition with the respondent as above found are unwilling to adopt and use said sales plan or method or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other sales plan or 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 by the element of chance involved therein, and have been, and are, 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 sales plan or method. The use of said sales plan or method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert substantial trade to respondent from his said competitors who do not use the same or an equivalent sales plan or method.

#### 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 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, Sam Luber, individually and trading as Dearborn 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, coffee sets, roasters, silverware, waffle irons, toaster tray sets, 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 respondent shall, within 60 days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

## Syllabus

IN THE MATTER OF  
YALE I. GLUBOK, TRADING AS RELIABLE 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 3278. Complaint, Dec. 3, 1937—Decision, Dec. 19, 1939*

Where an individual engaged in sale of various articles of merchandise, including blankets, bedspreads, silk hosiery, and other items and novelties, to purchasers in other States—

Furnished, through the mails and in some instances by door-to-door distribution, push cards, circulars descriptive of the several articles and novelties offered by him, and order blanks with directions for use of said cards for sale and distribution of his said products under a plan in accordance with which, and as a result of solicitation of public, person selecting, from number of girls' names displayed on card, name corresponding with that concealed under card's seal, was given choice of several of the articles of merchandise being thus disposed of, and person making sale of chances was similarly compensated, and amount paid by members solicited for chance was dependent upon particular number concealed by disc selected on card, as was, in case of certain cards, receipt of free chances, and under which persons other than individual selecting lucky name and operator of card, received nothing; and

Supplied thereby to and placed in the hands of others means by which lotteries were conducted in sale of articles and novelties involved and offered, sold, and distributed to purchasing public in accordance with aforesaid sales plan, under which products in question, ordered and shipped to numerous operators thus supplied, were distributed to purchasing public wholly by lot or chance, and amount paid therefor by respective customers was similarly wholly determined, and under which there was involved game of chance or sale of a chance to procure such articles and novelties at prices much lower than normal retail prices therefor, contrary to the established public policy of the United States Government, and in competition with those who do not sell such articles and novelties through any game of chance, gift enterprise, or lottery scheme;

With result that many purchasers of such products from said individual were attracted by element of chance involved in sales method by which they were distributed by him, and thereby induced to purchase same from him in preference to similar products offered and sold by competitors who did not and do not use similar methods, and with result, by reason of such preference, that members of public purchased substantial volume of merchandise and novelties from individual in question and trade was thereby diverted unfairly to him from competitors aforesaid;

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

## Complaint

30 F. T. C.

Before *Mr. William C. Reeves* and *Mr. Charles F. Diggs*, trial examiners.

*Mr. D. C. Daniel* and *Mr. William L. Pencke* for the Commission.  
*Mr. Sam A. 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 *Yale I. Glubok*, individually and trading as *Reliable Sales Co.*, hererinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent is an individual doing business under the name and style of *Reliable Sales Co.*, with his principal office and place of business located at 5244 Enright Avenue, St. Louis, Mo. He is now, and for some time last past has been, engaged in the sale and distribution of various articles of merchandise including, among others, clocks, lamps, cameras, watches, cooking sets, tableware sets, and zipper bags in commerce between and among the various States of the United States. He causes and has caused such articles when sold to be shipped or transported from his place of business in the State of Missouri to purchasers thereof in Missouri 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 his customers and prospective customers with a device commonly called a "push-card," the use of which in connection with the sale and delivery to the purchasing public by the method or plan suggested by respondent involves the distribution of said articles of merchandise to the purchasing public by means of a lottery scheme or gift

enterprise. The method or sales plan suggested by respondent was and is substantially as follows:

The said push card has a number of partially perforated discs, and concealed within each disc is a number. In immediate proximity to each disc is a girl's name. The said push card also has a master seal, and concealed within such master seal is a name corresponding to one of the names on the card. Purchasers select one of the discs and remove the same, disclosing the number thereunder. Persons selecting numbers from 1 to 17 pay in cents the amount of such number, except that persons selecting certain specified numbers receive their selection free of charge. Purchasers selecting numbers over 17 pay 17 cents. The push card bears a legend or legends informing purchasers and prospective purchasers of the plan or method by which said push card is operated, and by which the articles of merchandise described thereon are to be distributed. When all of the discs have been selected and the master seal removed, the person who selected the name corresponding to the name under the master seal receives one of the specified articles of merchandise heretofore referred to without further charge, and the person, salesman, agent, or representative soliciting sales by means of said card, as above described, receives one of the specified articles 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 a particular name or whether the selection will be free of charge until the selection has been made and the disc removed. The name under the master seal is concealed from purchasers and prospective purchasers until all of the discs have been selected. Thus, customers selecting names which do not correspond with the name under the master seal receive nothing but the privilege of making a selection for the money they pay. The value of the various articles of merchandise varies, but each of said articles of merchandise has a retail value in excess of 17 cents. The person selecting the name corresponding to the name under the master seal receives one of the articles of merchandise for a price not exceeding 17 cents, which is much less than the normal retail price of said article. The purchasing public is thus induced and persuaded into purchasing pushes from said card in the hope of selecting a prize-winning name and thus obtaining an article of merchandise for a price of 17 cents or less. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance, and the amount which the customer pays for a chance is determined wholly by lot or chance.

PAR. 3. The persons to whom respondent furnishes the said push cards use the same in purchasing, selling, and distributing respondent's

merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy and is contrary to an established public policy of the Government of the United States.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. 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 said business respondent, in the sale of said merchandise, has caused and causes the representations to be made to his customers and prospective customers:

- (a) That certain cameras have a retail value of \$5; and
- (b) That certain electric ship-model lamps have a retail value of \$6.50.

The truth and fact are that said cameras and lamps do not have a reasonable retail value or price as represented, but said purported retail value or price is grossly exaggerated and purely fictitious. A substantial portion of the purchasing public has been, and is, induced to purchase said cameras or lamps because of its reliance on said representations. The use by respondent of said representations has the capacity and tendency to, and does, mislead and deceive many of respondent's customers into the erroneous belief that said cameras and lamps have the retail value and price represented. There are many competitors of respondent who do not falsely represent the value or

price of the merchandise sold by them. The use of said representations by the respondent has the tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors, all to the injury of competition in commerce among and between the various States of the United States.

PAR. 6. The aforesaid acts and practices of respondent are all to the injury and prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on December 3, 1937, issued its complaint in this proceeding and caused same to be served upon the respondent, Yale I. Glubok, individually and trading as Reliable Sales 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 an answer thereto by said respondent, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel and William L. Pencke, attorneys for the Commission, before William C. Reeves and Charles F. Diggs, examiners for said 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 or tendered 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 and other evidence, and briefs in support of the complaint. No briefs were 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. The respondent, Yale I. Glubok, has carried on business under the name and style of Reliable Sales Co., which business has been conducted from his residence at 5244 Enright Avenue, in the city of St. Louis, State of Missouri. The business carried on

by respondent consisted of the sale of various articles of merchandise, including blankets, bed spreads, silk hose, silverware, clocks, and novelties of various kinds. Respondent caused some of the articles of merchandise and novelties sold by him to be transported, when sold from his said place of business in St. Louis, in the State of Missouri, through and into other States of the United States to the respective purchasers thereof, and in the course and conduct of his said business respondent has been 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. Respondent, in the course of his business as set out in paragraph 1 hereof, has mailed from his place of business in St. Louis, Mo., to persons in States of the United States other than the State of Missouri, cards, sometimes described as push cards. Each of these cards was accompanied by a circular descriptive of the several articles of merchandise and novelties offered for sale by respondent and an order blank which the person addressed was requested to use. Distribution of these cards, circulars, and order blanks in some instances was made from door to door by the respondent in person or by a messenger. Directions for the use to be made of the cards and order blanks were printed upon the back of each of the order blanks. Each of the cards had printed thereon in plain view a number of girls' names and above or below each name was a disc which concealed a number. Near the upper right-hand corner of each of the cards was a larger disc in the form of a seal, which disc concealed a name which was the same as one of the names printed elsewhere on the card. Members of the public were to be solicited to select one or more of the names on the card and to pay the number of cents indicated by the number or numbers concealed by the disc or discs above or below each of the names so selected, except that with one type of the cards, five of the numbers were free and selectors of these numbers paid nothing and selectors of numbers higher than 17 paid only 17 cents and with another type of card selectors of numbers higher than 10 paid only 10 cents. When all names on one of the cards had been selected and collection made of the various amounts, the large disc or seal was then opened and the name concealed by it was disclosed and the person who had selected the name which was concealed by the seal was given his choice of several of the articles of merchandise, and the person who had sold the chances upon one of the cards also was given his choice of such articles but the persons who had selected the other names on

the card received nothing. The order blank was then filled out by the person who had sold the chances on the card and the articles of merchandise selected were indicated thereon and a money order for the amount required was inclosed with the order blank and mailed to respondent.

PAR. 3. The Commission finds that numerous persons to whom respondent furnished push cards, as set out in Paragraph 2 hereof, used same in purchasing, selling, and distributing articles of merchandise and novelties offered for sale by respondent in accordance with the sales plan described in said paragraph 2. Respondent in this manner supplied to, and placed in the hands of others, the means by which lotteries were conducted in the sale of such articles of merchandise and novelties. The Commission further finds that the articles of merchandise and novelties offered for sale and sold by respondent were distributed to the purchasing public wholly by lot or chance, and that the amount which each of the customers paid for a chance also was determined wholly by lot or chance; that the sale of such articles in such a manner involved a game of chance or the sale of a chance to procure such articles of merchandise and novelties at prices much lower than the normal retail prices therefor, and that the use of said method in the sale and distribution of articles of merchandise and novelties is a practice of the sort which is contrary to the established policy of the Government of the United States.

PAR. 4. There are among the competitors of respondent persons, partnerships, and corporations engaged in the sale and distribution of articles of merchandise and novelties of the same general nature as those sold by respondent and in the same trade territory as that reached by respondent in various States of the United States, which competitors do not sell such articles of merchandise and novelties by means of any game of chance, gift enterprise, or lottery scheme. Many purchasers of articles of merchandise or novelties from respondent were attracted by the element of chance involved in the sales method by which such articles of merchandise and novelties were distributed by respondent and on that account were induced to purchase such articles of merchandise and novelties from respondent in preference to similar articles of merchandise and novelties offered for sale and sold by competitors of respondent who did not and who do not use similar methods, and on account of such preference members of the public have purchased a substantial volume of merchandise and novelties from respondent with the result that trade has been diverted unfairly to respondent from such competitors.

Order

30 F. T. C.

## CONCLUSION

The acts and practices of the respondent, as herein set out have been, and are, to the prejudice and injury of the public and to 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 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, Yale I. Glubok, individually and trading as Reliable 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 blankets, bed spreads, silk hose, silverware, clocks 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 push or pull cards, punchboards, or any 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 merchandise to the 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 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 merchandise to the public.

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## Order

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 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  
B & T FLOOR COMPANY

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

*Docket 3541. Complaint, Aug. 17, 1938—Decision, Dec. 19, 1939*

Where a corporation engaged in sale and distribution of extruded aluminum trimmings and metal products for trimming wall and floor covering materials; in advertising, under trade-mark "Chromedge," its said trimmings in circulars, folders, catalogs and stationery circulated generally throughout the United States, and through agents sent into various States—

- (a) Represented that it manufactured such trimmings, through use of such statements as "manufactured only by," etc.; and
- (b) Represented that its said trimmings were made of an alloy, one of the principal component parts of which was chromium, and that such trimmings, thus made, could be obtained only from it, and that so-called "Chromedge" was metal of superior quality, having attributes of chromium, and was preferable to extruded aluminum, through such statements as "can be obtained ONLY from ourselves or through an authorized distributor. Do not accept inferior imitations. \* \* \*" and "\* \* \* manufactured from a special white metal alloy in which we have incorporated chromium, magnesium, \* \* \*";

Facts being it did not manufacture metal in question sold by it under trade name "Chromedge," nor manufacture the extruded aluminum alloy trimmings sold by it as aforesaid, so-called "Chromedge" was not a metal of superior quality having attributes of chromium, etc., but was in fact an extruded aluminum alloy purchased by it from aluminum manufacturer, by whom same was also sold to numerous competitors of said corporation for trimmings, as aforesaid;

With tendency and capacity to mislead and deceive substantial portion of purchasing public, and with effect of causing number of such public, many of whom prefer to purchase trimmings and metal products made of chromium because of durability and inherent qualities thereof, and on the part of which there has long existed preference for buying direct from manufacturer by reason of advantages thus had, as believed, in matter of better goods at lower prices, to purchase substantial volume of such trimmings from it, and of thereby causing trade to be diverted unfairly to it from its competitors who truthfully advertise and represent their metal trimmings, and of whom many sell and distribute such products of same general nature without in any way misrepresenting quality thereof or nature of material from which made, or that they are manufacturers of their products; to prejudice and injury of competitors and public:

*Held*, That such acts, practices, statements and representations, 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. William C. Reeves*, trial examiner.

*Mr. Merle P. Lyon* and *Mr. Charles S. Cow* for the Commission.

*Mr. James M. Schooler* and *Mr. W. S. McDowell*, of Columbus, Ohio, and *Mr. Samuel Schrivener, Jr.*, 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 B & T Floor 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, B & T Floor Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, having its office and principal place of business at 135 North Front Street, Columbus, Ohio.

PAR. 2. Respondent is now and for more than 9 months last past has been in the business of selling and distributing extruded aluminum alloy trimmings and metal products. Respondent causes said products, when sold, to be transported from its place of business in Ohio to purchasers thereof located in the various States of the United States other than the State of Ohio and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained a course of trade in said 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. 3. Respondent, in the course and conduct of its said business, at all times herein mentioned has been, and is now, in competition with other corporations and with individuals, firms, and partnerships engaged in the advertising, sale, and distribution of extruded aluminum alloy trimmings and of metal products similar to those of respondent and of other products designed for similar usage 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, by means of advertising circulars, folders, catalogs, and stationery circulated generally throughout the United States and through its agents sent into various States of the United States, has made many representa-

## Complaint

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tions concerning the character and nature of said products. Among such representations made by respondent are the following:

**CHROMEDGE**, the brilliant solid white metal for trimming wall and floor covering materials, manufactured only by the B & T Floor Company, Columbus, Ohio.

**\* \* \* PLEASE NOTE:** All Chromedge items are branded with our trade mark. Look for the name "Chromedge" on the flange. If it is not trademarked "chromedge," it is not genuine chromedge. Chromedge can be obtained **ONLY** from ourselves or through an authorized distributor. Do not accept inferior imitations. Insist on genuine Chromedge—so that you will be sure the beauty of your installations will endure \* \* \*.

**METAL.** Chromedge is not a plated metal. Chromedge is manufactured from a special white metal alloy in which we have incorporated chromium, magnesium, silicon, iron, copper, etc. in such a way that it will accept and retain a brilliant, lustrous polish. Its ductility is of such a nature that it may be easily bent to fit curves and angles.

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, by use of the trade name "Chromedge" and through other means respondent, directly or by inference through the statements and representations herein set out, and other statements of similar import and effect, represents that it manufactures the metal it sells under the trade name "Chromedge"; that "Chromedge" is a metal which is composed of a large percentage of chromium; that respondent corporation is the only concern from and through whom this material can be purchased; that "Chromedge" is a metal of superior quality having the attributes of chromium, and therefore, preferable to extruded aluminum.

**PAR. 5.** The aforesaid representations made by respondent with respect to the nature and quality of its products are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent does not manufacture the metal it sells under the trade name "Chromedge." "Chromedge" is not a metal which is composed of a large percentage of chromium. "Chromedge" is not a metal of superior quality having the attributes of chromium and is not preferable to extruded aluminum. The true facts are that "Chromedge" is an extruded aluminum alloy trimming and is composed of approximately 98 percent aluminum and less than 1 percent chromium. The word "Chromedge" is merely a trade-mark of respondent B & T Floor Co. Extruded aluminum alloy trimmings with substantially identical component ingredients can be purchased from respondent's competitors who do not use the trade name "Chromedge" to describe the same.

**PAR. 6.** For many years there has existed a preference on the part of the purchasing public for buying goods direct from the manufac-

turer thereof. This preference results from the belief that manufacturers are able to offer lower prices, better quality and other advantages not obtainable elsewhere. There are those of the purchasing public who prefer to purchase metal products made of chromium in preference to those made of extruded aluminum because of the durability and inherent qualities of chromium.

PAR. 7. There are among respondent's competitors many who sell and distribute similar products and who do not in any way misrepresent the quality and character of their respective products and their respective business status.

PAR. 8. Each and all of the false and misleading statements and representations made by the respondent in describing its products, as hereinabove set out, were, and are, calculated to, and 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 of said representations are true. On account of this erroneous and mistaken 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 competitors likewise engaged in the business of selling and distributing said products, and who truthfully advertise their respective products. 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 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 August 17, 1938, issued its complaint and caused same to be served upon the respondent B & T Floor 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 an answer thereto by said respondent, William C. Reeves, an examiner for said Commission, was designated and appointed to take testimony and to receive evidence in said proceeding, and pursuant thereto a hearing was held at Columbus, Ohio, on November 10, 1938, at which hearing a stipulation as to cer-

## Findings

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tain facts was entered into by and between Merle P. Lyon, counsel for the Commission, and James M. Schooler and W. S. McDowell, counsel for respondent, which stipulation was read into the record, whereupon testimony was taken and evidence received at the instance of counsel for the Commission explanatory of and supplementary to said stipulation, which stipulation and testimony has been 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 upon said complaint, the answer thereto, the stipulation as to the facts and testimony and evidence explanatory of and supplementary to said stipulation, and the brief in support of the charges stated in the complaint. No brief was filed on behalf of respondent and oral argument was waived by counsel for respondent, and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent B & T Floor Co. is a corporation organized under the laws of the State of Ohio with its principal place of business in the city of Columbus in said State. Said respondent is, and has been for more than a year, engaged in the business of selling and distributing extruded aluminum trimmings and metal products, for use in trimming wall and floor covering materials. It has caused, and now causes, the trimmings sold by it to be transported from its place of business at Columbus in the State of Ohio 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 respondent has been, and is now, in active competition with various persons and partnerships and other corporations also engaged in the sale of similar materials in commerce between and among several of the States of the United States.

PAR. 2. The respondent, in the course and conduct of its business, as described in paragraph 1 hereof, adopted and used a trade-mark consisting of the word "Chromedge" for the trimmings for wall and floor covering materials offered for sale and sold by it. In the course and conduct of its said business and for the purpose of inducing the purchase of said products, respondent by means of advertising in circulars, folders, catalogs, and stationery circulated generally throughout the United States, and through its agents sent into various States of the United States has made many representations con-

cerning the character and nature of said product, among which were the following:

**CHROMEDGE**, the brilliant solid white metal for trimming wall and floor covering materials, manufactured only by the B & T Floor Company, Columbus, Ohio.

\* \* \* **PLEASE NOTE:** All Chromedge items are branded with our trade-mark. Look for the name "Chromedge" on the flange. If it is not trade-marked "chrom-edge", it is not genuine chromedge. Chromedge can be obtained **ONLY** from ourselves or through an authorized distributor. Do not accept inferior imitations. Insist on genuine Chromedge—so that you will be sure the beauty of your installations will endure \* \* \*.

**METAL.** Chromedge is not a plated metal, Chromedge is manufactured from a special white metal alloy in which we have incorporated chromium, magnesium, silicon, iron, copper, etc. in such a way that it will accept and retain a brilliant, lustrous polish. Its ductility is of such a nature that it may be easily bent to fit curves and angles.

The statements and representations contained in said advertising matter which respondent caused to be distributed, as stated, purported to be descriptive of the trimmings offered for sale and sold by respondent and by the use of these statements and representations, and other statements and representations of like import, together with the use of the trade mark "Chromedge," as stated, respondent represented that it manufactured such trimmings and that such trimmings were made of an alloy, one of the principal component parts of which was chromium; that trimming made of such alloy could be obtained only from respondent; that "Chromedge" was a metal of superior quality having the attributes of chromium and was preferable to extruded aluminum.

**PAR. 3.** The respondent does not manufacture the metal it sells under the trade name "Chromedge" and does not manufacture the extruded aluminum alloy trimmings it sells. "Chromedge" is not a metal which is composed of a large percentage of chromium but is composed of the following ingredients:

Magnesium-----	1.10% to 1.40%.
Silicon-----	45% to 65% of magnesium contents.
Chromium-----	0.20% to 0.30%.
Iron, maximum-----	0.20%.
Copper, maximum-----	0.05%.
Other elements, maximum of each-----	0.03%.
Aluminum, approximately-----	99.8%.

The metal sold by respondent under the name "Chromedge" is not a metal of superior quality having the attributes of chromium and is not preferable to extruded aluminum, but is, in fact, an extruded aluminum alloy. Respondent purchases practically all of its extruded aluminum alloy, which it sells under the trade name "Chromedge," from the

Aluminum Co. of America, and said alloy is manufactured by the Aluminum Co. of America under a formula 53-S.

The same alloy is sold by the Aluminum Co. of America to numerous competitors of respondent and trimmings for wall and floor covering materials made of such alloy are sold by competitors of the respondent.

PAR. 4. The statements and representations made by the respondent in its advertising matter, as aforesaid, concerning its metal trimmings for wall and floor covering materials offered for sale and sold by it have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public and have caused a number of the purchasing public to purchase a substantial volume of such trimmings from the respondent, thereby causing trade to be diverted unfairly to the respondent from its competitors in commerce between and among the various States of the United States, who truthfully advertise and represent the metal trimmings offered for sale and sold by them, to the injury of such competitors.

PAR. 5. Many of the competitors of respondent sell and distribute trimmings for wall and floor covering materials of the same general nature as those sold by respondent, which competitors do not in any way misrepresent the quality of such trimmings or the nature of the material from which they are made, and do not falsely represent that they are the manufacturers of products sold by them. Members of the public prefer to purchase metal products made of chromium because of the durability and inherent qualities of that material. For many years there has existed a preference on the part of the purchasing public for buying goods direct from the manufacturer. This preference results from the belief that manufacturers are able to offer advantages not obtainable elsewhere, including goods of better quality at lower prices.

PAR. 6. Many members of the purchasing public prefer to purchase trimmings for wall and floor covering materials made of chromium rather than those made of extruded aluminum, and the statements and representations made by respondent in its advertising matter, without qualification or explanation, concerning the composition and nature of the alloy from which the trimmings offered for sale and sold by respondent were made, as set out in paragraph 2 hereof, constituted false and misleading claims, statements and representations and were to the prejudice of the public and to competitors of respondent and constituted 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.

## CONCLUSION

The acts, practices, statements, and representations of the respondent, as herein set out, have been and are all to the prejudice and injury of the public and to the 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

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 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 Charles S. Cox, counsel for the Commission, no brief having been filed by the respondent and no oral argument having been requested, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent B & T Floor 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 extruded aluminum alloy trimmings and metal products in interstate commerce, or in the District of Columbia, do forthwith cease and desist from representing, directly or indirectly:

1. By use of the words "manufactured only by," "manufactured," or any other words of similar import and effect, or in any manner, that it is the manufacturer of any such product, unless and until the respondent actually owns and operates or directly and absolutely controls a manufacturing plant or factory wherein the product so represented is manufactured by it.

2. By use of the word "Chromedge" or any other word or words of similar import or meaning, or in any other manner, that extruded aluminum alloy metal, or any other metal not composed principally of chromium, is chromium.

3. That respondent's extruded aluminum alloy metal product designated "Chromedge" is anything other than extruded aluminum alloy metal, or that it is different in any material respect from the extruded aluminum alloys sold by its competitors.

4. That respondent's extruded aluminum metal product, now designated "Chromedge," has the attributes of chromium or that it is superior in quality, and preferable, to extruded aluminum.

## Order

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5. That competitors' extruded aluminum alloy products are inferior to, or imitations of, the extruded aluminum metal products now sold by the respondent under the name "Chromedge," or that respondent's product is secured from sources not available to its competitors.

*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  
ZO-AK 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 3724. Complaint, Feb. 28, 1939—Decision, Dec. 19, 1939*

Where a corporation engaged in sale and distribution of certain medicinal or pharmaceutical preparations designated as "Zo-Ak Tablets" (blue label) or "Zo-Ak for Men," and "Zo-Ak Tablets" (orange label) or "Zo-Ak for Women," to wholesale and retail druggists and other purchasers in various other States and in the District of Columbia; in advertisements which it disseminated concerning its said preparations through the mails and through newspapers and periodicals of general circulation and through circulars and other printed or written matter distributed in commerce, and which were intended and likely to induce purchase thereof—

- (a) Represented that its said "Zo-Ak Tablets for Men" constituted a competent remedy or treatment for sexual debility and a stimulant for reduced virile powers, and was of peculiar value to men in relation to their sex life, and would build up health and strength, facts being said preparation was not a competent remedy or treatment for aforesaid conditions, nor of peculiar value, as above claimed, but acted only as an irritant, did not contain sufficient concentrated vitamins to be beneficial in building up health and strength, and did contain dangerous ingredient yohimbine hydrochloride, aphrodisiac effect of which cannot be produced by recognized and established therapeutic dosage, which was greatly exceeded by recommended dosage in preparation in question;
- (b) Represented that said "Zo-Ak Tablets for Women" constituted a remedy or relief for the nervous symptoms due to "change of life" and a cure, remedy, or relief for various symptoms of "change of life," such as hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells, facts being said preparation was not a remedy or relief for such symptoms, did not make period in question one of greater ease and comfort, and was not a cure or relief for hot flushes, etc., as above set forth, and was entirely insufficient to accomplish any of the results claimed therefor by it; and
- (c) Failed to reveal to purchasers and prospective purchasers, in false advertisements disseminated by it, that use of its said preparation for men, under conditions prescribed or under such conditions as are customary or usual, in some cases caused injury to health and might be injurious, taken as aforesaid, and caused irritation and injury to urinary tract, with serious nephritis as one of its possible after-effects;

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 of inducing portion of said public, because of such belief, to purchase its injurious, drug-containing medicinal preparations:

*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.

Complaint

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Before *Mr. Randolph Preston*, trial examiner.  
*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 Zo-Ak Co., 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, Zo-Ak Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 56 West Forty-fifth Street, New York, N. Y. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing certain medicinal or pharmaceutical preparations designated as Zo-Ak Tables (blue label), or Zo-Ak for Men, and Zo-Ak Tables (orange label), or Zo-Ak for Women.

In the course and conduct of its said business, respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to wholesale and retail druggists and other purchasers thereof located 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 and commerce in said preparations 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 aforesaid business, 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 preparations, and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said medicinal preparations 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:

#### MEN

Get free booklet about Zo-Ak Tablets—the formula of a well-known New York physician *created especially for men*. Zo-Ak contains *quick acting* vegetable stimulants plus *essential* vitamin concentrates in *adequate* amounts to build up health and strength.

#### ZO-AK A SPECIAL TONIC FOR MEN

It is the formula of a well-known New York physician created especially for men whose virile vigor is temporarily lowered. Zo-Ak contains *Quick Action* vegetable stimulants plus Adequate amounts of essential vitamin concentrates to build up health and strength.

#### MEN

Whose virile power is temporarily below par should try Zo-Ak, the formula of a well-known New York physician *created especially for men*. Zo-Ak contains *quick acting* vegetable ingredients plus *adequate* amounts of essential vegetable concentrates to build up health and strength. Try Zo-Ak faithfully as directed. Then if you don't notice a marked stimulation of virile power your druggist will refund your money.

In many cases however virility is not lost but merely lowered by overwork or worry. This is especially noticeable in business men who after a hard day at the office come home thoroughly unfit for the marital attentions their wives expect. \* \* \* For such men whose virile powers are temporarily reduced, not lost, a course of treatment with Zo-Ak Tablets frequently gives the necessary boost that assists nature.

Zo-Ak Tablets are indicated for temporary reduction of virile powers since they stimulate the natural functions of important organs.

Take 2 or 3 Zo-Ak Tablets three times daily one-half hour before meals. For best results take Zo-Ak at least a month. \* \* \* The longer you take Zo-Ak Tablets the more satisfactory will be the result from their use. However many men get quick stimulation after a single bottle.

Thousands of men whose virile powers have become temporarily reduced or weakened (but not totally lost) have found that Zo-Ak Tablets give them the stimulation they so much desire.

Zo-Ak contains two potent quick acting vegetable herb substances which are acknowledged by many of the medical profession to be invaluable in stimulating the important organs concerned with masculine functions.

In addition to these stimulants Zo-Ak contains essential vitamin concentrates in *adequate dosage*. These build up health and strength.

Generally around the age of 40 or 45 most women go through a physiological change called the menopause or "change of life."

This change is often accompanied by many distressing and miserable symptoms. These are hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells.

## Complaint

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These symptoms often last for months, often years, but fortunately they may be considerably relieved in many cases by the use of hormones and certain substances contained in Zo-Ak Tablets for Women (orange box).

These tablets are also the formula of a prominent New York physician so they may be taken with confidence. Zo-Ak Tablets for Women are not a "cure all" but a special medicine intended to relieve the nervous symptoms of the "change of life" and make this trying period one of greater ease and comfort.

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, Zo-Ak Tablets for Men, or Zo-Ak Tablets (blue label), is a competent remedy, treatment, or stimulant for sexual debility or reduced virile powers; that it is of peculiar value to men in relation to their sex life and that said preparation will build up health and strength; that Zo-Ak Tablets (orange label), or Zo-Ak for Women, is a remedy or relief for the nervous symptoms due to "change of life" and is a cure, remedy, or relief for various symptoms of "change of life," such as hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells.

PAR. 4. 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, respondent's medicinal preparation, Zo-Ak Tablets (blue label), or Zo-Ak for Men, is not a competent remedy, treatment or stimulant for sexual debility or reduced virile powers and is not of peculiar value to men in relation to their sex life but acts only as an irritant to the sexual organs. Furthermore, this preparation does not contain sufficient concentrated vitamins to make it beneficial in the building up of health and strength. In truth and in fact, Zo-Ak Tablets (orange label), or Zo-Ak for Women, is not a remedy or relief for the nervous symptoms of the "change of life" and does not make this trying period one of greater ease and comfort. Furthermore, this preparation is not a cure or relief for hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells, and is entirely insufficient to accomplish any of the results claimed for it by the respondent's directions.

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 respondent fails to reveal to the purchasers and prospective purchasers that the use of its medicinal preparation, Zo-Ak Tablets (blue label), or Zo-Ak for

Men, under conditions prescribed or under such conditions as are customary or usual in some cases cause injury to health.

Zo-Ak Tablets (blue label), or Zo-Ak for Men, contains the dangerous ingredient yohimbine hydrochloride. The aphrodisiac effect of yohimbine hydrochloride cannot be produced by the recognized and established therapeutic dosage. The recommended dosage for respondent's preparation is greatly in excess of the therapeutic dosage. Such tablets taken under the conditions prescribed by respondent and under the conditions which are customary or usual may be injurious to the health of the users thereof and cause irritation and injury to the urinary tract and serious nephritis may be one of its after-effects.

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 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 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 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 February 28, 1939, issued, and on March 1, 1939, served, its complaint in this proceeding upon the respondent, Zo-Ak Co., Inc., a corporation, charging it with 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 an answer by said respondent, the Commission, by order entered herein, granted said respondent's 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. Thereafter the proceeding regularly came on for final

hearing before the Commission on the said complaint and amended answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Zo-Ak Co., Inc., is a corporation organized and doing business under the laws of the State of New York, with its office and principal place of business located at 56 West Forty-fifth Street, New York, N. Y. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing certain medicinal or pharmaceutical preparations designated as Zo-Ak Tablets (blue label), or Zo-Ak for Men, and Zo-Ak Tablets (orange label), or Zo-Ak for Women.

In the course and conduct of its said business, respondent causes said preparations, when sold, to be transported from its place of business in the State of New York to wholesale and retail druggists and other purchasers thereof located 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 and commerce in said preparations 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 aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination, of false advertisements concerning its said medicinal 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 medicinal preparations and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning its said medicinal preparations 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

## Findings

and representations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

## MEN

Get free booklet about Zo-Ak Tablets—the formula of a well-known New York physician *created especially for men*. Zo-Ak contains *quick acting* vegetable stimulants plus *essential* vitamin concentrates in *adequate* amounts to build up health and strength.

## ZO-AK A SPECIAL TONIC FOR MEN

It is the formula of a well-known New York physician created especially for men whose virile vigor is temporarily lowered. Zo-Ak contains *Quick Action* vegetable stimulants plus Adequate amounts of essential vitamin concentrates to build up health and strength.

## MEN

Whose virile power is temporarily below par should try Zo-Ak, the formula of a well-known New York physician *created especially for men*. Zo-Ak contains *quick acting* vegetable ingredients plus *adcuqate* amounts of essential vegetable concentrates to build up health and strength. Try Zo-Ak faithfully as directed. Then if you don't notice a marked stimulation of virile power your druggist will refund your money.

In many cases however virility is not lost but merely lowered by overwork or worry. This is especially noticeable in business men who after a hard day at the office come home thoroughly unfit for the marital attentions their wives expect. \* \* \* For such men whose virile powers are temporarily reduced, not lost, a course of treatment with Zo-Ak Tablets frequently gives the necessary boost that assists nature.

Zo-Ak Tablets are indicated for temporary reduction of virile powers since they stimulate the natural functions of important organs.

Take 2 or 3 Zo-Ak Tablets three times daily one-half hour before meals. For best results take Zo-Ak at least a month. \* \* \* The longer you take Zo-Ak Tablets the more satisfactory will be the result from their use. However, many men get quick stimulation after a single bottle.

Thousands of men whose virile powers have become temporarily reduced or weakened (but not totally lost) have found that Zo-Ak Tablets give them the stimulation they so much desire.

Zo-Ak contains two potent quick acting vegetable herb substances which are acknowledged by many of the medical profession to be invaluable in stimulating the important organs concerned with masculine functions.

In addition to these stimulants Zo-Ak contains essential vitamin concentrates in *adequate dosage*. These build up health and strength.

Generally around the age of 40 or 45 most women go through a physiological change called the menopause or "change of life."

This change is often accompanied by many distressing and miserable symptoms. These are hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells.

These symptoms often last for months, often years, but fortunately they may be considerably relieved in many cases by the use of hormones and certain substances contained in Zo-Ak Tablets for Women (orange box).

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These tablets are also the formula of a prominent New York physician so they may be taken with confidence. Zo-Ak Tablets for Women are not a "cure all" but a special medicine intended to relieve the nervous symptoms of the "change of life" and make this trying period one of greater ease and comfort.

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, Zo-Ak Tablets for Men, or Zo-Ak Tablets (blue label), is a competent remedy or treatment for sexual debility and is a stimulant for reduced virile powers; that it is of peculiar value to men in relation to their sex life and that said preparation will build up health and strength; that Zo-Ak Tablets (orange label), or Zo-Ak for Women, is a remedy or relief for the nervous symptoms due to "change of life" and is a cure, remedy, or relief for various symptoms of "change of life," such as hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells.

PAR. 4. 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, respondent's medicinal preparation, Zo-Ak Tablets (blue label), or Zo-Ak for Men, is not a competent remedy or treatment for sexual debility or a stimulant for reduced virile powers and is not of peculiar value to men in relation to their sex life but acts only as an irritant to the sexual organs. Furthermore, this preparation does not contain sufficient concentrated vitamins to make it beneficial in the building up of health and strength. In truth and in fact, Zo-Ak Tablets (orange label), or Zo-Ak for Women, is not a remedy or relief for the nervous symptoms of the "change of life" and does not make this trying period one of greater ease and comfort. Furthermore, this preparation is not a cure or relief for hot flushes, dizzy spells, bursting headaches, "nerves," irritability and crying spells, and is entirely insufficient to accomplish any of the results claimed for it by the respondent's directions.

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 respondent fails to reveal to the purchasers and prospective purchasers that the use of its medicinal preparations, Zo-Ak Tablets (blue label), or Zo-Ak for Men, under conditions prescribed or under such conditions as are customary or usual in some cases cause injury to health.

Zo-Ak Tablets (blue label), or Zo-Ak for Men, contains the dangerous ingredient yohimbine hydrochloride. The aphrodisiac effect of yohimbine hydrochloride cannot be produced by the recognized and established therapeutic dosage. The recommended dosage for respondent's preparation is greatly in excess of the therapeutic dosage. Such tablets taken under the conditions prescribed by respondent and under the conditions which are customary or usual may be injurious to the health of the users thereof and cause irritation and injury to the urinary tract and serious nephritis may be one of its after-effects.

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 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 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 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.

#### 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, Zo-Ak Co., Inc., 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

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of inducing or which is likely to induce, directly or indirectly, the purchase of the medicinal or pharmaceutical preparations hereinafter described, 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 the medicinal preparations hereinafter described, which advertisement represents, directly or by implication, that the medicinal preparation now designated by the name Zo-Ak Tablets (blue label) or Zo-Ak for Men, or any other medicinal or pharmaceutical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under those names or any other name or names, is a competent remedy or treatment for sexual debility or a stimulant for reduced virile powers, or that it is of peculiar value to men in relation to their sex life, that it will build up health and strength, or that it contains quick-acting vegetable stimulants plus essential vitamin concentrates in adequate amounts to build up health and strength; or which advertisement fails to reveal to purchasers or prospective purchasers that the use of said preparation under conditions prescribed or under such conditions as are customary or usual may in some cases cause injury to health; or which advertisement represents, directly or by implication, that the medicinal preparation now designated by the name Zo-Ak Tablets (orange label) or Zo-Ak for Women, or any other medicinal or pharmaceutical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under those names or any other names, is a remedy for, or affords relief from, the nervous symptoms due to "change of life," or that it is a cure, remedy or relief for various symptoms of "change of life," such as hot flashes, dizzy spells, bursting headaches, "nerves," irritability, and crying spells.

*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  
NUTRINE CANDY 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; AND OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

*Docket 3756. Complaint, Apr. 11, 1939—Decision, Dec. 19, 1939*

Where a corporation engaged in manufacture, offer, sale, and distribution of a small line of fancy boxed candy to dealers, and of bulk candy, in which it specialized, directly to retailers in some 15 States, and for sale of which bulk candy of like grade and quality it maintained 4 separate and distinct price schedules governing price to be charged in accordance with classification of particular dealer as Eastern Syndicate, National Syndicate, Small Syndicate, or Small Retail account, as case might be—

Discriminated in price through sale of its said candy to purchasers competitively engaged with one another in resale thereof at its "ES," "NS," "SS," and "SR" prices, in accordance with classification of such customers, governed by no standard rule, by its salesmen, and in accordance with permitted action of latter in selling to same customer certain items under "NS" or "SS" price classifications and rest of items purchased at same time under "SR" list price, and thereby sold different competitively engaged purchasers candy of like grade, quality, and quantity at varying prices and price differentials ranging from a low of \$0.0075 per pound to high of \$0.04% per pound, depending upon brand of candy thus sold and purchased;

With result that the effect of such discriminations in prices might be to lessen competition between those retailers who purchase from it in one of aforesaid price classifications and competing retailers who purchase in higher price classification, and to injure, destroy, and prevent competition between said retailers and to tend to concentrate in most favored retailers, who were in direct competition with those less favored, retail sales of its said products, and with tendency and capacity to eliminate and destroy bulk candy business of latter:

*Held*, That such discrimination in price in sale in commerce of bulk candies of like grade and quality to purchasers competitive one with the other, absent anything in record to justify same, constituted violation of provisions of section 2 (a) of Clayton Act, as amended by Robinson-Patman Act; and

Where said corporation engaged also, as aforesaid, in manufacture, offer, sale, and distribution of its fancy boxed candy to retail dealers in aforesaid States, including various assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to consumer, and were composed of (1) number of 1-pound boxes of candy, together with push card for use in sale and distribution of such candy under a plan in accordance with which customer and purchaser paid therefor varying amount, ranging from 1 cent to 39 cents, as determined by number concealed within disk bearing feminine name selected, or of (2) other assortments involving lottery or chance feature similar to aforesaid, and varying therefrom in detail only—

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Sold and distributed such assortments to and through direct and indirect retail dealer purchasers thereof, by whom, in accordance with aforesaid or similar plans as above described, same were exposed and sold to purchasing public, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its boxed candy, involving sale and distribution of such product by means of game of chance, gift enterprise, or lottery scheme, and under which, as set forth, fact as to whether purchaser paid 1 cent or any intervening amount up to 39 cents for pound box containing candy of like grade and quality, was determined solely and wholly by lot or chance, contrary to an established public policy of the United States Government and in violation of the criminal laws of many States, and in competition with (1) many who regard such method of sale and distribution of candy as contrary to public policy, as morally bad and encouraging gambling, as injurious to the candy industry itself as resulting in merchandising of candy through a lottery scheme, and as providing retail merchants with means of violating the public policy and laws of the several States, and with (2) many who are unwilling to adopt and use said or similar plan or method or any method involving sale of candy by chance or lottery in violation of public policy or of criminal statutes;

With the result that retailers were attracted by its said sales plan and element of chance involved therein, and were thereby induced to buy and sell its said boxed candy in preference to that offered and sold by competitors who do not use same or similar sales method, and trade was thereby diverted to it from its competitors aforesaid; to the substantial injury of competition in commerce among the various States:

*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. John W. Carter, Jr.*, for the Commission.

*Hickey & Hall*, of Chicago, Ill., for respondent.

## COMPLAINT

*Count 1*

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated, and is now violating, the provisions of section 2 of the Clayton Act as amended by the Robinson-Patman Antidiscrimination 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. The respondent, Nutrine Candy Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 419 West Erie Street, Chicago, Ill.

PAR. 2. Respondent corporation is now and has been since prior to June 19, 1936, engaged in the business of manufacturing, offering for

sale, selling, and distributing, candy, including a small line of fancy candies packed in boxes, but in general specializing in bulk candy as more particularly described herein. Respondent sells bulk candy direct to retail dealers in commerce between and among the States of Illinois, Wisconsin, Minnesota, Nebraska, Oklahoma, Arkansas, Tennessee, Michigan, Iowa, Indiana, Kansas, Missouri, Ohio, Kentucky, West Virginia, and western Pennsylvania, and as a result of said sale causes said product to be shipped and transported from Chicago, Ill., to the purchasers thereof who are located in the aforementioned States. There is, and has been at all times herein mentioned, a continuous current of trade and commerce in said product across State lines between respondent's factory and the purchasers of said product.

PAR. 3. In the course and conduct of its business as aforesaid, respondent, during the time herein mentioned, has been and is now in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing candy in commerce between and among the various States of the United States.

Purchasers of respondent's candy in the course of their business in reselling respondent's candy, during the time herein mentioned, have been and are now in substantial competition with each other.

PAR. 4. In the course and conduct of its business as aforesaid, since June 19, 1936, respondent has been and is now discriminating in price between different retailers buying said candy of like grade and quality sold by it in interstate commerce by giving and allowing certain of said retailers of its product different prices than given or allowed other retailers. Said discrimination in price is brought about by the following practice pursued by the respondent, to wit:

Respondent sells its products under four different price lists, which price lists are designated by the following letters:

ES, NS, SS, and SR

So-called Eastern Syndicate accounts are classified under the letters "ES." National Syndicate accounts are classified under the letters "NS." Small Syndicate accounts are classified under the letters "SS" and Small Retail accounts under the letters "SR." Customers purchasing on the "SR" price list pay the highest prices, while customers purchasing on the other price lists pay lower prices for goods of like grade and quality. For the purpose of illustrating the differential in price resulting from the four price lists, there is appended hereto and made a part of this paragraph a tabulation showing the prices at which the various kinds of candy were sold to customers purchasing

under the various classifications during the period from July 1 to July 5, 1937, inclusive.<sup>1</sup>

Respondent permits its salesmen to classify customers as the salesmen see fit and in many instances customers who are small retailers are classified as and sold at the prices specified for sales to syndicate accounts. Furthermore, the salesmen frequently sell certain items to their customers from the "NS" or "SS" price lists and then the rest of the items purchased by the same customer are from the "SR" price list.

Respondent does not make known to its customers that it sells its products at the prices set forth in the various classifications. The salesmen are promised commissions of 12 percent on the Small Retail accounts, 5 percent on the Small Syndicate accounts, and 2 percent on the National Syndicate accounts.

PAR. 5. The general effect of said discrimination in price by the respondent set forth above has been and may be substantially (a) to lessen competition between those retailers who purchase from respondents in one of the aforesaid lower-priced classifications and competing retailers who purchase in a higher-priced classification; (b) to injure, destroy, and prevent competition between the aforesaid retailers; and (c) to tend to create a monopoly in the more favored retailers who are in direct competition with retailers who are not so favored as to receive the benefit of said lower prices, in that a substantial amount of business in this line of commerce has been and is being diverted to the favored retailers with the cumulative effect of having a tendency and capacity to eliminate and destroy the bulk candy business of said small independent retail dealers.

PAR. 6. The foregoing alleged acts and practices of said respondent are violations of section 2 (a) of the first section of the said act of Congress approved June 19, 1936, entitled "An Act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes."

#### *Count 2*

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 Nutrine Candy Co., a corporation in its own name and right and trading under the name and style of Superior Candy 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

<sup>1</sup> In the interest of brevity said "Tabulation" or "Table of prices," etc. is not published as appendix to complaint as it appears incorporated in findings *infra* at p. 123.

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

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraphs 1 and 2 of count 1 of this complaint to the same extent and as though the allegations of said paragraphs 1 and 2 of said count 1 were set out in full herein, and said paragraphs 1 and 2 of said count 1 are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. In the course and conduct of its business as aforesaid, respondent, during the time herein mentioned, has been and is now in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing candy in commerce between and among the various States of the United States.

PAR. 3. 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 is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of 1-pound boxes of candy together with a device commonly called a push card. The card contains a number of partially perforated disks with a feminine name printed immediately above each of said disks and with the word "push" printed on the face of said disk. Concealed within each disk is a number and when a disk is pushed or separated from the card the number is disclosed. The numbers range from 1 to 39 but are not arranged in numerical sequence. Sales are from 1 cent to 39 cents and the person pushing a disk from said card pays in cents the amount of the number disclosed. Each purchaser is entitled to and receives a box of candy. The push card bears legends or instructions as follows:

TRY YOUR LUCK

1¢ to 39¢

— EVERYBODY WINS —

A Full 1 Pound Box

HOME STYLE

CHOCOLATE COVERED CHERRIES

---

Pay What You Punch

FROM 1 TO 39¢ NO HIGHER

EVERY PUNCH WINS

1 Pound Box Chocolate Cherries

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Sales of said boxes of respondent's candy are made by means of said push cards in accordance with the above-described legends or instructions. The prices to be paid for said boxes of candy are thus determined wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy involving a lot or chance feature but such assortments and the method of sale and distribution thereof are similar to the one hereinabove described and vary only in detail.

PAR. 4. Retail dealers who purchase respondent's said assortments of candy directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its candy in accordance with the sales plans or methods hereinabove set forth. 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 the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws of many of the States of the United States.

PAR. 5. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a box of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute candy in competition with the respondent as above alleged are unwilling to adopt and use said sales plans or methods or any methods involving a game of chance or the sale of a chance to win something by chance or any other methods that are contrary to public policy or in violation of criminal statutes 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 the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent 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.

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 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) and pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 11th day of April 1939, issued and on April 12, 1939, served its complaint in this proceeding upon the respondent, Nutrine Candy Co., a corporation, charging it, the aforesaid corporation, in count 1 thereof, with violating the provisions of section 2 (a) of the Clayton Act, as amended, by the Robinson-Patman Antidiscrimination Act approved June 19, 1936 (U. S. C., title 15, sec. 13), and in count 2 thereof charging it, the aforesaid Nutrine Candy Co., with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of the Federal Trade Commission Act (U. S. C., title 15, sec. 45).

After the issuance and service of the said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing, 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 complaint aforesaid, the respondent's substitute answer thereto, and the Commission now having duly considered the record 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

##### *Count 1*

PARAGRAPH 1. Respondent, Nutrine Candy Co., is a corporation organized under the laws of the State of Illinois with its principal office and place of business located at 419 West Erie Street, in the city of Chicago, State of Illinois. Respondent is now, and for sev-

eral years last past has been, engaged in the manufacture of candy in the city of Chicago, and in the sale, offering for sale, selling, and distribution to dealers of a small line of fancy candies packed in boxes, but specializing generally in the sale, offering for sale, selling, and distribution of bulk candy direct to retail dealers in the States of Wisconsin, Minnesota, Nebraska, Oklahoma, Arkansas, Tennessee, Michigan, Iowa, Indiana, Kansas, Missouri, Ohio, Kentucky, West Virginia, and western Pennsylvania. It causes said bulk candy, when sold, to be shipped or transported from its principal place of business in the State of Illinois to purchasers thereof in the State of Illinois and in the other States of the United States as hereinabove named. In so carrying on said business, respondent has been, and now is, engaged in active competition with other corporations and with partnerships, individuals, and firms engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States, and the purchasers of respondent's candy in the course of their business in reselling same have been for several years last past and are now in substantial competition with each other.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent has established, and subsequent to June 19, 1936, has maintained and now maintains, four separate and distinct price schedules on bulk candies of like grade and quality. Upon each schedule, so established and maintained, respondent causes to be listed under the various brand and trade names all of the bulk candy manufactured, sold, handled, and distributed by it, together with the price per pound of each brand so listed. The schedules, as aforesaid, are designated by symbols, to wit: "ES," "NS," "SS," and "SR." Theoretically, all dealers who qualify as Eastern Syndicate accounts are so classified and the schedule or price list designated "ES" is used in determining what price per pound such dealer must pay for the bulk candy so purchased; all dealers who qualify as National Syndicate accounts are so classified and the schedule or price list designated "NS" is used in determining what price per pound such dealer must pay for the bulk candy so purchased; all dealers who qualify as Small Syndicate accounts are so classified and the schedule or price list designated "SS" is used in determining what price per pound such dealer must pay for the bulk candy so purchased, and all dealers who qualify as Small Retail accounts are so classified and the schedule or price list designated "SR" is used in determining what price per pound such dealer must pay for the bulk candy so purchased, and the price per pound for its bulk candy of like grade and quality varies according to such schedules. Dealers purchasing

under the "ES" price list pay the lowest price per pound, while dealers purchasing under the "SR" pay the highest price per pound for candy of like grade and quality.

Respondent, during the period July 1 to July 5, 1937, inclusive, sold and offered for sale in commerce to purchasers, competitive one with the other, its bulk candies of like grade and quality at varying differentials, as hereinbelow illustrated:

Table of prices of Nutrine Candy Co. from July 1 to July 5, 1937, at which sales have been made

	Woolworth-Kresge-Niesner Bros.			S. S.	S. R.	Maximum price differential	Percent of increase over the minimum price
	E. S.		N. S.				
Butter cream chocolate drops.....	0.06 $\frac{1}{4}$		0.06 $\frac{1}{2}$	0.07	0.08 $\frac{3}{8}$	0.02 $\frac{5}{8}$	42
Cocoanut bonbons.....		0.10 $\frac{1}{4}$	.11	.11	.14 $\frac{1}{4}$	.04	39
Chocolate panned fruit and nut mix.....	.11 $\frac{1}{4}$	.11 $\frac{1}{2}$					
Chocolate fruit fudge.....	.06 $\frac{1}{2}$	.06 $\frac{1}{2}$			.08 $\frac{1}{2}$	.02	31
Citrus peanuts.....	0.08 $\frac{1}{2}$	.09	.09 $\frac{1}{4}$	.10 $\frac{1}{2}$	.12 $\frac{3}{8}$	.06 $\frac{3}{8}$	98
Creamed coco dips.....	.10 $\frac{1}{2}$		.10 $\frac{1}{2}$	.11 $\frac{1}{4}$	.13	.04 $\frac{3}{8}$	42
Frosty peaks.....	.06 $\frac{1}{2}$		.10 $\frac{1}{2}$	.10 $\frac{1}{2}$	.10 $\frac{1}{2}$	.04 $\frac{3}{8}$	67
Fruit salads.....	.06 $\frac{1}{2}$	.06 $\frac{1}{2}$	.07 $\frac{1}{2}$	.08 $\frac{1}{4}$	.08 $\frac{1}{4}$	.02 $\frac{1}{4}$	35
Giant jelly drops.....	.06	.06	.06 $\frac{1}{4}$	.06 $\frac{1}{4}$	.06 $\frac{1}{4}$	.0075	12 $\frac{1}{2}$
Hawaiian cocoanut sparklers.....	.12		.12 $\frac{1}{4}$	.14 $\frac{1}{8}$	.16 $\frac{1}{8}$	.04 $\frac{1}{8}$	41
Happy prince milk chocolates.....	.12		.18 $\frac{1}{8}$			.06 $\frac{1}{8}$	57
Iced fruit marmalade.....	.08 $\frac{1}{2}$		.10 $\frac{1}{4}$	.12 $\frac{1}{4}$	.12 $\frac{1}{4}$	.03 $\frac{1}{4}$	44
Iced caramel buds.....	.10 $\frac{1}{2}$		.11 $\frac{1}{4}$	.13 $\frac{1}{4}$	.13 $\frac{1}{4}$	.02 $\frac{1}{4}$	26
Iced maple nut snacks.....	.10 $\frac{1}{4}$		.11 $\frac{1}{4}$	.13 $\frac{1}{2}$	.13 $\frac{1}{2}$	.03 $\frac{1}{4}$	32
Jelly orange slices.....	.06	.06	.06 $\frac{1}{4}$	.06 $\frac{1}{4}$	.06 $\frac{1}{4}$	.0075	12 $\frac{1}{2}$
Panama rainbow cubes.....	.09 $\frac{1}{4}$		.09 $\frac{1}{4}$		.12 $\frac{1}{8}$	.03 $\frac{1}{8}$	39
Spiced jelly strings.....		.06 $\frac{1}{4}$	.07	.08 $\frac{1}{4}$	.09 $\frac{1}{2}$	.03 $\frac{1}{4}$	52
Sunbeams.....	.08	.08	.09 $\frac{1}{4}$	.10 $\frac{1}{4}$	.11 $\frac{1}{8}$	.03 $\frac{1}{8}$	48
Tangerine slices.....	.06 $\frac{1}{2}$	.06 $\frac{1}{2}$	.07	.08 $\frac{1}{4}$	.09 $\frac{1}{2}$	.03	46
Vanilla fruit fudge.....	.06 $\frac{1}{2}$	.06 $\frac{1}{2}$	.07	.08 $\frac{1}{2}$		.02	31
Sugar roasted peanuts.....	.10 $\frac{1}{2}$		.11		.12 $\frac{1}{4}$	.02 $\frac{1}{4}$	21

PAR. 3. Every customer purchasing respondent's bulk candy is classified and placed under one of these price schedules. Respondent itself, however, does not classify each customer nor does it have any standard rule governing the classification of its customers but permits its salesmen to determine and decide the classification within which the particular purchaser is placed. This method in many instances has resulted, and will continue to result, in the classification of some small retailers either as "ES," "NS," or "SS" accounts and in sales to such retailers under either the "ES," "NS," or "SS" price schedules. Respondent has also permitted its salesmen to sell certain items to one customer under the "NS" or "SS" price classification and the rest of the items purchased by the same customer at the same time under the "SR" price list. This method of selling its products has resulted and is resulting in respondent's selling to different purchasers, competitive with each other, candy of like grade, quality, and quantity at varying

prices. Said price differentials range from a low of \$0.0075 per pound to a high of \$0.047 $\frac{7}{8}$  per pound, depending upon the brand of candy so sold and purchased.

PAR. 4. The difference in price at which respondent sells its bulk candies of like grade and quality, as set out in paragraphs 2 and 3 above, amounts to and are discriminations in price in commerce between purchasers of respondent's bulk candies.

PAR. 5. The Commission finds that the discriminations in prices, hereinabove found in paragraphs 2 and 3 as having been made by respondent, in sale in commerce of its bulk candies of like grade and quality to purchasers competitive the one with the other in the resale of said candies has been, and may be:

(a) Substantially to lessen competition between those retailers who purchase from respondent in one of the aforesaid price classifications and competing retailers who purchase in a higher price classification.

(b) To injure, destroy, and prevent competition between the aforesaid retailers.

(c) To tend to concentrate in the more favored retailers who are in direct competition with the less-favored retailers the retail sales of its products, with the effect of having the tendency and capacity to eliminate and destroy the bulk candy business of said less-favored retailers.

#### CONCLUSION

Nothing appearing in the record to justify the price discriminations hereinabove found, the Commission, therefore, concludes that the respondent Nutrine Candy Co., has discriminated in price in the sale in commerce of its bulk candies of like grade and quality to purchasers competitive one with the other, as hereinabove set out, in violation of the provisions of subsection (a) section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

#### *Count 2*

PARAGRAPH 1. Respondent, Nutrine Candy Co., a corporation doing business in the method and manner as aforesaid, and as hereinabove more fully set out in the findings as to the facts in paragraphs 1 and 2 under count 1, also in its own name and right and trading under the name and style of Superior Candy Co., with its principal office and place of business located at 419 West Erie Street, Chicago, Ill., is now and has been, subsequent to June 19, 1936, engaged in the manufacturing, offering for sale, selling, and distributing of fancy candy packed in boxes. Respondent sells its boxed candy direct to retail dealers in commerce between and among the States of Wisconsin,

Minnesota, Nebraska, Oklahoma, Arkansas, Tennessee, Michigan, Iowa, Indiana, Kansas, Missouri, Ohio, Kentucky, West Virginia, and western Pennsylvania. It causes said box candy, when sold, to be shipped or transported from its principal place of business in the State of Illinois to purchasers thereof in the State of Illinois and in the other States of the United States as hereinabove named. In so carrying on said business, respondent has been and now is engaged in active competition in the sale and distribution of its box candy with other corporations and with partnerships, individuals, and firms engaged in the manufacture of candy and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business of selling and distributing fancy candy packed in boxes, as aforesaid, the respondent, Nutrine Candy Co., in its own name and right and trading under the name and style of Superior Candy Co., since June 19, 1936, has been, and is now, selling to dealers various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumer thereof.

One of such assortments manufactured, sold, and distributed by respondent, consists of a number of 1-pound boxes of candy, together with a device commonly known as a push card. The 1-pound boxes of candy are distributed to the purchasing public by means of this push card and in the following manner:

The card bears the following legend or instructions:

TRY YOUR LUCK  
1c to 39c  
— EVERYBODY WINS —  
A Full 1 Pound Box  
HOME STYLE  
CHOCOLATE COVERED CHERRIES

Pay What You Punch  
FROM 1 TO 39C NO HIGHER  
EVERY PUNCH WINS  
1 Pound Box Chocolate Cherries

and contains a number of partially perforated disks with a feminine name printed immediately above each disk and the word "push" printed on the face of each disk. Concealed from the purchaser or prospective purchaser and within each disk is a number ranging from 1 to 39 but the numbers are not arranged in numerical sequence. When a disk is pushed or separated from the card, the number concealed, as aforesaid, is for the first time disclosed or exposed and the purchaser pushing the disk or separating the disk from the

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card must pay in cents the amount of the number so disclosed and upon such payment receives for the amount so paid a 1-pound box of candy. One purchaser may thus be required to pay 39 cents for a pound box of respondent's candy, while another purchaser may be required to pay 1 cent or any other intervening amount between 1 cent and 39 cents for a pound box containing candy of like grade and quality. Whether a purchaser is to pay 1 cent or any intervening amount up to 39 cents for a pound box of candy of like grade and quality is determined solely and wholly by lot or chance. The other assortments of box candy manufactured, distributed, and sold by respondent as aforesaid involve a lottery or chance feature similar to the one just above described, varying only in detail.

PAR. 3. Retail dealers purchasing all or any one of respondent's said assortments of box candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan or one similar thereto but varying in detail. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its box candy and the use of such plan or methods in the sale of its box candy and the sale of said box candy by and through the use thereof and by the aid of the aforesaid sales plan or methods similar thereto, varying only in detail, 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 of many States of the United States.

PAR. 4. The sale and distribution of candy by the retailers by the method described herein or methods similar thereto, varying only in detail, as distributed by respondent, is the sale and distribution of candy by means of a game of chance, gift enterprise, or lottery scheme. Many competitors regard such method of sale and distribution of candy as contrary to public policy; as morally bad and encouraging gambling; as injurious to the candy industry itself, because it results in the merchandising of candy by means of a lottery scheme; and as providing retail merchants with a means of violating the public policy and the laws of the several States. Many persons, firms and corporations who sell or distribute candy in competition with respondent are unwilling to adopt and use the same or a similar sales plan or methods or any method involving the sale of candy by chance or lottery in violation of public policy or in violation of criminal statutes. The retailers are attracted by the sales plan of respondent and the element of chance involved therein and are thereby induced to buy and sell respondent's box candy in preference to box candy offered for sale by the competitors

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of respondent who do not use the same or a similar sales method, resulting in diverting trade to respondent from its said competitors who do not use a similar sales 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.

## 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, the substituted answer filed thereto by the respondent, Nutrine Candy Co., 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 the facts and its conclusions, which findings and conclusions 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) and that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That respondent, Nutrine Candy Co., a corporation, its officers, directors, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution, and delivery of its bulk candy and box candy in interstate commerce do forthwith cease and desist from:

1. The unlawful discrimination in prices found in paragraphs 2 and 3 of count 1 of the aforesaid findings as to the facts and conclusion.

2. Engaging in any similar discrimination in price in the sales of its bulk candy in interstate commerce under substantially like circumstances and conditions between purchasers competitively engaged one with the other in the resale of said candies of like grade and quality.

3. 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.

4. Supplying to or placing in the hands of dealers assortments of said candy or any other merchandise, together with punchboards, push or pull cards, or other lottery devices, which said punchboards, push or pull cards, 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.

5. Supplying to or placing in the hands of dealers, punchboards, push or pull cards, or other lottery devices, either with assortments of said candy 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 candy or other merchandise to the general public.

6. Selling or otherwise disposing of said candy or any other merchandise by the use of punchboards, push or pull cards, or any other device or devices.

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

## Syllabus

## IN THE MATTER OF

JOHN C. JOHNSON, TRADING AS JOHNSON'S LIXOLENE  
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3887. Complaint, Sept. 9, 1939—Decision, Dec. 19, 1939*

Where an individual engaged in manufacture, sale, and distribution of medicinal preparation which was recommended by him for treatment of eczema, ringworm, athlete's foot, and other diseases, ailments and conditions of skin and scalp, and which consisted, essentially, of solution of salicylic acid in diluted mixture of alcohols, together with small amount of boric acid and trace of methyl salicylate; in advertisements concerning his said product which he disseminated through the mails, through circulars and other printed or written matter distributed in commerce among the various States, and through continuities broadcast from radio stations of extrastate audience, and through various means, and which were intended and likely to induce, directly or indirectly, purchase of his said product—

- (a) Represented that his said product, or "Johnson's Lixolene," was a safe skin remedy and reliable compound and effective antiseptic and powerful germicide, and competent, adequate and effective remedy for treatment and cure of eczema, athlete's foot, acne, psoriasis, dandruff, poison ivy, warts, and corns;
- (b) Represented that all eczemas and other diseases of the skin are caused by parasitic infection, and that proper treatment for relief or cure thereof is local application of a mild germicide such as his said product, and that such product constituted competent, adequate and effective remedy for diseases of scalp, such as dandruff, seborrhea, and alopecia, and gave complete relief for all parasitic infections of skin and scalp; and
- (c) Represented that he was a physician or doctor of medicine and had a recognized standing and reputation as a dermatologist and chemist, and was properly qualified by education, research, and training to prescribe for various diseases of skin and scalp;

Facts being his said product or "Lixolene" did not have qualities or achieve results claimed and represented as above set forth, was neither skin remedy nor powerful germicide nor competent, adequate or effective remedy or cure for eczema or for various other conditions above set forth, and had no therapeutic value in treatment thereof, beyond temporarily relieving, due to its mildly antiseptic and counter-irritant properties, itching, all eczemas and other skin diseases are not caused by parasitic infection, but eczemas in many cases are due to allergic conditions resulting from food contacts, plant pollens or other causes, requiring, for proper treatment in many cases, complicated procedure of competent physician, he was neither physician or doctor of medicine nor possessed of recognized standing or reputation as dermatologist or chemist, and facts set forth by him with reference to cause of acne and reproduction of bacteria and functioning thereof in causing skin diseases were false;

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With tendency and capacity, through use of such false and misleading statements, representations, and advertisements in designating or describing his said product and effectiveness in treatment of various diseases, ailments, and conditions of the skin and scalp, to mislead substantial portion of purchasing public into erroneous and mistaken belief that all of said representations were true, and that his product possessed properties represented and would, in truth, accomplish results claimed, and with result, as direct consequence of such mistaken and erroneous beliefs induced as aforesaid, that number of purchasing public bought substantial volume of his said product:

*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. 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 John C. Johnson, an individual, trading as Johnson's Lixolene 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 is an individual trading under the name and style of Johnson's Lixolene Co., with his office and principal place of business located at 4028 Hill Crest Drive, San Diego, Calif. Respondent is now, and for several years last past has been engaged in the manufacture, sale, and distribution of a medicinal preparation known as "Johnson's Lixolene," which is recommended by him for the treatment of eczema, ringworm, athlete's foot, psoriasis, acne, dandruff, poison ivy, warts, corns, and other diseases, ailments, and conditions of the skin and scalp.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused his said product "Johnson's Lixolene," when sold, to be transported from his place of business in San Diego, Calif., to purchasers located in 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 during all the times herein mentioned, a course of trade in the aforementioned product sold by the 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 his said 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 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:

**Johnson's Lixolene. The Safe Skin Remedy.**

A Reliable Compound, An Effective Antiseptic, A Powerful Germicide. Used Externally for Eczema, Athlete's Foot, Acne, Ringworm, Psoriasis, Dandruff, Poison Ivy, Warts and Corns.

It is a well established fact that all Eczemas of the skin are caused by parasitic infection and the proper treatment is the local application of a Real Germicide on the skin where the disorder is present.

When these parasites get through the epidermis or outer layer of the skin, they take up their abode in the tissues where they can get a good supply of blood, lay their eggs, and hatch millions in just a short time.

The cause of Acne is the clogging of the pore or gland by a morbidly increased discharge of sebaceous matter on the skin; this hard tallow or grease in the gland causes it to become enlarged and inflamed, thus a portal is made and an invitation given for the germ to enter and develop the dreaded stage of Acne known as Acne Vulgares. Treatment to be desired for Acne in any stage is a mild germicide applied locally, which will gently peel the epidermis or outer skin and kill the parasite.

Johnson's Lixolene has proven to be a marvelous remedy in giving complete relief to a great host of young people whose faces were badly marred by the ravages of Acne.

Diseases of the Scalp—As Dandruff, Seborrhea and Alopecia. In recent years science has discovered that these disorders are all caused by parasites or germs in the skin. Through years of experience as a Dermatologist and chemist, we are glad to offer to any who need a real remedy for dandruff, Johnson's Lixolene.

This radio address is given by Dr. J. C. Johnson, the author of Johnson's Lixolene, "The Safe Skin Remedy," for the benefit of those who are interested in knowing of this new remedy which is offered in the drug stores for the

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relief of even the most chronic cases of eczemas. This is our third time to broadcast over this station, spreading the news about the therapeutic value of Lixolene in giving complete relief from the causes of all parasitic infections of the skin.

On account of the distinctive therapeutic value of Johnson's Lixolene to completely relieve all parasitic infections of the skin, we are receiving thousands of letters from grateful people who have been cured of all types of skin diseases as mentioned in this letter above.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements not herein set out, all of which purport to be descriptive of respondent's product and its effectiveness as a remedy or cure for the various diseases, ailments and conditions of the skin hereinbefore set out, the respondent has falsely represented, directly and by inference and implication, among other things: (1) That respondent's product "Johnson's Lixolene" is a safe skin remedy, a reliable compound, an effective antiseptic, a powerful germicide, and a competent, adequate and effective remedy for the treatment and cure of eczema, athlete's foot, acne, ringworm, psoriasis, dandruff, poison ivy, warts, and corns; (2) that all eczemas and other diseases of the skin are caused by parasitic infection, and that the proper treatment for the relief or cure thereof is the local application of a mild germicide such as respondent's product; (3) that respondent's product is a competent, adequate, and effective remedy or cure for diseases of the scalp, such as dandruff, seborrhea, and alopecia; (4) that respondent's product gives complete relief for all parasitic infections of the skin and scalp; and (5) that respondent is a medical doctor, and has a recognized standing and reputation as a dermatologist and chemist; and is peculiarly qualified by education, research and training to cure or prescribe for the various diseases of the skin and scalp.

PAR. 5. 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 Johnson's Lixolene does not have any of the qualities or achieve any of the results claimed and represented as hereinbefore described.

Johnson's Lixolene consists essentially of a solution of salicylic acid in a diluted mixture of alcohols, together with a small amount of boric acid and a trace of methyl salicylate. Insofar as their action on the skin is concerned, these ingredients are all local irritants and mild antiseptics which may have some tendency to dissolve or wash away fat and greasy materials on the skin and produce a destruction of the superficial cell layers of the skin.

Johnson's Lixolene is neither a safe skin remedy, a reliable compound, an effective antiseptic, nor a powerful germicide. The ingredients contained therein are definitely irritating and are dangerous to use except under the direction of a competent physician. Johnson's Lixolene is not a competent, adequate or effective remedy or cure for eczema, acne, ringworm, psoriasis, dandruff, poison ivy, seborrhea, or alopecia. All eczemas and other diseases of the skin are not caused by parasitic infection, but many eczemas result from contact with foods, plant pollens, or other causes. The proper treatment for eczemas and other skin ailments is not in all cases the local application of a mild germicide, but many cases of eczema, acne, and other ailments of the skin must be treated by a complicated procedure under the skillful direction of a competent physician. Respondent's product will not give complete relief for all parasitic infections of the skin or scalp. Respondent is not a physician or medical doctor and has no recognized standing or reputation as a dermatologist or chemist. Moreover, respondent's advertising representations as to the cause of acne and eczemas of the skin are unscientific, false, and deceptive. Acne is not caused by a parasite, and bacteria do not reproduce by laying eggs, or cause skin diseases by hatching millions of germs under the skin.

PAR. 6. The use of the aforesaid false and misleading statements, representations and advertisements by the respondent in designating or describing his said product, Johnson's Lixolene, and its effectiveness in the treatment of the various diseases, ailments, and conditions of the skin and scalp, in offering for sale and in selling his said product, had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true, and that said product possesses the properties represented and will in truth accomplish the results claimed.

PAR. 7. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said product, Johnson's Lixolene.

PAR. 8. 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 September 9, 1939, issued, and on October 6, 1939, served its complaint in this proceeding upon respondent John C. Johnson, an individual trading as Johnson's Lixolene Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 25, 1939, the respondent filed his answer in which answer he admitted all of 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 is an individual trading under the name and style of Johnson's Lixolene Co., with his office and principal place of business located at 4028 Hill Crest Drive, San Diego, Calif. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a medicinal preparation known as "Johnson's Lixolene," which is recommended by him for the treatment of eczema, ringworm, athlete's foot, psoriasis, acne, dandruff, poison ivy, warts, corns, and other diseases, ailments, and conditions of the skin and scalp.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused his said product "Johnson's Lixolene," when sold, to be transported from his place of business in San Diego, Calif., to purchasers located in 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 during all the times herein mentioned, a course of trade in the aforementioned product sold by the 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 his said 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 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:

Johnson's Lixolene. The Safe Skin Remedy.

A Reliable Compound, An Effective Antiseptic, A Powerful Germicide. Used Externally for Eczema, Athlete's Foot, Acne, Ringworm, Psoriasis, Dandruff, Poison Ivy, Warts, and Corns.

It is a well established fact that all Eczemas of the skin are caused by parasitic infection and the proper treatment is the local application of a Real Germicide on the skin where the disorder is present.

When these parasites get through the epidermis or outer layer of the skin, they take up their abode in the tissues where they can get a good supply of blood, lay their eggs, and hatch millions in just a short time.

The cause of Acne is the clogging of the pore or gland by a morbidly increased discharge of sebaceous matter on the skin; this hard tallow or grease in the gland causes it to become enlarged and inflamed, thus a portal is made and an invitation given for the germ to enter and develop the dreaded stage of Acne known as Acne Vulgares. Treatment to be desired for Acne in any stage is a mild germicide applied locally, which will gently peel the epidermis or outer skin and kill the parasite.

Johnson's Lixolene has proven to be a marvelous remedy in giving complete relief to a great host of young people whose faces were badly marred by the ravages of Acne.

Diseases of the Scalp—As Dandruff, Seborrhea, and Alopecia. In recent years science has discovered that these disorders are all caused by parasites or germs in the skin. Through years of experience as a Dermatologist and chemist, we are glad to offer to any who need a real remedy for dandruff, Johnson's Lixolene.

This radio address is given by Dr. J. C. Johnson, the author of Johnson's Lixolene, "The Safe Skin Remedy," for the benefit of those who are interested in knowing of this new remedy which is offered in the drug stores for the relief of even the most chronic cases of eczemas. This is our third time to broadcast over this station, spreading the news about the therapeutic value of Lixolene in giving complete relief from the causes of all parasitic infections of the skin.

On account of the distinctive therapeutic value of Johnson's Lixolene to completely relieve all parasitic infections of the skin, we are receiving thousands of letters from grateful people who have been cured of all types of skin diseases as mentioned in this letter above.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements not herein set out, all of which purport to be descriptive of respondent's product and its effectiveness as a remedy or cure for the various diseases, ailments, and conditions of the skin hereinabove set out, the respondent has falsely represented, directly and by inference and implication, among other things: (1) That respondent's product "Johnson's Lixolene" is a safe skin remedy, a reliable compound, an effective antiseptic, a powerful germicide, and a competent, adequate, and effective remedy for the treatment and cure of eczema, athlete's foot, acne, psoriasis, dandruff, poison ivy, warts, and corns; (2) that all eczemas and other diseases of the skin are caused by parasitic infection, and that the proper treatment for the relief or cure thereof is the local application of a mild germicide such as respondent's product; (3) that respondent's product is a competent, adequate, and effective remedy or cure for diseases of the scalp, such as dandruff, seborrhea, and alopecia; (4) that respondent's product gives complete relief for all parasitic infections of the skin and scalp; and (5) that respondent is a medical doctor, and has a recognized standing and reputation as a dermatologist and chemist, and is peculiarly qualified by education, research and training to cure or prescribe for the various diseases of the skin and scalp.

PAR. 5. 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 Johnson's Lixolene does not have any of the qualities or achieve any of the results claimed and represented as hereinabove described.

Johnson Lixolene consists essentially of a solution of salicylic acid in a diluted mixture of alcohols, together with a small amount of boric acid and a trace of methyl salicylate. Insofar as their action on the skin is concerned, these ingredients are all local irritants and mild antiseptics which may have some tendency to dissolve or wash away fat and greasy materials on the skin and produce a destruction of the superficial cell layers of the skin.

Johnson's Lixolene is neither a skin remedy nor a powerful germicide. It is not a competent, adequate, or effective remedy or cure for eczema, acne, psoriasis, dandruff, poison ivy, seborrhea, or alopecia, and it does not have any therapeutic value in the treatment thereof

in excess of temporarily relieving the symptom of itching due to its mildly antiseptic and counter-irritant properties. All eczemas and other diseases of the skin are not caused by parasitic infection, but many eczemas of the skin are caused by allergic conditions which may result from contact with foods, plant pollens or other causes. The proper treatment for eczemas and other skin ailments is not in all cases the local application of a mild germicide, but many cases of eczema, acne and other ailments of the skin must be treated by a complicated procedure under the skillful direction of a competent physician. Respondent is not a physician or medical doctor and has no recognized standing or reputation as a dermatologist or chemist. Respondent's product will not give complete relief for all parasitic infections of the skin or scalp. Moreover, respondent's advertising representations as to the cause of acne and eczemas of the skin are unscientific, false, and deceptive. Acne is not caused by a parasite, and bacteria do not reproduce by laying eggs, or cause skin diseases by hatching millions of germs under the skin.

PAR. 6. The use of the aforesaid false and misleading statements, representations, and advertisements by the respondent in designating or describing his said product, Johnson's Lixolene, and its effectiveness in the treatment of the various diseases, ailments, and conditions of the skin and scalp, in offering for sale and in selling his said product, had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true, and that said product possesses the properties represented and will in truth accomplish the results claimed.

PAR. 7. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said product, Johnson's Lixolene.

#### 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 allega-

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tions 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 John C. Johnson, an individual trading as Johnson's Lixolene 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 the medicinal preparation known as Johnson's Lixolene, 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:

1. That the use of respondent's preparation is a remedy or cure for eczema, acne, psoriasis, dandruff, poison ivy, seborrhea, or alopecia, or has any therapeutic value in the treatment thereof in excess of temporarily relieving the symptom of itching by reason of its mildly antiseptic and counter-irritant properties.

2. That respondent's preparation is a germicide.

3. That all eczemas or other diseases of the skin are caused by parasitic infection.

4. That the use of respondent's preparation will give relief for all parasitic infections of the skin or scalp.

5. That the proper treatment for eczema or other skin ailments is, in all cases, the local application of a germicide.

6. That respondent is a physician or medical doctor, or that he has any recognized standing or reputation as a dermatologist or chemist.

*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.

## Syllabus

IN THE MATTER OF  
NATIONAL NUMBERING MACHINE COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SUBSEC. (A) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,  
AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 3889. Complaint, Sept. 12, 1939—Decision, Dec. 19, 1939*

Where a corporation engaged in manufacture of typographic numbering machines of five-wheel and six-wheel type for stock, and in sale, offer and distribution of such machines to purchasers in commerce among the various States engaged in substantial competition with each other in resale of said machines, and, as engaged as aforesaid in manufacture, sale, etc., of such machines, in active competition with others engaged in manufacture, sale, and distribution in commerce of similar products—

- (a) Discriminated in price between dealer purchasers in active competition with one another in resale of such machines to same prospective purchasers, through selling to certain company 100 machines at net price of \$6 per machine, while selling, at or about same time, 300 machines of like grade and quality at net price of \$5 per machine to dealer competitor, by whom substantial number of such machines, thus purchased by it, were advertised and resold at net price of \$7.50 and \$8.50 for the five-wheel and six-wheel types, respectively; and
- (b) Discriminated in price through selling for resale its machines of like grade and quality in quantities of five or less and at net prices varying from \$6 to \$8 per machine to various other concerns, corporations, individuals, firms, and partnerships competitive the one with the other;

With the result that the effect of such discriminations in price made by it as aforesaid in sale in commerce of its said typographic numbering machines of like grade and quality to purchasers competitive the one with the other, had been and might be—

(1) Substantially to lessen competition with it and with favored purchasers;

(2) To tend to create a monopoly in it and in said favored purchasers in line of commerce in which it and favored customers engaged; and

(3) To injure, destroy or prevent competition in sale and distribution of said typographic numbering machines between it and its competitors, and between said favored purchasers of said machines receiving such discriminatory prices and other less favored competing purchasers of same machines not receiving such discriminatory prices:

*Held*, That said corporation discriminated in price in sale in commerce of its said machines of like grade and quality to purchasers competitive one with the other, in violation of provisions of subsection (a) of section 2 of the Clayton Act, as amended.

*Mr. John W. Carter, Jr.* for the Commission.

*Mr. Irving Fox*, of Brooklyn, N. Y., for respondent.

Complaint

30 F. T. C.

## COMPLAINT

The Federal Trade Commission having reason to believe that the party respondent named in the caption above and hereinafter more particularly described, at various times 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, National Numbering Machine Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its office and place of business at 1 Beekman Street, New York, N. Y. Said respondent was incorporated in 1936 and from that time up to June 1938, manufactured special made-to-order typographic numbering machines. Thereafter respondent commenced the production of typographic numbering machines for stock. Respondent sells and distributes such machines in commerce between and among the various States of the United States causing said machines to be shipped and transported from their place of manufacture in New York, N. Y., to purchasers thereof located in the various States of the United States.

PAR. 2. For more than 25 years prior to June 1938, typographic numbering machines were manufactured, sold, and distributed in the United States by 4 producers, all located in New York City. Two of such producers sell and distribute their machines at list prices of \$12 per machine for the 5-wheel type and \$14 per machine for the 6-wheel type. The other 2 sell and distribute their machines at list prices of \$13 for the 5-wheel type and \$15 for the 6-wheel type. All of said machines are sold and distributed to dealers at a functional discount of 33½ percent from list price and are sold and distributed to users at a discount from list price of 5 percent on purchases of 6 to 11 machines, 10 percent on purchases of 12 to 24 machines, 15 percent on purchases of 25 to 49 machines, and 20 percent on purchases of 50 machines or more.

PAR. 3. In June 1938, respondent began the manufacture, sale, and distribution of stock typographic numbering machines at list prices of \$13 for the 5-wheel type and \$15 for the 6-wheel type per machine. Several months after June 1938, however, respondent in an effort to compete more effectively with the better-known machines of its older and better established competitors reduced its list prices thereon to \$11 for the 5-wheel type and \$13 for the 6-wheel type and offered discounts to the trade generally from said list prices of 35 percent on purchases of 6 to 12 machines, 40 percent on pur-

chases of 12 to 25 machines, 40 percent plus 5 percent on purchases of 25 to 100 machines and special discounts on purchases of 100 machines or more.

PAR. 4. 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 manufacturing, selling, and distributing typographic numbering machines in commerce between and among the various States of the United States.

PAR. 5. In the course and conduct of its business as above described, respondent has discriminated in price and is now discriminating in price between different purchasers buying typographical numbering machines of like grade and quality for resale to dealers and users by giving and allowing to some of its purchasers of said machines lower prices than those given or allowed to other of its purchasers competitively engaged one with the other in the resale of the said machines to dealers and ultimate users within the United States. Respondent, since June 1938, sold 300 of said machines of both the 5- and 6-wheel type to the Craftsmen Machinery Co. of Boston, Mass., at a net price of \$5 per machine and at or about the same time has sold 100 machines of like grade and quality to the American Wood Type Manufacturing Co. of New York City at a net price of \$6 per machine, both of which concerns are dealers in said machines and are in active competition one with the other for the resale of said machines to the same prospective purchasers. The Craftsmen Machinery Co. has advertised and resold a substantial number of the machines so purchased at unit prices of \$7.50 for the 5-wheel type and \$8.50 for the 6-wheel type. The respondent has likewise, since June 1938, sold for resale machines of like grade and quality in quantities of 5 or less to various other concerns, corporations, individuals, firms, and partnerships at net prices varying from \$6 to \$8 per machine.

PAR. 6. The general effect of said discriminations in price made by said respondent as above set out has been and may be substantially to lessen competition with respondent and with the favored purchasers; to tend to create a monopoly in respondent and in said favored purchasers in the line of commerce in which said respondent and said favored purchasers are engaged; to injure, destroy, or prevent competition in the sale and distribution of said typographic numbering machines between respondent and its competitors and between the said favored purchasers of said machines receiving such discriminatory prices and other less favored competing purchasers of the same machines not receiving said discriminatory prices.

PAR. 7. 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 (The Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (title 15, sec. 13), the Federal Trade Commission on the 12th day of September 1939, issued and thereafter served its complaint in this proceeding upon the respondent, National Numbering Machine Co., Inc., a corporation, charging it, the aforesaid corporation, with violating the provisions of section 2 of the Clayton Act as amended, by the Robinson-Patman Anti-discrimination Act approved June 19, 1936, (U. S. C. title 15, sec. 13).

After the issuance and service of the said complaint, the said respondent, National Numbering Machine Co., Inc., by its attorney Irvin Fox, filed a request with the Commission seeking an extension of time within which to file the answer of respondent. By an order entered on the 28th day of October 1939, the Commission extended such time from October 3, 1939, to October 30, 1939. On October 4, 1939, the said respondent, National Numbering Machine Co., Inc., by its attorney Irvin Fox, filed its answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to the said facts.

Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint filed and served as aforesaid, the motion to extend time for filing answer, the order extending said time, the answer of respondent admitting all the material allegations of fact in said complaint, the waiver, by the respondent, of all intervening procedure and further hearing, and the Commission now having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and from these facts draws the conclusion hereinafter set out.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, National Numbering Machine Co., Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business located at 1 Beekman Street, in the city of New York, N. Y., and until June 1938, was en-

gaged in the manufacture of special made-to-order typographic numbering machines.

Since June 1938, the said respondent has been, and now is, engaged in the city of New York in the manufacturing of typographic numbering machines of the five-wheel and six-wheel type for stock, and in the sale, offering for sale, selling, and distribution of such machines to purchasers in commerce between and among the various States of the United States. In the course of its business respondent causes said machines when sold, to be shipped and transported from its principal place of business in the State of New York to purchasers thereof in the State of New York and in the various States of the United States.

In so carrying on its business as aforesaid, respondent has been, and now is, engaged in active competition with other corporations, individuals, partnerships, and firms engaged in the manufacture of typographic numbering machines and in the sale and distribution thereof in commerce between and among the various States of the United States; and the purchasers of said machines manufactured and sold by respondent as aforesaid, in the course of their business in reselling said machines, have been for several years last past, and are now, in substantial competition with each other.

PAR. 2. The Craftsman Machinery Co. of Boston, Mass., and the American Woodtype Manufacturing Co. of New York City are dealers in typographic numbering machines and are in active competition one with the other in the resale of such machines to the same prospective purchasers. Respondent sold to American Woodtype Manufacturing Co. of New York City 100 machines at a net price of \$6 per machine, and at or about the same time sold to the Craftsman Machinery Co. of Boston, Mass., 300 machines of like grade and quality at a net price of \$5 per machine. The Craftsman Machinery Co. of Boston, Mass., advertised and has resold a substantial number of the machines, purchased as aforesaid, to users at a net price of \$7.50 and \$8.50 for the 5-wheel and 6-wheel type respectively.

The respondent has likewise since June 1938, sold for resale its machines of like grade and quality, in quantities of five or less, to various other concerns, corporations, individuals, firms, and partnerships, competitive the one with the other, at net prices varying from \$6.00 to \$8.00 per machine.

The different prices as found and set out herein amount to, and are, discriminations in price in commerce between purchasers of respondent's typographic numbering machines.

Order

30 F. T. C.

PAR. 3. The Commission finds that the discriminations in price made by respondent, as aforesaid, in the sale in commerce of its typographic numbering machines of like grade and quality to purchasers competitive the one with the other, has been, and may be,

(a) Substantially to lessen competition with respondent and with the favored purchasers.

(b) To tend to create a monopoly in respondent and in said favored purchasers in the line of commerce in which said respondent and in which favored customers engage.

(c) To injure, destroy or prevent competition in the sale and distribution of said typographic numbering machines between respondent and its competitors and between said favored purchasers of said machines receiving such discriminatory prices and other less favored competing purchasers of the same machines not receiving such discriminatory prices.

#### CONCLUSION

The Commission therefore concludes that the respondent, National Numbering Machine Co., Inc., has discriminated in price in the sale in commerce of its typographic numbering machines of like grade and quality to purchasers, competitive one with the other, as hereinabove set out, in violation of the provisions of subsection (a) Section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, (U. S. C. title 15, sec. 13).

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer filed by respondent, National Numbering Machine Co., 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 the facts and its conclusion drawn therefrom, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of an Act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914, as amended by the Robinson-Patman Act approved June 19, 1936, (U. S. C. title 15, sec. 13).

*It is ordered,* That respondent, National Numbering Machine Co., Inc., and its successors, together with its respective officers, directors, representatives, agents, and employees, in the sale of respondent's typographic numbering machines of like grade and quality sold for

use, consumption, or resale within the United States, do forthwith cease and desist from:

(a) Discriminating in price, either directly or indirectly, between the Craftsman Machinery Co. and the American Woodtype Manufacturing Co., and, where either or any of the sales are in interstate commerce, between other purchasers competitively engaged one with the other in the resale of such machines, by selling such typographic numbering machines to such customers at the different prices set forth in paragraph 2 of the aforesaid findings as to the facts and conclusion.

(b) Discriminating in price, where either or any of the sales are in interstate commerce, between different purchasers competitively engaged in the resale of its typographic numbering machines by means of price differences substantially similar to the price differences set forth in paragraph 2 of the aforesaid findings as to the facts and conclusion unless the differences between the prices paid by such purchasers make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such machines are to such purchasers sold or delivered.

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

Modified Order

30 F. T. C.

## IN THE MATTER OF

W. H. SNYDER, R. P. SNYDER AND ROGER N. SNYDER,  
DOING BUSINESS AS W. H. SNYDER & SONS

## MODIFIED CEASE AND DESIST ORDER

*Docket 1441. Order, Dec. 20, 1939*

Order, in response to motion, modifying cease and desist order of March 3, 1932, 16 F. T. C. 59, so as to require respondents, their agents, etc., in connection with offer, etc., in commerce, of cigars, to cease and desist from using word "Havana" or other words, etc., indicative of Cuban origin, etc., to describe, etc., cigars not made from tobacco grown on island of Cuba, as in said order set forth.

*Mr. Marshall Morgan* for the Commission.

## MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter coming on to be heard by the Commission upon the motion of the Chief Counsel for the Commission, filed November 1, 1939, that the Commission modify the order to cease and desist as entered herein on March 3, 1932, and it appearing that notice that said motion would be heard by the Commission on November 15, 1939, was duly served upon respondents, and it further appearing that respondents herein have not been engaged in the manufacture of cigars under the brand names "Havana Fruit" and "Havana Velvet," respectively, since the year 1933, and that said respondents have no intention of resuming the manufacture and sale of cigars under such brand names, and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises.

*It is ordered,* That the motion to modify the order to cease and desist issued herein on March 3, 1932, be, and the same hereby is, granted in all respects except for the period of time within which said respondents are directed to file a report of compliance with the terms of this order.

*It is further ordered,* That the order to cease and desist issued herein on March 3, 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 the respondents thereto, the stipulation as to the facts agreed upon and approved; and the Commission having made its findings as to the facts and its conclusion that said respond-

ents have violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

*It is now ordered,* That W. H. Snyder, R. P. Snyder, and Roger N. Snyder, partners, doing business under the trade name and style W. H. Snyder & Sons, and each of them, their agents, individual or corporate, representatives, servants, employees, and successors in business, 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 cease and desist from:

Using the word "Havana" or any other word or words, terms, or picturizations 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 from 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  
JOHN C. HERMAN AND EDWIN S. HERMAN, DOING  
BUSINESS AS JOHN C. HERMAN & COMPANY

## MODIFIED CEASE AND DESIST ORDER

*Docket 1443. Order, Dec. 20, 1939*

Order, in response to motion, modifying cease and desist order of February 27, 1932, 16 F. T. C. 42, so as to require respondents, their agents, etc., in connection with offer, etc., in commerce, of cigars, to cease and desist from using word "Havana" or other words, etc., indicative of Cuban origin, etc., to describe, etc., cigars not made of tobacco grown on island of Cuba, as in said order set forth.

*Mr. Marshall Morgan* for the Commission.

## MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter coming on to be heard by the Commission upon the motion of the Chief Counsel for the Commission, filed November 1, 1939, that the Commission modify the order to cease and desist entered herein on February 27, 1932, and it appearing that notice that said motion would be heard by the Commission on November 15, 1939, was duly served upon respondents, and it further appearing that respondents herein have not used or employed the label or brand "Havana Darts" in connection with the manufacture and sale of cigars since 1932, and that said respondents have no intention of resuming the manufacture and sale of cigars under said brand name, and the Commission having duly considered the said motion and the record herein, and being now fully advised in the premises.

*It is ordered*, That the motion to modify the order to cease and desist issued herein on February 27, 1932, be, and the same hereby is, granted in all respects except for the period of time within which said respondents are directed to file a report of compliance with the terms of this order.

*It is further ordered*, That the order to cease and desist issued herein on February 27, 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 the respondents thereto, agreed upon and approved, in which said answer the said respondents stated that they desired to waive hearing on the charges set forth in said complaint, refrained from contesting the proceeding and thereby consented that the Commission might make, enter and serve upon them an

order to cease and desist from the violations of the law alleged in the complaint; and the Commission having concluded that said respondents have violated the provisions of the Federal Trade Commission Act;

*It is now ordered,* That John C. Herman and Edwin S. Herman, partners, doing business under the trade name and style of John C. Herman & Co., and each of them, their agents, individual or corporate, representatives, servants, employees, and successors in business, 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 cease and desist from;

Using the word "Havana" or any other word or words, terms, or picturizations 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 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.

Modified Order

30 F. T. C.

IN THE MATTER OF  
FLECK CIGAR COMPANY

MODIFIED CEASE AND DESIST ORDER

*Docket 1453. Order, Dec. 20, 1939*

Order, in response to motion, modifying cease and desist order of January 23, 1933, 17 F. T. C. 197, so as to require respondent, its agents, etc., in connection with offer, etc., in commerce, of cigars, to cease and desist from using word "Cuba" or other words, etc., indicative of Cuban origin, etc., to describe, etc., cigars not made from tobacco grown on island of Cuba, as in said order set forth.

*Mr. Marshall Morgan* for the Commission.

MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter coming on to be heard by the Commission upon the motion of the Chief Counsel for the Commission, filed November 1, 1939, that the Commission modify the order to cease and desist as entered herein on January 23, 1933, and it appearing that notice that said motion would be heard by the Commission on November 15, 1939, was duly served upon respondent, and it further appearing that respondent herein abandoned the operation of its business on June 30, 1935, since which date it has been in process of liquidation, and the Commission having duly considered the 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 herein as issued on January 23, 1933, be, and the same hereby is, granted in all respects except for the period of time within which said respondent is directed to file a report of compliance with the terms of this order.

*It is further ordered*, That the order to cease and desist issued herein on January 23, 1933, 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 the respondent, thereto, agreed upon and approved, in which said answer the said respondent stated that it desired to waive hearing on the charges set forth in said complaint and not to contest the proceeding, and thereby consented that the Commission might make, enter and serve upon it an order to cease and desist from the violations of the law alleged in the complaint;

and the Commission having concluded that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is now ordered,* That Fleck Cigar Co., a corporation, its agents, individual or corporate, representatives, servants, employees, and successors in business, 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 cease and desist from:

Using the word "Cuba" or any other word or words, terms, or picturizations 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 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.

Modified Order

30 F. T. C.

## IN THE MATTER OF

JOHN F. REICHARD, TRADING AS MANCHESTER CIGAR  
COMPANY

## MODIFIED CEASE AND DESIST ORDER

*Docket 1459. Order, Dec. 20, 1939.*

Order, in response to motion, modifying cease and desist order of March 12, 1932, 16 F. T. C. 77, so as to require respondent, his agents, etc., in connection with offer, etc., in commerce, of cigars, to cease and desist from using word "Havana" or other words, etc., indicative of Cuban origin, etc., to describe, etc., cigars not made from tobacco grown on Island of Cuba, as in said order set forth.

*Mr. Marshall Morgan* for the Commission.

## MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter coming on to be heard by the Commission upon the motion of the Chief Counsel for the Commission, filed November 1, 1939, that the Commission modify the order to cease and desist as entered herein on March 12, 1932, and it appearing that notice that said motion would be heard by the Commission on November 15, 1939, was duly served upon respondent, and it further appearing that said respondent, formerly trading as Manchester Cigar Co., has not been engaged in the business of manufacturing cigars for a period of ten years last past, and the Commission having duly considered the 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 12, 1932, be, and the same hereby is, granted in all respects except for the period of time within which said respondent is directed to file a report of compliance with the terms of this order.

*It is further ordered,* That the order to cease and desist issued herein on March 12, 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 the respondent thereto, in which said answer the respondent stated that he desired to waive hearing on the charges set forth in said complaint, that he refrained from contesting the proceeding and thereby consented that the Commission might make, enter and serve upon him an order to cease and desist from the violations of the law alleged in the complaint, and requested the Commission to proceed to final disposition of the matter upon such answer pursuant to the Com-

mission's rules of practice, and without further hearings, said answer being agreed upon and approved; and the Commission having concluded that the said respondent has violated the provisions of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

*It is now ordered,* That John F. Reichard, trading as Manchester Cigar Co., his agents, individual or corporate, representatives, servants, employees, and successors in business, 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 cease and desist from:

Using the word "Havana" or any other word or words, terms, or picturizations 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 from tobacco grown on the island of Cuba.

*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.

Modified Order

30 F. T. C.

## IN THE MATTER OF

HERBERT L. SMITH

MODIFIED CEASE AND DESIST ORDER

*Docket 1467. Order, Dec. 20, 1939*

Order, in response to motion, modifying cease and desist order of March 14, 1932, 16 F. T. C. 89, so as to require respondent, his agents, etc., in connection with offer, etc., in commerce, of cigars, to cease and desist from using word "Havana" or other words, etc., indicative of Cuban origin, etc., to describe, etc., cigars not made from tobacco grown on island of Cuba, as in said order set forth.

*Mr. Marshall Morgan* for the Commission.

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

## MODIFIED ORDER TO CEASE AND DESIST, ETC.

This matter coming on to be heard by the Commission upon the motion of the Chief Counsel for the Commission, filed November 1, 1939, that the Commission modify the order to cease and desist entered herein on March 14, 1932, and it appearing that notice that said motion would be heard by the Commission on November 15, 1939, was duly served upon respondent, and that respondent thereupon appeared by counsel on November 15, 1939, and was duly heard by the Commission upon said motion, together with the Chief Counsel for the Commission, and the Commission having duly considered the said motion, including argument of counsel, and the record herein, and being now fully advised in the premises.

*It is ordered*, That the motion to modify the order to cease and desist issued herein on March 14, 1932, be, and the same hereby is, granted in all respects.

*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 the respondent thereto, the stipulation as to the facts agreed upon and approved; and the Commission having made its findings as to the facts and 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 Herbert L. Smith, 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 distribution 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 picturizations 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 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 Herbert L. Smith, 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  
YARDLEY OF LONDON, INC.

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

*Docket 2330. Complaint, Mar. 15, 1935—Decision, Dec. 20, 1939*

Where a domestic corporation, subsidiary of an English concern of London, engaged at its place of business in the United States in mixing, compounding, and manufacturing, among other toilet requisites, cosmetics and products, soaps, perfumes, powders, bath salts, facial creams, brilliantines, and after-shaving lotions, from such domestic products, as case might be, as alcohol, distilled water, mineral oil, borax, waxes, glycerin, menthol crystals, salt crystals, magnesium, and petroleum jelly, and from such imported products as perfume concentrates, milling chips or ribbons, imported waxes and others, and in sale and distribution of its various products from its place of business to retail dealer purchasers at various points in the several States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of like and similar products in commerce as aforesaid—

- (a) Represented, in advertisements in newspapers and other publications circulating among the various States and in said District, and on labels as below set forth and otherwise, that said products were English and imported, through use of words "London," "English," or "Old English," and other words, depictions, etc., indicative of English origin, and made use of such terms and phrases as "33 Old Bond Street," "Straight from Bond Street" and word "London" as part of its corporate name, in connection with offer of said various products;
- (b) Made use of labels which were identical with those used by the parent company in England, and there made, for its perfumes compounded in this country, from London perfume concentrates, domestic alcohol and distilled water, and placed in bottles made, in some instances, in the United States from English molds and designs, and which consisted of old English print depicting vendors of lavender flowers in London in the 1770's, and bore inscription "YARDLEY'S OLD ENGLISH LAVENDER—Yardley & Company, Ltd., London—Est. 1770," and sold its said perfume, thus bottled and labeled, in containers bearing the same imprint and words "YARDLEY Old English LAVENDER—33 Old Bond Street, London,"; and
- (c) Made use of such words as "English," "Old English," "33 Old Bond Street, London," in describing its Complexion Cream and other products made as above set forth, and made use of label substantially identical with that employed on its perfume, as above described, on its bath salts, together with words "YARDLEY London," and set forth on boxes in which bottles of its said salts, thus labeled, were packed, words "YARDLEY LAVENDER BATH SALTS—Established in England in 1770," together with designation or reproduction on top of each box of Royal Coat of Arms with familiar lion and unicorn, and legend, underneath, "By Appointment to H. M. The Queen—YARDLEY—33 Old Bond Street, London";

Notwithstanding fact perfumes and other products thus referred to, designated and labeled, were mixed and compounded, as above set forth, in this country from domestic and imported ingredients, and did not originate as finished products in London, or England;

With tendency and capacity to mislead and deceive a substantial part of the purchasing and consuming public into the erroneous and mistaken belief that all of said products were made and compounded into the finished or completed product in England, and then imported into the United States, and, as such, decidedly preferred by some members of purchasing public over similar and less expensive articles of domestic manufacture by reason of widespread popularity and demand long enjoyed by toilet requisites made or compounded in England or France, and superiority thereof, as believed by many, in quality and other desirable characteristics over similar articles made or compounded in the United States; and

With result that purchasing and consuming public bought substantial portion of its said products as and for those made and compounded in England, and trade was thereby unfairly diverted to it from its competitors engaged in manufacture, sale, and distribution, or in sale and distribution, of toilet requisites, including perfumes, cosmetics, bath salts, after-shaving lotions, brillantines and facial creams, and who truthfully represent the country wherein their products are made or compounded; 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.

Before *Mr. Edward M. Averill*, *Mr. John J. Keenan*, and *Mr. Robert S. Hall*, trial examiners.

*Mr. John W. Hilldrop* and *Mr. Morton Nesmith* for the Commission.

*Townsend & Lewis*, 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 Yardley of London, 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, Yardley of London, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal place of busi-

## Complaint

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ness located at Union City, in the State of New Jersey. It is now and, for a number of years last past, has been engaged as a subsidiary of Yardley and Co., Ltd., of London, England, in the importation, mixing, compounding, and manufacturing of toilet requisites, including soaps, powders, perfumes, cosmetics, and other products, and in the sale and distribution of said products in commerce between and among various States of the United States. It causes and has caused said products, when sold, to be shipped from its place of business in the State of New Jersey to purchasers thereof located in a State or States other than the State of New Jersey. In the course and conduct of its business, Yardley of London, Inc., was at all times herein referred to in competition with other corporations, individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of similar products.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, Yardley of London, Inc., caused advertisements and advertising matter to be inserted in newspapers and other publications having interstate circulation and wherein appeared the following statements which were published and circulated in the various States of the United States of America: "World-wide Christmas Broadcast from 33 Old Bond Street" and "Each year from Yardley House in London, thousands of gifts go out to the four corners of the earth." In the said advertisements certain articles of merchandise which respondent ships and distributes to and into various of the States of the United States of America from its place of business in the State of New Jersey, were referred to in said advertisements as "Yardley's English Lavender," "Yardley's Famous English Lavender Soap," "English Lavender," "Yardley's English Lavender Bath Salts." In said advertisements so published as aforesaid, an invitation was extended by respondent to the retailers thereof to "give yourself an English complexion," and in said advertisements the following statements were made: "Those marvelous English complexions you'll see at the Embassy Club in London—almost anywhere in Mayfair—haven't just happened that way. English women take care of their complexions \* \* \*." Respondent, in announcing the opening of a certain retail shop by it which it maintains at 620 Fifth Avenue, New York City, in which it sells the articles of merchandise it manufactures at its place of business in New Jersey and ships to said shop at 620 Fifth Avenue in the city of New York, N. Y., in interstate commerce, caused the following advertisements to be inserted in newspapers having an interstate circulation and which were published and distributed in various of the States of the United States of America: "Straight from Bond Street and fragrant with English Lavender." "From their shop in Bond Street, London, Yard-

ley has brought gifts of dignity and charm to you." "Christmas with all the charm of Old England." "Yardley of London." "Cosmetics imported from Bond Street." "We are constantly in receipt of bulk shipments from our factories in England"; when in truth and in fact, the said products so advertised and shipped in interstate commerce as aforesaid or a large portion thereof were not manufactured, mixed, branded, or compounded into the finished product in England and were not imported into the United States of America as finished products from England, but were products composed of ingredients which though imported from England, were mixed or compounded into the finished product in the United States of America; or were products, some of the ingredients of which were obtained from or through Yardley and Company, Ltd., London, England, and thereafter mixed or compounded in the United States of America with ingredients of domestic production to form the finished product.

PAR. 3. There is a preference on the part of certain of the buying public for goods, wares, and merchandise which are manufactured in foreign countries and imported into the United States of America, and such goods so manufactured and imported command and bring from the said section of the public a higher price in the markets of the United States of America than domestic goods, wares, and merchandise of the same nature and description. The advertising and the labeling of its goods, wares, and merchandise by respondent in manner and form as hereinbefore set out have a capacity to mislead and deceive the purchasing public by creating the impression and belief that the products advertised and offered for sale by respondent in interstate commerce as aforesaid are all manufactured in England and imported to America, which has the tendency and capacity to divert trade to respondent from the competitors of respondent who actually import similar goods, wares and merchandise which are manufactured in foreign countries, into the United States for sale to the buying public and from those competitors of respondent who manufacture and sell in interstate commerce similar goods, wares and merchandise to those sold in interstate commerce by respondent but who truthfully represent same to be manufactured in the United States instead of foreign countries.

PAR. 4. Wherefore, the above alleged acts and things done by respondent are to the prejudice of the public and respondent's competitors and constitute unfair methods of competition in interstate commerce within the intent and meaning of section 5 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 15, 1935, issued, and on March 16, 1935, served its complaint in this proceeding upon the respondent, Yardley of London, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John W. Hilldrop and Morton Nesmith, attorneys for the Commission, and in opposition to the allegations of the complaint by Dallas S. Townsend, attorney for the respondent, before Edward M. Averill, John J. Keenan and Robert S. Hall, 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, and the oral arguments of Morton Nesmith and Dallas S. Townsend; 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, Yardley of London, Inc., is a New Jersey corporation. Its plant and principal place of business is located in Union City, N. J. It also maintains a retail shop at 620 Fifth Avenue, New York, N. Y. Respondent is now, and for some time last past has been, a subsidiary of Yardley and Co., Ltd. of London, England. Respondent is now, and for several years last past has been, engaged in the mixing, compounding, and manufacturing of toilet requisites and cosmetics, including soaps, perfumes, powders, bath salts, facial creams, brilliantines, after shaving lotions, and other products, and in the sale and distribution thereof in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of its business, the respondent offers for sale and sells its products in commerce as aforesaid to retail dealers purchasing said products for resale. When the products are so sold, the respondent causes them to be transported from its place

of business in the State of New Jersey to the purchasers thereof located at various points in the several States of the United States and in the District of Columbia. Respondent maintains, and for some time past has maintained, a course of trade in its products in 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 its business, respondent is, and has 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 several States of the United States and in the District of Columbia.

PAR. 3. Respondent in the course of its business has caused certain representations to be made with respect to its preparations through advertisements inserted in newspapers and other publications having a circulation between and among the various States of the United States and in the District of Columbia. Typical of said representations are the following:

World-wide Christmas broadcast from 33 Old Bond Street.

Each year from Yardley House in London, thousands of gifts go out to the four corners of the earth.

Give yourself an English complexion.

Those marvelous English complexions you'll see at the Embassy Club in London—almost anywhere in Mayfair—haven't just happened that way. English women take care of their complexions \* \* \*.

Straight from Bond Street and fragrant with English Lavender.

From their shop in Bond Street, Yardley has brought gifts of dignity and charm to you.

Christmas with all the charm of Old England.

Yardley of London.

Cosmetics imported from Bond Street.

In said advertisements, on the labels used for the products hereinafter referred to, and in other ways, the respondent has described and referred to all of said products as being English and as being imported products. Some of said products are specifically designated as follows:

Yardley's English Lavender.

Yardley's Famous English Lavender Soap.

English Lavender, and

Yardley's English Lavender Bath Salts.

PAR. 4. The procedure generally followed by respondent in manufacturing its products is as follows: The respondent receives certain imported ingredients in bulk from its parent company, Yardley and Co., Ltd. of London. At the respondent's plant in Union City, New Jersey, these ingredients are mixed, in most cases, with

## Findings

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certain domestic ingredients according to the parent company's formula for that particular product. Among the domestic ingredients which are used in the manufacture of respondent's products are the following: Alcohol, borax, carbonate, magnesium, calcium carbonate, castor oil, bath salt crystals, colors and dyes, glycerin, mineral oil, paraffin wax, rice starch, potassium hydroxide, zinc oxide, greases, vaseline, menthol crystals, and magnesium stearate.

The procedure followed by respondent in the manufacture of its perfumes is as follows: Respondent imports from London perfume concentrates or compounds which consist of a blended mixture of various oil extracts from flowers and plants. The concentrate is not a usable commodity until alcohol, which is the diluting medium is added. Respondent, at its plant in New Jersey, adds domestic alcohol and distilled water in varying percentages to this concentrate and produces a usable and merchandisable perfume. The perfume is then placed into bottles which are in some instances made in the United States from English molds and designs. The bottles are then labeled with labels made in England which are identical with those used by respondent's parent company. Each of these labels consists of an old English print depicting the vendors of lavender flowers in London in the 1770's and bears the following inscription:

YARDLEY'S OLD ENGLISH  
LAVENDER  
Yardley & Company, Ltd.  
London  
Est. 1770

After being bottled and labeled, the perfume is placed into boxes. Each box has imprinted upon it the print above described and is inscribed as follows:

YARDLEY  
Old English  
LAVENDER  
33 Old Bond Street  
London

The procedure followed by respondent in the manufacture of its soap is as follows: Respondent imports from London milling chips or ribbons. At its plant in New Jersey, it adds the perfume concentrate to the chips or ribbons and this mixture is then pressed or stamped by machines into cakes of soap. The cakes are then imprinted, wrapped and put into boxes for shipment.

Respondent's English Complexion Cream is composed of several imported ingredients and two domestic ingredients, namely, mineral oil and borax. The mixing, compounding and transformation takes place in respondent's plant in Union City, N. J.

Respondent's "Lavender Brilliantine" is composed of five waxes and one perfume. Three of these waxes are obtained domestically and are mixed in respondent's plant in New Jersey with the imported ones. To this mixture is added the perfume. This perfume consists of the imported compound or concentrate to which has been added varying percentages of domestic alcohol as above described. The completed product is packed in metal containers upon which appear the print above described and which bear the following inscription:

YARDLEY'S  
Old English Lavender  
Solidified  
BRILLIANTINE  
YARDLEY  
33 Old Bond Street  
London

Respondent's "After Shaving Lotion" is composed of the following domestic products: alcohol, distilled water, glycerin, and menthol crystals, to which is added the imported perfume concentrate. These ingredients are mixed and compounded at respondent's plant in Union City, N. J.

Respondent's "Lavender Bath Salts" is composed of salt crystals, magnesium and perfume. The salt crystals and magnesium are domestically obtained and the perfume which is added consists of the perfume concentrate plus domestic alcohol. These ingredients are mixed and compounded at respondent's plant in Union City, N. J. The completed product is bottled and labeled, the label, except for the addition of the words "Bath Salts," being identical with that used on respondent's perfume. The metal top has imprinted thereon:

YARDLEY  
London

These bottles are then packed in boxes which are labeled:

YARDLEY  
LAVENDER BATH SALTS  
Established in England in 1770

## Findings

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On the top of each box appears the Royal Coat of Arms with the familiar lion and unicorn, under which appears:

By Appointment

to

H. M. The Queen

YARDLEY

33 Old Bond Street

London

Respondent's "Night Cream #1441," as it is known in this country, or "Skin Food" as known in England, is composed of six ingredients, three of which are domestically obtained, namely, mineral oil, petroleum jelly, and borax. These ingredients are mixed and compounded at respondent's plant in Union City, N. J.

PAR. 5. Toilet requisites, including cosmetics and perfumes, made or compounded in England or France, have for many years enjoyed widespread popularity and demand on the part of a portion of the American purchasing public, many of whom believe and consider that such articles made or compounded in England or France are superior in quality and other desirable characteristics to similar articles made or compounded in the United States. There is, therefore, a decided preference for such articles by some members of the purchasing public, and such imported articles sell for a higher price in this country than similar articles of domestic manufacture. Tariff duties are higher on such imported articles in the finished or completed form than on bulk shipments of certain of the ingredients thereof.

PAR. 6. The use by the respondent of the statements, claims, and representations as 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 all of said products are manufactured and compounded into the finished or completed product in England and then 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 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 toilet requisites, including perfumes, cosmetics, bath salts, after shaving lotions, brillian-tines, and facial creams, who truthfully represent the country wherein their products are made or compounded. As a consequence thereof,

substantial injury has been and is being done by respondent to competition in commerce between and among the several States of the United States and in the District of Columbia.

#### CONCLUSION

The aforesaid acts and practices of 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 respondent, testimony and other evidence taken before Edward M. Averill, John J. Keenan, and Robert S. Hall, 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 Morton Nesmith, counsel for the Commission, and by Dallas S. Townsend, 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, Yardley of London, 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 toilet requisites and cosmetics, including, without limitation, perfumes, bath salts, facial creams, brilliantines, and after shaving lotions 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 words "London" (except as provided in paragraph 3 hereof), "English," or "Old English," or through the use of any other words, phrases, symbols or picturizations indicative of English origin, or through any other means or device, or in any manner, that any of the aforesaid toilet requisites and cosmetics which were in fact made, compounded, diluted or bottled in the United States, or in any place other than England, were made, compounded, diluted or bottled in England or are of English origin; provided, however, that the country of origin of the various ingredients thereof may be stated when immediately accompanied by a statement that such products were made, compounded, diluted or bottled, as the case may be, in the United States or in such place other than England.

2. Using the terms or phrases "33 Old Bond Street," "Straight from Bond Street," or any other words or phrases of similar import to de-

scribe or in any way refer to any of the aforesaid toilet requisites or cosmetics which were in fact made, compounded, diluted or bottled in the United States or in any place other than England.

3. Using the word "London" as part of its corporate name in connection with the offering for sale, sale, and distribution of any of the aforesaid toilet requisites or cosmetics, which were in fact made, compounded, diluted or bottled in the United States or in any place other than England, without clearly and conspicuously stating in immediate connection therewith that such products were made, compounded, diluted or bottled, as the case may be, in the United States or in such place other than England.

*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

W. H. SHANKS, W. J. GOGGIN, CLARA SHANKS AND  
 JESSIE G. GOGGIN, TRADING AS SHANKS  
 LABORATORIES

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

*Docket 3860. Complaint, Aug. 29, 1939<sup>1</sup>—Decision, Dec. 20, 1939*

Where four partners engaged in sale and distribution of their drug-containing "Mange Lotion" to purchasers in various other States and in the District of Columbia; in advertisements which they disseminated through the mails, through insertion in circulars and other printed or written matter distributed in commerce in the various States, and in other ways and through various other means, and which were likely and intended to induce, directly or indirectly, purchase of their said preparation—

- (a) Represented that their said product was a competent and effective cure or remedy and treatment for eczema and all types of mange, abscesses, cuts, sores, and other diseases and disorders of the skin on dogs and that, where thus used, it would in all cases cause hair to grow;
- (b) Represented that, applied to human beings, it constituted such a cure or remedy and treatment for eczema and all cases of itching scalp, and competent and effective cure or remedy for athlete's foot and dandruff, and would cause hair to grow on bald spots on the head of human beings; and
- (c) Represented that it was a guaranteed treatment for itching of scalp on human beings and for scratching dogs;

Facts being said preparation would not in all cases cause hair to grow on dogs, was not such a cure, remedy, or treatment for eczema or itching scalp or for other conditions above set forth, would not cause hair to grow on bald spots as above, was not such a cure, remedy, or treatment for any diseases or disorders of skin on dogs or human beings due to or persisting because of systemic disorder or condition, guarantee was limited to refund of purchase price and was not of preparation's therapeutic value, and representations and claims made as above were otherwise false and misleading and false advertisements;

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 drug-containing preparation:

*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. Maurice C. Pearce* for the Commission.

<sup>1</sup> Amended and supplemental.

## 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 W. H. Shanks, W. J. Goggin, Clara Shanks, and Jessie G. Goggin, individuals and copartners trading as Shanks Laboratories, 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 amended and supplemental complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondents, W. H. Shanks, W. J. Goggin, Clara Shanks, and Jessie G. Goggin, are individuals and copartners trading as Shanks Laboratories and having their principal office and place of business in the city of Columbus, State of Ohio.

PAR. 2. The respondents are now, and have been for several years last past, engaged in the business of selling and distributing a medicinal preparation containing drugs designated "Shanks Mange Lotion." Respondents cause said preparation, when sold by them, to be transported from their 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. Respondents maintain, and at all times herein mentioned have 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 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 preparation, by United States mails, by insertion 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 preparation; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and repre-

sentations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

The guaranteed treatment. For itchy scalps and scratching dogs.

I have been successful in compounding a preparation to be used in the treatment of mange, eczema, cuts, sores, abscesses, etc. that over a period of 20 years \* \* \* it has never failed to effect a rapid clearing up of all forms of skin diseases \* \* \*.

Nothing is much more unsightly not to mention the uncomfortableness, of a dog that is continually scratching and biting at himself in order to allay the continual itch. \* \* \* In every case without one single exception Shanks Mange Lotion has cleared up this condition and produced a growth of coat.

Shanks gives quick relief, controls many so-called "hopeless cases" of mange, eczema and similar skin diseases.

One application brought results. It brings quick relief from mange and has cleaned up many so-called hopeless cases of skin disorders \* \* \*.

Shanks controls almost "hopeless" skin diseases.

I find your Mange Lotion the most wonderful coat and skin conditioner I have ever used. It cleared up a very bad case of mange amazingly fast.

You, too, will find Shanks Mange Lotion the greatest preparation you have ever used.

SHANKS MANGE LOTION—FOR HUMAN USE—SCALP AND DANDRUFF TREATMENT.

A treatment of this kind every week or 10 days will clear a scalp of dandruff and stop any itching condition.

I was troubled with an itching condition of my scalp for several years. This was so annoying that many nights after retiring I was compelled to get up and wash my scalp with cold water, which gave temporary relief. Shanks Mange Lotion used once or twice monthly has cleaned up this condition entirely and keeps the scalp feeling fine.

Alopecia (bald or bare spots that appear rather suddenly). Some physicians claim this is caused by a nervous condition, some claim they do not know what the cause is. Regardless of the cause Shanks Mange Lotion used twice daily has never failed to clear up this condition and produce a regrowth of hair.

I have had a bald spot on my head about the size of a half dollar for over six months and have been treating it by a physician with salves, lotions and lights, but no results. A barber recommended I try Shanks Mange Lotion. I purchased a 50¢ size bottle and applied it twice daily. Before this amount was *all* used the hair was coming in thicker than on other parts of my head.

ATHLETE'S FOOT. The U. S. Department of Drugs and Foods claim this is incurable. Probably they are correct. However, if you are troubled with this condition give Shanks Mange Lotion a trial.

Infant 3 months old. All of body covered with eczema. Various remedies were used, all of which caused the child to cry and become very irritable. Shanks Mange Lotion was applied. It caused no discomfort to the child. After one application daily for ten days the skin appeared normal.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondents represent directly or by implication that said preparation is a competent and effective cure or remedy, and a competent and

effective treatment, for eczema, all types of mange, abscesses, cuts, sores, and all other diseases and disorders of the skin on dogs and that the use of said preparation will in all cases cause hair to grow on dogs. The respondents further represent, as aforesaid, that said preparation when applied to human beings is a competent and effective cure or remedy, and a competent and effective treatment, for eczema and all cases of itching scalp, that said preparation is a competent and effective cure or remedy for athlete's foot and dandruff, and will cause hair to grow on bald spots on the head of human beings. The respondents further represent, as aforesaid, that the said preparation is a guaranteed treatment for itching of the scalp on human beings and for scratching dogs.

PAR. 5. The aforesaid statements and representations by respondents, 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 or a competent or effective treatment for eczema, all types of mange, abscesses, cuts, sores, or all other diseases or disorders of the skin on dogs. Said preparation will not in all cases cause hair to grow on dogs. Said preparation is not a cure or remedy or a competent or effective treatment for eczema or all cases of itching of the scalp on human beings. Said preparation is not a cure or remedy for athlete's foot or dandruff and will not cause hair to grow on bald spots on the head of human beings. Said preparation is not a cure or remedy or a competent or effective treatment for any diseases or disorders of the skin on dogs or human beings which diseases or disorders are due to or persist because of a systemic disorder or condition. Said preparation is not a guaranteed treatment for itching of the scalp on human beings or for scratching dogs. Such guarantee is limited by the respondents to a refund of the purchase price of said preparation to the purchaser thereof but is not a guarantee of the therapeutic value of said preparation.

PAR. 6. The use by the respondents 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 respondents' said 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 con-

stitute 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 26, 1939, issued and subsequently served its complaint in this proceeding upon respondents, W. H. Shanks, W. J. Goggin, Clara Shanks, and Jessie G. Goggin, individuals and copartners trading as Shanks Laboratories, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 29, 1939, the Commission issued its amended and supplemental complaint in this proceeding, and subsequently served said complaint upon said respondents. On November 17, 1939, the respondents filed their answer, in which answer they admitted all the material allegations of fact set forth in said original complaint and 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 original complaint and 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 respondents, W. H. Shanks, W. J. Goggin, Clara Shanks, and Jessie G. Goggin, are individuals and copartners trading as Shanks Laboratories, and having their principal office and place of business in the city of Columbus, State of Ohio.

PAR. 2. The respondents are now, and have been for several years last past, engaged in the business of selling and distributing a medicinal preparation containing drugs, designated "Shanks Mange Lotion." Respondents cause said preparation, when sold by them, to be transported from their 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. Respondents maintain, and at all times herein mentioned have 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 their aforesaid business the respondents have disseminated and are now disseminating, and have

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caused and are now causing the dissemination of false advertisements concerning their said preparation by United States mails, by insertion 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 preparation, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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:

The guaranteed treatment. For itchy scalps and scratching dogs.

I have been successful in compounding a preparation to be used in the treatment of mange, eczema, cuts, sores, abscesses, etc., that over a period of 20 years \* \* \* It has never failed to effect a rapid clearing up of all forms of skin diseases. \* \* \*

Nothing is much more unsightly not to mention the uncomfortableness, of a dog that is continually scratching and biting at himself in order to allay the continual itch. \* \* \* In every case without one single exception Shanks Mange Lotion has cleared up this condition and produced a growth of coat.

Shanks gives quick relief, controls many so-called "hopeless cases" of mange, eczema and similar skin diseases.

One application brought results. It brings quick relief from mange and has cleaned up many so-called hopeless cases of skin disorders. \* \* \*

Shanks controls almost "hopeless" skin diseases.

I find your Mange Lotion the most wonderful coat and skin conditioner I have ever used. It cleared up a very bad case of mange amazingly fast.

You, too, will find Shanks Mange Lotion the greatest preparation you have ever used.

**SHANKS MANGE LOTION—FOR HUMAN USE—SCALP AND DANDRUFF TREATMENT**

A treatment of this kind every week or 10 days will clear a scalp of dandruff and stop any itching condition.

I was troubled with an itching condition of my scalp for several years. This was so annoying that many nights after retiring I was compelled to get up and wash my scalp with cold water, which gave temporary relief. Shanks Mange Lotion used once or twice monthly has cleaned up this condition entirely and keeps the scalp feeling fine.

Alopecia (bald or bare spots that appear rather suddenly). Some physicians claim this is caused by a nervous condition, some claim they do not know what the cause is. Regardless of the cause Shanks Mange Lotion used twice daily has never failed to clear up this condition and produce a regrowth of hair.

I have had a bald spot on my head about the size of a half dollar for over six months and have been treating it by a physician with salves, lotions and lights, but no results. A barber recommended I try Shanks Mange Lotion. I pur-

chased a 50¢ size bottle and applied it twice daily. Before this amount was all used the hair was coming in thicker than on other parts of my head.

**ATHLETE'S FOOT.** The U. S. Department of Drugs and Foods claim this is incurable. Probably they are correct. However, if you are troubled with this condition give Shanks Mange Lotion a trial.

Infant 3 months old. All of body covered with eczema. Various remedies were used, all of which caused the child to cry and become very irritable. Shanks Mange Lotion was applied. It caused no discomfort to the child. After one application daily for ten days the skin appeared normal.

**PAR. 4.** Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondents represent, directly or by implication, that said preparation is a competent and effective cure or remedy and a competent and effective treatment for eczema, all types of mange, abscesses, cuts, sores, and all other diseases and disorders of the skin on dogs, and that the use of said preparation will in all cases cause hair to grow on dogs. The respondents further represent, as aforesaid, that said preparation, when applied to human beings, is a competent and effective cure or remedy and a competent and effective treatment for eczema and all cases of itching scalp; that said preparation is a competent and effective cure or remedy for athlete's foot and dandruff, and will cause hair to grow on bald spots on the head of human beings. The respondents further represent, as aforesaid, that the said preparation is a guaranteed treatment for itching of the scalp on human beings and for scratching dogs.

**PAR. 5.** The aforesaid statements and representations by respondents 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 or a competent or effective treatment for eczema, all types of mange, abscesses, cuts, sores, or all other diseases or disorders of the skin on dogs; said preparation will not in all cases cause hair to grow on dogs; said preparation is not a cure or remedy or a competent or effective treatment for eczema or for all cases of itching of the scalp on human beings; said preparation is not a cure or remedy for athlete's foot or dandruff, and will not cause hair to grow on bald spots on the head of human beings; said preparation is not a cure or remedy or a competent or effective treatment for any diseases or disorders of the skin on dogs or human beings, which diseases or disorders are due to or persist because of a systemic disorder or condition; said preparation is not a guaranteed treatment for itching of the scalp on human beings or for scratching dogs. Such guarantee is limited by the respondents to a refund of the purchase price of

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said preparation to the purchaser thereof, but is not a guarantee of the therapeutic value of said preparation.

PAR. 6. The use by the respondents 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 respondent's said medicinal preparation containing drugs.

#### CONCLUSION

The aforesaid acts and practices of 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 and the amended and supplemental 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 in said amended and supplemental 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, W. H. Shanks, W. J. Goggin, Clara Shanks, and Jessie G. Goggin, individually and as copartners trading as Shanks Laboratories, or trading under any other name or names, 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 the medicinal preparation designated by the name "Shanks Mange Lotion," 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:

1. That said preparation is a cure or remedy or a competent or effective treatment for eczema, abscesses, cuts, or sores.

2. That said preparation is a cure or remedy for athlete's foot or dandruff.

3. That said preparation will cause hair to grow on bald spots on the head of human beings.

4. That said preparation is in all cases a competent or effective treatment for itching scalp on human beings or mange on dogs.

5. That said preparation is a cure or remedy or a competent or effective treatment for any diseases or disorders of the skin on human beings or dogs, unless such representations are restricted to those cases of such diseases or disorders which are not due to and do not persist because of a systemic disorder.

*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

BEN RANSOM, TRADING AS RANSOM ELECTRIC  
COMPANY

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

*Docket 3905. Complaint, Sept. 30, 1939—Decision, Dec. 20, 1939*

Where an individual engaged in business of buying for resale and selling to retail trade, incandescent electric lamp bulbs, including certain of said products made in Japan and by him imported therefrom, and marked or branded as there made, and including also bulbs purchased by him from domestic manufacturers and certain products made under trade name "Elite Lamp Service," and, as thus engaged, in selling his said products to purchasers at various points in other States and in the District of Columbia, in competition with others engaged in sale and distribution of electric lamp bulbs, and including many competitors who do not in any manner misrepresent their products or the source or origin thereof—

- (a) Represented that said imported products were of domestic manufacture or origin, through removing therefrom words "Made in Japan" and packing same in cartons upon which were printed words "Made in U. S. A." and "Lednew Lamps" or "The Lednew Corporation," and selling and shipping, thus containered and marked, said bulbs to purchasers in commerce as aforesaid set out, with effect of misleading and deceiving purchasing public into erroneous and mistaken belief that bulbs manufactured in and imported from Japan were made in the United States; and
- (b) Represented that bulbs dealt in by him as aforesaid were made by other than the real or actual manufacturer, through setting forth, on cartons in which he placed certain bulbs brought from domestic makers, as name of purported manufacturer of product enclosed, name of which was not that of manufacturer of lamp bulbs enclosed therein, or, in some instances, name of any manufacturer of such products, with effect of misleading and deceiving purchasing public and causing it erroneously to believe that domestically manufactured bulbs were made by company whose name appeared on carton or container thereof, as above set forth, and that such products were of quality and grade of bulbs usually made and sold by concern whose name thus appeared; and
- (c) Represented that the Bureau of Standards had adopted and promulgated specifications for incandescent electric lamp bulbs, and that bulbs sold by him under trade name above set forth were made in conformity therewith, through statement "All the E. L. S. lamps are made in conformity with the specifications of the U. S. Bureau of Standards," facts being said bureau had not adopted or promulgated any such specifications with which his said product could conform;

With capacity and tendency to mislead substantial portion of purchasing public through such false, deceptive, and misleading acts and practices, and cause it to believe said statements and representations to be true, and with result, as direct consequence of such mistaken and erroneous beliefs induced by said acts and practices, that substantial number of consuming public pur-

## Complaint

chased substantial volume of his said bulbs, and trade was thereby unfairly diverted to him from his competitors in commerce; to their substantial injury and that of the public:

*Held*, That such acts and practices 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.

*Mr. Clark Nichols* 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 Ben Ransom, an individual trading as Ransom Electric 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ben Ransom, is an individual trading as Ransom Electric Co., with his office and principal place of business located at 147 Second Avenue, North, Nashville, Tenn. The respondent is now, and has been for several years last past, engaged in the business of buying and selling incandescent electric lamp bulbs. A large part of the electric bulbs bought and sold by the respondent are manufactured in Japan and imported by the respondent into the United States. Respondent in the conduct of his business as aforesaid has been, and is, engaged in commerce, as commerce is defined in the Federal Trade Commission Act, by importing products from Japan and by causing his products, when sold, to be transported from his aforesaid place of business in the State of Tennessee to purchasers thereof at their respective points of location in the various States of the United States other than the State of Tennessee and in the District of Columbia.

PAR. 2. In the course and conduct of his aforesaid business, and at all times herein referred to, respondent has been, and is, in substantial competition with corporations, firms, partnerships, and other individuals engaged in the business of selling and distributing incandescent electric lamp bulbs in commerce among the various States of the United States and in the District of Columbia, who do not use the methods or engage in the unfair acts or practices herein alleged.

PAR. 3. In the course and conduct of his business aforesaid, the respondent has been, and is, engaged in importing from Japan Japanese-manufactured incandescent electric lamp bulbs marked or

branded with the words "Made in Japan." Before selling, said Japanese-manufactured incandescent lamp bulbs, respondents has removed, and does remove, the original mark or brand, "Made in Japan" in order to conceal from prospective purchasers the source of origin of said electric bulbs. In order to further mislead and deceive prospective purchasers as to the source of origin of said electric bulbs, respondent has inserted said bulbs, and does insert said bulbs, into small sleeves or wrappers upon which are printed the words "Lednew Lamps," "Made in the U. S. A.," "The Lednew Corporation" so as to signify that they were manufactured in the United States by the Lednew Corporation. Said lamp bulbs, enclosed in wrappers as aforesaid, have been, and are being, packed by the respondent into cartons or containers marked or branded with words or letters similar to those on the wrappers, including the words and letters, "Made in U. S. A.," "Lednew Lamps," and "The Lednew Corporation" which likewise signify that said products were manufactured in the United States by the Lednew Corporation. Said incandescent electric lamp bulbs, deceptively packed and marked as described above, have been sold, and are being sold, by the respondent in commerce as heretofore alleged.

PAR. 4. In the course and conduct of the business aforesaid, the respondent has purchased, and does purchase, incandescent lamp bulbs from various manufacturers in the United States; and said American-manufactured bulbs have been, and are being, packed and sold by respondent in packages or containers branded or marked with the name of a manufacturing concern which is not the true manufacturer thereof.

PAR. 5. In the course and conduct of the business aforesaid, and in order to induce the purchase of certain of his lamp bulbs sold under the name or brand of "The Elite Lamp Service," the respondent has distributed, and is now distributing, and causing to be distributed, to the purchasing public situated in the various States of the United States and in the District of Columbia, circulars, pamphlets, wrappers, and other advertising material containing statements and representations relative to the quality and efficiency of said electric lamp bulbs. Among and typical of the false and misleading statements, disseminated as aforesaid, is the following:

All the E. L. S. lamps are made in conformity with specifications of the  
U. S. Bureau of Standards \* \* \*

Through the use of the aforesaid statements and representations, and others of similar import and meaning not herein set forth, respondent has represented, directly and by implication, that the United States Bureau of Standards has adopted and promulgated specifi-

cations for incandescent electric lamp bulbs, and that respondent's electric lamp bulbs which have been and which are being sold by him under the trade name or brand of "The Elite Lamp Service" are made in conformity with such specifications.

The aforesaid statements and representations are false, misleading, and untrue. In truth and in fact, the United States Bureau of Standards has not adopted or promulgated any specifications for incandescent electric lamp bulbs with which respondent's said bulbs could conform.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, and the aforesaid unfair and deceptive acts or practices, 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 has caused, and now causes, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's incandescent electric lamp bulbs. As a result thereof, trade in commerce among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from his competitors who are likewise engaged in said commerce and who do not misrepresent the source or origin and quality of their incandescent electric lamp bulbs.

PAR. 7. The aforesaid methods, acts, or 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 or 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 30th day of September 1939, issued and served its complaint in this proceeding upon the respondent, Ben Ransom, an individual, trading as Ransom Electric 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 by respondent of three answers dated October 5, October 9, and October 23, 1939, respectively, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answers and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiv-

ing 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, Ben Ransom, is an individual and is the sole owner and operator of the Ransom Electric Co., and his business address is 211 Second Avenue North, Nashville, Tenn. The respondent is now, and has been for several years last past, engaged in the business of buying for resale and selling to the retail trade incandescent electric lamp bulbs.

PAR. 2. The respondent, in the conduct of such business, has caused said merchandise when sold to be shipped to purchasers thereof located at various points in the several States of the United States other than the State from which said shipments are made, and in the District of Columbia.

PAR. 3. In the conduct of such business, the respondent is, and has been, in competition with other persons, and with corporations, firms, and partnerships engaged in the sale and distribution of incandescent electric lamp bulbs in commerce among the various States of the United States and in the District of Columbia. Among said competitors are many who do not in any manner misrepresent their products or the source or origin thereof.

PAR. 4. In the course and conduct of his business, as aforesaid, the respondent has been, and is engaged in importing from Japan incandescent electric lamp bulbs, manufactured in Japan, which bulbs were marked or branded with the words "Made in Japan." Before selling such bulbs so marked and branded, the respondent buffed off, or otherwise removed from the bulbs, the words "Made in Japan." Respondent then packed the bulbs in cartons upon which were printed the words "Made in U. S. A.," "Lednew Lamps," or "The Lednew Corporation" and sold and shipped said bulbs in said cartons to purchasers in commerce, as aforesaid. In some instances respondent purchases incandescent electric lamp bulbs from domestic manufacturers and places such lamp bulbs, when offered for sale and sold to retailers for resale to the public, in cartons or containers upon which is placed or printed the name of the purported manufacture thereof, which name in truth and in fact is not the

name of the manufacturer of the lamp bulbs enclosed in said carton or container or, in some instances, the name of any manufacturer of such lamp bulbs.

The aforesaid acts and practices of the respondent have misled and deceived the purchasing public into the erroneous and mistaken belief that the bulbs manufactured in, and imported from, Japan were made and manufactured in the United States of America. Such acts and practices also misled and deceived the purchasing public and caused it erroneously to believe that domestically manufactured bulbs were made and manufactured by the company whose name appears on the carton or container in which such bulbs are offered for sale and sold, and that such bulbs were of the quality and grade of bulbs usually made and sold by the company whose name appeared on said carton or container.

Respondent also purchased for resale certain incandescent electric lamp bulbs manufactured under the trade name "The Elite Lamp Service," and sold and distributed such lamps to retailers in commerce as above described for resale to the consuming public, and as a part of the sale and distribution of such lamps furnished to such retailers, advertising matter, circulars and pamphlets upon which was printed, among other things, the following statement with reference to the bulbs sold under said trade name:

All the E. L. S. lamps are made in conformity with the specifications of the U. S. Bureau of Standards

Through the use of the aforesaid statement and representation, respondent has represented, directly and by implication, that the United States Bureau of Standards has adopted and promulgated specifications for incandescent electric lamp bulbs and that respondent's said bulbs sold under said trade name are made in conformity with such specifications. The aforesaid statement and representation is false, misleading, and deceptive, for in truth and in fact the United States Bureau of Standards has not adopted or promulgated any specifications for incandescent electric lamp bulbs with which respondent's said bulbs could conform.

PAR. 5. Respondent's acts and practices as hereinabove described are false, deceptive and misleading and were and are calculated to and have the capacity and tendency to mislead a substantial portion of the purchasing public and cause it to believe that said statements and representations are true. As a direct consequence of such mistaken and erroneous beliefs induced by the acts and practices of the respondent as aforesaid, a substantial number of the consuming public has purchased a substantial volume of respondent's incan-

descent electric lamp bulbs with the result that trade has been unfairly diverted to respondent from his competitors in commerce, as commerce is defined in the Federal Trade Commission Act, and substantial injury has been, and is now being, done by respondent to its competitors and to the public.

#### CONCLUSION

The aforesaid acts and practices of the respondent, Ben Ransom, trading as Ransom Electric Co., 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 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, Ben Ransom, an individual, trading as Ransom Electric 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 incandescent electric lamp bulbs in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through removal from bulbs of the words "Made in Japan" or the removal of any other words indicating foreign origin of bulbs, or by placing bulbs imported from Japan or any other foreign country in cartons or containers bearing the words "Made in the U. S. A.," "Lednew Lamps," or "The Lednew Corporation," or any other names indicating domestic manufacture of such bulbs or any other word or words indicating domestic origin, or in any other manner, that bulbs made or manufactured in Japan or any other foreign country are made or manufactured in the United States of America.

2. Representing, through names of purported manufacturers placed on the cartons or containers in which bulbs are offered for sale and sold, or in any other manner, that bulbs are manufactured or made by anyone other than the real or actual manufacturer thereof.

3. Representing, through the use of the statement "All of the E. L. S. lamps are made in conformity with the specifications of the U. S. Bureau of Standards," or any other words of similar import and meaning, that the bulbs offered for sale and sold by the respondent conform to specifications of the United States Bureau of Standards or any other bureau or division of the United States Government, unless and until such bureau or division has promulgated specifications for incandescent electric lamp bulbs and the products so represented conform thereto.

*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  
JOHNSON & JOHNSON, THE KENDALL COMPANY, AND  
THE BAY COMPANY

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

*Docket 3393. Complaint, Apr. 29, 1938—Decision, Dec. 21, 1939*

Where three corporations which (1) were engaged at their respective places of business in manufacture of medical supplies, such as gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, and in sale thereof among the various States of the United States, the Territories thereof, and in the District of Columbia, to purchasers in other States, (2) made, in the aggregate, about 85 percent of all such products manufactured in the United States and sold therein, with balance divided among 12 others, output of no one of which equalled that of any of the aforesaid three, and (3) were and, but for acts below set forth, would be, in competition with one another as to price in sale of said various products between and among the various States of the United States, etc.—

Entered into and carried out an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they did fix and maintain, uniform prices to be exacted, and which they did exact, from purchasers of their said gauze, bandages, bandage rolls, and other products, as above set forth; and, in pursuance of said combination, agreement, etc.—

- (a) Concertedly fixed and maintained uniform prices for their said products, and communicated with one another proposed changes therein, in advance of trade notification thereof, and maintained for products aforesaid published list prices; and
- (b) Agreed to and did divide the United States into zones for which they fixed and maintained, concertedly, uniform prices exacted by them from purchasers of their said gauze bandages, bandage rolls, and other products, as above set forth;

With result that said acts and practices hindered and prevented price competition between and among said corporations in sale of said various products in commerce, and had a dangerous tendency so to do, and placed in such corporations power to control and enhance prices, and created in them a monopoly in sale of said various products and unreasonably restrained commerce therein:

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

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

*Mr. Edward L. Smith* for the Commission.

*Hurd, Hamlin & Hubbell*, of New York City, and *Mr. Kenneth Perry*, of New Brunswick, N. J., for Johnson & Johnson.

*Ropes, Gray, Boyden & Perkins*, of Boston, Mass., for The Kendall Co.

*Miller, Canfield, Paddock & Stone and Mr. Horace W. Bigelow, of Detroit, Mich., for The Bay 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 Johnson & Johnson, The Kendall Co., and The Bay 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. Respondent Johnson & Johnson is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in New Brunswick in said State; respondent The Kendall Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the city of Walpole in said State; respondent The Bay Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business in the city of Bridgeport in said State.

PAR. 2. The said respondents are now and since their being organized have been engaged in the manufacture at their respective places of business of medical supplies such as gauze bandage, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, and in the sale thereof between and among the various States of the United States, the territories thereof, and in the District of Columbia. In the course and conduct of their businesses, all of the said respondents for more than 5 years last past have caused and still cause such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, when sold directly and indirectly by them, to be transported in interstate commerce from their respective places of business to, into, and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, are and have been sold. Respondent The Kendall Co. now sells, and for more than 5 years last past has sold through two of its subsidiary corporations, Bauer & Black and Lewis Manufacturing Co., who in turn have sold

directly and through agents, and sales are and have been made by the said respondents, Johnson & Johnson and The Bay Co., directly and through agents.

The amount of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured and sold directly and indirectly by the respondents constitutes and at all times since 1933 has constituted approximately 85 percent of all of the gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured in the United States and sold therein, the balance of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured in the United States being manufactured by 12 other manufacturers, none of which manufactures as much of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products as does any of the respondents, Johnson & Johnson, The Kendall Co., and The Bay Co. The respondents were prior to September 1933, in competition as to price with one another in the sale of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products between and among the various States of the United States, the territories thereof, and in the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since September 1933, and would now be in such price competition with one another.

PAR. 3. In September 1933, said respondents for the purpose of eliminating price competition among themselves, entered into, have since carried out, and are still carrying out, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained uniform prices to be, and which have been and are still being, exacted by them from their purchasers of such gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out the aforesaid combination, agreement, understanding, and conspiracy, the said respondents have, among other things, done the following:

(a) By agreement among themselves have fixed and maintained, and still fix and maintain, uniform prices for gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, sold by them and by each of them;

(b) Agreed to divide, and pursuant to such agreement have divided the United States into zones for which zones the respondents have by agreement fixed and maintained and still fix and maintain uniform prices exacted by them from their purchasers of gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products.

PAR. 4. The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products 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 created in the respondents a monopoly in the sale of gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in interstate commerce; have unreasonably restrained interstate commerce in gauze bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products 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 respondents, Johnson & Johnson, The Kendall Co. and The Bay Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted respondents motions for permission to withdraw said answers and to substitute therefor answers 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 answers were 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 answers, 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 Johnson & Johnson is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in New Brunswick in said State; respondent The Kendall Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal office and place of business in the city of Walpole in said State; respondent The Bay Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal office and place of business in the city of Bridgeport in said State.

PAR. 2. The said respondents are now and since their being organized have been engaged in the manufacture at their respective places of business of medical supplies such as gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, and in the sale thereof between and among the various States of the United States, the territories thereof, and in the District of Columbia. In the course and conduct of their businesses, all of the said respondents for more than 5 years last past have caused and still cause such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, when sold directly and indirectly by them, to be transported in interstate commerce from their respective places of business to, into, and through various States of the United States other than the States in which they respectively have their factories and places of business, to the purchasers in such other States to whom such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products, are and have been sold. Respondent The Kendall Co. now sells, and for more than 5 years last past has sold through two of its subsidiary corporations, Bauer & Black and Lewis Manufacturing Co., who in turn have sold directly and through agents, and sales are and have been made by the said respondents, Johnson & Johnson and The Bay Co., directly and through agents.

The amount of such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured and sold directly and indirectly by the respondents constitutes and at all times since 1933 has constituted approximately 85 percent of all of the gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products manufactured in the United States and sold therein, the balance of such gauze, bandages, bandage rolls,

cotton sponges, napkins, pads, adhesives, and similar products manufactured in the United States being manufactured by 12 other manufacturers, none of which manufactures as much of such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products as does any of the respondents, Johnson & Johnson, The Kendall Co., and The Bay Co. The respondents were, prior to September 1933, in competition as to price with one another in the sale of such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products between and among the various States of the United States, the territories thereof, and in the District of Columbia, and but for the combination, agreement, understanding, and conspiracy hereinafter described, said respondents would have been at all times since September 1933, and would now be, in such price competition with one another.

PAR. 3. In September 1933, said respondents for the purpose of eliminating price competition among themselves, entered into, have since carried out, and are still carrying out, an agreement, combination, understanding, and conspiracy among themselves to fix and maintain, and by which they have fixed and maintained uniform prices to be, and which have been and are still being exacted by them from their purchasers of such gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to and for the purpose of carrying out the aforesaid combination, agreement, understanding and conspiracy, the said respondents have, among other things, done the following:

(a) By agreement among themselves: (1) Have fixed and maintained, and still fix and maintain, uniform prices for gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products sold by them and each of them; (2) have communicated to one another proposed changes in the prices of the aforesaid products prior to the release to the trade of notice of such proposed changes in prices; (3) have maintained published list prices for the aforesaid products.

(b) Agreed to divide, and pursuant to such agreement have divided, the United States into zones for which zones the respondents have by agreement fixed and maintained and still fix and maintain uniform prices exacted by them from their purchasers of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products.

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## CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products 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 created in the respondents a monopoly in the sale of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in such commerce; have unreasonably restrained such commerce in gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products 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 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, Johnson & Johnson, The Kendall Co., and The Bay Co., their respective officers, agents, servants, and employees, in connection with the sale and the offering for sale of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products in commerce between and among the various States of the United States and in the District of Columbia, forthwith cease and desist from:

1. Entering into and carrying out any conspiracy, combination, or undertaking to fix and maintain uniform prices in the sale of gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products to any and all classes and kinds of buyers.
2. Agreeing to communicate or communicating to any another changes and proposed changes in prices prior to the release to the trade in the regular course of business of notice of such price changes.
3. Agreeing to maintain and maintaining pursuant to any such agreement, published list prices.

4. Agreeing to divide, and dividing pursuant to such agreement, the United States into zones and with respect to such zones, fixing and maintaining uniform prices for gauze, bandages, bandage rolls, cotton sponges, napkins, pads, adhesives, and similar products.

*It is hereby further ordered,* That the respondents, and each of them, shall, within 60 days from the day of the date of the service upon them of this order, file with this Commission reports in writing setting forth in detail the manner and form in which they shall have complied with this order.

IN THE MATTER OF  
THE ASSOCIATION OF AMERICAN ARTS, INC., ET AL.

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

*Docket 3409. Complaint, May 7, 1938—Decision, Dec. 22, 1939*

Where a corporation and two individuals who, together with a third, were the incorporators thereof and directed and controlled its activities, policies, and affairs, engaged in offer and sale of tinted or colored enlargements of family and other photographs and of frames therefor; and two other persons engaged as agents and sales representatives for said two individuals and corporation in the offer and sale of their aforesaid products and in serving, in the case of one of said persons, as assistant manager for said individuals and said corporation;

In carrying on their said business through visiting, directly and through agents and representatives employed by them, homes of prospective customers in cities, towns, and rural communities of the various States, and through sales talks containing approved methods of approach and convincing arguments for use in contacting such prospective purchasers, prepared and furnished by them for distribution among and use by their salesmen, along with sample cases containing attractive specimens of genuine pastel paintings, oil color and water color paintings, identification card or credentials, contract forms and blanks, receipts and similar documents, and certificates or coupons for use in connection with so-called "draw," as below set forth, and under general procedure by which (1) one of their agents or representatives obtained photograph to serve as model for alleged Venetian convex portrait paintings, pastel and other types of so-called "paintings," (2) second and different salesman, in due course, submitted outline or proof of enlarged photograph and then endeavored to collect full price agreed upon for uncompleted alleged "pastel" or "painting," and to induce customer to agree to buy frame therefor, and (3) third and final representative delivered alleged "pastel" or "painting" and collected any sum remaining due and for frame, if customer had agreed to buy one, and under which purchasers were given to understand that they were contracting or dealing with duly constituted agents or representatives of said corporation, individuals, and persons, or of one of their trade name companies; and, as aforesaid engaged, in direct and substantial competition with others likewise engaged in sale of tinted or colored photographs, enlargements, and frames therefor, in commerce among the various States, and with others engaged in similar sale of genuine original pastels and paintings, including oil and water colors—

(a) Represented, directly and through their said agents and sales representatives, that the finished pictures would be hand painted oil portraits on canvas and that paintings were done on Japanese silk, and made use of such terms as "pastel," "painting," "oil portraits," and "pastel portrait painting" to designate and refer to said photographs or enlargements thereof, or pictures produced on photographic base or impression, facts being so-called "pastels" or "paintings" were not such in any sense of word but,

on contrary, were merely cheap, quickly made, photographic enlargements tinted or colored, and costing about \$1.25 each; and

- (b) Represented that cost of production of one of so-called Venetian convex portrait paintings, unframed, was \$3.98, while similar cost of the smaller pastel portrait painting, so-called, was \$7.90, and that of larger one was \$15.80, and that said prices for unframed paintings were special prices, and that "special" offers were being made to selected customers, to expire on given date, and due to advertising campaign which they were conducting;
- (c) Represented, that particular types of children were being selected for reproduction work in their art school, and that the work was being done by unemployed artists, and, through the trade names made use of by them and otherwise, that they or their businesses were artists or art associations, and that art work would be performed without charge, and that portrait paintings made by them were often purchased by advertising concerns, and that pictures of the children would be used as models in the studio conducted by them, and that they were conducting exhibitions from which cereal manufacturers would select subjects for use in their advertising, and that any compensation received as result of purchases by advertising concerns as aforesaid would be turned over to the children's parents; and
- (d) Represented, in aforesaid general connection, through one of such individuals, that he was an artist and had been commissioned to make such pastels or paintings and that it was necessary and advisable to have his signature as such artist on each picture, and that child's picture, if customer would agree, would be placed on exhibition at the Boston Studio of the supposed American Art Association, under which, and similar, trade names they carried on their business;

Facts being prices named as above set forth did not represent cost nor special prices but, on the contrary, their regular prices, which were highly exorbitant and fictitious in character, methods made use of by them were those employed customarily by them and their agents and sales representatives, in the conduct of their businesses, and said individual was not an artist commissioned, etc., as above set forth, and other statements above set out with respect to supposed nature of their said businesses as organizations of artists, and with respect to exhibition or purchase of children's portraits, etc., were false;

- (e) Represented, in connection with their said selling methods, that a drawing contest would be held to decide who should be one of a few lucky persons in a particular city or town to have placed in their homes by them free paintings, and made use, in such connection, of plan under which customer, allowed two draws or trials to win trade check or coupon, or blank, invariably drew former, to be advised, upon the conclusion of negotiation with the agent for a fine "pastel" or "painting" free at the close thereof, that a so-called nominal charge, assertedly representing merely "actual cost" of materials to be used, needed to be paid;

Facts being such alleged "draw" or "drawing" was mere sham device employed by them to induce prospective customer to believe that if he drew a lucky "coupon" or certificate he would thereby have distinct advantage of obtaining pastel or painting "free" or at price below that ordinarily charged customers, and other customers, unknown to each other, were similarly approached and likewise beguiled into erroneous belief that they were exceptional one favored by fortune and chance;

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- (f) Concealed from persons thus solicited and contacted fact that it would be impossible, due to specially designed, odd style of frame, to secure for alleged pastel or painting frame from any source other than themselves, and assured those inquiring in advance, that there would be no difficulty in such matter, and advised customers upon delivery of the completed picture, to their surprise, that it would be futile for them to have so-called pastels or paintings framed elsewhere, and gave them to understand that the pictures would soil or otherwise deteriorate unless suitably framed, including glass, and thus and thereby sold to customers, along with the alleged pictures, pastels, or paintings, frames at grossly exorbitant prices; and
- (g) Refused to return valued family photograph in case of controversy as to alleged misrepresentation as to character or quality of work or otherwise, and insisted upon holding purchaser to letter and terms of contract and enforcing compliance therewith.

With result that many customers, dissatisfied in aforesaid respects and who asserted misrepresentations, were forced to go through with contract in order to obtain return of treasured family photograph and public was misled and deceived, (1) through use of term "Art Association," as to character of business actually being conducted, and caused to confuse business in question with various organizations which might properly be designated under similar name as such associations, and, (2) through such false and misleading representations made directly or with knowledge, acquiescence and active cooperation of said individuals and persons with intent and result of selling said colored enlargements and frames therefore, was deceived concerning quality and value of their products and in other particulars as above described; and

With further result public was thereby induced to purchase said products in erroneous belief that they were high-grade, quality pastels or paintings and picture frames of exceptional merit and value, and trade was unfairly diverted to them from their competitors hereinabove set forth, including those who do not employ such practices in selling their tinted or colored enlargements and frames, but truthfully represent their products and honestly sell the same, and including those engaged in business of painting genuine pastels and paintings and who truthfully represent their products as such:

*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. 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 The Association of American Arts, Inc., a corporation; Edward Ziman and Harry Burney (otherwise known as H. E. Burney, H. E. Bernstein, and Harry E. Bernstein), individually, and trading as partners under the trade names American Art Association, Paramount Art Studios,

and Royal Art Association; Jack A. Burney (otherwise known as Jack A. Bernie, Jacob Bernstein, and Jack A. Burnstein), individually, and trading as Burney Fairchild Studio and The Fine Art Portrait Co., and as agent for Edward Ziman, Harry Burney, and The Association of American Arts, Inc.; Peter F. Friedman (also known as Peter F. Fairchild), individually, and also trading as The Burney Fairchild Studio and as agent for Edward Ziman, Harry Burney, and The Association of American Arts, Inc.; Alfred Davis, Paul Seidler, Eli Lictofsky, and Hulbert Beauregard, individually, and as agents for Edward Ziman, Harry Burney, and The Association of American Arts, Inc., hereinafter referred to as respondent, 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 Association of American Arts, Inc., with its principal office and place of business located at 486 Boylston Street, Boston, Mass., was incorporated under the laws of the State of Massachusetts on July 6, 1937, with the following incorporators: Harry E. Bernstein, Edward Ziman, and Jack A. Bernie, who direct the activities and control the policy and affairs of such respondent company. These three persons, together with Paul Seidler and Eli Lictofsky, became and have served as directors of said corporation.

Respondents, Edward Ziman and Harry Burney are individuals residing at Boston in the State of Massachusetts and doing business at 486 Boylston Street, Boston, Mass., where they also are and have been trading as partners under the trade names American Art Association, Paramount Art Studios, and Royal Art Association.

The American Art Association and the Paramount Art Co., located at 486 Boylston Street, Boston, Mass., were registered at the office of the City Clerk at Boston, Mass., by respondents, Edward Ziman and Harry E. Bernstein, and on April 13, 1936, these respondents registered at the office of the City Clerk at Boston the Royal Art Co., located likewise at 486 Boylston Street, Boston, Mass. Respondents, Edward Ziman and Harry Burney, trading as individuals and likewise as partners, are the owners and the operators of the business conducted by them at the above stated Boston address through the medium of the aforementioned corporation and trade name companies and the agents and sales representatives employed by them, and they direct and have directed the activities and control and have controlled the business policies and practices of said companies.

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The American Art Association, stated to be doing business at 710 Eddy Street, Providence, R. I., was previously registered at the office of the City Clerk of Providence, R. I., on September 17, 1935, by Edward Ziman and Harry Burney, both stated to be of 1626 Commonwealth Avenue, Brighton, Mass. The Paramount Art Co. was registered at the same time at the office of the City Clerk at Providence, R. I., with the same personnel and same Providence address.

Respondents, Paul Seidler, Peter F. Friedman, also known as Peter F. Fairchild, Hulbert Beauregard, Eli Lictofsky, and Alfred Davis, individually, and through the medium of trade name companies, all located and doing business at 486 Boylston Street, Boston, Mass., are and have been agents and sales representatives for the said Edward Ziman, Harry Burney, and The Association of American Arts, Inc., Alfred Davis being also assistant manager for said respondents in connection with the businesses conducted by them at said address, 486 Boylston Street, Boston.

Respondents hereinabove named are now, and for some time last past have been, engaged in the business of offering for sale and selling tinted or colored enlargements of family and other photographs, and of frames therefor. Respondents sell their products directly and through the medium of salesmen or representatives appointed by them as agents in their behalf to customers located in States other than the State of Massachusetts. In consummating such sales and in distributing such products, respondents cause the pictures and frames so sold by them to be transported and delivered from their places of business in Boston in the State of Massachusetts through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of their said business, respondents have been and now are engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale of tinted or colored photographic enlargements and frames therefor in commerce between and among the various States of the United States, and likewise with corporations, partnerships, and individuals engaged in the sale of genuine original pastels and paintings, including oil paintings and water color paintings in commerce among the various States of the United States as will be more fully hereinafter shown.

**PAR. 2.** A crayon is a pencil-shaped piece of colored clay, chalk, or charcoal used for drawing upon paper. A crayon drawing is the act or art of drawing with crayons.

A drawing is a representation produced by the art of drawing; a work of art produced by pen, pencil, or crayon.

The pastel, in art, is a colored crayon made of pigments ground with chalk and compounded with water into a sort of paste. A drawing made with a colored chalk or crayon is called a pastel, as is also the art of drawing with colored crayons.

Paint is defined as a substance used in painting composed of a dry coloring material intimately mixed with a liquid vehicle. A painting is a likeness, image, or scene depicted with paints without the aid of photography.

A water color is a painting with pigments for which water, and not oil, is used as a solvent.

A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil.

An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 3. In the course and conduct of their said business respondents directly and through agents and representatives employed by them visit the homes of prospective customers in cities, towns, and rural communities of the various States of the United States. Sales talks containing approved methods of approach and convincing arguments to be used in contacting prospective purchasers of pictures and of frames therefor, and contract forms and blanks, receipts, and similar documents, are prepared and furnished by respondents for distribution and use among their salesmen; also certificates or coupons to be used in connection with the "draw," as hereinafter related.

PAR. 4. Respondents make their pictures in the following manner: A negative is made of a family or other type of photograph furnished by the purchaser or consumer to one of respondents' agents or sales representatives. This photograph is and has been obtained by the salesman or sales representative to serve as a model for alleged Venetian convex portrait paintings, pastel, and other types of so-called "paintings." The negative made from the photograph furnished is then used to make a photographic enlargement of the original photograph. A second and different salesman thereafter submits an outline or proof of the enlarged photograph in due course, and endeavors at that time to collect the full price theretofore agreed upon for the incompleting alleged "pastel" or "painting," and also to induce the customer to agree to buy a frame therefor. A third and final representative delivers the finished alleged "pastel" or

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“painting,” collects any sum remaining due thereon, and also collects for the frame if the customer has agreed to buy one.

Purchasers of pictures are given to understand that they are contracting or dealing with duly constituted agents or representatives of respondents or of one of respondents' trade name companies, and each agent or salesman is furnished by respondents with an identification card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers. Sample cases containing attractive specimens of genuine pastel paintings, oil color and water color paintings, are also furnished agents or solicitors by said respondents for use in soliciting orders in their behalf.

PAR. 5. In the course and conduct of their said business, respondents directly and through their agents and sales representatives employed by them as aforesaid, make and cause to be made various false, misleading and deceptive representations. Typical of such representations, among others, are the following:

That \$3.98, unframed, is the cost of production of one Venetian convex portrait painting; that \$7.90, unframed, is the cost of production of one pastel portrait painting 10½ by 14½ inches in size; that \$15.80, unframed, is the cost of production of one pastel portrait painting 14½ by 20½ inches in size; that pastels and paintings would be made at cost and only for a select few in each community; that Mr. Burney is an artist, has been commissioned to make the pastels or paintings, and it is necessary and advisable to have his signature, as such artist, on each picture; that if the customer would agree to have her children's portraits painted, the same would be placed on exhibition at the Boston Studio of the American Art Association; that a very special offer was being made to selected customers which would expire on a given date; that “special” offers made were due to an advertising campaign being conducted by the respondents; that finished pictures would be hand-painted oil portraits on canvas; that paintings are done on Japanese silk; that work is done by unemployed artists; that the American Art Association, not being in a position to employ live models, was therefore selecting particular types of children for reproduction in their art school; that art work would be performed without charge; that the companies have art classes where paintings are produced; that portrait paintings by the companies are often purchased by advertising concerns and that any compensation received as a result of such purchases would be turned over to the parents of the children whose portraits were thus purchased; that the child's picture submitted would be used as a model in the studio conducted by the respondents in Boston; that the companies were conducting exhibitions from which cereal manufacturers

would select subjects to be used in their advertising; that the prices of \$3.98, \$7.90, and \$15.80 for unframed paintings are special prices.

PAR. 6. In further connection with their selling methods, respondents represent that a drawing contest will be held for the purpose of deciding who shall be one of a few lucky persons in a particular city or town to have respondents place free paintings in their homes. The agent in connection with said drawing produces a number of slips of paper. It is represented that most of said slips are blank but that a few are trade checks or coupons; that a customer is allowed two draws or trials; that if he draws a blank he does not win, but if fortunate enough to draw a winning check or coupon, he will be entitled to receive a genuine oil painting or pastel free. The prospective customer draws, and finally, and invariably, draws a lucky coupon, allegedly giving him an oil painting free. The customer is thereupon congratulated by the agent upon his good luck. Believing the representations of the agent to the effect that he has been lucky and has obtained a distinct financial advantage the customer is thereby induced to continue negotiations with said agent and to make a contract with the said agent for a fine "pastel" or "painting" free. The customer is casually and incidentally informed when the agent is departing that there is just a nominal charge to be paid in connection with the transaction, representing the "actual cost" of the materials to be used in making the "painting" or "pastel."

Said alleged "draw" or "drawing" was, and is, a mere sham device employed by respondents for the sole purpose of inducing the prospective purchaser to believe that if he draws a lucky "coupon" or certificate, he will thereby have the distinct advantage of obtaining a pastel or painting "free" or at a price below that ordinarily charged customers, when in truth and in fact other customers unknown to each other are approached in the same manner through the use of said drawing scheme and device, and likewise have been beguiled into believing that they are exceptional ones favored by fortune and chance, when such is not the fact.

PAR. 7. After obtaining through the representations of the first visiting agent a contract from the customer for the purchase of a pastel or painting, a second and different agent or representative calls upon the customer with an unfinished proof or enlargement of the alleged pastel or painting and on this visit collects or attempts to collect the entire sum due for the unfinished alleged pastel or painting; and at the same time undertakes to sell the customer a frame therefor. The matter of the frame is here mentioned for the first time, and the customer learns, to his surprise and dismay, from the salesman that it will be impossible to obtain a frame for the

alleged pastel or painting from any source other than the said respondents. Said customers are given to understand then that the pictures, pastels, or paintings of respondents are of such a distinct or unusual shape as to make it impossible to obtain frames for them in department, furniture, or other stores; and further, that it would be futile for the customer to attempt to have the pastels or paintings framed by any other organization than those of the respondents, the work being so technical that only their experts could give satisfaction. Said customers in this connection are given to understand that their pictures will soil, smear, or deteriorate unless covered by a suitable frame, including glass, and customers being influenced by said representations thereupon undertake to preserve the pictures they have bought by purchasing frames therefor. The alleged pictures, pastels, or paintings, and frames are sold to customers by respondents at grossly exorbitant prices. In case of unexpected preliminary inquiry from the customer as to whether or not it may be possible to obtain readily a frame for said alleged "pastel" or "painting," respondents' sales agents and representatives falsely, and with a view to effecting the contemplated sale, assure the customer that he will experience no difficulty in obtaining a frame; following which positive assurance, the second salesman who appears at the home for the purpose of collecting any sum due on the painting and selling a frame therefor will break the real news to the customer to the effect that it is only possible to obtain a frame from respondents.

PAR. 8. Respondent, Harry Burney, among others, makes and has made it a practice to call upon various customers for the purpose of exhibiting to them the proof or sketch of the pastel or painting they have ordered, to collect in advance of the completion thereof any sum remaining due on said pastel or painting, and to endeavor to sell the customer a frame for the pastel or painting so purchased by him. On the occasion of these visits respondent Burney represents to the customer that he, Burney, is an artist and that in such capacity he has duly signed his name on said pastel or painting for the customer who has "commissioned" him to paint the same.

In further connection with the conduct of their said business respondents represent that they are, and conduct, an art association or art institute, where works of art may and will be exhibited, in this manner making a distinct impression upon the customer with respect to their standing and reputation in the world of art.

PAR. 9. In truth and in fact, the various statements and representations made by respondents and by their sales agents and representatives in selling and offering for sale their pictures in cities, towns, and communities of the respective States of the United States, were

and are false, deceptive, and misleading in the following, among other, particulars:

The so-called "pastels" or "paintings" as sold by respondents are not pastels or paintings in any sense of the word, but, on the contrary, are merely cheap, quickly made photographic enlargements tinted or colored, costing about \$1.25 each. Said alleged "pastels" and "paintings" are in no instance sold at cost, and the respective prices of \$3.98, \$7.90, and \$15.80 at which respondents sell unframed "pastels" and "paintings" and the prices for which frames therefor are sold, are not special prices offered by respondents to a select few in any community or otherwise, but, on the contrary, are respondents' regular prices, highly exorbitant and fictitious in character representing substantial profit to respondents, and the methods by which said products are sold are the customary methods ordinarily employed by respondents and their agents and sales representatives in the conduct of their businesses. Respondent, Burney, is not an artist and has not been commissioned in any instance to make a pastel or painting for any customer as alleged, and his signature on the proof or finished product of any alleged pastel or painting is not that of a commissioned artist in the sense that such term is used and understood. Children's portraits will not be and have not been placed on exhibition at the Boston studio of the American Art Association, particular types of children are not being selected by respondents for the purpose of reproducing paintings of them in respondents' art school for the alleged reason that respondents are not in a position to employ live models, or for any other reason, and children's pictures are not and have not been used as models in any studio conducted by the respondents in Boston or elsewhere. Alleged portrait paintings by respondents are not purchased by advertising concerns and no compensation is received as a result of such alleged purchases to be turned over to the parents of children whose portraits are stated to have thus been purchased. Finished pictures are not hand-painted oil portraits on canvas and paintings are not made on Japanese silk, nor by unemployed artists. Respondents do not have art classes where paintings are produced and art work is not performed without charge. No special offer expiring on a given date has been or is being made to selected customers, and no special offers are being made as a result of any advertising campaign being conducted by respondents. Neither the respondents nor the trade name companies operated by them conduct exhibitions from which cereal manufacturers select subjects to be used in their advertising.

The Association of American Arts, Inc., the American Art Association, the Royal Art Association, and the Paramount Art Studios

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are not and never have been art associations or art studios in the sense that such terms are known and accepted in the field or world of art. On the contrary, the business conducted now or heretofore by respondents, through the medium of the above styled corporate and trade names, is and has been no more, in fact, than a business enterprise to sell to the public for profit cheap colored or tinted photographic enlargements and frames therefor. The use by respondents of the term "art association" has misled and deceived the public as to the character of the business actually conducted by respondents, and has caused the public to confuse respondents' business with various organizations, some similar in name or designation, which are conducting, and which properly may be designated as, art associations.

Further, representations made by respondents and their agents and sales representatives in connection with the so-called draw are highly deceptive in various aspects, and customers, believing that they have been actually lucky and have obtained an advantage through the draw, are thereby induced to enter into contracts with respondents for the purchase of pictures and frames therefor.

Respondents in further connection with the sale of said frames have deceived customers by withholding from them at the time a pastel or painting is ordered the fact that it will be impossible for the customer thereafter to obtain a frame to fit said pastel or painting except from the respondents and at the prices exacted by respondents therefor.

PAR. 10. The pictures or photographs which are secured from prospective purchasers by the agents and representatives of respondents for the purpose of having "pastels" or "paintings" made from them are, in most instances, pictures of members of the family, or dear relatives, and many such pictures cannot possibly be duplicated. Such photographs furnished to respondents by their customers possess, and have possessed, great sentimental value. In case of controversy as to alleged misrepresentation as to the character or quality of the work done, or for other reasons justified in the mind of the purchaser, the respondents insist upon holding the purchaser to the letter and terms of the contract, and, as a means of enforcing compliance with the contract in every instance, respondents refuse to return the valued family photograph until the money claimed to be due has been paid to respondents. Under such type of duress, many customers who are dissatisfied with the character or quality of the picture made for them, and who assert, and have asserted, misrepresentation in connection therewith, have been forced to go through with the

contract in order to obtain the return of a treasured family photograph.

PAR. 11. There are among the competitors of respondents, as described in paragraph 1 hereof, corporations, partnerships, firms, and persons who are engaged in the sale of tinted or colored enlargements of photographs and of frames therefor, who do not employ the practices as set forth in paragraphs 3 to 8 of this complaint, but who truthfully represent their products and honestly vend the same; and there are also, among the competitors of respondents, corporations, partnerships, firms, and persons engaged in the business of painting genuine pastels and paintings who truthfully represent their products as such.

PAR. 12. By the use of the within described false and misleading representations, respondents have deceived and are deceiving the public concerning the quality and value of the products sold by them as aforesaid and in the various other particulars as hereinbefore described and related, and have thereby induced, and are inducing, the public to purchase said products under the erroneous belief that the same are and were high-grade quality "pastels" or "paintings," and picture frames therefor, of exceptional merit and value. The use by respondents of the said practices as set forth in paragraphs 3 to 8 of this complaint tends to and does unfairly divert trade from competitors and thereby substantial injury has been done, and is being done, by respondents to competition in interstate commerce among and between the various States of the United States.

PAR. 13. 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 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 7, 1938, issued, and on May 9, 1938, served, its complaint in this proceeding upon respondents, The Association of American Arts, Inc., a corporation; Edward Ziman and Harry Burney (otherwise known as H. E. Burney, H. E. Bernstein, and Harry E. Bernstein), individually, and trading as partners under the trade names American Art Association, Paramount Art Studios, and Royal Art Association; Jack A. Burney (otherwise known as Jack A. Bernie, Jacob Bernstein, and Jack A. Burnstein), individually, and trading as Burney Fairchild Studio and The Fine

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Art Portrait Company, and as agent for Edward Ziman, Harry Burney, and The Association of American Arts, Inc.; Peter F. Friedman (also known as Peter F. Fairchild), individually, and also trading as The Burney Fairchild Studio, and as agent for Edward Ziman, Harry Burney, and The Association of American Arts, Inc.; Alfred Davis, Paul Seidler, Eli Lictofsky, and Hulbert Beauregard, individually, and as agents for Edward Ziman, Harry Burney, and The Association of American Arts, Inc., charging them with the use of unfair methods of competition in violation of the provisions of said act. After the issuance of said complaint, respondent, The Association of American Arts, Inc., filed a voluntary petition in bankruptcy on May 26, 1938, was adjudicated a bankrupt on May 31, 1938, and thereafter, as of January 1, 1939, pursuant to the provisions of chapter 179 of the acts of 1939 of the State of Massachusetts, was dissolved as nonexistent. After the issuance of said complaint and the filing of respondents' answer thereto, the Commission by order entered herein, granted motions filed by respondents, H. E. Bernie (or Bernstein), J. A. Bernie (or Jack A. Bernie or Bernstein), Eli Lictofsky (or A. Davis), and by Edward Ziman for permission to withdraw their said answer and to substitute therefor answers 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 answers were 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 answers, 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 Association of American Arts, Inc., with its principal office and place of business prior to and at the time of the filing of the complaint herein, located at 486 Boylston Street, Boston, Mass., was incorporated under the laws of the State of Massachusetts on July 6, 1937, with the following incorporators: Harry E. Bernstein, Edward Ziman, and Jack A. Bernie, who directed the activities and controlled the policies and affairs of such respondent company. These three persons, together with Paul Seidler and Eli Lictofsky, became and served as directors of said corporation.

Respondents, Edward Ziman and Harry Bernie, the latter also known as H. E. Bernie or Bernstein, each hereinafter referred to as respondent, are individuals who, prior to, and at the time of the issuance of complaint herein, resided at Boston in the State of Massachusetts and were engaged in business at 486 Boylston Street, Boston, Mass., where they had been trading as partners under the trade names American Art Association, Paramount Art Studios, and Royal Art Association.

The American Art Association and the Paramount Art Studios, which prior to, and at the time of the issuance of complaint herein, were also located at 486 Boylston Street, Boston, Mass., were registered at the office of the City Clerk at Boston, Mass., by respondents Edward Ziman and Harry E. Bernstein, and on April 13, 1936, these respondents registered at the office of the City Clerk at Boston the Royal Art Co., located likewise at 486 Boylston Street, Boston, Mass. Respondents, Edward Ziman and Harry Burney, trading as individuals and likewise as partners, were the owners and the operators of the business conducted by them at the above stated address and through the medium of the aforementioned corporation and trade name companies and the agents and sales representatives employed by them, directed the activities and controlled the business policies and practices of said companies.

Jack A. Burney, otherwise known as Jack or J. A. Bernie, Jacob Bernstein, and Jack A. Bernstein; and Eli Lictofsky, otherwise known as A. or Alfred Davis, each hereinafter referred to as respondent, prior to and at the time of the issuance of the complaint herein, traded individually, and through the medium of various trade name companies as agents and sales representatives for the said Edward Ziman, Harry Burney or Bernie and the Association of American Arts, Inc., respondent Eli Lictofsky or Alfred Davis, also serving as assistant manager for respondents Harry Ziman and Harry Burney or Bernie and the Association of American Arts, Inc.; at the aforementioned address 486 Boylston Street, Boston, Mass.

PAR. 2. The four above named individual respondents, at the time of the issuance of the complaint herein, and for some time prior thereto, were engaged in the business of offering for sale and selling tinted or colored enlargements of family and other photographs, and of frames therefor. Respondents sold their products directly and through the medium of salesmen or representatives appointed by them as agents in their behalf to customers located in States other than the State of Massachusetts. In consummating such sales and in distributing such products, respondents caused the pictures and frames so

sold by them to be transported and delivered from their places of business in Boston, in the State of Massachusetts through and into various other States of the United States to the respective purchasers thereof at their respective points of location. In the course and conduct of their said business, respondents had been and were engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale of tinted or colored photographic enlargements and frames therefor in commerce between and among the various States of the United States, and likewise with corporations, partnerships, and individuals engaged in the sale of genuine original pastels and paintings, including oil paintings and water color paintings in commerce among the various States of the United States.

PAR. 3. In the course and conduct of their said business respondents directly and through agents and representatives employed by them visited the homes of prospective customers in cities, towns, and rural communities of the various States of the United States. Sales talks containing approved methods of approach and convincing arguments to be used in contacting prospective purchasers of pictures and of frames therefor, and contract forms and blanks, receipts, and similar documents, were prepared and furnished by respondents for distribution and use among their salesmen; also certificates or coupons to be used in connection with the "draw" as hereinafter related.

PAR. 4. Respondents made their pictures in the following manner: A negative was made of a family or other type of photograph furnished by the purchaser or consumer to one of respondents' agents or sales representatives. This photograph was obtained by the salesman or sales representative to serve as a model for alleged Venetian convex portrait paintings, pastel, and other types of so-called "paintings." The negative made from the photograph furnished was then used to make a photographic enlargement of the original photograph. A second and different salesman thereafter submitted an outline or proof of the enlarged photograph in due course, and endeavored at that time to collect the full price theretofore agreed upon for the incompleting alleged "pastel" or "painting," and also to induce the customer to agree to buy a frame therefor. A third and final representative delivered the finished alleged "pastel" or painting," collecting any sum remaining due thereon, and also collected for the frame if the customer had agreed to buy one.

Purchasers of pictures were given to understand that they were contracting or dealing with duly constituted agents or representatives of respondents or of one of respondents' trade name companies, and each agent or salesman was furnished by respondents with an identi-

fication card or card of credentials to be presented or exhibited by him when interviewing prospective purchasers. Sample cases containing attractive specimens of genuine pastel paintings, oil color and water color paintings, were also furnished agents or solicitors by said respondents for use in soliciting orders in their behalf.

PAR. 5. In the course and conduct of their said business, respondents directly and through their agents and sales representatives employed by them as aforesaid, made and caused to be made various false, misleading, and deceptive representations. Typical of such representations, among others, were the following:

That \$3.98, unframed, was the cost of production of one Venetian convex portrait painting; that \$7.90, unframed, was the cost of production of one pastel portrait painting 10½ by 14½ inches in size; that \$15.80, unframed, was the cost of production of one pastel portrait painting 14½ by 20½ inches in size; that pastels and paintings would be made at cost and only for a selected few in each community; that Mr. Burney was an artist, had been commissioned to make pastels or paintings, and it was necessary and advisable to have his signature, as such artist, on each picture; that if the customer would agree to have her children's portraits painted, the same would be placed on exhibition at the Boston Studio of the American Art Association; that a very special offer was being made to selected customers which would expire on a given date; that "special" offers were made due to an advertising campaign being conducted by the respondents; that finished pictures would be hand painted oil portraits on canvas; that paintings were done on Japanese silk; that work was done by unemployed artists; that the American Art Association, not being in a position to employ live models, was therefore selecting particular types of children for reproduction work in their art school; that art work would be performed without charge; that the companies had art classes where paintings were produced; that portrait paintings by the companies were often purchased by advertising concerns and that any compensation received as a result of such purchases would be turned over to the parents of the children whose portraits were thus purchased; that the children's pictures submitted would be used as models in the studio conducted by the respondents in their business; that the companies were conducting exhibitions from which cereal manufacturers would select subjects to be used in their advertising; that the prices of \$3.98, \$7.90, and \$15.80 for unframed paintings were special prices.

PAR. 6. In further connection with their selling methods, respondents represented that a drawing contest would be held for the purpose of deciding who should be one of a few lucky persons in a particular city or town to have respondents place free paintings in their homes. The

agent in connection with said drawing produced a number of slips of paper. It was represented that most of said slips were blank, but that a few were trade checks or coupons; that a customer was allowed two draws or trials; that if he drew a blank he did not win, but if fortunate enough to draw a winning check or coupon he would be entitled to receive a genuine oil painting or pastel free. The prospective customer drew, and finally, and invariably, drew a lucky coupon, allegedly giving him an oil painting free. The customer was thereupon congratulated by the agent upon his good luck, believing the representations of the agent to the effect that he had been lucky and had obtained a distinct financial advantage. The customer was thereby induced to continue negotiations with said agent and to make a contract with the said agent for a fine "pastel" or "painting" free. The customer was casually and incidentally informed when the agent was departing that there was just a nominal charge to be paid in connection with the transaction, representing the "actual cost" of the materials to be used in making the "painting" or "pastel." Said alleged "draw" or "drawing" was a mere sham device employed by respondents for the sole purpose of inducing the prospective customer to believe that if he drew a lucky "coupon" or certificate, he would thereby have the distinct advantage of obtaining a pastel or painting "free" or at a price below that ordinarily charged customers, when in truth and in fact other customers unknown to each other were approached in the same manner through the use of said drawing scheme and device, and likewise were beguiled into believing that they were exceptional ones favored by fortune and chance when such was not the fact.

PAR. 7. After obtaining through the representations of the first visiting agent a contract from the customer for the purchase of a pastel or painting, a second and different agent or representative called upon the customer with an unfinished proof or enlargement of the alleged pastel or painting and on this visit collected or attempted to collect the entire sum due for the unfinished alleged pastel or painting; at the same time undertook to sell the customer a frame therefor. The matter of the frame was here mentioned for the first time, the customer learning to his surprise and dismay from the salesman that it would be impossible to obtain a frame for the alleged pastel or painting from any source other than the said respondents. Said customers were given to understand then that the pictures, pastel, or paintings of respondents were of such a distinct or unusual shape as to make it impossible to obtain frames for them in department, furniture, or other stores; and further, that it would be futile for the customer to attempt to have the pastels or paintings framed by any other organization than those

of respondents, the work being so technical that only their experts could give satisfaction. Said customers in this connection were given to understand that their pictures would soil, smear, or deteriorate unless covered by suitable frames, including glass, and customers being influenced by said representations thereupon undertook to preserve the pictures they had bought by purchasing frames therefor. The alleged pictures, pastels, or paintings and frames were sold to customers by respondents at grossly exorbitant prices. In case of unexpected preliminary inquiry from the customer as to whether or not it might be possible to obtain readily a frame for said alleged "pastel" or "painting," respondents' sales agents and representatives falsely, and with a view to effecting the contemplated sale, assured the customer that he would experience no difficulty in obtaining a frame; following which positive assurance the second salesman who appeared at the home for the purpose of collecting any sum due on the painting and selling a frame therefor would break the real news to the customer to the effect that it was only possible to obtain a frame from respondents.

PAR. 8. Respondent, Harry Burney, among others, made it a practice to call upon various customers for the purpose of exhibiting to them the proof or sketch of the pastel or painting which they had ordered, to collect in advance of the completion thereof any sum remaining due on said pastel or painting, and to endeavor to sell the customer a frame for the pastel or painting so purchased by him. On the occasion of these visits respondent Burney represented to the customer that he, Burney, was an artist and that in such capacity, he had duly signed his name on said pastel or painting for the customer who had "commissioned" him to paint the same.

In further connection with the conduct of their said business respondents represented that they were conducting an art association or art institute, where works of art might and would be exhibited, in this manner making a distinct impression upon the customer with respect to their standing and reputation in the world of art.

PAR. 9. The Commission finds that the various statements and representations made by respondents and by their sales agents and representatives in selling and offering for sale their pictures in cities, towns, and communities of the respective States of the United States, were false, deceptive, and misleading in the following, among other particulars:

The so-called "pastels" or "paintings" as sold by respondents were not pastels or paintings in any sense of the word, but on the contrary, were merely cheap, quickly made photographic enlargements tinted

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or colored, costing about \$1.25 each. Said alleged "pastels" and "paintings" were in no instance sold at cost, and the respective prices of \$3.98, \$7.90, and \$15.80 at which respondents sold unframed "pastels" and "paintings" and the prices for which frames therefor were sold, were not special prices offered by respondents to a select few in any community or otherwise, but, on the contrary, were respondents' regular prices, highly exorbitant and fictitious in character representing substantial profit to respondents, and the methods by which said products were sold were the customary methods ordinarily employed by respondents and their agents and sales representatives in the conduct of their businesses. Respondent Burney was not and is not an artist and had not been commissioned in any instance to make a pastel or painting for any customer as alleged, and his signature on the proof or finished product of any alleged pastel or painting was not that of a commissioned artist in the sense that such term is used and understood. Children's portraits were not placed on exhibition at the business studio of the American Art Association, particular types of children were not selected by respondents for the purpose of reproducing paintings of them in respondents' art school, and children's pictures were not used as models in any studio conducted by the respondents in business or elsewhere. Alleged portrait paintings by respondents were not purchased by advertising concerns and no compensation was received as a result of such alleged purchases to be turned over to the parents of children whose portraits were stated to have thus been purchased. Finished pictures were not hand-painted oil portraits on canvas and paintings were not made on Japanese silk, nor by unemployed artists. Respondents did not have art classes where paintings were produced and art work was not performed without charge. No special offer expiring on a given date was made to selected customers, and no special offers were made as a result of any advertising campaign conducted by respondents. Neither the respondents nor the trade name companies operated by them conducted exhibitions from which cereal manufacturers selected subjects to be used in their advertising.

The Association of American Arts, Inc., the American Art Association, the Royal Art Association, and the Paramount Art Studios were not art associations or art studios in the sense that such terms are known and accepted in the field or world of art. On the contrary, the business conducted by respondents, through the medium of the above styled corporate and trade names was no more, in fact, than a business enterprise to sell to the public for profit cheap colored or tinted photographic enlargements and frames therefor. The use by respondents of the term "art association" mislead and deceived the

public as to the character of the business actually conducted by respondents, and caused the public to confuse respondents' business with various organizations, some similar name or designation which were conducting, and which properly might be designated as, art associations.

Further, representations made by respondents and their agents and sales representatives in connection with the so-called draw were highly deceptive in various aspects, and customers, believing that they had been actually lucky and had obtained an advantage through the draw when such was not the fact, were thereby induced to enter into contracts with respondents for the purchase of pictures and frames therefor.

Respondents, in further connection with the sale of said frames deceived customers by withholding from them the fact that at the time a pastel or painting was ordered it would be impossible for the customer thereafter to obtain a frame to fit said pastel or painting except from the respondents and at the prices exacted by respondents therefor.

PAR. 10. The Commission finds that the pictures or photographs which were secured from prospective purchasers by the agents and representatives of respondents for the purpose of having "pastels" or "paintings" made from them were, in most instances, pictures of members of the family, or dear relatives, and that many such pictures could not possibly be duplicated. Such photographs furnished to respondents by their customers possess great sentimental value. In case of controversy as to alleged misrepresentation as to the character or quality of the work done, or for any other reasons justified in the mind of the purchaser, the respondents insisted upon holding the purchaser to the letter and terms of the contract, and as a means of enforcing compliance with the contract respondents refused to return the valued family photograph until the money claimed to be due had been paid to respondents. Under such type of duress, many customers dissatisfied with the character or quality of the picture made for them, and who asserted misrepresentation in connection therewith, were nevertheless forced to go through with the contract in order to obtain the return of a treasured family photograph.

PAR. 11. The Commission further finds that all of the representations by the salesmen and representatives of respondents were made with the knowledge, acquiescence, and active cooperation of respondents for the purpose and with the result of selling colored enlargements of photographs and frames therefor. The respondents and said salesmen and representatives knew these representations to be false and misleading. The respondents further aided and abetted in the fur-

therance of said fraudulent sales plan and representations by furnishing salesmen and representatives with standardized sales talks containing for their guidance the false and misleading representations hereinbefore set out.

PAR. 12. There were among the competitors of respondents as described in paragraph 1 hereof, corporations, partnerships, firms, and persons who were engaged in the sale of tinted or colored enlargements of photographs and of frames therefor, who did not employ the practices set forth in paragraphs 3 to 8 of the complaint, but who truthfully represented their products and honestly sold the same; and there were also among the competitors of respondents, corporations, partnerships, firms, and persons engaged in the business of painting genuine pastels and paintings, who truthfully represented their products as such.

PAR. 13. By the use of the within described false and misleading representations, respondents deceived the public concerning the quality and value of the products sold by them as aforesaid and in the various other particulars as hereinbefore described and related, and thereby induced the public to purchase said products under the erroneous belief that the same were high-grade quality "pastels" or "paintings," and picture frames of exceptional merit and value. The use by respondents of the said practices as set forth in paragraphs 3 to 8 of the complaint tended to and did unfairly divert trade to the respondents from their competitors hereinabove described who were likewise engaged in commerce among and between the various States of the United States.

#### CONCLUSION

The aforesaid acts and practices of the within named 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 Commission upon the complaint of the Commission and the answers of respondents, H. E. Bernie or Bernstein, otherwise known as Harry Burney or H. E. Burney; J. A. Bernie or Bernstein, otherwise known as Jack A. Burney or Jacob Bernstein; Eli Lictofsky, otherwise known as A. Davis or Alfred Davis, and Edward Ziman, in which answers respondents admit all the material allegations of fact set forth in the 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, H. E. Bernie or Bernstein, otherwise known as Harry Burney or H. E. Burney; J. A. Bernie or Bernstein, otherwise known as Jack A. Burney or Jacob Bernstein; Eli Lictofsky, otherwise known as A. Davis or Alfred Davis, and Edward Ziman, individuals, their representatives, agents, and employes, directly or through any corporate or other device, including any trade name, in connection with the advertising, offering for sale, and sale and distribution of colored or tinted photographs or enlargements having a photographic base and of frames therefor, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or in any manner, that colored or tinted pictures, photographs, or photographic enlargements are hand-painted or are paintings.

2. Using the terms "pastel" or painting," "oil portraits" or "pastel portrait painting," either alone or in conjunction with any other terms or words or in any way to designate, describe, or refer to colored or tinted pictures, photographs or photographic enlargements, or other pictures produced from a photographic base or impression.

3. Misrepresenting that any specified sum is the actual cost of production of a picture or otherwise misrepresenting the actual cost of either materials or delivery.

4. Representing that a picture similar to sample displayed will be delivered unless the picture so delivered is of the same kind, quality, design, and workmanship.

5. Representing that respondents are conducting any special or advertising campaign in any particular place or locality for the purpose of obtaining special exhibitors, or otherwise, unless such campaign or such special offer is in fact then being conducted or made in such locality for such purpose.

6. Representing that said pictures 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 such pictures is limited.

7. Representing that any portrait will be placed on exhibition in any studio or other place of display, or that respondents' portrait paintings are purchased by advertising concerns and that any compensation received from such sale will be turned over to the customer.

8. Representing that particular types are being selected for the purpose of reproducing "paintings" in respondents' art school, or

that respondents have art classes where paintings are produced and art work performed without charge.

9. Representing by means of any trade name or otherwise that the respondents operate or are connected with any art association or art studio.

10. Representing through the use of a "draw," or any drawing contest, or through the use of "lucky" blanks, slips, coupons, or certificates, or through the use of any other device, plan, or scheme, or through any introductory or advertising offer, or otherwise, that any customer thereby would obtain a financial advantage or would be entitled to receive any picture free or would receive a substantial discount or reduction in the price of any picture or pictures.

11. Concealing from or failing to disclose to customers upon initial contact that the finished picture when delivered will be so shaped and designed that it can only be used in a specially designed, odd style of frame, which can be obtained from respondents only.

12. Representing to customers in any manner that suitable frames for pictures may be purchased elsewhere unless such odd design of frame can in fact be readily purchased in the customary marts of trade.

13. Representing as the customary or regular prices or values of pictures or frames, prices and values which are in excess of the prices at which such products are regularly and customarily sold in the normal and usual course of business.

14. Retaining the original photograph loaned to respondents for use in making a picture, unless all of the terms and conditions upon which said original photograph is to be retained in connection with the purchase and payment for a picture or frame, or for any other purpose, are fully and adequately revealed to the purchaser at the time the original photograph is obtained from such purchaser.

*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 this proceeding be, and the same hereby is, closed as to the respondent, The Association of American Arts, Inc., said corporation having been inactive for more than a year and having been duly dissolved, and that the proceeding be closed as to respondents Peter F. Friedman, (also known as Peter F. Fairchild), Paul Seidler, and Hulbert Beauregard, 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.

## Syllabus

IN THE MATTER OF  
GRAVITONIC LIFE RAY CORPORATION, INC., AND  
FRED W. REED

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

*Docket 3451. Complaint, June 7, 1938—Decision, Dec. 22, 1939*

Where a corporation and an individual, its president and in charge of its affairs, engaged, in cooperation with each other, in manufacture, sale and distribution of an electric appliance or table to purchasers in various other States and in the District of Columbia, in competition with others likewise engaged in sale and distribution in commerce among the various States of products and preparations intended, designed, and used for purposes for which they recommended their product; in describing same in advertisements in pamphlets, leaflets, newspapers, and magazines distributed among public in various States—

- (a) Represented that their said device was a scientific discovery which was based upon scientific foundations and forces and which located causes or troubles of disease and purified blood stream by mechanical action thereof; and
- (b) Represented that said device cured and relieved various ailments and conditions, including sinus infections in a few applications, sleeping sickness, blindness caused by ticcouloureux, tuberculosis, stomach and gall bladder troubles, kidney trouble and arthritis, cancer, high blood pressure, and a number of others;

Facts being device in question was not a discovery, would not accomplish any such results or locate causes of any troubles or diseases and was not a competent or effective treatment therefor, but was worthless and of no use in diagnosis, cure or treatment of disease, and had no scientific foundation and no beneficial effect on the system, and statements in question were false, misleading and untrue;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all of their said representations were true, and with result that number of consuming public purchased substantial volume of their said electric tables and trade was thereby diverted unfairly to them from their competitors engaged in sale and distribution in commerce of products and preparations intended, designed, and used for purposes for which their device was recommended, and who truthfully represented effectiveness 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. Arthur F. Thomas* and *Mr. Randolph Preston*, trial examiners.

*Mr. William L. Taggart* for the Commission.

*Mr. Frederic I. Barrows*, of Indianapolis, Ind., and *Mr. J. Carl Lambdin*, of St. Petersburg, Fla., for Fred W. Reed.

Complaint

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## 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 Gravitonic Life Ray Corporation, Inc., a corporation, and Fred W. Reed, individually, and as president of Gravitonic Life Ray Corporation, 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 Gravitonic Life Ray Corporation, Inc., is organized under the laws of the State of Florida. Its officers are Fred W. Reed, president, and Mrs. Helen Stowers, secretary. Its main office is located at 687 Central Avenue, St. Petersburg, Fla.

Respondent Fred W. Reed of 1330 North Meridian Street, Indianapolis, Ind., is the president of respondent Gravitonic Life Ray Corporation, Inc., a corporation, and controls and directs the activities, practices and policies of said corporate respondent in the course and conduct of the business and in doing the acts and things hereinafter described. Respondent Fred W. Reed uses the respondent Gravitonic Life Ray Corporation Inc., and other corporations as instrumentalities and means through which he conducts the business and does the acts and things hereinafter described. Respondents Fred W. Reed and Gravitonic Life Ray Corporation, Inc., separately and collectively, also use various trade names in conducting the business and in doing the acts and things hereinafter described. Among the corporations used by the respondent Fred W. Reed as instrumentalities and means of conducting the business, and doing the acts and things hereinafter described, are the following: Gravitonic Life Ray Estate, Ltd., and Gravitonic Life Ray Estate, Inc. Among the trade names used by the respondents Gravitonic Life Ray Corporation, Inc. and Fred W. Reed are the following: Gravitonic Life Ray Estate, Ltd., and Gravitonic Life Ray Estate, Inc.

In doing the acts and things hereinafter alleged, and during all of the time herein mentioned, respondents Gravitonic Life Ray Corporation, Inc. and Fred W. Reed have acted together and in cooperation with each other.

PAR. 2. Respondents, trading in their own names and through said corporations and under said trade names as aforesaid, have been for some time past, and are now, engaged in the business of manufacturing and in selling and distributing an electrical appliance. The last known place of business of the respondents was 1330 North Me-

ridian Street, Indianapolis, Ind. The product advertised and sold is a table to which is attached an electrical appliance and other accessories. Respondents have conducted their said business at and from various points in the United States.

The respondents cause their said product, when sold, to be transported from the point in the State where they happen to be located at the time of a particular sale into and through the several States of the United States to the purchasers thereof, located at various points in States of the United States other than the State of origin of such shipments and in the District of Columbia.

PAR. 3. In the course and conduct of their business in commerce among and between the various States of the United States and in the District of Columbia respondents have been and are in substantial competition with individuals, partnerships, and corporations engaged in said commerce in the sale and distribution of similar products and in the sale and distribution of products and preparations intended, designed, and used for the purposes for which the respondents recommend their said product.

PAR. 4. In the course and conduct of their business in said commerce, and for the purpose of inducing members of the public to purchase said product, respondents advertise said product in booklets, pamphlets, circulars, by personal contact, and by other means, all purporting to be descriptive of said product and its effectiveness and value for the uses and purposes for which it is advertised. In the aforesaid advertisements distributed among prospective purchasers, and in newspapers and magazines and other types of advertisements circulated among said prospective purchasers and the public, as aforesaid, statements to the following effect are made:

THE GRAVITONIC LIFE RAY now being presented to the public, is a wonderful discovery which promises to revolutionize the present methods of making examinations and the treatment of practically all human ills. As the name implies, this discovery is based on the forces of gravity, the tonic of the air, and the vibrational impulses in the ether surrounding the earth. All life is, or is affected by vibration and these vibrations in the ether both build and destroy life. THE GRAVITONIC LIFE RAY is the summation of all the rays which produce and support life. The gamma rays and all other rays which tend to destroy life, have been screened out. These life rays show practically no tendency to heat, and in no way resemble electricity. Nothing seems to stop them for they will pass through all known substances. Furthermore, the supply is inexhaustible.

\* \* \* \* \*

The ray seems to be unfailling in its powers to locate the *cause* of the trouble. The blood stream is purified by the mechanical action of the GRAVITONIC LIFE RAY which destroys disease germs, reduces poisons and stimulates the muscles that absorb the poisons and draws them to the surface.

\* \* \* \* \*

## Complaint

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In a large percentage of all bodily ills, sinus trouble is found to be the basic cause. It is the relief of this same sinus trouble which has, oddly enough, given the medical profession so much real trouble; yet the ray will relieve sinus infections in a few applications. Sleeping sickness victims have been aroused, patients blinded by tie-douloureux have had sight restored, tuberculosis, stomach and gall bladder troubles have been relieved and cured, diseases of the kidneys overcome, arthritis victims relieved and cured, gland disorders corrected, likewise diabetes, tumor, prostate trouble, colds, dizziness, anemia, cancer, chronic indigestion, acute appendicitis, goiter, colitis, dyspepsia, nervousness, spinal trouble, high blood pressure, tonsillitis, catarrh, and mastoid and ear trouble have been relieved and cured.

\* \* \* \* \*

Asserting he has captured, caged and finally tamed a real "life ray" from the wilds of space, Frederick Williams Reed of Hollywood has just concluded a series of demonstrations admittedly somewhat mystifying to the scientists who have seen it. So long as this ray sojourns in matter that matter is alive, he says; as soon as it goes out the thing is armiated [sic] dies. He describes it as a "force" diffused throughout the universe, variously described as "nervous ether," "life fluid," "vital principle," and so on.

"Every diseased part of the body," Reed declared, "has a vibration peculiar to itself. Trained fingers can, therefore, identify a disease, whether it is cancer, tuberculosis or something else, by the feel of the vibrations," and it is asserted that certain malignant diseases have been cured by passing this ray through a patient's body.

## GRAVITONIC LIFE RAY—WHAT IS IT?

Hear the voices and music vibrate from vegetables, flowers and the human body, transmitted through the human hand \* \* \*

Feel vitality surge through your body \* \* \*

See demonstration and be Convinced!

All of said statements, together with many similar statements appearing in respondents' advertising literature purport to be descriptive of their product and its affectiveness in treating or curing many of the diseases, ailments, afflictions and conditions of the human body. In all of their advertising literature, respondents represent, through the statements and representations herein set out and other statements of similar import and effect, that their product, Gravitonic Life Ray, will prevent and cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present or exist in the human body.

PAR. 5. In truth and in fact said product is not a wonderful discovery which promises to revolutionize methods of making examinations, and a treatment of practically all human ills. The product is not a scientific discovery based on forces of gravity, the tonic of the air, and the vibrational impulses of the ether surrounding the earth. The said product will not locate the causes of any troubles or diseases. The said product will not relieve the symptoms of, and

is not a remedy or cure for, sinus trouble and infections, sleeping sickness, blindness caused by ticcouloureux, or for tuberculosis, stomach and gall bladder troubles, diseases of the kidneys, arthritis, gland disorders, diabetes, tumor, prostate trouble, colds, dizziness, anemia, cancer, chronic indigestion, acute appendicitis, goiter, colitis, dyspepsia, nervousness, spinal trouble, high blood pressure, tonsillitis, catarrh, or mastoid and ear trouble.

Said product named herein when manufactured, advertised, and distributed is then and there misrepresented in that the aforesaid statements regarding the therapeutic, curative, and other benefits and effects thereof shown on the different circulars, and other advertisements, and by personal orations to the public, as aforesaid, are false and fraudulent, and the same are applied knowingly and in reckless and wanton disregard of their truth or falsity.

PAR. 6. There are among respondents' competitors in commerce as herein set out, those who do not in any way misrepresent the character and nature of their products, and who do not make use of any of the misleading representations herein set out or similar ones with respect to the therapeutic value of their respective products.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondents in designating or describing their product and the effectiveness of said product for curing, treating, or relieving the diseases, ailments, afflictions, and conditions of the human body herein named, in offering for sale and selling their said product, were, and are, calculated to, and have had, and now have a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that all of said representations are true and that said product will, in truth, accomplish the results claimed. Further, as a direct consequence of the mistaken and erroneous beliefs, induced by the acts and representations of the respondents, as hereinabove detailed, a number of the consuming public have purchased a substantial volume of respondents' product with the result that trade has been unfairly diverted to the respondents from competitors likewise engaged in the business of distributing and selling similar products or other products designed, intended and sold for use in the cure, relief or treatment of the various diseases, ailments, afflictions and conditions named herein, and who truthfully represent the effectiveness of their respective products. As a result, thereof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and deceptive 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 June 7, 1938, issued its complaint in the above-entitled proceeding, and caused same to be served upon respondents, Gravitonic Life Ray Corporation, Inc., and Fred W. Reed, individually, charging them with violation of Section 5 of the provisions of said act. Respondent entered an appearance and filed an answer to the complaint, and thereafter, beginning on August 8, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Taggart, attorney for the Commission, before Arthur F. Thomas, and Randolph Preston, trial examiners 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 said complaint, the answer thereto, testimony and other evidence, and 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, Gravitonic Life Ray Corporation, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Florida. It maintains its principal office and place of business in St. Petersburg, Fla. Respondent Fred W. Reed is an individual, and is president of respondent corporation, and in charge of its affairs. Also he carries on business under the trade names of the respondent corporation, and similar ones, such as Gravitonic Life Ray Estate, Ltd., Reed's Gravitonic Health Institute, etc. The corporate respondent, and the individual respondent Fred W. Reed, acting in cooperation with each other, are engaged in the manufacture, sale and distribution of an electrical appliance or table. The respondents cause said product when sold to be transported from their place of business in St. Petersburg, Fla., to 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 product in commerce between and among various States of the United States, and in the District of Columbia. In the course and conduct of their business respondents are in competition with other corporations, firms, and individuals who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States, of products and preparations intended, designed, and used for the purposes for which respondents recommend their product.

PAR. 2. In the course and conduct of the business, respondent Reed, in cooperation with the corporate respondent, and in the sale and distribution of the product, caused to be published in advertisements, pamphlets, leaflets, newspapers, and magazines, distributed among the public in the various States, certain advertisements in order to induce said public to take treatments by use of, and to purchase said electrical table. In these advertisements respondents have published and distributed among many others, the following statements:

The GRAVITONIC LIFE RAY now presented to the public is a wonderful discovery which promises to revolutionize the present methods of making examinations, and the treatment of practically all human ills. As the name implies this discovery is based upon the forces of gravity, the tonic of the air, and the vibrational impulses thereof in the ether surrounding the earth. All life is, or is affected by vibrations and these vibrations in the ether both build and destroy life. The GRAVITONIC LIFE RAY is the summation of all the rays which produce and support life. The GAMMA RAYS and all other rays which tend to destroy life, have been screened out.

The RAY seems to be unfailing in its power to locate the cause of the trouble. The blood stream is purified by the mechanical action of the GRAVITONIC LIFE RAY which destroys disease germs, reduces poisons, and stimulates the muscles that absorb the poisons and draws them to the surface.

In a large percentage of all bodily ills, sinus trouble is found to be the basic cause. It is the relief of this same sinus trouble which has, oddly enough, given the medical profession so much real trouble; yet the RAY will relieve sinus infections in a few applications. Sleeping sickness victims have been aroused, patients blinded by ticcouloureux have had sight restored, tuberculosis, stomach and gall bladder troubles have been relieved and cured; diseases of the kidneys overcome, arthritis victims relieved and cured, gland disorders corrected, likewise diabetes, tumors, prostate trouble, colds, dizziness, anemia, cancer, chronic indigestion, acute appendicitis, catarrh, colitis, dyspepsia, nervousness, spinal trouble, high blood pressure, tonsillitis, and mastoid and ear trouble have been relieved and cured.

PAR. 3. The foregoing statements, all of which purport to be descriptive of respondents' product and its effectiveness in treating or curing many diseases and conditions of the human body, are false,

Order

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misleading and untrue. Respondents' device is worthless and is of no use in the diagnosis, cure or treatment of disease. It is not a discovery and will not revolutionize methods of making examinations or the treatment of practically all human ills. This device will not locate the causes of any troubles or diseases. The use of respondents' device is not a cure or remedy for sinus trouble and infections, sleeping sickness, blindness caused by ticcouloureux, tuberculosis, stomach and gall bladder troubles, diseases of the kidneys, arthritis, gland disorders, diabetes, tumor, prostate trouble, colds, dizziness, anemia, cancer, chronic indigestion, acute appendicitis, colitis, dyspepsia, nervousness, spinal trouble, high blood pressure, tonsilitis, catarrh, mastoid and ear trouble, and the use of such device is not a competent or effective treatment for any of said diseases and disorders. Respondents' device has no scientific foundation and will have no beneficial effect on the human system.

PAR. 4. Each and all of the false and misleading statements and representations made by the respondents in describing the said product as hereinabove set out, were and are calculated to, and have had the tendency and capacity to 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' electrical tables with the result that trade has been diverted unfairly to respondents from their competitors engaged in the business of selling and distributing in commerce among and between the various States of the United States, products and preparations intended, designed and used for the purposes for which respondents recommend their said products, and who truthfully represent the effectiveness 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 the respondents, testimony and other evidence taken before Arthur F. Thomas and Randolph Preston, Esqs., examiners of the Commission theretofore duly designated by it, in support of the allegations of

said complaint, brief of the Commission filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, Gravitonic Life Ray Corporation, Inc., a corporation and its officers and Fred W. Reed, individually and as President of Gravitonic Life Ray Corporation, Inc., whether trading under the trade names of Gravitonic Life Ray Estate, Ltd., Gravitonic Life Ray Estate, Inc., or any other trade name, their respective agents, representatives and employees directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of an electrical appliance or device now designated as Gravitonic Life Ray Table, or any other appliance, or device of similar design or having substantially the same uses and purposes whether sold under this 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 respondents' device is a scientific discovery or based upon any scientific foundation.

2. Representing that respondents' device will locate the causes or troubles of any disease.

3. Representing that the use of respondents' device is a cure or remedy for sinus trouble and infections, sleeping sickness, blindness caused by ticdouloureux, tuberculosis, stomach and gall bladder troubles, diseases of the kidneys, arthritis, gland disorders, diabetes, tumor, prostate trouble, colds, dizziness, anemia, cancer, chronic indigestion, acute appendicitis, colitis, dyspepsia, nervousness, spinal trouble, high blood pressure, tonsillitis, catarrh, mastoid and ear trouble, or that its use constitutes a competent and effective treatment therefor.

4. Representing that the use of respondents' device will have any beneficial effect upon the human system or any beneficial value in the treatment of any disease or condition of the human body.

*It is further ordered*, That respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

## IN THE MATTER OF

JAKE FELT, TRADING AS THE FRUIT AND PRODUCE EX-  
CHANGE, M. E. CARTER AND COMPANY, MILTON K.  
ALTSCHUL, INC., SAN PAT VEGETABLE COMPANY, A. O.  
KOLBERG, ALBERT MILLER AND COMPANY, AND  
CHASE AND COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 2 (c) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED  
BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1938

*Docket 3765. Complaint, Apr. 17, 1939—Decision, Dec. 22, 1939*

Where (a) five corporations which (1) were engaged in producing and distributing produce, foodstuffs, and allied products and in selling and shipping same in interstate commerce to the below-described individual, jobber thereof, and to other purchasers, and which (2) were fairly representative of a large group of other sellers likewise thus engaged in producing, distributing, and selling such products as aforesaid to such individual and others, and which, as thus engaged, were in active competition with other producers and distributors of similar commodities in endeavoring to sell and ship the same in interstate commerce to said jobber or broker and competitors thereof; and (b) other sellers—

Transmitted, paid, and delivered to said individual jobber or broker so-called brokerage fees or commissions consisting of certain percentage of the quoted sales prices agreed upon between each of such sellers and said individual, or flat commission thus agreed upon, upon purchases made of them by said individual for the business operated by him as jobber of produce, foodstuffs, and allied products, and for corporate wholesale dealer in such products, of which he owned 84 percent of the outstanding stock and of which he was president and member of its board of directors, and the affairs of which he actively managed and conducted; and

Where said individual engaged as above set forth, in the course and conduct of his individual business and of corporate business controlled and operated by him as above described; in purchasing the stock requirements of each of said businesses from sellers residing in other States, including sellers above set forth, for shipment to him and storage in warehouse used jointly by the two businesses and sale therefrom by his said jobbing or brokerage business to divers wholesalers of such commodities and by said corporate business, controlled and operated by him as above, to divers retailers thereof—

Received and accepted so-called brokerage fees or commissions upon commodities resold by him as jobber as aforesaid to wholesale dealers therein, and upon commodities resold by said corporate wholesaler to divers retailers therein, while in fact sole party at interest in and active manager of said jobber or brokerage business and while president and member of board of directors of said corporate wholesaler and manager of its affairs, and in connection with which various purchasing transactions upon which such so-called brokerage fees or commissions were respectively paid and transmitted, and accepted and received, no services whatsoever had been or were being ren-

dered to, for, or on behalf of said various sellers by said individual trading as above set forth, or by said corporate wholesaler, but in which connection said individual was acting in fact for and on behalf of his own interest and as representative of said wholesaler controlled by him, with benefits possibly accruing to sellers solely incidental to buying services performed by said wholesaler:

*Held*, (1) That said corporate sellers, through granting and paying fees and commissions as brokerage to said individual upon his purchases, without services being rendered therefor, violated subsection (c) of Section 2 of the Clayton Act, as amended, and (2) that said individual, trading as above set forth, violated provisions of said subsection of such statute by receiving and accepting fees and commissions as brokerage upon purchases from said corporate and other sellers without services being rendered therefor.

Before *Mr. Charles E. O'Connor*, trial examiner.

*Mr. John T. Haslett* for the Commission.

*Mr. Seward R. Moore*, of Minneapolis, Minn., for San Pat Vegetable Co.

*Warlow & Carpenter*, of Orlando, Fla., for Chase & Co.

#### 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 section 2 (c) of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Act of Congress entitled "An Act to amend section 2 (c) of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), hereby issues this its complaint against said parties respondent and states its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jake Felt is an individual trading and doing business as the Fruit and Produce Exchange, with his principal office and place of business at Linden Station, Memphis, Tenn. The business engaged in by respondent Jake Felt under the said trade name is that of a jobber of produce, foodstuffs, and allied products.

Respondent M. E. Carter & Co. is a corporation organized and existing under and by virtue of the laws of the State of Tennessee, with its principal office and place of business at Linden Station, Memphis, Tenn. The business of the respondent M. E. Carter & Co. is that of a wholesale dealer in produce, foodstuffs and allied products.

Eighty-four percent of the outstanding stock of the respondent corporation M. E. Carter & Co. is owned by respondent Jake Felt who is president and a member of the board of directors thereof, and who actively manages and conducts its affairs.

PAR. 2. In the course and conduct of the aforesaid respective businesses engaged in by the respondents Jake Felt and M. E. Carter & Co., said respondent Jake Felt, trading as the Fruit and Produce Exchange, purchases the stock requirements of each of said businesses, said requirements consisting of produce, foodstuffs, and allied products, from sellers residing in States other than the State of Tennessee, among whom are the respondent sellers hereinafter named. Pursuant to such purchases commodities are shipped by said sellers from the respective States in which such sellers are located into and through the various States of the United States to the respondent Jake Felt, trading as the Fruit and Produce Exchange.

Said commodities when received are stored in a warehouse which is used jointly by the said respondent Jake Felt, trading as the Fruit and Produce Exchange, and respondent M. E. Carter & Co.

Sales from said stock of goods so purchased and stored in the common warehouse as aforesaid are made by respondent Jake Felt, trading as the Fruit and Produce Exchange, to divers wholesalers of such commodities, and by respondent M. E. Carter & Co. to divers retailers of such commodities.

PAR. 3. Respondent Milton K. Altschul, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 264 Wholesale Terminal Building, Los Angeles, Calif.

Respondent San Pat Vegetable Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business at Sinton, Tex.

Respondent A. O. Kolberg is a corporation organized and existing under and by virtue of the laws of the State of Texas, with its principal office and place of business at McAllen, Tex.

Respondent Albert Miller & Co. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 308 West Washington Street, Chicago, Ill.

Respondent Chase & Co. is a corporation organized and existing and by virtue of the laws of the State of Florida, with its principal office and place of business located at Sanford, Fla.

The respondents named in this paragraph will hereinafter be referred to as "seller respondents." Each of the seller respondents named in this paragraph is engaged in the sale of commodities to

respondent Jake Felt and other customers residing in States other than the respective States in which the seller respondents are located, pursuant to which sales, commodities are shipped and transported by each of the 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 producers and sellers engaged in the common practice of selling some of their commodities in interstate commerce, as aforesaid, to respondent Jake Felt and to competitors of said respondent Jake Felt and respondent M. E. Carter & Co. Said group or class of sellers comprises a large number of such producers and sellers too numerous to be specifically named herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

PAR. 4. In the course of the purchasing transactions by said respondent Jake Felt, trading as the Fruit and Produce Exchange, as set forth in paragraph 2 hereof, resulting in the delivery of commodities by the seller respondents and other sellers to respondent Jake Felt, said seller respondents and other sellers, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay and deliver, to said respondent Jake Felt, so-called brokerage fees or commissions, the same being a certain percentage of the quoted sales prices agreed upon between each of such sellers and respondent Jake Felt, and respondent Jake Felt, since June 19, 1936, has received and accepted and is receiving and accepting such so-called brokerage fees or commissions upon commodities resold by respondent Jake Felt, trading as the Fruit and Produce Exchange, to divers wholesale dealers in such products, and resold by respondent M. E. Carter & Co. to divers retail dealers, while said respondent Jake Felt is the sole party at interest in and is the active manager of the business engaged in under the trade name of the Fruit and Produce Exchange, and while 84 percent of the outstanding stock of the respondent M. E. Carter & Co. is owned by said respondent Jake Felt, who is president and a member of the board of directors thereof and actively manages its affairs.

In all 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 Jake Felt, no services whatsoever in connection with said purchases have been rendered, or are now being rendered, to, for, or on behalf of said seller respondents or any other seller by either said respondent Jake Felt, trading as the Fruit and Produce Exchange, or respondent M. E. Carter & Co.

PAR. 5. 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 Jake Felt upon the purchases of said respondent Jake Felt, trading as the Fruit and Produce Exchange 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, section 13) and for other purposes," approved June 19, 1936 (the Robinson-Patman Act).

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (the Clayton Act), as amended by section 1 of an act entitled "An Act to amend section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, section 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on April 17, 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 the material allegations as set forth in the complaint to be true was filed on behalf of the individual respondent Jake Felt, the respondent Jake Felt trading as the Fruit and Produce Exchange and the respondent M. E. Carter & Co. Answers admitting and denying various material facts alleged in the complaint were also filed on behalf of all other respondents. Pursuant to written notice to all respondents herein of the date, place and time hearing would be held, testimony and other evidence in support of the allegations of said complaint were introduced by an attorney for the Commission before an examiner for the Commission, and no opposition to the allegations of the complaint was introduced, nor were there any appearances made by the respondents Milton K. Altschul, Inc., San

Pat Vegetable Co., A. O. Kolberg, Albert Miller & Co. and Chase & Co.

Thereafter, admissions of facts alleged in the complaint as to place of incorporation of respondents A. O. Kolberg and Albert Miller & Co. and waivers of intervening procedure, briefs and oral argument were received from all respondents, except the respondent Milton K. Altschul, Inc. The foregoing together with testimony and other evidence, were duly received and filed in the office of the Commission; the respondent Milton K. Altschul, Inc., was apprized of his procedural rights in connection with the filing of brief and oral argument before the Commission and failed to reply to communications sent him by the Commission, 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 this its findings as to the facts and conclusion.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Jake Felt is an individual trading and doing business as the Fruit and Produce Exchange, with his principal office and place of business at Linden Station, Memphis, Tenn.

The business engaged in by the respondent Jake Felt under the said trade name is that of jobber of produce, foodstuffs and allied products.

The respondent M. E. Carter & Co. is a corporation organized and existing under and by virtue of the laws of the State of Tennessee with its principal office and place of business located at Linden Station, Memphis, Tenn.

The business of the respondent M. E. Carter & Co. is that of a wholesale dealer in produce, foodstuffs, and allied products. Eighty-four percent of the outstanding stock of the respondent corporation M. E. Carter & Co. is owned by the respondent Jake Felt, who is president and a member of the board of directors thereof, and who actively manages and conducts its affairs.

PAR. 2. Respondent Milton K. Altschul, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 264 Wholesale Terminal Building, Los Angeles, Calif.

Respondent San Pat Vegetable Co. is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at Sinton, Tex.

Respondent A. O. Kolberg is a corporation organized and existing under and by virtue of the laws of the State of Texas with its principal office and place of business at McAllen, Tex.

Respondent Albert Miller and Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its principal office and place of business located at 308 West Washington Street, Chicago, Ill.

Respondent Chase & Co. is a corporation organized and existing under and by virtue of the laws of the State of Florida with its principal office and place of business located at Sanford, Fla.

This group of respondents will hereinafter be referred to as "seller respondents."

The seller respondents are fairly representative of a large group of sellers engaged in producing and distributing produce, foodstuffs, and allied products which they sell and ship in interstate commerce to the respondent Jake Felt, trading as The Fruit and Produce Exchange, and to other purchasers thereof. Each of the seller respondents actively competes with other producers and distributors of similar commodities in endeavoring to sell and ship the same in interstate commerce to the broker respondent and to competitors of the broker respondent.

PAR. 3. Since June 19, 1936, in the course and conduct of the respective businesses engaged in by the respondents Jake Felt and M. E. Carter & Co., said respondent Jake Felt, trading as The Fruit and Produce Exchange, has purchased the stock requirements of each of said businesses, said requirements consisting of produce, foodstuffs, and allied products from sellers residing in States other than the State of Tennessee, among whom are the seller respondents herein named.

Pursuant to such purchases, commodities are shipped by said sellers from the respective States in which such sellers are located into and through the various States of the United States to the respondent Jake Felt, trading as The Fruit and Produce Exchange.

Such commodities, when received, are stored in a warehouse which is used jointly by the said respondent Jake Felt, trading as The Fruit and Produce Exchange, and the respondent M. E. Carter & Co.

Sales from said stock of goods so purchased and stored in the common warehouse, as aforesaid are made by the respondent Jake Felt, trading as The Fruit and Produce Exchange, to divers wholesalers of such commodities and by respondent M. E. Carter & Co. to divers retailers of such commodities.

PAR. 4. In the course and conduct of the business engaged in by the said respondent Jake Felt, trading as The Fruit and Produce Exchange, wherein commodities are delivered by the said seller respondents and other sellers to the respondent Jake Felt, said seller respondents and other sellers, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay, and deliver, to said respondent Jake Felt, trading as The Fruit and Produce Exchange, so-called brokerage fees or commissions, the same being a certain percentage of the quoted sales prices agreed upon between each of such sellers and respondent Jake Felt, or a flat commission agreed upon between each of such sellers and respondent Jake Felt, and respondent Jake Felt, since June 19, 1936, has received and accepted, and does receive and accept, such so-called brokerage fees or commissions upon commodities resold by said respondent Jake Felt, trading as The Fruit and Produce Exchange, to divers wholesale dealers in such products, and resold by respondent M. E. Carter & Co. to divers retail dealers, while said respondent Jake Felt is the sole party at interest in and is the active manager of the business engaged in under the trade name of The Fruit and Produce Exchange, and while said respondent Jake Felt is president and a member of the board of directors of the respondent corporation M. E. Carter & Co. and actively manages its affairs.

In all the purchasing transactions engaged in by the said respondent Jake Felt in connection with which 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 Jake Felt, no services whatsoever in connection with said purchases have been rendered or are now being rendered to, for, or on behalf of said seller respondents or any other seller by said respondent Jake Felt, trading as The Fruit and Produce Exchange, or the respondent M. E. Carter & Co.

In all matters and transactions wherein the respondent Jake Felt, trading as The Fruit and Produce Exchange, negotiated or dealt with sellers in connection with the purchase of commodities by said respondent Jake Felt, trading as The Fruit and Produce Exchange, the said respondent Jake Felt was acting in fact for and on behalf of his own interest and as a representative of the respondent M. E. Carter & Co., which is controlled by the said respondent Jake Felt, and any benefits which may have accrued to the seller respondents or other sellers therefrom were benefits solely incidental to the buying services performed by the respondent M. E. Carter & Co.

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## CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that the respondents Milton K. Altschul, Inc., San Pat Vegetable Co., A. O. Kolberg, Albert Miller & Co., and Chase & Co., have violated and are now violating the provisions of subsection (c), section 2, of the Clayton Act, as amended, by granting and paying fees and commissions as brokerage to the respondent Jake Felt, individually and trading as The Fruit and Produce Exchange, upon his purchases without services being rendered therefor.

The Commission further concludes that the respondent Jake Felt, individually and trading as The Fruit and Produce Exchange, has violated and is now violating the provisions of subsection (c) of section 2 of the said statute by receiving and accepting fees and commissions as brokerage upon purchases from the seller respondents and other sellers without services being rendered therefor.

## 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 Jake Felt, individually, trading as The Fruit and Produce Exchange, and as president of the respondent M. E. Carter & Co., admitting all the material allegations of the complaint to be true, the answers, admitting and denying various material facts of the complaint of the other respondents and admissions of facts alleged in the complaint as to place of incorporation of respondents A. O. Kolberg and Albert Miller & Co., testimony and other evidence taken before an examiner for the Commission theretofore duly designated by it in support of said complaint, and waivers of intervening procedure, briefs, and argument were received from all respondents, except the respondent Milton K. Altschul, Inc. The foregoing were duly received and filed in the office of the Commission. The respondent Milton K. Altschul, Inc., was apprized of his procedural rights in connection with the filing of brief and oral argument before the Commission and failed to reply to communications sent him by the Commission, and the Commission having made its findings as to the facts and 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 the respondents Milton K. Altschul, Inc., San Pat Vegetable Co., A. O. Kolberg, Albert Miller & Co., and Chase & Co., and their officers, representatives, agents, and employees, in connection with the sale and distribution of commodities in interstate commerce, do forthwith cease and desist from paying or granting to the respondent Jake Felt, individually, trading as The Fruit and Produce Exchange, or under any other name, any fee or commission paid as brokerage or any allowance in lieu thereof upon the purchases made by the respondent Jake Felt without services being rendered therefor by the respondent Jake Felt.

*It is further ordered,* That the respondent Jake Felt, individually and trading as The Fruit and Produce Exchange, his representatives, agents, and employees, either in their capacities as employees of the respondent Jake Felt or in their individual capacities, in connection with the purchase of commodities in interstate commerce by the respondent Jake Felt, individually and trading as The Fruit and Produce Exchange, do forthwith cease and desist from accepting or receiving from sellers any fees or commissions as brokerage or any allowance in lieu thereof.

*It is further ordered,* That the complaint herein be, and the same hereby is, dismissed as to the respondent M. E. Carter & Co. for the reason that the record does not disclose that any brokerage or commissions or any allowances or discounts in lieu thereof have been paid, granted, or transmitted to the respondent M. E. Carter & Co.

*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  
UNIVERSAL CORDAGE COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

*Docket 3612. Complaint, Sept. 23, 1938—Decision, Dec. 27, 1939*

Where a corporation engaged in manufacturing remade rope and cordage from reclaimed Manila fiber, and in sale and distribution of its said products to customers in various States and in the District of Columbia—

- (a) Caused the words "Pure Manila" to appear on labels and brands affixed to its remade rope and cordage and made use of said words in designating its products on announcements and invoices to dealers, jobbers, and distributors, and stenciled the same in the branding of burlap containers thereof, facts being its said product, labeled, branded, and advertised as above set out, was not, as understood by substantial portion of purchasing public from words "Pure Manila," rope or cordage made of new and unused fiber or material theretofore unused for rope or cordage, with each fiber going into the product from the beginning of the rope-making process entirely new, but was restranded and assembled by it from reclaimed fiber obtained from old, used and discarded rope, and while there is a difference in appearance of such a product made from new material and one made from that which is used or discarded which expert in trade might detect, substantial portion of purchasing public cannot determine by appearance of rope such difference, and custom and practice, known to purchasers and users of rope and cordage, has been generally adopted by manufacturers, distributors, and sellers thereof of so marking or branding their products as to indicate presence of old or used fiber when employed in manufacture thereof; and
- (b) Represented itself to be "new manufacturers of pure Manila rope" in statements to the trade through the medium of the mail, facts being its factory equipment was less than equipment and machinery used by manufacturers in making rope and cordage of new materials, it eliminated approximately two-thirds of rope-making in its process of using fiber of old product, and about two-thirds of labor cost of making rope from new material by assembling from reclaimed fiber obtained from old, used, and discarded rope, its product so as to be enabled thereby to sell to purchasing public at substantially lower prices than could be offered by manufacturers of Manila rope and cordage of new fiber and material, its products;

With effect of misleading and deceiving many dealers and members of purchasing public into erroneous and mistaken beliefs induced as aforesaid and with result that trade in commerce was thereby diverted unfairly to it from competitors who do not misrepresent the nature, character, and quality of the material used in the manufacture of rope and cordage and otherwise misrepresent their goods; to 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.

## Complaint

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

*Mr. John R. Phillips, Jr.* for the Commission.

*Weisman, Celler, Quinn, Allen & Spett*, 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 Universal Cordage Co., 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, Universal Cordage 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 312 Bridge Street, in the city of Brooklyn, State of New York.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing remade rope and cordage from reclaimed Manila fiber, and in the sale and distribution thereof. Respondent causes said rope and cordage when sold to be transported from its place of business in the State of New York 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 rope and cordage 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. In the course and conduct of its business respondent is in active and substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of rope and cordage 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 said rope and cordage, respondent has caused the words "Pure Manila" to appear on labels and brands affixed to its remade rope and cordage, and on announcements and invoices to dealers, jobbers, and distributors, and in stenciled brandings on burlap containers for such rope and cordage. Respondent has also represented itself, through the medium of the United States mail, to be "new manufacturers of pure Manila Rope."

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All of said statements, together with similar statements appearing on the labels, brands, announcements, invoices, and the stenciled brandings on its burlap containers, purport to be descriptive of the character, quality, nature, and fiber of respondent's rope and cordage. By use of said labels, brands, announcements, invoices, stenciled brandings, and through other means, the respondent, through the statements and representations as aforesaid, and other statements of similar import and effect, represents that its rope and cordage are in whole manufactured from new pure Manila fiber.

PAR. 5. The representations made by the respondent with respect to the character, quality, nature, and fiber of its rope and cordage are grossly exaggerated, false, misleading, and untrue. In truth and in fact its rope and cordage are not manufactured from new and unused pure Manila fiber, but are restrand and assembled from reclaimed fiber obtained from old, used, and discarded rope and hawsers, which fact is not indicated or disclosed upon its merchandise or in the labels brands, announcements, or other sales-promotional representations used in respect thereto.

The cost to respondent of obtaining old and used rope and hawsers, and the restrand and assembling the reclaimed fiber therefrom as aforesaid, is much less than the cost of manufacturing new rope and cordage made from new Manila fiber, and respondent is thereby enabled to sell its said rope and cordage to retailers, jobbers, and wholesalers and to the purchasing public at substantially lower prices than manufacturers of Manila rope and cordage from new material.

The manufacturers, distributors, and sellers of rope and cordage made from new pure Manila fiber have generally adopted and followed, and they now follow, the common practice and custom of truthfully disclosing the various fibers and materials from which such rope and cordage are made, and this custom and practice on the part of said manufacturers, distributors, and sellers of rope and cordage is understood and relied upon by the purchasing public in its purchase thereof to mean rope and cordage manufactured from new and unused Manila fiber unless otherwise expressly specified.

PAR. 6. There are among respondent's competitors many who manufacture and sell rope and cordage who do not in any way misrepresent the quality or character of their respective ropes and cordage and the materials from which they are made.

PAR. 7. Each and all of the false and misleading statements and representations made by respondent in designating and describing its rope and cordage, as hereinabove set out, have had and now have a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that

all of such representations are true and that its said rope and cordage are made from new and unused pure Manila fiber, and to lead the public into the purchase of a substantial volume of respondent's said rope and cordage because of said mistaken and erroneous belief, with the result that trade in said commerce has been diverted unfairly to the respondent from its competitors, likewise engaged in manufacturing, distributing, and selling rope and cordage in said commerce, who truthfully represent the quality and character of their respective rope and cordage and the material or fiber from which they are manufactured. As a consequence thereof, substantial injury has been done and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 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 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 September A. D. 1938, issued and served its complaint in this proceeding upon the respondent Universal Cordage Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, testimony, and other evidence in support of the allegations of said complaint were introduced by John R. Phillips, Jr., attorney for the Commission, 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 proceedings regularly came on for final hearing before the Commission on said complaint, 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, Universal Cordage 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 312

Bridge Street, in the city of Brooklyn, State of New York. It is now, and for more than 1 year last past has been engaged in the business of manufacturing remade rope and cordage from reclaimed Manila fiber, and in the sale and distribution thereof. Respondent causes said rope and cordage, when sold, to be transported from its place of business in the State of New York, to its customers located 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 said rope and cordage sold and distributed by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in the course and conduct of its said business, and for the purpose of inducing the purchase of said rope and cordage, has caused the words "Pure Manila" to appear on labels and brands affixed to its remade rope and cordage. It has also caused the words "Pure Manila" to appear in designating its products on announcements and invoices to dealers, jobbers, and distributors, and has also stenciled said words in the branding of burlap containers for such rope and cordage; and in statements to the trade through the medium of the United States mail, respondent has also represented itself to be "new manufacturers of pure Manila rope."

PAR. 3. A substantial portion of the purchasing public believe the words "Pure Manila" when used on labels, brands, and advertisements of rope and cordage, mean that the product thus labeled, branded, and advertised, is a rope or cordage made of new and unused fiber, or from material theretofore unused for rope or cordage; that each fiber going into the product, from the beginning of the rope-making process, is entirely new fiber. The words "new manufacturers of pure Manila rope" mean, also, to such substantial portion of the purchasers of rope that the makers of rope or cordage thus branded, labeled, or advertised, are manufacturers of pure Manila rope, and that such makers have ample factory equipment to begin with the raw material and process such raw material into a finished new rope or cordage product.

PAR. 4. Respondent's product, labeled, branded and advertised as shown in paragraph 2 hereof, is not rope or cordage manufactured from new and unused, pure Manila fiber. The respondent restrands and assembles its products from reclaimed fiber obtained from old, used, and discarded rope. Respondent's factory equipment is less than the equipment and machinery used by manufacturers in manufacturing rope and cordage of new materials. In using fiber of old ropes, the preliminary steps of combing or preparing, and the spinning process necessary in making rope of new fiber are eliminated,

which elimination is approximately two-thirds of rope making. Approximately two-thirds of the labor cost of manufacturing rope from new material is eliminated by respondent's methods of assembling its product from reclaimed fiber obtained from old, used, and discarded rope. Respondent is thereby enabled to sell its rope and cordage to the purchasing public at substantially lower prices than can be offered by manufacturers of Manila rope and cordage from new fiber or material.

PAR. 5. While there is a difference in the appearance of rope manufactured from new material and rope manufactured from used or discarded material, which an expert in the rope trade might detect, yet a substantial portion of the purchasing public cannot determine by the appearance of the rope, such difference.

PAR. 6. Manufacturers, distributors, and sellers of rope and cordage have adopted generally the custom and practice, which is generally known to purchasers and users of rope and cordage, of so marking or branding their products as to indicate the presence of old or used fiber when such fiber is used in the manufacture thereof, and to fail to so mark or brand rope and cordage containing old and used fiber leads purchasers to believe that such rope and cordage contain no old or used fiber.

PAR. 7. The use by the respondent of the statements and representations hereinabove set out, in connection with the offering for sale and sale of its rope and cordage 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 induced as above set out. As a result thereof, trade in said commerce has been diverted unfairly to the respondent from competitors who do not misrepresent the nature, character, and quality of the material used in the manufacture of rope and cordage, and who do not otherwise misrepresent their products. In consequence thereof, injury has been done, and is now being done, by respondent to competitors in commerce between 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

30 F. T. C.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, no answer having been filed by the respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief in support of the complaint filed by John R. Phillips, Jr., counsel for the Commission, no 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, Universal Cordage 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 rope and cordage in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing that rope or cordage made in whole or in part from used or reclaimed Manila fiber is made of new and unused fiber.

2. Using the words "Pure Manila" or any other words of like import and meaning to designate, describe or refer to rope or cordage made in whole or in part from used or reclaimed Manila fiber.

3. Representing, through the use of the words "New manufacturers of Pure Manila rope and fiber" or through the use of any other words importing or implying that respondent is the manufacturer of the products sold by it, that the respondent is the manufacturer of the rope and cordage sold by it, unless and until it actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said products are manufactured in their entirety by 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.

## Syllabus

IN THE MATTER OF  
RALSTON PURINA COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3102. Complaint, Apr. 10, 1937—Decision, Dec. 28, 1939*

Where a corporation engaged in manufacture of livestock feeds, cereal foods for human consumption, and food for dogs and other animals, including its "Purina Dog Chow," and in sale and distribution of its said product to purchasers in other States, in substantial competition with others similarly engaged in sale of like products or of those for the same purposes—

Represented, in pamphlets, circulars, labels, and other advertising matter circulated through the several States and in the District of Columbia, that said "Purina Dog Chow" contained pure beef, pure meat, and meat, facts being ingredient thus referred to, and properly designated as "meat meal" or dehydrated meat meal, purchased by it from packing companies and manufacturers thereof, was made by them under a process by which the meat trimmings, deposits of fat, various organs, incidental bone, etc., were so treated that two of four chemical food elements of meat, namely, fat and moisture, were removed, and any small amount included in original contents placed in vats or containers made use of was changed both physically and chemically, and there was no meat or beef in the meat meal or finished ingredient placed, in form of dry meal or powder, in said dog food;

With tendency and capacity to mislead and deceive substantial part of purchasing and consuming public into erroneous and mistaken belief that said dog food contained pure beef, pure meat, or meat, and with result, as consequence of such belief, that purchasing and consuming public bought substantial amount thereof and trade was unfairly diverted to it from its competitors engaged in manufacture, sale, and distribution of such products, or in sale and distribution thereof, and who truthfully represent the contents 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 and unfair and deceptive acts and practices in commerce.

Before *Mr. W. W. Sheppard*, *Mr. Miles J. Furnas*, and *Mr. Randolph Preston*, trial examiners.

*Mr. S. Brogdyne Teu, II* and *Mr. Donovan Divet* for the Commission.

*Mr. Crawford Johnson* and *Mr. Thomas S. McPheeters, Jr.* of Bryan, Williams, Cave & McPheeters, 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 Ralston Purina Co., 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 is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located in the city of St. Louis, State of Missouri. It is now, and for some time past has been, engaged in the manufacture of live stock feeds, cereal foods for human consumption and of food for dogs and various other animals, among which said products is a dog food which it offers for sale and sells under the trade name "Purina Dog Chow." The respondent sells and distributes said product in commerce between and among the various States of the United States, causing the same when sold to be shipped from its place of business in the State of Missouri to purchasers thereof located in a State or States other than the State of Missouri.

In the course and conduct of its business, the respondent has been, and is, in substantial competition with various other corporations, partnerships, firms, and individuals engaged in the sale of similar products or products to be used for the same and similar purposes, which competitors cause their products when sold to be transported to purchasers thereof located in the various States of the United States.

PAR. 2. In the course of promotion of sale and sale of its dog food under the trade name "Purina Dog Chow," the respondent causes representations and statements to be made in pamphlets, circulars, labels, and other advertising matter circulated throughout the several States of the United States to the following effect, gist, or meaning:

That the product contains "pure beef," "pure meat," or "meat."  
That it contains "whole milk."

And that 1 pound of its product contains as much food value as 3 pounds of fresh or canned meat.

In truth and in fact, the product does not contain "pure beef," "pure meat," or "meat." The portion of the contents so designated and described is properly known and referred to as dehydrated meat scraps. Said product does not contain "whole milk," but is made of

dried skimmed milk. One pound of the product does not contain as much food value as 3 pounds of fresh or canned meat.

PAR. 3. Under the foregoing facts and circumstances, the representations, statements, and terms used by respondent in its advertising matter, as set forth in paragraph 2 hereof, are false and misleading, and have the capacity and tendency to deceive and do deceive the ultimate purchasers and consumers into buying that which they do not intend to buy. Through and by virtue of the use of such representations, statements, and terms in its advertising matter, as aforesaid, the respondent has placed and is placing in the hands of its wholesaler and retailer purchasers, the means of deceiving the ultimate purchasers and consumers. The aforesaid practices have the capacity and tendency to divert to respondent the trade of competitors engaged in selling in interstate commerce products of the same kind and nature as those of respondent, which products are truthfully advertised and described, and thereby substantial injury is done by respondent to competition in commerce between and among the various States of the United States.

PAR. 4. The acts and things above alleged to have been done and the false representations alleged to have been made by respondent are to the prejudice of the public and the competitors of respondent and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 10th day of April 1937, issued, and thereafter served, its complaint in this proceeding upon the respondent, Ralston Purina 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 in support of the allegations of the complaint was introduced, first, by S. Brogdyne Teu, II, before W. W. Sheppard, a duly appointed trial examiner of the Commission; subsequently before Miles J. Furnas, duly appointed trial examiner of the Commission, and later, before Randolph Preston, a duly appointed trial examiner of the Commission, designated by it to preside at said hearings. The respondent was represented at all of these hearings by its attorneys, Bryan, Williams, Cave & McPheeters,

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Crawford Johnson and Thomas S. McPheeters, Jr., of said firm, appearing as its counsel. Said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said pleadings, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral argument of the counsel aforesaid. Mr. Donovan Divet, of the Chief Counsel's staff, presented the argument on behalf of 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 its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its principal place of business located in the city of St. Louis, State of Missouri. It is now, and for some time past has been, engaged in the manufacture of livestock feeds, cereal foods for human consumption, and of food for dogs and various other animals, among which said products is a dog food which it offers for sale and sells under the trade name "Purina Dog Chow." The respondent sells and distributes said product in commerce between and among the various States of the United States, causing the same, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located in a State or States other than the State of Missouri.

In the course and conduct of its business the respondent has been and is in substantial competition with various other corporations and with firms, partnerships, and individuals engaged in the sale of similar products, or of products to be used for the same purposes, which competitors cause their products, when sold, to be transported to purchasers thereof located in various States of the United States.

PAR. 2. In the course of the promotion of sale and the sale of its dog food under the trade name "Purina Dog Chow," the respondent has caused and causes representations and statements to be made in pamphlets, circulars, labels, and other advertising matter circulated throughout the several States of the United States and in the District of Columbia, among others, to the following effect, that the said product contains pure beef, pure meat, and meat, when in truth and in fact said product does not contain pure beef, pure meat, beef or meat; but the ingredient of the said product so designated and described is

properly known and referred to as "meat meal" or more fully as dehydrated meat meal. The ingredient which the respondent represents as pure beef, pure meat, or meat is purchased by said respondent from Armour & Co. of Chicago, from Swift & Co. of Chicago, and from the Kohr Packing Co. of Davenport, Iowa, and after being purchased is put into the final product Purina Dog Chow by the respondent. The said ingredient is made by all the said companies from substantially the same materials and by substantially the same processes of manufacture. For the purpose of manufacturing said ingredient the said companies place meat trimmings, deposits of fat, hearts, lungs, spleen, kidneys, paunches, intestines to a limited extent, incidental bone, and connective tissue in the organs and abdominal tract into large containers or vats. The final product, Purina Dog Chow, is 8 percent beef meal and 8 percent pork meal. When the respective companies are manufacturing pork meal for use by the respondent the ingredients of the meal are taken from hogs and when they are manufacturing beef meal the ingredients are taken from beef animals. The contents of the containers or vats are subjected to a temperature of 212° F. or more. The contents of the containers or vats are subjected to this temperature for from 6 to 8 hours, and as a part of this heating process the fats and oils are drawn off. The remaining contents of the vats or containers are then placed in an expeller or screw-worm, which forces out any fat or oil remaining after the heating process. The heating process also substantially reduces the moisture content of the original contents of the vats or containers. Chemically, meat is composed of four food elements, which are protein, fat, moisture, and calcium. The heating processes used by all of the companies from which the respondent purchases the ingredient in Purina Dog Chow designated as meat or beef remove from the original contents of the vats or containers two of the four chemical food elements of meat, to wit, the fat and the moisture. Meat is the edible portion of the carcass of an animal. The original contents of the said containers or vats include a small amount of meat but the Commission finds that the contents of said vats or containers as a whole cannot properly be designated as meat, as pure meat, as beef, or as pure beef, and further finds that whatever meat is included in the original contents placed in said vats or containers is changed both physically and chemically by the heating process and the expelling process of the various companies with the result that there is no meat or beef in the final ingredient, meat meal, which is placed in the said Purina Dog Chow in the form of a dry meal or powder. The Commission finds that the proper designation of the ingredient on which the respondent has based its assertions

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that said Dog Chow contains meat, pure meat, beef, or pure beef, is meat meal or more fully, dehydrated meat meal.

PAR. 3. The use by the respondent of the representations and statements aforesaid, and of others of similar import not herein set out, in connection with the sale and distribution of the aforesaid product, Purina Dog Chow, 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 product contains pure beef, pure meat, or meat. As a result of this mistaken and erroneous belief, the purchasing and consuming public have purchased a substantial amount of respondent's product, with the result that trade has been unfairly diverted to respondent from its competitors in the manufacture, sale, and distribution of such products, or in the sale and distribution thereof, which competitors truthfully represent the contents of their respective products; as a consequence thereof, substantial injury has been and is being 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 the respondent, as herein found, 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.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before W. W. Sheppard, Miles J. Furnas, and Randolph Preston, examiners of the Commission theretofore duly designated by it, in support of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Donovan Divet, counsel for the Commission, and by Crawford Johnson, 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 Ralston Purina 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 food for dogs known as Purina Dog Chow, or any other product containing substantially similar in-

redients, whether sold under the same name or under any other name, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the terms "pure beef," or "pure meat" or "meat" or "beef" or any other terms of similar import or meaning to designate or describe dehydrated meat meal, or any product which is not meat or beef in fact.

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

## IN THE MATTER OF

A. SCHOTTLAND, INC., AND VALMOR UNDERGARMENT  
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 3276. Complaint, Dec. 2, 1937—Decision, Dec. 28, 1939*

Where a corporation engaged in manufacture of fabrics and in sale thereof to garment manufacturers and other purchasers located throughout the various States and in the District of Columbia; in soliciting and selling certain of its fabrics to such manufacturers—

- (a) Supplied such customers with tags and labels to be affixed and attached to garments made therefrom, and which were thus affixed by said customers to garments made from fabrics in question, and which bore statement "PURE DYE NANUETTE CREPE DuPont Rayon and Silk," with words "Pure Dye" and "Crepe" featured thereon and words "Dupont Rayon and Silk" printed in small and less conspicuous type, and which tags and labels set forth, on back thereof, " 'Nanquette Crepe' makes possible the elimination of tin-weighted cloths for lingerie," "The 'Nanquette Crepe' label is the guarantee of PURE DYE \* \* \*," "Best results are obtainable when the silk lingerie is ironed \* \* \*," and thereby represented to purchasing public and garment manufacturers that fabrics thus advertised, offered, and sold were silk, facts being they were not made of silk, product of cocoon of silkworm, as long definitely and specifically associated with word in mind of retail dealers and consuming public generally, but were composed entirely of materials other than silk, and made of rayon; and

Where second concern engaged in manufacture of women's undergarments and other allied products, and in sale thereof to retailers and other purchasers throughout the various States and in the District of Columbia—

- (b) Tagged and labeled garments made by it from fabrics which it purchased from such fabric manufacturer with tags and labels supplied by manufacturer in question, as above described, and in a display folder, with which it accompanied its said garments, set forth legend "PURE DYE NANUETTE CREPE DuPont Rayon and Silk," with words "Pure Dye" and "Raysilk" featured in large conspicuous type and words "Made of Silk and Rayon" printed in less conspicuous type, and in other display folders, with which it accompanied other garments made, offered and sold by it, featured words "Van Ceta Taffeta Slips" and "Val Sheen Satin Slips," and represented thereby to members of purchasing public and retail and other dealers that garments thus advertised, offered and sold were silk, facts being they were not products of silk, long held in great public esteem and confidence for their preeminent qualities and long associated in public mind with fabric made from cocoon of silkworm, or silk as designated, described and referred to in case of dress goods, ladies' undergarments, and other items of wearing apparel as "Pure Dye," "Crepe," "Taffeta," and "Satin" or through coined word including word "silk";

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and to cause them to purchase said products as result of such erroneous

## Complaint

beliefs thus induced, and with result that trade in commerce was unfairly diverted to them from those engaged in manufacture and sale of fabrics, garments, ladies' slips, and other allied products in commerce among the various States and in the District of Columbia, and who do not misrepresent in any manner the kind or quality of goods made, offered, and sold by them, and substantial injury was done to 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 E. Reardon*, trial examiner.

*Mr. James L. Fort* for the Commission.

*Evans, Smith & Evans*, of Paterson, N. J., 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 A. Schottland, Inc., a corporation, and Valmor Undergarment 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, 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, A. Schottland, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey with its office and principal place of business located at 1441 Broadway, New York, in said State. It is now, and for many years last past has been, engaged in the business of manufacturing fabrics. It sells, and has sold and distributed, such goods to garment manufacturers and other customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said goods, when sold, to be shipped from its factories located at Nanuet, N. Y., and at Rocky Mount, N. C., to the purchasers thereof located in the various States of the United States other than the States of origin of such shipments.

Respondent Valmor Undergarment Co. 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 149 Madison Avenue, New York, in said State. It is now, and for many years last past has been, engaged in the business of manufacturing ladies' undergarments and other allied products. It sells, and has sold and distributed, such undergarments and other

allied products to retail dealers and other customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said products when sold to be shipped from its place of business in New York City to the purchasers thereof located in the various States of the United States other than the State of New York.

There is now, and has been at all times mentioned herein, a constant current of trade and commerce by said respondents in said products so sold by them between and among the various States of the United States. Respondents are now, and at all times herein mentioned have been, in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of fabrics, ladies' undergarments, and other allied products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent A. Schottland, Inc., in soliciting the sale of and selling certain of its products to garment manufacturers supplies its customers with tags and labels to be affixed and attached to the garments made from said fabrics. Said customers did, and do, attach and affix such tags and labels to the garments manufactured by them from said products. The said labels and tags bear the following statement:

PURE DYE

NANUETTE

CREPE

DuPont Rayon and Silk

On both the tags and labels the words "Pure Dye" and "Crepe" are featured and displayed prominently in large, conspicuous type, while the words "DuPont Rayon and Silk" are printed in small and less conspicuous type. On the backs of the tags the following statements appear: " 'Nanuette Crepe' makes possible the elimination of 10-weight cloths for lingerie," "The 'Nanuette Crepe' label is a guarantee of PURE DYE \* \* \*," and "Best Results are obtainable when the silk lingerie is ironed \* \* \*." Other fabrics sold and shipped by the respondent, A. Schottland, Inc., in commerce as set out in paragraph 1 are branded or labeled "RAYSILK." The foregoing statements and representations made by the respondent, A. Schottland, Inc., as in this paragraph set out, serve as representations to the purchasing public and to garment manufacturers that such fabrics so advertised and offered for sale were, and are, silk fabrics. The representations hereinabove set forth are, and were, false and misleading in that said fabrics so represented, desig-

nated and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but are, and were, composed of materials other than silk.

PAR. 3. In the course and conduct of its business as described in paragraph 1 hereof, respondent Valmor Undergarment Co. purchases certain fabrics manufactured by respondent A. Schottland, Inc., which are tagged, branded, and labeled, as set out in paragraph 2 hereof. Respondent Valmor Undergarment Co. uses said fabrics so purchased and so tagged, branded, and labeled in the manufacture by it of garments, ladies' slips, and other allied products which it offers for sale and sells, tagged and labeled as aforesaid, in commerce as hereinbefore set out, accompanied by a display folder bearing the following:

PURE DYE  
NANUETTE  
CREPE

DuPont Rayon and Silk

The said display folders featured the words, "Pure Dye" and "Ray-silk," in large conspicuous type, while the words "Made of Silk and Rayon" were printed in less conspicuous type. Other garments manufactured by the respondent Valmor Undergarment Co. and offered for sale and sold in commerce as hereinbefore set out were accompanied by display folders on which appeared in large, conspicuous type "Van Ceta Taffeta Slips," and "Val Sheen Satin Slips."

The statements and representations made by the respondent Valmor Undergarment Co., as in this paragraph set out, serve as representations to members of the purchasing public and to retail dealers and other dealers that such garments so advertised and offered for sale were, and are, silk garments. Such representations are, and were, false and misleading in that said garments so represented, designated and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but are, and were, composed of materials other than silk.

PAR. 4. The word "silk" for many years last past has had and still has in the mind of the retail dealers and consuming public generally a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products for many years have held and still hold a great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics; a variety of distinctive terms has been applied to the fabrics resulting from different types of weaving of silk fiber. Dress goods, ladies' undergarments, and other items of wearing apparel designated, described, and referred to as "Pure Dye," "Crepe," "Taffeta," and

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“Satin” or by use of any coined word which includes the word “Silk,” have been for a long time, and at the present time still are, associated in the public mind with the fabric made from the cocoon of the silkworm commonly known and understood by the public generally as “silk.”

PAR. 5. There are among the competitors of respondents mentioned in paragraph 1 hereof corporations, individuals, partnerships, and firms engaged in the manufacture and sale of fabrics, garments, ladies' slips, and other allied products who do not misrepresent the kind of goods manufactured and offered for sale by them.

PAR. 6. The use by respondents of the representations set forth herein have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are, and were, true and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth. The use by respondents of the representations aforesaid has unfairly diverted, and does unfairly divert, trade in said commerce to the respondents from their said competitors, and thereby substantial injury is being, and has been, done by respondents to competition in commerce among and between the various States of the United States.

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

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 2, 1937, issued and served its complaint in this proceeding upon the respondents, A. Schottland, Inc., and Valmor Undergarment Co., Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On March 16, 1938, the respondent Valmor Undergarment Co., Inc., filed its substitute answer to the complaint in which it admitted the truth of all the material allegations of the complaint. The respondent A. Schottland, Inc., filed its answer to the complaint on December 23, 1937. After the issuance of said complaint and the filing of respondents' answers thereto testimony and other evidence in support of the allega-

tions of said complaint were introduced by James L. Fort, Esq., attorney for the Commission, and by Mr. George Schottland, the secretary of respondent, A. Schottland, Inc., in its behalf in opposition to the complaint, before Edward E. Reardon, Esq., 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 upon the said complaint, the answers of the respondents, the testimony and other evidence, the brief of counsel for the Commission in support of the complaint (respondents 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. The respondent, A. Schottland, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and having its office and principal place of business at No. 1441 Broadway, in the city and State of New York. It is and has been for many years last past engaged in the business of manufacturing fabrics in its factories, which are located at Rocky Mount, N. C., and at Nanuet, N. Y., and in the business of selling, in commerce, the fabrics manufactured by it to garment manufacturers and to other purchasers of its fabrics, located throughout the various States of the United States and in the District of Columbia.

PAR. 2. The respondent, Valmor Undergarment Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, and having its office and principal place of business at No. 149 Madison Avenue, in the city and State of New York. It has been for many years last past and now is engaged in the business of manufacturing women's undergarments and other allied products and in the business of selling same, in commerce, to retail dealers and to other purchasers located throughout the various States of the United States and in the District of Columbia.

PAR. 3. The respondents, A. Schottland, Inc., and Valmor Undergarment Co., Inc., in the sale by them, respectively, of fabrics, women's undergarments and other allied products, are and have been, during all the times mentioned and referred to above, 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, and corporations who are and have been engaged in the sale of fabrics, women's undergarments, and other allied products.

PAR. 4. In the course and conduct of its business as described herein, respondent, A. Schottland, Inc., in soliciting the sale of and selling certain of its fabrics to garment manufacturers, supplies its customers with tags and labels to be affixed and attached to the garments made from said fabrics. Said customers affix such tags and labels to the garments manufactured by them from the said fabrics. The said labels and tags bear the following statement:

PURE DYE  
NANUETTE  
CREPE  
DuPont Rayon and Silk

On both the tags and labels the words "Pure Dye" and "Crepe" are featured and displayed prominently in large, more conspicuous type, while the words "DuPont Rayon and Silk" are printed in small and less conspicuous type. On the backs of the tags the following statements appear.

"Nanulette Crepe" makes possible the elimination of tin weighted cloths for lingerie

The "Nanulette Crepe" label is a guarantee of PURE DYE \* \* \*

Best results are obtainable when the silk lingerie is ironed \* \* \*

The foregoing statements and representations made by the respondent, A. Schottland, Inc., as set out herein, serve as representations to the purchasing public and to garment manufacturers that such fabrics so advertised, offered for sale, and sold, were, and are, silk fabrics. The representations hereinabove set forth are, and were, false and misleading in that said fabrics so represented, designated, and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but are, and were, composed entirely of materials other than silk, to wit, rayon.

PAR. 5. In the course and conduct of its business as described herein, respondent Valmor Undergarment Co., Inc., purchases certain fabrics manufactured by the respondent A. Schottland, Inc., with which fabrics respondent A. Schottland, Inc., furnishes certain tags and labels as described herein. Respondent Valmor Undergarment Co., Inc., uses said fabrics, so purchased, and said tags and labels in the manufacture by it of garments, ladies' slips, and other allied prod-

ucts which it offers for sale and sells, tagged and labeled as aforesaid, in commerce, accompanied by a display folder bearing the following:

PURE DYE  
NANUETTE  
CREPE

*DuPont Rayon and Silk*

The said display folders featured the words "Pure Dye" and "Ray-silk" in large conspicuous type, while the words "Made of Silk and Rayon" were printed in less conspicuous type. Other garments manufactured by the respondent Valmor Undergarment Co., and offered for sale and sold in commerce as hereinbefore set out were accompanied by display folders on which appeared in large, conspicuous type "Van Ceta Taffeta Slips," and "Val Sheen Satin Slips."

The statements and representations made by the respondent Valmor Undergarment Co., Inc., as in this paragraph set out, serve as representations to members of the purchasing public and to retail dealers and other dealers that such garments so advertised and offered for sale were, and are, silk garments. Such representations are, and were, false and misleading in that said garments so represented, designated, and referred to are not, and were not, composed of silk, the product of the cocoon of the silkworm, but are, and were, composed of materials other than silk.

PAR. 6. The word "silk" for many years last past has had and still has in the mind of the retail dealers and consuming public generally a definite and specific meaning, to wit: The product of the cocoon of the silkworm. Silk products for many years have held and still hold a great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics; a variety of distinctive terms has been applied to the fabrics resulting from different types of weaving of silk fiber. Dress goods, ladies' undergarments, and other items of wearing apparel designated, described and referred to as "Pure Dye," "Crepe," "Taffeta," and "Satin" or by use of any coined word which includes the word "Silk," have been for a long time, and at the present time still are, associated in the public mind with the fabric made from the cocoon of the silkworm commonly known and understood by the public generally as "Silk."

PAR. 7. There are among the competitors of respondents, corporations, individuals, partnerships, and firms engaged in the manufacture and sale of fabrics, garments, ladies' slips, and other allied products in commerce between and among the various States of the

United States and in the District of Columbia who do not misrepresent in any manner the kind or quality of goods manufactured, offered for sale, and sold by them.

PAR. 8. The use by respondents of the representations set forth herein have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are, and were, true and to cause them to purchase said products as a result of such erroneous beliefs induced as above set forth. The use by respondents of the representations aforesaid has unfairly diverted, and does unfairly divert, trade in commerce to the respondents from their said competitors, and thereby substantial injury is being, 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 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 Valmor Undergarment Co., Inc., in which answer the Valmor Undergarment Co., Inc., 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; the answer of the respondent, A. Schottland, Inc., denying many of the material allegations of the complaint, 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 brief filed by the counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, A. Schottland, Inc., and Valmor Undergarment Co., Inc., 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 textile fabrics including women's undergarments and

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

1. Using the words "pure dye" 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, provided that in the case of a fabric or material composed in part of unweighted silk and in part of materials other than unweighted silk, such words may be used as descriptive of the unweighted 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. Using the words "satin," "taffeta," or "crepe" or any other word or words of similar import or meaning to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm: *Provided, however,* That when said words are used truthfully to designate or describe the type of weave, construction or finish, such words must be qualified by using in immediate connection and conjunction therewith in letters of at least equal size and conspicuousness a word or words clearly and accurately naming or describing the fibers or materials from which said product is made;

3. Using the term "silk" or any other term or terms which includes the word "silk," or any colorable simulation thereof, or using any other term of similar import or meaning to describe or designate any fabric or product which is not wholly composed of silk, the product of the cocoon of the silkworm, provided that in the case of a fabric or product composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content when immediately accompanied by a word or words accurately describing and designating such other materials 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 service upon them of this order file with the Commission a report in writing setting forth in detail the manner in which they have complied with this order.

IN THE MATTER OF  
CIVILIAN PREPARATORY SERVICE, INC.

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

*Docket 3387. Complaint, Apr. 22, 1938—Decision, Dec. 28, 1939*

Where a corporation engaged in sale and distribution of correspondence courses of study and instruction for civil service examinations for certain Government positions to purchasers in various other States, in substantial competition with others similarly engaged in sale and distribution in commerce among the various States and in the District of Columbia of correspondence courses of study and instruction to prepare students for such examinations, and of correspondence courses of study and instruction of other kinds; in soliciting, directly and through its representatives, sale of its said courses—

- (a) Represented that it or its representatives were connected with or under supervision of Government or Civil Service Commission, and that it was cooperating with and working in conjunction with said commission or by authorization thereof in preparing students for such examinations, and that its school had been selected by such commission to select and prepare candidates for civil service examinations and positions, facts being neither it nor its representatives had any connection with Government or Civil Service Commission, did not cooperate with latter or operate by authority thereof, as above set forth, and statements and representations made as above described were otherwise false;
- (b) Represented that it was able to and did secure advance information with respect to civil service examinations, and that such examinations would be held at specified times and places, or within specified time, and that Government positions were open or available to those taking its course and passing Civil Service examination, facts being it had no means of securing advance information with respect to such examinations not open to members of general public, and did not in fact secure such information, in case of the greater percentage of students solicited Government positions were not then open and available, nor were civil service examinations fixed for definite time or place or to be held within specified time in the future, nor within reasonable time thereafter;
- (c) Represented that prospects solicited had been selected for definite Government positions after qualifying by taking its courses and passing the civil service examination, and that it was necessary to take said course in order to take such examination or secure a position under the classified civil service, and that its students were given preferences in such examinations or in appointments to such positions, and that its school had the recognition or approval of the Government or said commission, facts being neither it nor its representatives had any official authority to select prospects for such positions or examinations therefor, representations made by it as above set forth were otherwise false, and it could not assure or guarantee Government position to its students and did not fulfill such representations made by its representatives; and

## Complaint

(d) Represented that payment of purchase price of its course of instruction, or balance due after initial payment, might be paid after the student obtained a position with the Government, facts being it did not fulfill promises made by its representatives that payments on the cost of its courses might be thus deferred, but required payment during period of instruction, regardless of employment by Government;

With effect of misleading purchasers and prospective purchasers of its said courses into the erroneous and mistaken belief that such various misrepresentations were true, and to induce such purchasers to buy its said courses of study and instruction by reason thereof, and of thereby unfairly diverting trade to it from competitors engaged in sale of similar and other courses, and including those who, in the sale of their respective courses, do not similarly or in any manner misrepresent the same or matters pertaining thereto; to the substantial injury of competition in commerce among the various States:

*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. Robert S. Hall*, trial examiner.

*Mr. John R. Phillips, Jr.* for the Commission.

*Via, Hardwick & Quinlan*, of Huntington, W. Va., 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 Civilian Preparatory Service, 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. Said respondent, Civilian Preparatory Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its office and principal place of business located at Simms-Keller Building, in the city of Huntington in said State.

PAR. 2. Said respondent, Civilian Preparatory Service, Inc., a corporation, is now, and has been for more than 2 years 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 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 United States mail. Respondent 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 West Virginia to, into, and through States of the United States other than West Virginia 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 of other kinds, all of which are pursued by correspondence. Said respondent 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 respondent, in soliciting the sale of and in selling its said courses of study and instruction has made many misrepresentations to prospective students both directly and through its representatives, among which misrepresentations are the following:

1. That such representatives represent or are connected with or are under the supervision of the United States Government or the United States Civil Service Commission.

2. That respondent, in conducting said business as aforesaid, is an agency or representative of or connected with the United States Government or the United States Civil Service Commission, or that it is cooperating with or working in conjunction with or by authorization of the United States Civil Service Commission in preparing students for civil service examinations.

3. That a Government job is assured or guaranteed to the student taking the course offered.

4. That respondent has means of securing and does in fact secure advance information concerning examinations to be held by the United States Civil Service Commission.

5. That Government positions are open and available to students taking respondent's course and passing the civil service examination.

6. That civil service examinations will be held at definite times or places or within a specified time.

7. That the prospect solicited has been selected for a definite Government position after qualifying by taking respondent's course and passing the civil service examination.

8. That it is necessary to take respondent's course in order to take a civil service examination or secure a Government position under the classified civil service.

9. That respondent school has been selected by the United States Civil Service Commission to select and prepare candidates for civil service examinations and positions.

10. That the balance due after the initial payment may be paid after the student starts working for the Government.

11. That respondent school is recognized or approved by the Government.

12. That students of the school conducted by respondent are given preferences in civil service examinations or in appointments to Government positions.

PAR. 5. In truth and in fact neither respondent nor its representatives represent or are connected with the United States Government or the United States Civil Service Commission, nor do they cooperate with or operate by authority of said Civil Service Commission in preparing students for civil service examinations. Respondent cannot assure or guarantee a Government job to its students and does not fulfill such representations when made by its representatives. Respondent has no means of securing advance information concerning examinations to be held by the United States Civil Service Commission that is not open to members of the general public, nor does it in fact secure such information. In the greater percentage of cases of solicitation of students by respondent's representatives, Government positions are not open and available at the time and civil service examinations are not fixed for a definite time or place or to be held within a specified time in the future, nor are examinations for such positions held within a reasonable time thereafter. Neither respondent nor its representatives have any official authority to select prospects for Government positions or for examinations therefor. It is not necessary to take respondent's courses in order to take civil service examinations or to secure Government positions under the classified civil service. The school conducted by respondent has not been selected by the United States Civil Service Commission to prepare candidates for civil service examinations and positions. Respondent does not fulfill promises made by its representatives that payments on the cost of its courses may be made after its students start working for the Government, but requires payment therefor during the period of instruction regardless of employment by the Government. The school con-

ducted by respondent is not recognized or approved by the Government and students thereof are not given preferences in civil service examinations or in appointments to Government positions.

PAR. 6. The foregoing representations used by respondent through its representatives in offering for sale and selling its courses of study and instruction have had and now have the tendency and capacity to do in fact mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraph 4 hereof are true, and to induce them to purchase such courses of study and instruction on account thereof. Thereby trade is unfairly diverted to respondent 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 those who in the sale of their respective courses of study and instruction do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, 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.

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 April 22, 1938, issued, and on April 25, 1938, served its complaint in this proceeding upon the respondent, Civilian Preparatory Service, Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said 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 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.** Said respondent, Civilian Preparatory Service, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its office and principal place of business located at Simms-Keller Building, in the city of Huntington in said State.

**PAR. 2.** Said respondent, Civilian Preparatory Service, Inc., a corporation, is now, and has been for more than two years 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 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 United States mail. Respondent in the course and conduct of said business during the time aforesaid caused and does now cause its said course of study and instruction to be transported from its said place of business in West Virginia to, into and through States of the United States other than West Virginia 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 of other kinds, all of which are pursued by correspondence. Said respondent 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 respondent, in soliciting the sale of and in selling its said courses of study and instruction has made many misrepresentations to prospective students both directly and through its representatives, among which misrepresentations are the following:

1. That such representatives represent or are connected with or are under the supervision of the United States Government or the United States Civil Service Commission.

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2. That respondent, in conducting said business as aforesaid, is an agency or representative of or connected with the United States Civil Service Commission, or that it is cooperating with or working in conjunction with or by authorization of the United States Civil Service Commission in preparing students for civil service examinations.

3. That a Government job is assured or guaranteed to the student taking the course offered.

4. That respondent has means of securing and does in fact secure advance information concerning examinations to be held by the United States Civil Service Commission.

5. That Government positions are open and available to students taking respondent's course and passing the civil service examination.

6. That civil service examinations will be held at definite times or places or within a specified time.

7. That the prospect solicited has been selected for a definite Government position after qualifying by taking respondent's course and passing the civil service examination.

8. That it is necessary to take respondent's course in order to take a civil service examination or secure a Government position under the classified civil service.

9. That respondent school has been selected by the United States Civil Service Commission to select and prepare candidates for civil service examinations and positions.

10. That the balance due after the initial payment may be paid after the student starts working for the Government.

11. That respondent school is recognized or approved by the Government.

12. That students of the school conducted by respondent are given preferences in civil service examinations or in appointments to Government positions.

PAR. 5. In truth and in fact neither respondent nor its representatives represent or are connected with the United States Government or the United States Civil Service Commission, nor do they cooperate with or operate by authority of said Civil Service Commission in preparing students for civil service examinations. Respondent cannot assure or guarantee a Government job to its students and does not fulfill such representations when made by its representatives. Respondent has no means of securing advance information concerning examinations to be held by the United States Civil Service Commission that is not open to members of the general public, nor does it in fact secure such information. In the greater percentage of cases of solicitation of students by respondent's representatives, Government positions are not open and available at the

time and civil service examinations are not fixed for a definite time or place or to be held within a specified time in the future, nor are examinations for such positions held within a reasonable time thereafter. Neither respondent nor its representatives have any official authority to select prospects for Government positions or for examinations therefor. It is not necessary to take respondent's courses in order to take civil service examinations or to secure Government positions under the classified civil service. The school conducted by respondent has not been selected by the United States Civil Service Commission to prepare candidates for civil service examinations and positions. Respondent does not fulfill promises made by its representatives that payments on the cost of its courses may be made after its students start working for the Government, but requires payment therefor during the period of instruction regardless of employment by the Government. The school conducted by respondent is not recognized or approved by the Government and students thereof are not given preferences in civil service examinations or in appointments to Government positions.

PAR. 6. The foregoing representations used by respondent through its representatives in offering for sale and selling its courses 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 as set out in paragraph 4 hereof are true, and to induce them to purchase such courses of study and instruction on account thereof. Thereby trade is unfairly diverted to respondent 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 those who in the sale of their respective courses of study and instruction do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, 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.

#### 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

Order

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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 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, Civilian Preparatory Service, 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 courses of study and instruction, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the respondent or its representatives have any connection with or are under the supervision of the United States Government or the United States Civil Service Commission, or that respondent is cooperating with or working in conjunction with or by authorization of the United States Civil Service Commission in preparing students for civil service examinations, or that its school has been selected by the United States Civil Service Commission to select and prepare candidates for civil service examinations and positions.

2. Representing that the respondent is able to secure any advance information with respect to civil service examinations which is not available to the general public.

3. Representing that Government positions are open or available to students taking respondent's course and passing the civil service examination, or that civil service examinations will be held at a specified time or place, unless such examinations have in fact been set by the United States Civil Service Commission for such time and place.

4. Representing that a prospect solicited has been selected for a definite Government position after qualifying by taking respondent's course and passing the civil service examination, or that it is necessary to take respondent's course in order to take a civil service examination or secure a government position under the classified civil service.

5. Representing that students of the school conducted by respondent are given preferences in civil service examinations or in appointments to Government positions, or that respondent's school has the recognition or approval of the United States Government or the Civil Service Commission.

6. Representing that the payment of the purchase price of respondent's course of instruction, or any part thereof, may be deferred until after the student has obtained a position with the Government, unless and until such is the fact.

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

Complaint

30 F. T.C.

IN THE MATTER OF  
METZ BROS. BAKING 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 SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 3740. Complaint, Mar. 20, 1939—Decision, Dec. 28, 1939*

Where a corporation engaged in manufacture, offer, sale, and distribution of bread between and among the States of Iowa, Minnesota, South Dakota, and Nebraska, for resale in said various States and, as thus engaged, in substantial competition with others similarly engaged in manufacture, sale, and distribution of said product in commerce—

Discriminated in price between different purchasers buying said bread of like grade and quality sold by it in interstate commerce for use, consumption, and resale, through giving and allowing to some of its purchasers lower prices than given or allowed to others of its purchasers, in lowering prevailing wholesale price of bread sold by it and its competitors in various trade areas in aforesaid section from 11 cents to 8 cents for 24-ounce loaf, and from 8 cents to 6 cents for 16-ounce loaf, while retaining, in certain Iowa trade area, price of 10 cents for 24-ounce loaf, 8 cents for 20-ounce loaf, and 6 cents for 16-ounce loaf;

With result that effect of said discrimination in price thus made by it was to substantially lessen competition and to injure, destroy, or prevent competition between it and its competitors in sale and distribution of such product, and to tend to create monopoly in it in line of commerce concerned in the various localities or trade areas in the United States in which said competitors respectively were engaged:

*Held*, That such acts and practices, under the facts and circumstances set forth, were in violation of section 2 (a) of act of Congress approved October 15, 1914, as amended.

Before *Mr. Webster Ballinger*, trial examiner.

*Mr. John T. Haslett* for the Commission.

*Sifford & Wadden*, of Sioux City, Iowa, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions 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), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. The respondent, Metz Bros. Baking Co., is a corporation organized and existing under and by virtue of the laws of the

State of Iowa, with its principal office and place of business located at 408 Pearl Street, Sioux City, Iowa, and plants located at Sioux City, Iowa, and Sioux Falls, S. Dak.

PAR. 2. Respondent corporation is now and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling, and distributing bread. Respondent sells and distributes said product in commerce between and among the States of Iowa, Minnesota, South Dakota, and Nebraska, and preliminary to or as a result of said sales causes said product to be shipped and transported from the place of origin of the shipment to the purchasers thereof who are located in the aforementioned States other than the State of origin of the shipment. There is, and has been at all times herein mentioned, a continuous current of trade and commerce in said product across State lines between respondent's factories and the purchasers of said product. Said product is sold and distributed for resale within the States of Minnesota, South Dakota, Nebraska, and Iowa.

PAR. 3. 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 and with individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bread in commerce.

PAR. 4. In the course and conduct of its business, as aforesaid, since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying said bread of like grade and quality sold by the respondent in interstate commerce for use, consumption, and resale by giving and allowing certain of its said purchasers of its product lower prices than given or allowed other of its said purchasers. Said discrimination in price is, by the following practice and policy, pursued by the respondent, to wit: In certain trade areas or localities respondent sells its product of the same grade, quality, and weight at lower prices than it sells the identical product in other trade areas or localities. To illustrate, the respondent, in the course and conduct of its business, maintains two manufacturing plants for bread, one of said plants being located in Sioux City, Iowa, and the other plant being located in Sioux Falls, S. Dak.

From its plant located in Sioux Falls, S. Dak., respondent sells its product to customers located in the trade areas of southeastern, northwestern, and central South Dakota and a part of southwestern Minnesota, and 30 miles into the northwestern territory of Iowa. From its plant located in Sioux City, Iowa, respondent sells its product to customers located in the aforementioned area and also to customers

## Findings

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located in the trade area comprising the city of Omaha, Nebr., and in and around the trade area of Marshall and Worthington, Minn.

From the respondent's plants, as aforementioned, fleets of trucks are operated for the sale and distribution of bread into and through the various States, as aforesaid. Prior to September 16, 1938, the prevailing wholesale price of bread sold by the respondent and its competitors in the various trade areas, as aforesaid, except in the State of Iowa, was 11 cents for a 24-ounce loaf, and 8 cents for a 16-ounce loaf. On September 16, 1938, respondent lowered the wholesale price of bread within the trade areas designated as southwestern Minnesota and southeastern, northwestern, and central South Dakota, from 11 cents to 8 cents for a 24-ounce loaf, and from 8 cents to 6 cents for a 16-ounce loaf, or a decrease in the wholesale price of 27 percent; while in the trade area of the northwestern section of the State of Iowa the respondent maintained a price of 6 cents for a 16-ounce loaf, 8 cents for a 20-ounce loaf, and 10 cents for a 24-ounce loaf.

PAR. 5. The general effect of said discrimination in price so made by the respondent, as set forth above, has been and may be (a) substantially to lessen competition, and (b) to injure, destroy, or prevent competition between respondent and its competitor in the sale and distribution of such product, and (c) to tend to create a monopoly in respondent in said line of commerce in the various localities or trade areas in the United States in which such competitors respectively are engaged in business.

PAR. 6. The foregoing alleged acts and practices of said respondent are violations of subsection 2 (a) of section 1 of the said act of Congress approved June 19, 1936, entitled, "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes,'" approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes.

## 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 section 1 of an act entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13) and for other purposes" approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on March 20, 1939, issued and served its complaint in this proceeding upon the respondent Metz Bros. Baking Co., a corporation, charging it with discriminating in

price between different purchasers of bread in violation of subsection (a) of section 2 of the said act, as amended.

After the issuance and service of said complaint an answer was filed by the respondent Metz Bros. Baking Co. Pursuant to written notice to the respondent herein of the date, place, and time hearing would be held, the respondent by counsel appeared and made motion before a trial examiner for the Commission to withdraw the answer filed and to file with the Commission in lieu thereof an answer admitting all the material allegations as set forth in the complaint to be true, and waiving all intervening procedure and further hearings, all of which appears in the record herein. Subsequently, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving all intervening procedure, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearings before the Commission on said complaint and substitute answer, briefs, and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Metz Bros. Baking Co., is a corporation organized and existing under and by virtue of the laws of the State of Iowa with its principal office and place of business located at 408 Pearl Street, Sioux City, Iowa, and having plants located at Sioux City, Iowa, and Sioux Falls, S. Dak.

PAR. 2. The respondent is engaged in the business of manufacturing, offering for sale, selling, and distributing bread. The respondent sells and distributes such product in commerce between and among the States of Iowa, Minnesota, South Dakota, and Nebraska, and causes such product to be shipped and transported from the place of origin of the shipment to purchasers who are located in the aforementioned States other than the State of origin of the shipment. There has been at all times a continuous current of trade and commerce in said product across State lines between respondent's manufacturing plants and the purchasers of said product. The product manufactured by the respondent is sold and distributed for resale within the States of Minnesota, South Dakota, Nebraska, and Iowa.

PAR. 3. In the course and conduct of its business as aforesaid, the respondent has been and is in substantial competition with other

## Findings

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corporations and with individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing bread in commerce.

PAR. 4. Since June 19, 1936, in the course and conduct of the business engaged in by the respondent, the respondent has been discriminating in price between different purchasers buying said bread of like grade and quality sold by the respondent in interstate commerce for use, consumption, and resale by giving and allowing some of its purchasers of its product lower prices than given or allowed other of its said purchasers. The respondent pursued the following practice and policy in discriminating in price, to wit: In certain trade areas or localities respondent sold its product of the same grade, quality, and weight at a lower price than it sold the identical product in other trade areas or localities. From the respondent's plant located in Sioux Falls, S. Dak., respondent sold its product to customers located in the trade areas of southeastern, northwestern, and central South Dakota, and a part of southwestern Minnesota, and 30 miles into the northwestern territory of Iowa. From its plant in Sioux City, Iowa, respondent sold its product to customers located in the aforementioned area and also to customers located in the trade area comprising the city of Omaha, Nebr., and in and around the trade area of Marshall and Worthington, Minn. From these plants as aforementioned, fleets of trucks operate for the sale and distribution of bread into and through the various States as aforesaid. Prior to September 16, 1938, the prevailing wholesale price of bread sold by the respondent and the respondent's competitors in the various trade areas as aforesaid, except in the State of Iowa, was 11 cents for a 24-ounce loaf, and 8 cents for a 16-ounce loaf. On September 16, 1938, respondent lowered the wholesale price of bread within the trade areas designated as southwestern Minnesota and southeastern, northwestern, and central South Dakota from 11 cents to 8 cents for a 24-ounce loaf and from 8 cents to 6 cents for a 16-ounce loaf, while at the same time, in the trade area of the northwestern section of the State of Iowa, the respondent maintained a price of 6 cents for a 16-ounce loaf, 8 cents for a 20-ounce loaf, and 10 cents for a 24-ounce loaf.

PAR. 5. The effect of said discrimination in price so made by the respondent as heretofore set forth has been to substantially lessen competition and to injure, destroy, or prevent competition between respondent and its competitors in the sale and distribution of such product and to tend to create a monopoly in respondent in said line of commerce in the various localities or trade areas in the United States in which such competitors respectively are engaged.

## CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of facts, the Commission concludes that the aforesaid acts and practices of respondent, Metz Bros. Baking Co., are in violation of section 2 (a) of said 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."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer filed herein on December 2, 1939, by respondent admitting all the material allegations of the complaint to be true and waiving the taking of evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that said respondent has violated the provisions of section 2 (a) 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.

*It is ordered,* That the respondent, Metz Bros. Baking Co., its officers, representatives, agents, and employees, cease and desist:

1. From selling bread from its plants at Sioux City, Iowa, or Sioux Falls, S. Dak., to purchasers in the trade areas designated as southwestern Minnesota and southeastern, northwestern, and central South Dakota at 8 cents for the 24-ounce loaf, while selling bread of like grade and quality to purchasers in the trade area designated as the northwestern section of the State of Iowa at 10 cents for the 24-ounce loaf; and to purchasers in the trade areas designated as southwest Minnesota and southeastern, northwestern, and central South Dakota at 8 cents for the 24-ounce loaf, while selling such product to purchasers in the trade area designated as the northwest section of the State of Iowa at 8 cents for the 20-ounce loaf.

2. From continuing or resuming the discriminations in price found by the Commission in paragraph 4 of the findings as to the facts.

3. From otherwise discriminating in price in manner and degree substantially similar to the discriminations set forth in paragraph 4 of the Commission's findings as to the facts.

Order

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

## Syllabus

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

*Docket 3791. Complaint, May 16, 1939—Decision, Dec. 28, 1939*

Where a corporation engaged in manufacture of its "Calox Tooth Powder" or dentifrice, and in sale and distribution thereof to purchasers at various points in other States, in substantial competition with those likewise engaged in such sale and distribution of tooth powders or dentifrices, including among competitors some who do not in any way misrepresent the ingredients in or efficacy of their products in distribution thereof in commerce; in advertising its said product in newspapers and other periodicals of general circulation in the various States and in the District of Columbia, and through broadcasts from radio stations of interstate scope and power—

- (a) Represented, directly and through implication, that use of said powder would assure possession of teeth which were white, clear and sparkling and which were beautiful as those of movie stars, and that such stars employed its said powder to the exclusion of other dentifrices and relied upon it alone in the care of their teeth, through such statements, among others, as "For teeth that 'Shine like the Stars' use Calox Powder," "\* \* \* Take a cue from Hollywood \* \* \*," "\* \* \* gives teeth the whiteness and brilliance the screen demands. It deserves its popularity with the stars \* \* \*," facts being no dentifrice alone is capable of giving all movie stars white, clear and sparkling teeth, use of its said tooth powder alone will not assure possession of such teeth or those as beautiful as teeth of such stars, and such stars do not employ said powder to exclusion of all other dentifrices nor rely thereon or upon any other dentifrice alone in the care of their teeth;
- (b) Represented, as aforesaid, that no tooth surface was neglected and that its said dentifrice would clean the proximal surfaces between the teeth, and that use thereof would result in the liberation of nascent oxygen in the mouth and would prevent film or decay and remove all types of stains, asserted three worst enemies of one's teeth, facts being said powder would not result in such liberation, but the foam resulting from use thereof, which it emphasized, was due largely to the soap content thereof, and it would not clean the proximal surfaces nor prevent film or decay or remove all types of stains, or any stain other than the ordinary surface stains;
- (c) Represented that sodium perborate in said powder would keep gums firm and healthy, and that use of a tooth powder was more effective in cleansing and polishing teeth than was use of a tooth paste, and would neutralize acid mouth conditions and constituted an effective antiacid, facts being said sodium perborate will not accomplish results claimed therefor and might not be a safe cleansing agent for continued use by one unusually sensitive or allergic thereto, dentists differ in their preference for tooth powders or tooth pastes for the brushing, polishing or cleansing of teeth,

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there is no consensus of opinion in the dental profession favoring use of tooth powders instead of tooth pastes, and said "Calox" will not neutralize acid mouth conditions, is not an efficient antiaacid and, except for use as a mild deodorant, has no substantial value for purposes other than cleansing and polishing the teeth; and

- (d) Represented that said "Calox" was more economical to purchase and use than competitive dentrifices and would accomplish results which could not be accomplished by such competing products, many of which it asserted had a greater tendency to injure, scratch, or destroy tooth enamel, tooth structure, or mouth tissues, facts being whether said powder was more economical to purchase and use than competitive tooth pastes would depend upon facts involved in any such comparison of costs and uses, cleansing ingredients of said powder were chalk, soap, sodium perborate, calcium peroxide, and magnesium carbonate, with foam largely due, as above set forth, to soap content and not to release of oxygen by other ingredients, most dentrifices, including pastes and powders, possess in common essential ingredients which are generally safe and effective for such cleansing purposes, many competing products have no more tendency to injure, scratch, or destroy tooth enamel, structure, or mouth tissue than has said "Calox," and effectiveness of any tooth powder or paste is dependent largely upon manner in which applied, with brush employed playing an important part in cleansing process;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that such representations were true, and with result, as direct consequence of such beliefs induced by said misrepresentations, that number of purchasing public bought substantial quantity of its said powder and trade was unfairly diverted to it from others likewise engaged in sale and distribution of dentrifices truthfully advertised and vended by them; 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 in commerce and unfair and deceptive acts and practices therein.

*Mr. Merle P. Lyon* for the Commission.

*Mr. William J. Wardall*, Trustee, Estate of McKesson & Robbins, Inc., of New York City and *Mr. Clinton Robb*, 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 McKesson & Robbins, 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 is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Mary-

land, with its office and principal place of business located at Bridgeport, Conn. Respondent is now, and for many years last past has been, engaged in the manufacture, sale, and distribution of various drugs, pharmaceutical, and proprietary products, including, among others, a dentifrice known as "Calox Tooth Powder."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes and has caused its said product, "Calox Tooth Powder," when sold, to be transported from its factory at Bridgeport, Conn., to purchasers located in States of the United States other than the State of origin of such shipments, and also in the District of Columbia. There is now, and has been during all the times herein mentioned, a course of trade in the aforementioned product sold by the 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, respondent is now and has been in substantial competition with other corporations and with persons, firms, and partnerships engaged in the sale and distribution of tooth powders, tooth pastes, and other products intended and used for cleansing teeth, 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 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 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 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 statements, and representations

contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:<sup>1</sup>

The primary representation used by the respondent in its current advertising is the picturization of various popular movie stars, together with the picturization of a can of Calox Tooth Powder, accompanied by the slogan, "For Teeth that 'Shine like the Stars' use Calox Powder."

PAR. 5. Through the use of the statements and representations hereinabove set forth, and other similar statements not herein set out, all of which purport to be descriptive of respondent's tooth powder and its effectiveness in cleansing the teeth and mouth, the respondent has falsely represented, directly and by inference and implication, among other things: (1) That movie stars have white, clear, and sparkling teeth because they use Calox Tooth Powder, and that Calox alone keeps their teeth white, clear, and sparkling, (2) That anyone who uses Calox Tooth Powder can have teeth as beautiful as those of the movie stars, and that the use of Calox Tooth Powder alone will result in beautiful teeth like those of movie stars, (3) That Calox Tooth Powder will help clean the proximal surfaces between the teeth as well as the broad exposed areas of the teeth, (4) That the sodium perborate contained in Calox Tooth Powder is a safe and efficient cleansing agent, and that it results in the liberation of nascent oxygen in the mouth in such manner as to effectively remove or prevent film, stain, or decay, (5) That the sodium perborate contained in Calox Tooth Powder will have a beneficial effect on the gums and help to keep them firm and healthy, (6) That the use of Calox Tooth Powder will make all normal sets of teeth white and brilliant, (7) That tooth powders, including Calox Tooth Powder are more effective for brushing, polishing, and cleansing teeth than tooth pastes, and are generally recommended by dentists in preference to tooth pastes, (8) That Calox Tooth Powder neutralizes acid mouth conditions, is an efficient antacid, and has substantial value for other purposes than cleansing the teeth, (9) That Calox Tooth Powder is a deodorant, and (10) That Calox Tooth Powder is more economical to purchase and use than competitive tooth pastes.

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

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<sup>1</sup> The quoted matter set forth at length in the complaint at this point, in which respondent purports to describe the qualities and effectiveness of its said preparations, is also set forth in the findings, *infra*, at p. 283, and for that reason is here omitted in the interest of brevity.

true facts are that Calox Tooth Powder does not have any of the qualities or achieves any of the results claimed and represented as hereinabove described.

The only cleansing ingredients contained in Calox Tooth Powder are chalk, soap, sodium perborate, calcium peroxide, and magnesium carbonate. Sodium perborate is a drug which should be used in the mouth only under the supervision of a dentist or physician, and is so highly alkaline that indiscriminate use thereof, as in a dentifrice, may result in alkaline burns and lesions of the gums and oral tissues. The consistent use of a dentifrice containing sodium perborate in the concentration found in Calox Tooth Powder may have the tendency and effect of causing soreness, irritation, and chemical burns of the gums and oral tissues.

In truth and in fact, the movie stars do not depend upon Calox Tooth Powder or any other dentifrice alone, but they employ the services of dentists who give them regular prophylactic treatments. The white, clear and sparkling teeth of movie stars is not the result of the use of Calox Tooth Powder, and Calox Tooth Powder alone does not keep their teeth white, clear, and sparkling. Movie stars generally do not use Calox Tooth Powder exclusively or in preference to competing dentifrices, and the permitted use of pictures and testimonials of various movie stars in respondent's advertising of Calox Tooth Powder is the result of a reciprocal publicity arrangement primarily intended for the advertising value thereof in promoting the screen careers and popularity of said movie stars. The use of Calox Tooth Powder will not result in teeth comparable to, or as beautiful as, the teeth of movie stars pictured in respondent's advertising.

Neither Calox Tooth Powder nor any other dentifrice will help clean the proximal surfaces between the teeth or exert any cleansing effect beyond the parts actually reached by the toothbrush. The effect of the sodium perborate contained in Calox Tooth Powder, either alone or in conjunction with any other cleansing ingredients contained therein, in the liberation of active oxygen is extremely slow and will not take place to any marked degree during the short time that Calox Tooth Powder is applied to the teeth. The foam obtained from the use of Calox Tooth Powder is due to the soap content thereof, and not to oxygen released by the sodium perborate or any other ingredient contained therein. Calox Tooth Powder will not prevent film, stain, or decay of teeth. The use of sodium perborate in a dentifrice will not prevent or eradicate gum infection or have any beneficial effect on the gums, but on the contrary may result in painful burns and lesions of the gums. The

use of Calox Tooth Powder will not make all normal sets of teeth white and brilliant. Many normal sets of teeth vary in all shades of color and translucency ranging from brilliant to dull and these shades cannot be altered or changed by the use of any dentifrice. Tooth powders, including Calox Tooth Powder, are no more effective for brushing, polishing, and cleansing teeth than tooth pastes. Tooth powders having a chalk base are very similar in properties to toothpastes, and there is no polishing ingredient contained in Calox Tooth Powder which is not found in other tooth powders or pastes. Most dentifrices, both pastes and powders, are composed essentially of chalk or other abrasives which are standardized and safe so far as their cleansing ingredients are concerned. Tooth powders are not generally recommended by dentists in preference to tooth pastes. Calox Tooth Powder is not an efficient antacid and is not effective to neutralize acid-mouth conditions. It does not have substantial value for oral hygiene purposes other than cleansing the teeth. The normal acid-alkali balance of the blood or other bodily fluids cannot be easily changed, and neither Calox Tooth Powder nor any other dentifrice will have any beneficial effect toward changing this balance. Calox Tooth Powder does not have any therapeutic value or any value other than to assist the toothbrush in the cleansing of the teeth. Calox Tooth Powder is not a competent and effective deodorant, and the only effect of the flavoring or other ingredients contained therein is to temporarily mask the breath or other unpleasant odors in some cases. Calox Tooth Powder is no more economical to purchase and use than other tooth powders or pastes. Calox Tooth Powder is no more concentrated or economical to use than other competing dentifrices, and its use does not accomplish results that cannot be accomplished by other competing preparations. Competitive dentifrices do not injure, scratch, or destroy tooth enamel, tooth structure, or mouth tissues to any greater extent than does respondent's tooth powder. The use of competitive dentifrices, including pastes, is neither unsafe nor dangerous. All tooth powders and pastes are essentially similar in properties and effect. Any cleansing effect accomplished by brushing the teeth with tooth paste or powder is due primarily to the mechanical action of the brush and not to the ingredients contained in the tooth paste or powder.

PAR. 7. There are among respondent's competitors many who manufacture, sell, and distribute tooth powders and tooth pastes and other products designed, intended and sold for the purpose of cleansing and beautifying the teeth who do not in any way misrepresent the qualities, effectiveness, or character of their respective products.

PAR. 8. The use of the aforesaid false and misleading statements, representations and advertisements by the respondent in designating or describing its said product, Calox Tooth Powder, and the effectiveness of said product in the cleansing and care of the teeth, in offering for sale and in selling its said product, had, and now has, a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true, and that said product possesses the properties represented and will in truth accomplish the results claimed.

PAR. 9. As a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said product, Calox Tooth Powder, with the result that trade has been unfairly diverted to the respondent from competitors likewise engaged in the business of distributing and selling tooth powders, tooth pastes, and similar products or other products designed, intended and sold for use in the cleansing and care of the teeth, and who truthfully represent the effectiveness and qualities of their respective products.

As a result thereof, injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. 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 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 16th day of May 1939, issued its complaint against said respondent McKesson & Robbins, Inc., and caused such complaint to be served as required by law, 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 June 22, 1939, 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, Clinton Robb, 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, McKesson & Robbins, Inc., is a corporation duly organized and existing under the laws of the State of Maryland with its chief office and principal place of business in the city of New York, N. Y., but with other offices in the city of Bridgeport, Conn., and elsewhere in the United States. Respondent is now and for some time has been engaged in the business of manufacturing, selling, and distributing in commerce among and between the various States of the United States a tooth powder or dentifrice known as "Calox Tooth Powder."

**PAR. 2.** By order of the District Court of the United States for the Southern District of New York, December 19, 1938, in Proceedings for the Reorganization of a Corporation Under Chapter 10 of the Bankruptcy Act, William J. Wardall was appointed sole trustee with authority to conduct the business of respondent corporation, under which authorization he since has continuously acted and now is acting.

**PAR. 3.** 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 at various points in States of the United States other than the State from which said shipments are made. Respondent 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. 4.** Respondent is now and has been in the course and conduct of its business as aforesaid in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling tooth powders or dentifrices in commerce among and between the various States of the United States.

PAR. 5. Respondent, in the course and conduct of its business in such commerce for the purpose of inducing the purchase of that product, Calox Tooth Powder, 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 and to be broadcast from radio stations of interstate scope and power. These advertisements contain statements concerning the ingredients in, and efficacy of, the product Calox Tooth Powder, 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 those advertisements made in substance the following statements:

1. For teeth that "Shine like the Stars" use Calox Powder.

2. Let a star show you how to have teeth that shine like the stars! Brush your teeth as the movie stars do—Change to Calox! A star's teeth are precious as jewels. Only a superb dentifrice gets the job of protecting and polishing them. Many Hollywood stars—following the advice of dentists—have chosen powder for brushing their teeth. But not just *any* powder. The Hollywood choice is the safer, softer powder—Calox. Take a cue from Hollywood. Decide to change to Calox—today. Then watch ugly stains disappear. Watch Calox bring up a high mirror gloss on your teeth. Hollywood has no "patent" on beautiful teeth. You, too, can have \* \* \* teeth that shine like the stars.

3. Why Hollywood says "O. K." 1. Gives "High-Luster" Polish. Five scientifically approved cleansing and polishing agents get to work. Teeth start to sparkle! 2. Double safe Because It Is \* \* \* Double Sifted through 100-mesh screens. It *cannot* contain any grit or pumice. 3. Releases Oxygen. Oxygen is Nature's own purifying agent. 4. Made with Prescription Care by McKesson & Robbins who have supplied drugs to physicians since 1833.

4. Have teeth That Shine Like the Stars. Calox gives teeth the whiteness and brilliance the screen demands. It deserves its popularity with the stars. Out in Hollywood, where a "starry" smile is worth more cold cash than anywhere on earth, they found out how Calox makes teeth *sparkle!* So it's Calox in many of the stars' dressing rooms! Calox for that last important brushing before the picture is "shot." Could *you* use "starry" teeth? Then take your teeth seriously. Use the dentifrice that has been tested and proved in the greatest "Personality Laboratory" in the world \* \* \* in the movie studios of Hollywood. Wake up the brilliance that your teeth have *naturally*. Make them \* \* \* shine like stars! Calox is fine and soft \* \* \* a product of pharmaceutical purity. It cleanses safely. And *doubly assures* cleansing by releasing live oxygen in the mouth. Oxygen is Nature's own purifying agent. Calox promotes mouth health \* \* \* helps neutralize mouth acids \* \* \* tends to strengthen gums.

5. Remember, Calox is safe. Screen stars make sure of safety \* \* \* they wouldn't risk a scratchy polish.

6. Adds a charming sparkle to your smile—take this tip from Hollywood \* \* \* use Calox Tooth Powder \* \* \* the very same pure, safe, refreshing dentifrice that helps protect the radiant smile of Jean Parker, scores of other famous screen stars, and millions of people throughout the world.

7. No tooth surface is neglected when your patient uses Calox. In practical mouth hygiene, you recognize the value of cleaning teeth *all over*, at least twice daily. Calox Tooth Powder does not stop with the broad exposed areas, but helps clean the proximal surfaces *between* the teeth as well. Its the safe and efficient amount of perborate in Calox that frees nascent oxygen to foam into the interstices and help force out debris with its penetrating bubbles.

8. It's so easy to combat the discoloration and damage caused by those three enemies lurking in your mouth—Film, Stain and Decay. Calox Tooth Powder contains a special polishing ingredient—marvelously effective and absolutely safe—which removes Film and banishes Stain. The teeth are restored to their natural, lustrous whiteness. And at the same time Calox fights decay. It frees a foam of live, bubbling oxygen that reaches and purifies. Some dentifrices aim at *one* of the Dental Enemies and some aim at another. The McKesson Laboratories perfected Calox to banish *ALL THREE*.

9. Film, Stain and Decay are the three worst enemies of your teeth. Stop them now—before any one says YOU have a "corn-on-the-cob" smile! Calox Tooth Powder removes film and banishes stains with marvelous effectiveness. It polishes the enamel gently, safely, restoring the gleaming natural whiteness of the teeth. A special ingredient tones the gums and helps to keep them firm and healthy. But the outstanding service of Calox is in fighting decay. It releases foaming oxygen that penetrates into the crevices where often dentifrices cannot reach—cleansing and protecting "The Forgotten 60" (hidden surfaces between the teeth).

10. Now—Oxygen Powder actually Foams All Over Teeth and Gums. Calox, as you know, is the famous formula containing Sodium Perborate which is universally used by dentists and physicians in treating Vincent's Infection or "trench mouth." This ingredient in combination with others is the reason why Calox Tooth Powder releases oxygen and lime-water upon contact with moisture in the mouth. You will feel the effects and see the benefits soon after starting to use it. Film and stain are speedily removed. Dull teeth begin to shine. Mouth acids are neutralized. The breath is actually deodorized and sweetened.

11. See how new-born Oxygen Whitens Teeth! Yes, it's true that Calox is not like ordinary tooth powders! It gives results in far shorter time because it contains genuine Sodium Perborate. This ingredient, frequently prescribed for "trench mouth" by dentists and physicians, releases 9 percent available oxygen. These oxygen bubbles force their way into tiny crevices not reached by many dentifrices. Decaying particles are swiftly deodorized. The breath is sweetened. Cleansing action on the teeth is many times more powerful. Calox is absolutely safe and non-irritating, entirely effective. Your own dentist will confirm the fact that Calox is actually healing to the gums and mucous membranes.

12. Dentists Use Powder For Whiter Teeth. Do likewise—and save 50% on Dentifrice.

13. Calox Tooth Powder is not an ordinary dentifrice. It is scientifically designed to accomplish what others neglect. In the mouth it liberates the purifying element oxygen, which foams in tiny penetrating bubbles, into every crevice. It reaches the forgotten areas where food debris ferments, and cleans them out. At the same time the whole mouth is sweetened and deodorized. Calox creates a gentle antacid, milk of lime, which flows over and around the teeth, neutralizing harmful acids. Calox is an ideal dentifrice for protecting the health of the gums. It cleanses, soothes and tones them up with a special ingredient, frequently prescribed by physicians in cases of Vincent's Infection, "trench mouth" and other gum diseases.

14. Calox cleans and polishes all five of the tooth surfaces, including the hidden 60 of the interstices \* \* \* with absolutely no abrasion. The perborate in Calox releases germ-fighting, nascent oxygen bubbles. These penetrate into and force decaying, acid particles out of between-the-teeth spaces and aid greatly in whitening all above-the-gum areas. Calox stimulates normal salivary alkalinity and itself releases gentle, antacid milk of lime. The special ingredients of Calox soothe and tone the gums and keep them healthy.

15. Dentists Recommend It—Dental Authorities say, "Use Powder for home care of the teeth."

16. Saves You Money—Calox costs only one-third as much to use as less efficient dentifrices.

17. Safer, More Effective—Calox is 100% dentifrice. Contains no injurious or unnecessary substances.

18. Dentists Advise Use of Powder. Safer, More Effective. Decay germs breed on the 60 "forgotten" areas, out of sight, where no ordinary dentifrice disturbs them. When you use Calox Tooth Powder, bubbles of purifying OXYGEN penetrate and cleanse those danger spots. Calox chases germs, neutralizing acids, deodorizes food debris. Polishes teeth safely to marvelous whiteness. Keeps gums firm and healthy. Calox costs no more than most tooth pastes. Goes three times as far!

PAR. 6. It is stated by respondent that thirteen of these eighteen statements in the foregoing excerpts from the advertising of Calox Tooth Powder numbered 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 herein, were discontinued by respondent corporation in 1937. Respondent further states that statements or excerpts numbered 2, 3, and 5 were discontinued in 1938, and only statements or excerpts numbered 1 and 6 are stated to have been used in 1939.

PAR. 7. 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, Calox Tooth Powder.

PAR. 8. There is no dentifrice which alone is capable of giving all movie stars white, clear, and sparkling teeth, and the use of Calox Tooth Powder alone will not assure the possession of teeth that are white, clear and sparkling. The use of Calox Tooth Powder will not assure beautiful teeth or teeth that are as beautiful as those of some movie stars. No dentifrice can clean tooth surfaces it does not contact and Calox Tooth Powder will not clean the proximal surfaces between the teeth. The Sodium Perborate contained in Calox Tooth Powder, which is approximately 10 percent, might not be a safe cleansing agent for continued use by a person unusually or peculiarly sensitive or allergic to that drug. The use of Calox Tooth Powder will not result in the liberation of nascent oxygen in the mouth. Calox Tooth Powder will not prevent film on teeth or decay of teeth and will not remove all types of stain from the teeth or any stain other than ordinary surface stains. The Sodium Perborate in Calox

Tooth Powder will not keep gums firm and healthy nor make all normal sets of teeth white and beautiful. Dentists differ in their preference for tooth powders or tooth pastes for the brushing, polishing or cleansing of the teeth and there is no consensus of opinion in the dental profession favoring the use of tooth powders instead of tooth pastes. Calox Tooth Powder will not neutralize acid mouth conditions, is not an efficient antacid, and except for its use as a mild deodorant has no substantial value for purposes other than cleansing and polishing the teeth. Whether Calox Tooth Powder is more economical to purchase and use than competitive tooth pastes will depend upon the facts involved in any such comparison of costs and uses.

PAR. 9. Movie stars do not employ Calox Tooth Powder to the exclusion of all other dentifrices, nor do movie stars rely upon this or any other dentifrice alone in the care of their teeth. The cleansing ingredients of Calox Tooth Powder are chalk, soap, sodium perborate, calcium peroxide, and magnesium carbonate. The foam obtained from the use of Calox Tooth Powder is largely due to the soap content thereof and not to oxygen released by any other ingredient. Most dentifrices, including pastes and powders, possess in common essential ingredients which are generally safe and effective for such cleansing purposes. Many competing dentifrices have no more tendency to injure, scratch or destroy tooth enamel, tooth structure, or mouth tissues than has Calox Tooth Powder. The effectiveness of any tooth powder or tooth paste in the cleansing of the teeth depends largely upon the manner in which applied, and the brush employed with such paste or powder plays an important part in the cleansing process.

PAR. 10. Among the competitors of the respondent are some who do not in any way misrepresent the ingredients in, or the efficacy of, their products in distributing the same in commerce.

PAR. 11. The aforesaid acts and practices of this respondent had, and some of them now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that these representations are true. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the misrepresentations of respondent as aforesaid, a number of the purchasing public has purchased a substantial quantity of respondent's product, Calox Tooth Powder, 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-

ent 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, McKesson & Robbins, Inc., 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 Calox Tooth Powder, 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 the use of Calox Tooth Powder alone will assure the possession of teeth that are white, clear, and sparkling, or will assure beautiful teeth or teeth that are as beautiful as those of some movie stars; that said dentifrice will clean the proximal surfaces between the teeth; that the use of Calox Tooth Powder will result in the liberation of nascent oxygen in the mouth; that Calox Tooth Powder will prevent film on teeth or decay of teeth or that it will remove all types of stain from the teeth or any stains other than ordinary surface stains; that the sodium perborate in Calox Tooth Powder will keep gums firm and healthy and make all normal sets of teeth white and beautiful; that the use of a tooth powder is more effective in cleansing and polishing the teeth than is the use of a tooth paste; that Calox Tooth Powder will neutralize acid mouth conditions, or is an effective antacid; that, except for its use as a mild deodorant, it has any substantial value for purposes other than cleansing and polishing the teeth; that Calox Tooth Powder is more economical to purchase and use than competitive dentifrices unless such is the fact; that movie stars employ Calox Tooth Powder to the exclusion of all other dentifrices, or rely upon it or any other dentifrice alone in the care of the teeth; that the foam obtained from the use of Calox Tooth Powder is due to the oxygen released by any ingredient thereof or is due to anything other than the soap content thereof; that many competing dentifrices have a greater tendency to injure, scratch or destroy tooth enamel, tooth structure, or mouth tissues than has Calox Tooth Powder; or that Calox Tooth Powder will accomplish results which could not 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.

## Complaint

## IN THE MATTER OF

MICHAEL P. BRIGANTI AND FRED C. MATTIA, TRADING  
AS PREMIER COLOR WORKS AND MATTIA AND BRIGANTI COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3826. Complaint, June 19, 1939—Decision, Dec. 28, 1939*

Where an individual engaged in manufacture and sale, under brand name "Ave Maria," of line of effervescent and laxative products—

Set forth on tin containers in which his "Ave Maria Effervescent Preparation" and "Ave Maria Laxative Preparation" were packed, and on cardboard cartons in which such containers were enclosed, legend "\* \* \* Made in U. S. A. from a highly recommended formula of Dr. Arnaldo Piutti, Director of the Pharmaceutical Institute of 'Reggio Universita Di Napoli' (Italy)," and depicted reproductions of three gold medals and decorations and, immediately thereunder, legend "Highest awards in the Hygienic Divisions of International Expositions";

Facts being said products had not, as thus represented, been made from formulas recommended by such a person, and medals and decorations were not reproductions of original medals and decorations awarded such products at expositions, and products in question had not been exhibited at exhibitions as aforesaid nor thus awarded medals or other prizes at expositions, such as preferred by substantial number of persons among purchasing public, and especially Italian-Americans, as superior merchandise to that which has not received any such awards;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all such representations were true, and with result, as direct consequence of such mistaken belief, that number of said purchasing public bought substantial volume of his said products and trade in commerce was thereby diverted unfairly to him from competitors engaged in sale of effervescent and laxative products and who truthfully represent their merchandise; 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.

*Mr. Robert 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 Michael P. Briganti and Fred C. Mattia, individually and as copartners trading as Premier Color Works and Mattia and Briganti 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, Michael P. Briganti and Fred C. Mattia, are copartners doing business under the trade names of Premier Color Works and Mattia and Briganti Company, with their offices and principal place of business located at 382 Pearl Street, New York, N. Y.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the business of manufacturing and selling under the brand name of "Ave Maria" a line of effervescent and laxative products. Respondents cause said products, when sold, to be transported from their 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 the State of New York and in the District of Columbia.

Respondents maintain and at all times herein mentioned 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. 3. In the course and conduct of their business, respondents are in substantial competition with other partnerships and with firms, corporations, and individuals engaged in the sale and distribution of effervescent and laxative 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 their business, respondents offer for sale and sell an effervescent product designated "Ave Maria Effervescent Preparation" and a laxative product designated "Ave Maria Laxative Preparation." The tin containers in which said products are packed by respondents, and the cardboard cartons in which the containers are enclosed when the products are prepared for sale by respondents, have printed thereon statements and representations concerning the source of the formulas for said products and concerning purported awards made with respect to said products. The statement and representation concerning the source of the formulas is as follows:

\* \* \* Made in U. S. A. from a highly recommended formula of Dr. Arnaldo Piutti, Director of the Pharmaceutical Institute of "Reggio Università" di Napoli' (Italy).

On the tin container and cardboard carton, in which respondents' said Ave Maria products are packaged, are depicted reproductions

of three gold medals and of a decoration. Immediately under said reproductions is the following statement:

Highest awards in the Hygienic Divisions of International Expositions.

In the manner and by the means aforesaid, respondents represent directly and by implication that their said "Ave Maria" products are manufactured from formulas recommended by one Dr. Arnaldo Piutti who is represented to be Director of the Pharmaceutical Institute of the Royal University of Naples (Italy); that the three medals and the decoration depicted on the containers and cartons of said "Ave Maria" preparations, as aforesaid, are reproductions of original medals and decorations awarded said products at various expositions and that respondents' products have received the highest awards in the Hygienic Divisions of International Expositions.

PAR. 5. The aforesaid statements and representations of respondents are false, misleading, and untrue. In truth and in fact said Ave Maria products are not made from formulas recommended by said Arnaldo Piutti. The medals and the decorations depicted on the containers and cartons, as aforesaid, are not reproductions of medals or decorations awarded said products at expositions. Said products were not exhibited at any international exposition and did not receive the awards depicted on the containers and cartons of the products. Respondents' said "Ave Maria" products have not been awarded any medals or other prizes at International expositions. Said products have not received any awards in the Hygienic Divisions of International Expositions.

There are among the purchasing public a substantial number of persons, especially among Italian-Americans, who have a preference for goods which have received awards at expositions, under the belief that such merchandise is superior to merchandise which has received no such awards.

PAR. 6. Each and all of the foregoing false and misleading statements and representations, made by respondents in offering for sale and selling their "Ave Maria" products, as hereinbefore set out, had and now has the capacity and tendency to, and does, mislead 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 respondents' said "Ave Maria" products, 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 respondents from competitors engaged in the business of selling effervescent or laxa-

tive products, and who truthfully represent their merchandise. As a result thereof, injury has been done and is being done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. 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, 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 19, 1939, issued, and on June 20, 1939 served its complaint in this proceeding upon the respondents Michael P. Briganti and Fred C. Mattia, individually and as copartners, trading as Premier Color Works and Mattia and Briganti Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act.

On December 15, 1939, the respondent, Fred C. Mattia, individually and as the sole owner of and trading as Premier Color Works and Mattia and Briganti Co., 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, except that said respondent therein alleged that on September 29, 1939, the respondent, Fred C. Mattia, purchased the entire interest of his copartner, Michael P. Briganti, in the business operated under the trade names of Premier Color Works and Mattia and Briganti Co., and since said date has been and is now the sole owner and proprietor thereof, in which the said Michael P. Briganti owns no interest, and has not been connected therewith in any manner since thus disposing of his interest. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, and the said answer thereto of the individual respondent, Fred C. Mattia, 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

PARAGRAPHS 1. Respondent, Fred C. Mattia, individually is the sole owner and proprietor of the business which he operates under the trade names of Premier Color Works and Mattia and Briganti Co.,

with his office and principal place of business located at 382 Pearl Street, New York, N. Y.

PAR. 2. The said respondent is now and for more than one year last past has been engaged in the business of manufacturing and selling under the brand name of "Ave Maria" a line of effervescent and laxative products. Said respondent causes said products when sold to be transported from his 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 the State of New York and in the District of Columbia.

Said respondent maintains and at all times herein mentioned 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. 3. In the course and conduct of his business said respondent is in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution of effervescent and laxative 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 business said respondent offers for sale and sells an effervescent product designated "Ave Maria Effervescent Preparation" and a laxative product designated "Ave Maria Laxative Preparation." The tin containers in which said products are packed by said respondent and the cardboard cartons in which the containers are enclosed when the products are prepared for sale by said respondent, have printed thereon statements and representations concerning the source of the formulas for said products and concerning purported awards made with respect to said products. The statement and representation concerning the source of the formulas is as follows:

\* \* \* Made in U. S. A. from a highly recommended formula of Dr. Arnaldo Piutti, Director of the Pharmaceutical Institute of "Reggio Universita" Di Napoli (Italy).

On the tin container and cardboard carton in which said respondent's Ave Maria products are packaged, are depicted reproductions of three gold medals, and of a decoration. Immediately under said reproductions is the following statement:

Highest awards in the Hygienic Divisions of International Expositions.

In the manner and by the means aforesaid the said respondent represents directly and by implication that his said Ave Maria products are manufactured from formulas recommended by one Dr. Arnaldo Piutti, who is represented to be Director of the Pharmaceutical In-

stitute of the Royal University of Naples (Italy) ; that the three medals and the decoration depicted on the containers and cartons of said Ave Maria preparations as aforesaid are reproductions of original medals and decorations awarded said products at various expositions, and that said respondent's products have received the highest awards in the Hygienic Divisions of International Expositions.

PAR. 5. The aforesaid statements and representations of said respondent are false, misleading and untrue. In truth and in fact, said Ave Maria products are not made from formulas recommended by said Arnaldo Piutti. The medals and the decorations depicted on the containers and cartons, as aforesaid, are not reproductions of medals or decorations awarded said products at expositions. Said products were not exhibited at any international exposition and did not receive the awards depicted on the containers and cartons of the products. Said respondent's Ave Maria products have not been awarded any medals or other prizes at international expositions. Said products have not received any awards in the Hygienic Divisions of International Expositions.

There are among the purchasing public a substantial number of persons, especially among Italian-Americans, who have a preference for goods which have received awards at expositions, under the belief that such merchandise is superior to merchandise which has received no such awards.

PAR. 6. Each and all of the foregoing false and misleading statements and representations made by said respondent in offering for sale and selling his Ave Maria products, as hereinbefore set out, had and now has the capacity and tendency to and does mislead 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 the said respondent's Ave Maria products, with the result that trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to said respondent from competitors engaged in the business of selling effervescents or laxative products and who truthfully represent their merchandise. As a result thereof, injury has been done and is being done by said 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 said 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 the answer of the respondent, Fred C. Mattia, individually, and as the sole owner of and trading as Premier Color Works and Mattia and Briganti Company, in which answer said respondent admits all the material allegations of fact set forth in said complaint, and in addition thereto alleges that on September 29, 1939, the respondent, Fred C. Mattia, purchased the entire interest of his copartner, Michael P. Briganti, in the business operated under the trade names of Premier Color Works and Mattia and Briganti Company, and since said date has been and is now the sole owner and proprietor thereof, in which the said Michael P. Briganti owns no interest, and has not been connected therewith in any manner since thus disposing of his interest, 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, Fred C. Mattia, an individual, trading as Premier Color Works and Mattia and Briganti 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 and distribution of his line of effervescent and laxative products designated by the brand name of "Ave Maria," "Ave Maria Effervescent Preparation," "Ave Maria Laxative Preparation," or by 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 formulas from which said products are manufactured are or were originated or recommended by an official or representative of the Royal University of Naples, or by any other person or persons who in truth and in fact have not originated or recommended said formulas.

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2. Representing through the use of medals or any other decoration depicted on the containers or cartons in which said products are packaged, or in any other manner that said products have been awarded any medals, prizes, or other awards of merit by any International Exposition or any other Exposition or by any divisions thereof until and unless said products have in fact won the awards represented.

*It is further ordered,* That the said 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 case be closed as to the individual respondent Michael P. Briganti, without prejudice to the right of the Commission to reopen the same and continue the prosecution thereof in the event such action is warranted by the facts.

## Syllabus

IN THE MATTER OF  
HOWARD D. JOHNSON COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3827. Complaint, June 21, 1939—Decision, Dec. 28, 1939*

Where a corporation engaged in manufacture of ice cream and other food products, and in sale and distribution thereof to purchasers in other States, in substantial competition with others engaged in sale and distribution of such various products, and including competitors selling and distributing in commerce and in the District of Columbia ice cream and food products, who do not misrepresent in any manner whatsoever the nature, character, quality, or method of manufacture of products thereof, nor make misrepresentations of any other character or nature to induce public to purchase their products; in advertisements which it disseminated through the mails, through newspapers of general circulation, and through circulars and other printed or written matter distributed among the various States, and through broadcasts from radio stations of extra-State audience and otherwise, and which were intended and calculated to induce purchase of its products—

Referred to its ice cream as "home made" and to its food as "wholesome—home cooked," and, in further connection with its trade name, referred to its business as makers of "home made ice cream, candies and pastries," and thereby represented to public that said products were in fact home made in the manner and of the ingredients characteristic of the preparation of such products in the home for consumption in the home, as distinguished from factory-made products made of ingredients and by ordinary means of production used in factories making such products for sale, facts being its said products were made in factory of the ordinary ingredients and by the ordinary methods of production used in factories making such products for sale;

With effect of deceiving and misleading prospective purchasers and purchasers of its products into belief that such representations were true, and with result, as consequence of such mistaken and erroneous beliefs, that substantial portion of purchasing public was induced to and did purchase ice cream and other food products from it, and trade was thereby unfairly diverted in such products to it from its 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 in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Randolph Preston*, trial examiner.

*Mr. Karl Stecher* for the Commission.

*Mr. Joseph T. Brennan*, of Wollaston, Mass., for respondent.

Complaint

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## 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 Howard D. Johnson 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, Howard D. Johnson Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located at 89 Beale Street, in the city of Wollaston, Mass. It is now, and has been for several years heretofore, engaged in the manufacture of ice cream and other food products and in the sale and distribution thereof in commerce between and among the various States of the United States. Respondent causes said products when sold to be transported from its place of business in the State of Massachusetts to the purchasers thereof located at points in States of the United States other than the State of Massachusetts. It maintains, and for a period of more than 1 year last past has maintained, a course of trade in said products in commerce between and among the various States of the United States.

**PAR. 2.** Respondent has been, and is, engaged in substantial competition in the sale and distribution of said ice cream and other food products with other corporations and with partnerships and individuals likewise engaged in the business of selling and distributing ice cream and other food products in commerce among and between the various States of the United States.

**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 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 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:

Howard Johnson home made ice cream.

Howard Johnson food is wholesome—home cooked.

Howard D. Johnson Company. Home made food and ice cream.

Howard D. Johnson Company. Makers of Howard Johnson's home made ice cream, candies and pastries.

PAR. 4. The aforesaid statements made and disseminated by respondent in offering for sale and selling its ice cream and other food products, as set forth in paragraph 3 thereof, purport to be descriptive of its merchandise and serve as representations to the public that said products are in fact home made in the manner and of the ingredients characteristic of the preparation of such products in home for consumption in the home as distinguished from factory made of the ingredients and by the ordinary means of production used in factories manufacturing such products for sale.

PAR. 5. In truth and in fact the statements made and disseminated by respondent, as set out in paragraph 3 hereof, are false and misleading for the reason that said products are factory made of the ingredients and by the ordinary methods of production used in factories manufacturing such products for sale.

PAR. 6. There are now and have been competitors of respondent selling and distributing ice cream and other food products in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent in any manner whatsoever the nature, character, quality, or method of manufacture or production of the products offered for sale and sold by them, nor do they make misrepresentations of any other character or nature to induce the public to purchase the products offered for sale and sold by them.

PAR. 7. The use and dissemination by respondent of the false, deceptive, and misleading statements, representations, and advertisements set forth in paragraph 3 hereof, had and have the capacity and tendency to, and did and do, deceive and mislead prospective purchasers and purchasers of its products into the belief that such representations are true. On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been, and is, induced to purchase ice cream and other food products 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.

· PAR. 8. 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 21, 1939, issued and on June 22, 1939, served its complaint in this proceeding upon respondent Howard D. Johnson 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. 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 the facts, and stating further that prior to the issuance of said complaint the respondent had discontinued the use of the words "home made" or "home cooked" or any other words of similar import and meaning in describing or designating the ice cream and other food products sold by it, 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, Howard D. Johnson Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its principal place of business located at 89 Beale Street, in the city of Wollaston, Mass. It is now, and has been for several years heretofore, engaged in the manufacture of ice cream and other food products and in the sale and distribution thereof in commerce between and among the various States of the

United States. Respondent causes said products when sold to be transported from its place of business in the State of Massachusetts to the purchasers thereof located at points in States of the United States other than the State of Massachusetts. It maintains, and for a period of more than 1 year last past has maintained, a course of trade in said products in commerce between and among the various States of the United States.

PAR. 2. Respondent has been, and is, engaged in substantial competition in the sale and distribution of said ice cream and other food products with other corporations and with partnerships and individuals likewise engaged in the business of selling and distributing ice cream and other food products in commerce among and between the various States of the United States.

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 products, by United States mails, by insertion in newspapers 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 continuities broadcast from radio stations which had sufficient power to, and did, convey the programs emanating therefrom to listeners located in various States of the United States other than the state in which said broadcasts originated, 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 its said products; and has disseminated, and has caused the dissemination of, false advertisements concerning its said products, by various means, for the purpose of inducing, and which were 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 by the respondent, as aforesaid, were the following:

Howard Johnson home made ice cream.

Howard Johnson food is wholesome—home cooked.

Howard D. Johnson Company. Home made food and ice cream.

Howard D. Johnson Company. Makers of Howard Johnson's home made ice cream, candies and pastries.

PAR. 4. The aforesaid statements made and disseminated by respondent in offering for sale and selling its ice cream and other food products, as set forth in paragraph 3 hereof, purported to be descrip-

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tive of its merchandise and served as representations to the public that said products were in fact home made, in the manner and of the ingredients characteristic of the preparation of such products in the home for consumption in the home, as distinguished from factory made products made of the ingredients and by the ordinary means of production used in factories manufacturing such products for sale.

PAR. 5. In truth and in fact the statements made and disseminated by respondent, as set out in paragraph 3 hereof, were false and misleading for the reason that said products were made in a factory of the ordinary ingredients and by the ordinary methods of production used in factories manufacturing such products for sale.

PAR. 6. There are now, and have been, competitors of respondent selling and distributing ice cream and other food products in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent in any manner whatsoever the nature, character, quality, or method of manufacture or production of the products offered for sale and sold by them, nor do they make misrepresentations of any other character or nature to induce the public to purchase the products offered for sale and sold by them.

PAR. 7. The use and dissemination by respondent of the false, deceptive, and misleading statements, representations and advertisements as above set forth had the capacity and tendency to, and did, deceive and mislead prospective purchasers and purchasers of its products into the belief that such representations were true. On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public was induced to, and did, purchase ice cream and other food products from the respondent, thereby unfairly diverting trade in such products to the respondent from its competitors. As a result thereof, injury has been done by respondent to competition in commerce among and between the various States of the United States.

## CONCLUSION

The aforesaid acts and practices of respondent Howard D. Johnson Co., 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.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material

allegations of the complaint to be true and states that it waives hearing on the charges set forth in said complaint and that without further evidence or other intervening procedure the case might proceed to final hearing upon the record, 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, Howard D. Johnson 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 its food products, 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 products, which said advertisement represents, directly or through implication, that said food products are home made or home cooked, unless and until said products are in fact made or cooked in the manner and of the ingredients characteristic of the preparation of such products in the home for consumption in the home, as distinguished from factory made products made of the ingredients and by the ordinary means of production used in factories manufacturing such products for sale.

*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  
MERRILL 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 3128. Complaint, May 14, 1937—Decision, Dec. 29, 1939*

Where a corporation engaged in manufacture of candy and in sale and distribution thereof to jobber and retailer purchasers in other States, including assortments with which, as case might be, it furnished (a) push cards designed and intended for use in distribution of said candy wholly by lot or chance under a plan in accordance with which and legend secured by chance, as displayed under disk selected and removed, purchaser or customer received by chance for 5 cents paid one candy bar, five candy bars, small canoe of candy, or package of choice candies, and maker of last sale on each of cards secured or was given larger canoe filled with candy, or (b) push cards of various types and design and punchboards for use in distribution of candy wholly by lot or chance and of same general nature and operation in substantially same manner as above described, and (c) articles of merchandise including pieces of glassware and chromium dishes for use as special prizes in operation of particular cards and boards;

Sold together with push cards or punchboards or both, such candies and articles of merchandise to jobbers and retailers by whom as said jobbers' vendees, or purchasers direct, such candies were resold to purchasing public by use of one or other of aforesaid devices and in manner and by sales plan above described; and supplied thereby to and placed in hands of others means by which games of chance, gift enterprises, and lotteries were conducted in said products' resale or distribution by retailers aforesaid, involving game of chance or sale of a chance and use of method or practice in such sale and distribution, 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 candy and articles of merchandise dealt in by them any method or sales plan involving games of chance, gift enterprises, or lottery schemes and refrain from use thereof, to their competitive disadvantage;

With result that many purchasers of candy and articles of merchandise from it were attracted by element of chance involved in sale and distribution of such candies and articles through use of push cards and punchboards furnished by it and were thereby induced to purchase said candies and articles offered by it in preference to similar products offered by competitors who did not furnish with candies and articles sold by them similar push cards and punchboards or similar devices, and jobber and retail dealers purchased substantial amount of candies and articles of merchandise from it and trade was thereby diverted unfairly to it from its 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, Mr. Charles F. Diggs, and Mr. Miles J. Furnas*, trial examiners.

*Mr. D. C. Daniel and Mr. P. C. Kolinski* for the Commission.

## COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Merrill Candy 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, Merrill Candy Co., is a corporation organized and doing business under the laws of the State of Wisconsin, with its principal office and place of business located at 1215-17 East Main Street, in the city of Merrill, State of Wisconsin. Respondent is now, and for several years last past has been, engaged in the manufacture of candies and in the sale and distribution thereof to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States. Respondent causes and has caused its said products when sold to be transported from its principal place of business in the city of Merrill, State of Wisconsin, to purchasers thereof in Wisconsin and in other States of the United States at their respective points of location. There is now, and has been for several years last past, a course of trade and commerce by said respondent in such candies between and among the States of the United States. In the course and conduct of said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the manufacture of candies and in the sale and distribution thereof in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale and retail dealers assortments of candy so packed and assembled as to involve, or which are designed to or may involve, the use of a lottery scheme when sold and distributed to the ultimate consumers thereof. Such assortments are composed of a number of bars of candy and a number of packages of candy, together with a device commonly called a "push card." The said bars of candy and the packages of candy are sold and distributed to the consuming public by means of said push card in the following manner:

Sales are 5 cents each, and each purchaser is entitled to one push from said card. When a push is made from said card, a number is disclosed. The numbers begin with one and continue to the number of pushes there are on the card, but the numbers are not arranged in numerical sequence. The card bears statements informing purchasers that certain numbers receive specified packages of candy, that certain other numbers receive a specified number of bars of candy, that all other numbers receive one bar of candy, and that the last sale from said assortment receives one of the specified packages of candy. The numbers on said card are effectively concealed from purchasers and prospective purchasers until a selection has been made and the particular push separated from the card. The fact as to whether a purchaser receives one or more than one bar of candy, or one of the packages of candy, for the price of 5 cents is thus determined wholly by lot or chance.

The respondent manufactures, sells, and distributes several assortments involving the use of a push card in the sale and distribution thereof to the consuming public, but all of said assortments involve the same principle as set forth above, and vary only in detail.

PAR. 3. The wholesale dealers and jobbers to whom respondent sells its assortments resell said assortments to retail dealers, and said retail dealers and the retail dealers to whom respondent sells direct expose said assortments for sale and sell said candy to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its product in accordance with the sales plan hereinabove set forth; and said sales plan has the capacity and tendency of inducing purchasers thereof to purchase respondent's said product in preference to candy offered for sale and sold by its competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure packages or 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 public policy of the Government of the United States. The use by respondent of said method has the tendency unduly to hinder competition or create monopoly in this, to wit: That the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same method or an equivalent or similar method involving the same or an equivalent or similar

element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale or sell candy so packed and assembled as above alleged, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its said competitors who do not use the same or an equivalent method; to exclude from said candy trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful; to lessen competition in said candy trade and to tend to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent method; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors, and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent method.

PAR. 6. 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 methods of competition in commerce within the intent and meaning of section 5 of an act of Congress, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 14, 1937, issued its complaint in this proceeding and caused same to be served upon the respondent Merrill 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 and the filing of respondent's answer thereto, testimony and other evidence in support

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of the allegations contained in said complaint were introduced by D. C. Daniel and P. C. Kolinski, attorneys for the Commission, and in opposition to the allegations of said complaint by Adam P. Schewe, the president of the respondent corporation, before William C. Reeves, Charles F. Diggs, and Miles J. Furnas, examiners for said 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 upon 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 the respondent and oral argument was waived by it, 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, Merrill Candy Co., is a corporation organized under the laws of the State of Wisconsin with principal place of business at Merrill in said State; for a number of years it has been engaged in the business of the manufacture, sale, and distribution of candy. It has caused candy manufactured by it, when sold, to be transported from its place of business in the State of Wisconsin to purchasers thereof located in other States of the United States, and in the course and conduct of its said business said respondent has been, and is now, in active competition with numerous persons and partnerships and other corporations 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 its business as set out in paragraph 1 hereof, has furnished with some assortments of candies sold by it, devices sometimes described as push cards, upon each of which were stamped 75 disks, each of which concealed a legend. Printed upon each of the cards were the words "All winners, no blanks." These cards were intended for use as follows: Members of the public were to be solicited to select 1 or more of the disks on 1 of the cards and to pay therefor 5 cents for each of the disks selected, whereupon the disks so selected were pushed from the card and the legend concealed thereby disclosed, some of which legends entitled the customer to only 1 candy bar; other such legends entitled the customer to 5 candy bars; other legends so obtained entitled the

customer to a small canoe filled with candy; other such legends entitled the customer to 1 package of choice candies and the person to whom the last sale on each of the cards was made, was given a larger canoe filled with candy but whether a selector of 1 of the disks obtained 1 candy bar, 5 candy bars, a small canoe filled with candy, a package of choice candies, or a larger canoe filled with candy was wholly a matter of chance and the customer did not know the number of candy bars to which he was entitled or whether he would receive 1 of the small canoes filled with candy, or a package of choice candies, until the disk selected by him was pushed from the card and the legend concealed thereby was disclosed. With other assortments of candies sold by it, respondent has furnished push cards of various types and designs and with still other assortments of candies so sold, respondent has furnished devices sometimes known as punchboards, but all such cards and boards so furnished by respondent were designed and intended for use in the distribution of candies wholly by lot or chance and were of the same general nature and were operated in substantially the same manner as were the push cards described herein.

PAR. 3. The annual sales made by respondent of candies with which it furnished push cards or punchboards have aggregated \$45,000 and approximately 70 percent of such sales have been made to dealers located in States other than the State of Wisconsin. Push cards and punchboards have been furnished by respondent with about 35 percent of its entire output. With some of the assortments or candies sold by respondent with which it furnished push cards or punchboards as set out in paragraph 2 hereof, articles of merchandise, including pieces of glassware and chromium dishes, were included for use as special prizes in the operation of such cards or boards.

PAR. 4. The Commission finds that the candies, glassware, and chromium dishes intended for use as special prizes in the operation of the push cards and punchboards, as set out in paragraph 3 hereof, were sold by respondent to jobbers and to retail dealers and with such sales it furnished push cards or punchboards, or both, and such candies and articles of merchandise so sold to jobbers were resold by them with the accompanying push cards or punchboards to retail dealers, and such candies and articles of merchandise were resold by the retail dealers to the purchasing public by the use of one or the other of the devices and in the manner and by the sales plan described in paragraph 2 hereof. The Commission further finds that respondent by furnishing such cards and boards, or either type of said devices, with the candies and articles of merchandise sold by it, thereby supplied to and placed in the hands of others the means

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by which games of chance, gift enterprises, and lotteries have been conducted. The Commission further finds that the use of such cards and boards, or either of such devices, in the resale and distribution by retail dealers of the candies and articles of merchandise 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 such candies and articles of merchandise 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. 5. There are among the competitors of respondent persons, partnerships, and corporations engaged in the manufacture and sale, or the sale, of candies and articles of merchandise of the same general nature as those sold by respondent and in commerce between and among various States of the United States, which competitors were unwilling to employ in the sale and distribution of candies and articles of merchandise dealt in by them, any method or sales plan which involved games of chance, gift enterprises, or lottery schemes, and refrained from the use of such practices, and as a result were placed at a disadvantage in competition. Many purchasers of candies and articles of merchandise from respondent were attracted by the element of chance involved in the sale and distribution of such candies and articles of merchandise by the use of push cards and punchboards furnished by respondent, and were thereby induced to purchase such candies and articles of merchandise offered for sale by respondent, in preference to similar candies and articles of merchandise offered for sale by competitors of respondent who did not furnish with candies and articles of merchandise sold by them similar push cards and punchboards or similar devices, and as a result jobbers and retail dealers purchased a substantial amount of candies and articles of merchandise from respondent with the result that trade was thereby 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, Charles F. Diggs, 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 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, Merrill Candy 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, others packages or assortments of candy or other merchandise together with push or pull cards, punchboards or any 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 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 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  
**ROY E. REED AND FLORENCE A. REED, TRADING AS  
 DIESEL ENGINEERS, ASSOCIATED**

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

*Docket 3258. Complaint, Nov. 1, 1937—Decision, Dec. 29, 1939*

Where an individual, and the wife of said individual, active participant with him in business in question and, together with him, responsible for policies and activities thereof, including advertising, and possessed of a wife's community property interest therein under the laws of the State concerned, engaged together in the conduct, through courses of study and instruction, by correspondence and through classroom instruction, of a school in the theory, operation, maintenance, and repair of Diesel engines and air-conditioning equipment, and, as thus engaged, in soliciting students in said and other States through salesmen or agents and in also advertising both courses of study and instruction by radio and by newspapers located in aforesaid and other States, and having general circulation throughout the United States, and in circulars distributed through their said agents and through the mail—

- (a) Represented and implied, through "blind advertisements" in the "Help Wanted" columns of various newspapers in the several States, such as "Wanted men and young men to earn while learning Diesel and Air conditioning. D. E. A., 807 S. Flower," "Diesel Air-conditioning Refrigeration Classes now forming. Summer rates in effect. Jobs furnished while training. You can work and earn while you learn," "Men—Small but welcome earnings while learning Diesel. Mechanically inclined ambitious men only. Minimum initial fee \$15 \* \* \*," and others of similar tenor, that persons responding would be afforded opportunity to learn to construct, operate, maintain, and repair Diesel engines and air-conditioning equipment while working for pay in a factory or shop in which such engines and equipment were made and repaired by a person or concern engaged therein;

Facts being such advertisements were inserted in "Help Wanted" columns, not to offer employment but to obtain students for school in question, individuals concerned did not own any such factory or shop, and, while conducting an employment bureau in connection with school in question, did not afford students opportunity to work in a factory or shop constructing, operating, maintaining, or repairing such engines or equipment except in very rare instances, and did not afford students, in many instances, opportunity to work at anything, and it was not until after making of initial payment for instruction to said individuals that facts aforesaid became known to person responding to advertisements in question;

- (b) Placed on their letterheads, used in correspondence with prospective students soliciting sale of their said courses and instruction, words "Diesel Engineers, Associated. Consulting Engineers" and, on printed agreements with students, set forth same legend, together with words "Application Associate Engineering Membership," and in such agreements described students as

members, agreement as membership, and diploma to be awarded upon completion of course of study and instruction as "Associate engineering membership;"

Facts being organization with which student became connected was not, as thus represented, an association of engineers banded together for the promotion of some common enterprise of mutual benefit to members, but trade school conducted by individuals aforesaid for profit, persons whose names were set out and designated as above set forth on such letterheads were not consulting engineers, nor engineers at all, and no degrees in engineering had been received either by any of said persons thus referred to or by any member of staff or faculty of school in question, of which Bachelor of Science degree was only one of any kind possessed by any member, and, notwithstanding possession of practical experience with engines of various types by some of such members and theoretical courses in engineering subjects and certain consultation by students, teachers, and occasionally others in such subjects, but without remuneration, they were not in fact consulting engineers or persons with thorough education and wide experience competent to give valuable professional engineering advice;

(c) Represented, through their agents by means of printed matter and instructions placed in said agents' hands, that there were growing opportunities to make or earn large amounts of money in the "wonderful" and "new" field and salaries amounting to hundreds of dollars a month, and that their teachers or staff were expert engineers, and that after theoretical training was completed there was a laboratory available for practical training, including necessary and practical machine shop training on lathes, drill presses, etc., so as to give student "a complete working knowledge of the things necessary for him to know so he can hold down a good job," and stressed the qualifications of their "Chief Engineer" as "a writer of note," with many years of "practical Engineering Experience";

Facts being there is little demand for services of students trained in their school, such persons, after completing their courses of study and instruction, are not engineers nor qualified thereby to do work of engineers or of people skilled in construction, maintenance, operation and repair of Diesel engines or air-conditioning equipment, many of their students are unable to obtain work in the field for which they have trained, their said school is not well equipped for laboratory or shop work nor is their teaching force well qualified to give the instruction advertised, and representations made by them as above set forth grossly misrepresent and exaggerate demand for and qualifications and earnings of persons trained by them, and education, training and experience of their teachers, and nature and extent of the equipment available to students at their said school; and

(d) Represented to prospective students that initial amounts of money paid for tuition would be refunded if student was unable to go on with the training, and that students would be paid a specified salary for working in said individuals' plant and thus reimbursed, and that, upon completion of course of study sold, positions would be available for their students in which the knowledge acquired by them in said courses could be applied, and made practice of allowing an asserted special discount from price set forth on contracts or agreements;

Facts being, excepting cases where payment was made by minor without consent of parents or legal guardian, refunds of initial payments or other pay-

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ments were at all times refused regardless of salesmen's representations, in reliance upon contract statements to effect that no oral representations would be recognized, said individuals did not own or operate a plant in which students were employed, nor pay students specified or any salary or secure work reimbursing students for money paid to said individuals, money received by such students in cases in which employment was secured for them by said individuals did not reimburse them for their tuition, they did not secure positions or work for students completing their courses in which latter might apply knowledge acquired from said courses, positions of such a nature in many cases were not available to such students through their own efforts or otherwise, and price secured through asserted special discount by the various students was the price regularly charged others for same course at same time;

With effect of misleading and deceiving many prospective purchasers of their said courses of study and instruction and causing them erroneously to believe that representations and implications made and used by said individuals in connection with offer, sale and distribution thereof were true, and of causing many prospective purchasers, because of such erroneous beliefs, to purchase said courses of study and instruction from such individuals and thereby unfairly divert trade in commerce to them from their competitors who do not use acts, practices and methods employed by individuals aforesaid; to said competitors' substantial injury and to that of public:

*Held*, That such acts, practices, and methods 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. Harry D. Michael* and *Mr. William L. Pencke* for the Commission.

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

PARAGRAPH 1. Respondents Roy E. Reed and Florence A. Reed are individuals presently trading under the name and style Diesel Engineers, Associated, formerly trading as Diesel Training School, with their office and principal place of business at 805½ South Flower Street, Los Angeles, Calif.

Respondents are now, and have been for more than 2 years last past, engaged in the sale and distribution of courses of study and instruction in the construction, operation, maintenance, and repair of Diesel engines and air conditioning equipment. When said courses of study and instruction are sold, respondents cause the books, lessons, and other printed and written matter used in connection therewith to be transported from their said place of business in the city of Los Angeles, Calif., to the purchasers thereof located at various points in the several States of the United States, other than the State of California, and in the District of Columbia. Respondents now maintain, and have maintained at all times mentioned herein, a constant current of trade and commerce in said products 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, as aforesaid, respondents are now, and for more than 2 years last past have been, in substantial competition in commerce between the various States of the United States and in the District of Columbia, with various other individuals and with corporations, partnerships and firms engaged in the sale and distribution of like and similar courses of study and instruction in the construction, operation, maintenance and repair of Diesel engines and air conditioning equipment.

PAR. 2. Respondents, in the course and conduct of their business, as aforesaid, for the purpose of inducing individuals to purchase said courses of study and instruction, place advertisements in newspapers circulated in various States of the United States and employ a number of representatives who travel in various of the States of the United States making personal solicitation of prospective students for said courses of study and instruction.

PAR. 3. Respondents have adopted the practice of running what are commonly known as "blind advertisements" in the Help Wanted Column of various and sundry newspapers located in the several States of the United States. Among and typical of these advertisements are the following:

WANTED men & young men to earn while learning DIESEL & AIR CONDITIONING. D. E. A., 807 S. Flower.

DIESEL Air-Conditioning Refrigeration Classes now forming. Summer rates in effect. Jobs furnished while training. You can work and earn while you learn. DIESEL ENGINEERS ASSOCIATED. Room 715. Hotel Whitmore. Sunday Only.

OPPORTUNITY FOR DIESEL ENGINEERING—Learn under lic. engineers, earn while learn. Sun Box 133.

MECHANIC—Part time job while learning. Diesel. Salary and tuition. Address Box 308 News-Pilot.

MEN to earn while learning air conditioning or Diesel. 807 S. FLOWER.

**MEN**—Small but welcome earnings while learning Diesel. Mechanically inclined ambitious men only. Minimum initial fee \$15. Write Box 61-G. News-Journal.

**EARN** money while learning Diesel. Write Box #575, Oklahoman and Times.

In said advertisements respondents represent and imply that persons responding to said advertisements will be afforded an opportunity to learn to construct, operate, maintain, and repair Diesel engines and air conditioning equipment while working for pay in a factory or shop in which Diesel engines and air conditioning equipment are manufactured and repaired by a firm engaged in that business. In truth and fact, the respondents do not own or operate a shop or factory where Diesel engines and air conditioning equipment are manufactured or repaired, nor do they provide employment in such a shop or factory for persons responding to said advertisements. Said advertisements are simply a "blind" to secure contact with prospective purchasers of said courses of study and instruction so sold and distributed by the respondents, as aforesaid. This fact does not become known to persons responding to said advertisements until after the making of an initial payment by such persons.

**PAR. 4.** On letterheads used in corresponding with prospective students in soliciting the sale of and selling said courses of study and instruction, the respondents place the following words:

**DIESEL ENGINEERS, ASSOCIATED Consulting Engineers**

**J. D. Moore,**  
Chief of Staff

**John F. Voogt,**  
Chief Consulting Engineer

**V. F. Payton,**  
Consulting Engineer

**E. Norrbom,**  
Consulting Engineer

**J. L. Mercer,**  
Consulting Engineer

On agreements with students, respondents place the following words:

**DIESEL ENGINEERS, ASSOCIATED Consulting Engineers**

**APPLICATION ASSOCIATE ENGINEERING MEMBERSHIP**

In said agreement the student is described as a "member," and the agreement of enrollment is described as a "membership," and the "diploma" to be awarded the "member" upon completion of the courses of study and instruction is described as an "associate engineering membership."

By the means and in the manner aforesaid, respondents represent and imply that the organization with which the "member" is to be associated is an association of engineers, banded together for the promotion of some common enterprise of mutual benefit to the members;

that the said J. D. Moore, designated Chief of Staff, and John F. Voogt, designated Chief Consulting Engineer, and the other persons designated as Consulting Engineers are engineers with a thorough education and wide experience, competent to give valuable professional advice in engineering matters and persons who, because of their rank and profession, are consulted by other engineers. In truth and fact, the organization with which the student, or "member," becomes associated is not an association of engineers banded together for the promotion of some common enterprise of mutual benefit to all the members, but is simply a trade name used by the said respondents in furthering the sale of said courses of study and instruction for the profit and for the benefit of the respondents. In truth and fact, the said J. D. Moore, designated Chief of Staff, and John F. Voogt, designated Chief Consulting Engineer, and the other persons designated as Consulting Engineers are not engineers with a thorough education and wide experience, competent to give professional advice in engineering matters, and are not persons who, because of their rank and profession, are consulted by other engineers on engineering matters.

PAR. 5. Respondents, in the course and conduct of their business as aforesaid, through said representatives, and in printed matter placed in the hands of said representatives, grossly misrepresent and exaggerate the demand for, and the qualifications and earnings of, persons trained by the respondents in the construction, operation, maintenance, and repair of Diesel engines and air conditioning equipment, and grossly misrepresent and exaggerate the education, training and experience of the teachers employed by the respondents and grossly misrepresent the nature and extent of the equipment available to "members" in respondents' "shops," purportedly operated at their said place of business at Los Angeles, Calif., and the instructional force available to teach such "members" in said "shops."

PAR. 6. Respondents, in many instances, represent to prospective purchasers of said courses of study and instruction that upon completion of a specified number of assignments, the respondents will return to purchasers the initial amount of money paid for the "membership" and represent that if the earnings of the "members" are not sufficient to enable the "member" to live in Los Angeles, Calif., while receiving instruction in respondents' "shops" that the initial payment made will be returned, and in some instances respondents represent that if for any reason the "member" is unable to complete said courses of study and instruction, that all money received by the respondents will be returned to such "member." Respondents, in some instances, represent to prospective purchasers of said courses of study and instruc-

tion that the "member" will be paid a specified salary per week for working in the "plant" of the respondents, which earnings would reimburse the "member." In other instances, respondents represent to prospective "members" that, upon completion of said courses of study and instruction, positions will be available for such "members" where the knowledge acquired from respondents' said courses of study and instruction can be applied.

In truth and fact, the respondents do not return to purchasers the initial amount of money paid for the "membership" upon completion of a specified number of lesson assignments. In many instances, the earnings of the "members" are not sufficient to enable them to live in Los Angeles, Calif., while receiving instruction in respondents' "shops" and respondents do not return the initial payment made. Respondents do not return the money received from a "member" who has been unable to complete said courses of study and instruction. Respondents do not pay to "members" a specified salary per week for working in the "plant" of respondents, and positions are not available to "members" upon completion of respondents' said courses of study and instruction.

PAR. 7. Respondents, in many instances, represent that the prices at which said courses of study and instruction are offered are a special price available for a limited time only, and, in other instances, the respondents represent that the price for said courses of study and instruction is to be increased by \$25 or \$50 in the near future. In truth and fact, the prices at which respondents offer to sell and sell said courses of study and instruction are not special prices, limited in time, but are the prices at which said courses of study and instruction are regularly offered for sale and sold. In truth and fact, in those instances where the respondents represent that the price is to be shortly increased by some \$25 or \$50, respondents do not contemplate, nor do they make, such raises in the price at which said courses of study and instruction are sold.

PAR. 8. The aforesaid acts, practices, and methods of the respondents have the capacity and tendency to and do mislead and deceive many prospective purchasers of respondents' said courses of study and instruction in the construction, operation, maintenance, and repair of Diesel engines and air conditioning equipment, and cause them erroneously to believe that the representations and implications so made and used by the respondents in connection with the offering for sale, sale and distribution of their said courses of study and instruction are true, and have the tendency and capacity to and do cause many prospective purchasers, because of said erroneous beliefs, to purchase said courses of study and instruction from the respond-

ents, thereby unfairly diverting trade in said commerce to the respondents from their competitors who do not use the acts, practices, and methods used by the respondents, to the substantial injury of said competitors in said commerce and to the injury of the public.

PAR. 9. The above alleged acts, practices, and methods of the respondents are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 1, 1937, issued and on November 5, 1937, served its complaint in this proceeding upon the respondent Roy E. Reed and upon the respondent Florence A. Reed, individuals trading under the name and style Diesel Engineers, Associated. 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 Hilburn H. Covington, attorney for the Commission, and by P. E. Cavaney, attorney for the respondents, 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 other evidence, and brief in support of the complaint (respondents 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 Roy E. Reed is an individual formerly doing business under the name and style of Diesel Engineers, Associated. The same business was formerly conducted by respondent Roy E. Reed under the name and style Diesel Training School. Subsequent to the issuance of the complaint in this proceeding, the respondent changed the trade name under which he conducted said business from Diesel Engineers, Associated, to Allied Engineering

## Findings

30 F. T. C.

School. The business under whichever of the three names mentioned above conducted is, and at all times hereinafter mentioned has been, owned by the respondent Roy E. Reed. The respondent Florence A. Reed is, and at all times hereinafter mentioned has been, the wife of the said Roy E. Reed, and both said respondents are now and have been at all times hereinafter mentioned citizens and residents of the State of California, domiciled therein. The principal office and place of business of said business is, and at all times mentioned herein has been, located at 805-807 South Flower Street, Los Angeles, Calif. The respondent Florence A. Reed now has, and at all times hereinafter mentioned has had, the community property interest of a wife in said business under the laws of the State of California and at all times mentioned herein has actively participated in the management of said business, and is now and at all times herein mentioned has been, together with the respondent Roy E. Reed, responsible for the policies and activities of said business, including its advertising.

Respondents in the conduct of said business are now, and for more than 2 years last past have been, engaged in the conduct of a school offering a course of study and instruction in the theory, operation, maintenance, and repair of Diesel engines and air-conditioning equipment. In said school respondents offer said courses of study and instruction both by correspondence and by classroom instruction, at 805-807 South Flower Street, Los Angeles, Calif. In connection with both types of study and instruction respondents employ salesmen or agents to solicit students in California and in other States of the United States. Respondents also advertise both courses of study and instruction by radio, and in newspapers located in California and in other States of the United States, and having a general circulation throughout the United States, and in circulars distributed by their said agents and by United States mail. As a result of such solicitation and advertising, respondents do obtain, and at all times herein mentioned have obtained, students residing in California and residing in other States of the United States, both for the correspondence and for the resident courses of study and instruction. In connection with said correspondence courses of study and instruction, respondents do mail, and at all times herein mentioned have mailed, lesson sheets and other literature by United States mail to students located in California and in other States of the United States. In the course and conduct of said business, as aforesaid, respondents are now, and at all times herein mentioned have been, in substantial competition in commerce between the various States of the United States and in the District of Columbia with various

other individuals and with corporations, partnerships, and firms engaged in the sale and distribution in interstate commerce of like and similar courses of study and instruction in the theory, operation, maintenance and repair of Diesel engines and air-conditioning equipment.

PAR. 2. As a part of the advertising of said business and for the purpose of obtaining students for both courses of instruction in said school, respondents have inserted and caused to be inserted in the "Help Wanted" columns of various and sundry newspapers located in the several States of the United States certain advertisements, known as blind advertisements. Among and typical of these advertisements are the following:

Wanted men and young men to earn while learning Diesel and Air Conditioning. D. E. A., 807 S. Flower.

Diesel Air-conditioning Refrigeration Classes now forming. Summer rates in effect. Jobs furnished while training. You can work and earn while you learn.

Opportunity for Diesel Engineering—learn under lic. engineers, earn while learn. Sun Box 133.

Mechanic—Part-time job while learning. Diesel. Salary & tuition. Address Box 308 News-Pilot.

Men to earn while learning Air conditioning or Diesel. 807 S. Flower.

Men—Small but welcome earnings while learning Diesel. Mechanically inclined ambitious men only. Minimum initial fee \$15. Write Box 61-A, News-Journal.

Earn money while learning Diesel. Write Box E-575. Oklahoman and Times.

By the use of said advertisements, and others of similar import not herein specifically set out, respondents represent and imply that persons responding to such advertisements will be afforded an opportunity to learn to construct, operate, maintain, and repair Diesel engines and air-conditioning equipment while working for pay in a factory or shop in which Diesel engines and air-conditioning equipment are manufactured and repaired by a person, firm or corporation engaged in that business. Said advertisements, in truth and in fact, are inserted in said "Help Wanted" columns not for the purpose of offering employment but for the purpose of obtaining students for said school. Respondents do not own or operate a factory or shop where either Diesel engines or air-conditioning equipment is manufactured or repaired. Respondents conduct an employment bureau in connection with said school, but do not afford students an opportunity to work in a factory or shop constructing, operating, maintaining or repairing Diesel engines or air-conditioning equipment except in very rare instances, and, in many instances, do not afford an opportunity to work at anything. These facts do not become known to persons responding to said advertisements until after an initial payment for instruction has been made to respondents.

PAR. 3. On letterheads used in correspondence with prospective students, soliciting the sale of and selling said courses of study and instruction, respondents place the following words:

Diesel Engineers, Associated  
Consulting Engineers

On said letterheads said words are followed by the names of various persons connected with said school, including the names of John F. Voogt and others who are described on said letterheads as consulting engineers.

On printed agreements with students respondents place the following words:

Diesel Engineers, Associated  
Consulting Engineers

Application Associate Engineering Membership

In said agreements students are described as members, the agreement of enrollment is described as a membership, and the diploma to be awarded upon completion of the course of study and instruction is described as an "associate engineering membership."

By the means and in the manner aforesaid, the respondents represent and imply that the organization with which the student, described as a member, is to be associated is an association of engineers banded together for the promotion of some enterprise of mutual benefit to the members, and that the said persons designated as consulting engineers are engineers with a thorough education and wide experience, competent to give valuable professional advice in engineering matters and persons who because of their rank in the profession are consulted by other engineers. In truth and in fact, the organization with which the student or member becomes associated is not an association banded together for the promotion of any common enterprise of mutual benefit to all members, but is a trade school conducted by the respondents for profit. The persons designated as consulting engineers are neither engineers nor consulting engineers. Neither said persons designated as consulting engineers nor any of the members of respondents' staff or faculty holds or has received any degree in engineering. Only one member of respondents' faculty holds a degree of any kind, to wit, James D. Moore, who holds the degree of Bachelor of Science. Although some of the members of respondents' staff and faculty have had practical experience with engines of various types, have had theoretical courses in engineering subjects, and are consulted by students, teachers and, occasionally, by others wishing advice on engineering subjects, none of them receive remuneration.

neration for such consultations, are in fact consulting engineers, or are persons with a thorough education and wide experience, competent to give valuable professional engineering advice.

PAR. 4. Respondents in the course and conduct of said business have placed printed matter in the hands of their said agents, and have otherwise instructed said agents concerning representations to be made to prospective students, which representations are made by said agents to prospective students. Typical of said instructions are the following:

Many prospects will ask technical questions about the operations of Diesels. It should be easy for you to get around such questions by saying, "Mr. —, I am not a diesel engineer. The school maintains a staff of expert engineers to answer technical questions. If I were an Engineer, I would be drawing a nice salary of from three to five hundred dollars per month, but I am getting into this new industry, and in a short time I expect to be in a position to earn some real money, for I know what fortunes were cleaned up when the automobile industry was new".

It is wonderful and it is new. There are so many opportunities in this field for men who are really *Properly* trained that you could spend hours telling of them.

If I can show you where I have something that will give you an advantage over other men, if I can show you where in a short length of time you can be in a position to earn good money, and at a cost that you can afford, is it possible for you to raise a small amount of money with which to get started?

We want to impress upon the prospective members of this organization the fact that we know how they should be taught. We give them all the necessary theory in twenty assignments. After these are completed, they are ready to go into the laboratory for practical training. A member is not ready for practical work until he knows Diesel theory. It would be like "putting the cart before the horse" to put him in the laboratory and then teach him theory. In the laboratory we give him the necessary training in machine shop work—working on lathes, drill presses, shapers, etc. We also give him welding experience. In fact a practical training has been arranged to give him a complete working knowledge of the things necessary for him to know so he can hold down a good job.

Stress the engineers who have written the text for this course. There isn't a man in the field today who has the qualifications for editing a practical theory course as has our Chief Engineer, J. D. Moore. He is a writer of note, besides having had twenty-five years of practical Engineering Experience. Study the data given on the engineers.

Through these representations and others of similar import not specifically set forth herein, respondents grossly misrepresent and exaggerate the demand for and the qualifications and earnings of persons trained by respondents, and grossly misrepresent and exaggerate the education, training and experience of the teachers employed by respondents, and grossly misrepresent and exaggerate the nature and extent of the equipment available to students at respond-

ents' said school in Los Angeles, and the instructional force available to teach said students. There is little demand for services of students trained in respondents' said school; said students, after completing respondents' said courses of study and instruction, are not engineers and are not qualified by said course of study and instruction to do the work of engineers or the work of persons skilled in the construction, maintenance, operation and repair of Diesel engines or air-conditioning equipment; many of respondents' students are unable to obtain work in the field for which respondents have trained them. Respondents' said school is not well equipped for laboratory or shop work. Respondents' teaching force is not well qualified to give the instruction advertised by respondents.

PAR. 5. Respondents have represented to prospective students that initial amounts of money paid for tuition would be refunded if the student was unable to go on with the training. In truth and in fact, except in cases where a payment is made by a minor without the consent of such minor's parents or legal guardians, respondents refuse at all times to refund initial payments or other money paid by prospective students for either of said courses of instruction, regardless of representations made by them, or their salesmen, relying in such refusal upon statements made in their contracts with such students to the effect that no oral representations will be recognized.

PAR. 6. Respondents have represented to prospective students that said students would be paid a specified salary for working in respondents' plant, which earnings would reimburse the student, and have further represented that upon completion of the course of study sold positions would be available for such students in which positions the knowledge acquired by the pursuit of respondents' said courses of study and instruction could be applied. Respondents do not own or operate a plant in which students are employed, do not pay students a specified salary, or any salary, and do not secure work for students which reimburses them for money paid to respondents. In cases where employment is secured by respondents for students, money received by said students is paid in compensation for services rendered and does not reimburse said students for tuition. Respondents do not secure positions or work for those students who complete either of their said courses of instruction in which knowledge acquired from respondents' said courses of instruction can be applied, and, in many cases, such positions are not available to said students through their own efforts or by any other means.

PAR. 7. Respondents indicate the price of their courses of instruction and study on the contracts or agreements entered into with students, and make a practice of allowing a discount on said price so

stated on said contract or agreement. When said discount is allowed, the rate after the deduction of the discount is represented to the student as a special rate or price to him, whereas, in fact, the price or rate paid by the student is the price charged other students for the same course at the same time.

PAR. 8. The aforesaid acts, practices, and methods of the respondents have the capacity and tendency to, and do, mislead and deceive many prospective purchasers of respondents' said courses of study and instruction and cause them erroneously to believe that the representations and implications so made and used by the respondents in connection with the offering for sale, sale and distribution of their courses of study and instruction are true, and have the tendency and capacity to and do cause many prospective purchasers, because of said erroneous beliefs, to purchase said courses of study and instruction from the respondents, thereby unfairly diverting trade in said commerce to the respondents from their competitors who do not use the acts, practices and methods used by the respondents, to the substantial injury of said competitors in said commerce and to the injury of the public.

#### CONCLUSION

The aforesaid acts, practices, and methods of the respondents are all to the injury and prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of 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 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, brief filed by William L. Pencke, counsel for the Commission (respondents having neither filed a brief nor requested an oral argument), 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, Roy E. Reed and Florence A. Reed, individually and trading under the name and style of Diesel Engineers, Associated, Diesel Training School, Allied Engineering School, or any other name, their representatives, agents and employees, directly or through any corporate or other device, in con-

nection with the offering for sale, sale and distribution in interstate commerce or in the District of Columbia of courses of instruction in Diesel engineering, air-conditioning or in any other subject or subjects, do forthwith cease and desist:

1. From representing, through advertisements in classified advertising pages of newspapers, magazines and other advertising literature, under such headings as "Help Wanted" or "Employment," or in any other manner, that persons responding to such advertisements may obtain an opportunity to work for pay while receiving instruction relating to Diesel engineering, air-conditioning equipment or any other subject.

2. From representing, in any way, that said respondent, or either of them constitutes or is connected with, or that the school which they conduct is, an association of engineers banded together for the promotion of any enterprise of mutual benefit to the members, and from representing that their students become members of such an organization.

3. From representing, in any manner, or by any method, that their students become members of any organization except as students in a school, and from representing that the school conducted by said respondents is any kind of organization other than a trade school.

4. Representing that the teachers in respondents' said school are consulting engineers, unless such persons are in fact fully qualified by education and practical experience in the engineering field to be designated as such and are employed and consulted by concerns or individuals actively engaged in the engineering field other than respondents.

5. Representing that teachers in respondents' said school are engineers, unless such persons are in fact fully qualified by education and practical experience in the engineering field to be designated as such.

6. From misrepresenting and exaggerating the demand for and the qualifications and earnings of persons trained in respondents' school.

7. From misrepresenting and exaggerating the education, training and experience of teachers employed by respondents.

8. From misrepresenting and exaggerating the equipment available to respondents' students at respondents' place of business or elsewhere.

9. From representing that initial payments made by prospective students, or any other amounts paid by students for tuition, will be refunded, when such refunds are not in fact made.

10. From representing that students will receive a specified salary, or any salary, while pursuing courses of instruction at respondents' school, or that students will be reimbursed for their tuition in any way, unless and until a salary is paid or students are reimbursed for the tuition paid in some manner.

11. From representing that upon completion of any of respondents' courses of study and instruction positions will be available offering work in the field of said courses of study and instruction, unless such positions are available and may be secured by students.

12. From representing that the price at which a course of study is offered is a special price, unless said price is lower than the sum charged other students for the same course of study and instruction at the same time.

*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  
GIMBEL BROTHERS, INC., AND MORRIS KAPLAN  
& SON, INC.

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

*Docket 3364. Complaint, Mar. 28, 1938—Decision, Dec. 29, 1939*

Where a corporation engaged in the operation of a department store from which it sold wools, woolens, and mixtures of wool, and rayon and cotton and other materials used in making of women's coats, dresses and suits, 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 wools, mixtures, and other materials used as above set forth—

Represented and described as "woolens" and "luxurious woolens" certain joblot of fabrics which consisted, as case might be, of all wool, wool and rayon, wool, rayon and cotton, and wool and cotton, and which, consisting of mill ends purchased at different times from various manufacturers and sold to said department store "as is" by vendor wholesaler and jobber of woolens, dress goods and pile fabrics, and known to trade as "experimental pieces," were mostly labeled "as are," and thereby represented to members of purchasing public that such fabrics were woolen fabrics and composed solely of wool;

Notwithstanding fact very large part of dress goods thus advertised and sold were composed largely of cotton and rayon, tests made thereon by National Bureau of Standards and others showed proportions of wool falling far short of minimum of 95 percent by weight of total fiber content, requiring, under standards promulgated by said Bureau, accompaniment, as therein set forth, of word "wool" with figure stating guaranteed percentage thereof, in as visible and distinct style as label word "wool," "woolen," or "worsted," and dress goods in question, in very large part, could not truthfully be advertised as "wool" or "woolens";

With tendency and capacity, through word's unqualified use as aforesaid, to mislead and deceive public into belief that said dress goods or cloth were composed entirely of wool, or fleece of sheep, as long definitely and specifically understood by manufacturers, retailers and consuming public generally, from words "wool" or "woolen," and, as such, held in high esteem in products made thereof for preeminent qualities and for warmth, durability and beauty of fabrics made therefrom, and preferred over other fiber admixtures by public, which, relying chiefly on seller representations for fabric wool content, cannot generally distinguish admixture from wholly wool product, and thereby cause members of public to purchase such fabrics, in aforesaid erroneous belief, as wool wholly, and not mixtures of wool and cotton, or wool, rayon and cotton, or wool and rayon, or wool and any other material, and divert trade unfairly to said store from competitors, of whom many do not misrepresent nature, character or content of fabrics offered by them, and of whom some, possessing, in common with many leading department stores and store herein concerned,

own bureaus of standards, in which tests can be made to ascertain wool content of merchandise offered, do make such tests and hold responsible individual buyer for truthfulness of advertising of goods purchased by him and offered for resale by store; to definite injury of trade of competitors who truthfully disclose mixture of fibers other than wool in their fabrics:

*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. John J. Keenan*, trial examiner.

*Mr. Merle P. Lyon* for the Commission.

*Chadbourne, Wallace, Parke & Whiteside*, of New York City, for Gimbel Brothers, Inc.

*Guzik & Watsky* of New York City, for Morris Kaplan & Son, Inc.

#### 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 Gimbel Brothers, Inc., a corporation, and Morris Kaplan & Son, Inc., a corporation, 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 said respondent Gimbel Brothers, 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 Broadway and 33rd Street, in the city of New York and State of New York. Said respondent is now, and for many years last past has been, engaged in the business of operating a chain of department stores, and from its New York City store sells goods, wares, and merchandise to customers located in the various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said goods, when sold, to be shipped from its place of business in New York to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and, at all times mentioned herein, has been, a course of trade and commerce by said respondent Gimbel Brothers, Inc., in said goods, so sold by it, between and among the various States of the United States, and said respondent is now, and at all times mentioned herein, has been in substantial competition with other corporations, and with other persons, firms, and partnerships, engaged in the sale of goods, wares, and merchandise in commerce between and among

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

PAR. 2. The respondent, Morris Kaplan & Son, Inc., is a corporation likewise 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 222 West 39th Street, in the city of New York and State of New York. Said respondent is now, and for many years last past has been, engaged in the wholesaling and jobbing of woolens, dress goods, and pile fabrics, which it purchases from various manufacturers throughout the United States. From its New York City office said respondent sells said woolens, dress goods, and pile fabrics to department stores and other retailers of said goods located in various States of the United States and in the District of Columbia. It causes, and during the time above mentioned has caused, its said goods, when sold, to be shipped from its place of business in New York, to the purchasers thereof located in the various States of the United States other than the State of New York. There is now, and, at all times mentioned herein, has been, a course of trade and commerce by said respondent, Morris Kaplan & Son, Inc., in said goods, so sold by it, between and among the various States of the United States; and said respondent is now, and at all times mentioned herein, has been, in substantial competition with other corporations, and with other persons, firms, and partnerships engaged in the wholesaling and jobbing of woolens, dress goods, and pile fabrics 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 described in Paragraph 1 herein, the respondent Gimbel Brothers, Inc., in soliciting the sale of and selling certain of its goods, wares, and merchandise to the general public, caused to be published in daily newspapers in the city of New York and having an interstate circulation certain advertisements containing headlines as follows:

*Gimbels Offers 10,000 Yards*

*\$2.49 to \$4.95 Spring*

WOOLENS

Sample Pieces from the Wyandotte Mills!

Kauffman Tweeds!

*\$1.44 Yard.*

*Gimbels*

*Fabrics for Which Women Search the City  
and Rarely Find—Except at Prohibitive Prices!*

Superb \$2.49 to \$4.95 Spring

WOOLENS

Sample Pieces from the Wyandotte Mills! Kauffman Tweeds!

*\$1.44 Yd.*

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## Complaint

Said advertisements further contained the following representations:

Here are fabrics that go into custom-made suits, coats, and frocks—into clothes tagged with the label of some exclusive Madison Avenue shop. Few of us can afford those clothes. *But Almost Everyone Can Afford these Fabrics at Gimbels Price.* You will find everything from the most feathery of woolens to the heaviest—in greys ranging from almost imperceptible mist to deepest fog; almost every blue under the sun; almost every rose that ever bloomed; beiges; greens; off shades; black.

On the second floor in respondent's New York store at Broadway and 33rd Street signs were displayed which read as follows:

*Sensational Sale!*

Luxurious Woolens \$1.44 Yd.

Usually \$2.49 to \$4.95 Yd.

*Sale—Luxury Woolens*

\$1.44 Yard

Usually \$2.49 to \$4.95

54" Wide

The foregoing statements and representations made by the respondent Gimbel Brothers, Inc. as in this paragraph set out, serve as representations to members of the purchasing public that such products so advertised and offered for sale were, and are, woolen products. The representations hereinabove set forth are, and were, false and misleading in that said products or the majority of them so represented, designated and referred to, were not, and are not 100 percent wool or all wool or composed chiefly or entirely of wool, but were and are mixtures of wool, cotton and rayon, or mixtures of wool and rayon, or mixtures of wool and cotton, or mixtures of wool and fiber composition.

PAR. 4. The word "wool" or "woolen" for many years last past has had, and still has, in the minds of garment manufacturers, jobbers, retailers, and the consuming public generally a definite and specific meaning, to wit, the fleece or hair obtained from sheep. Woolen products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities, and have been woven into a variety of fabrics noted for their qualities of warmth, durability, and beauty. Dress goods and other items of wearing apparel designated, described, and referred to as "woolen" have been for a long time, and at the present time still are, associated in the public mind with the fabric made from the hair or fleece of

sheep commonly known and understood by the public generally as "wool."

The word "woolen" when used by respondents as herein detailed without qualification as to the material from which dress goods or cloth are composed has the tendency and capacity to mislead and deceive the public into believing that such dress goods or cloth are composed chiefly or entirely of wool, and that they are not mixtures of wool and cotton, or wool, rayon and cotton, or of wool and rayon or of wool and any other material.

PAR. 5. In the course and conduct of its jobbing business as described in paragraph 2 herein, the respondent Morris Kaplan & Son, Inc., purchased at various times from various manufacturers located in States of the United States other than the State of New York, certain dress goods or fabrics known to the trade as "mill ends," the majority of which was composed of mixtures of wool, cotton, and rayon, or wool and rayon, or wool and cotton in varying proportions. In the further course of its said jobbing business, said respondent Morris Kaplan & Son, Inc. solicited the sale of and sold to the respondent Gimbel Brothers, Inc., 7,150 yards of said goods at a price of \$1 a yard, representing said goods to be "woolens," although said respondent Morris Kaplan & Son, Inc. well knew or had reason to know that said goods were not in fact woolens or composed entirely or even principally of wool.

PAR. 6. Respondent Gimbel Brothers, Inc., having purchased from respondent Morris Kaplan & Son, Inc. the 7,150 yards of dress goods designated as "woolens" in the manner and under the circumstances as described in paragraph 5 hereof, thereupon proceeded to retail them to the general public through its New York store at 33rd Street and Broadway, and solicited the sale thereof to the purchasing public by means of newspaper advertising and otherwise as more particularly described in paragraph 3 of this complaint, and did sell substantial quantities thereof by individual sales to purchasers residing in States of the United States other than the State of New York.

PAR. 7. In purchasing said 7,150 yards of dress goods as hereinbefore described at the bargain low price of \$1 per yard from respondent Morris Kaplan & Son, Inc., the said respondent Gimbel Brothers, Inc. knew, or had reason to know, or should have known, that said dress goods were not wool or woolen goods, or composed chiefly or entirely of wool, and could not truthfully be represented to the purchasing public as "woolens." Under the terms and conditions contained in the written order under which said respondent Gimbel Brothers, Inc. purchased said goods, it reserved the right and privilege of testing said merchandise and of cancelling the order and

returning said goods if the merchandise was found not to be as represented. Nevertheless, said respondent, either with full knowledge that said goods were not woolens or woolen goods, or with negligent, careless, and reckless neglect of its duty to test said products or inquire into their composition, wilfully, negligently, and fraudulently failed and neglected to ascertain the true composition and character of said goods, by inquiry, examination, test or otherwise, and advertised said goods to the general public in unqualified terms as "woolens."

PAR. 8. Among the competitors of the respondents there are corporations, individuals, firms, and partnerships engaged in the business of operating department stores, selling goods, wares, and merchandise or wholesaling and jobbing woolens, dress goods and pile fabrics, who do not misrepresent the composition, quality and materials of goods offered for sale by them.

PAR. 9. The use by respondents of the representations set forth herein have had and now have the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations were and are true and to cause them to purchase said products as a result of such erroneous beliefs engendered as above set forth. The use by respondents of the representations aforesaid has unfairly diverted and does unfairly divert trade in said commerce to the respondents from those of their said competitors who do not use such deceptive practices and methods. Thereby injury is being, and has been, done by respondents to competition in commerce among and between the various States of the United States.

PAR. 10. The aforesaid acts, practices and representations of the respondents as herein alleged 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.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 28, 1938, issued and served its complaint in this proceeding upon the respondents, Gimbel Brothers, Inc., a corporation, and Morris Kaplan & Son, Inc., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Merle P. Lyon,

attorney for the Commission, and in opposition to the allegations of complaint by Horace G. Hitchcock and Watson T. Southworth of Chadbourne, Wallace, Parke and Whiteside of New York City, N. Y., on behalf of respondent Gimbel Brothers, Inc., and Leo Guzik of Guzik and Watsky, New York City, N. Y., on behalf of respondent Morris Kaplan & Son, Inc., before John J. Keenan, a duly appointed trial examiner of the Commission, designated by it to receive such testimony and evidence, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint, the answers thereto, the testimony and other evidence and briefs in support of the complaint and in opposition thereto (no oral argument having been requested or made). And the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Morris Kaplan & Son, Inc., is a New York corporation engaged in the wholesaling and jobbing of woolens, dress goods, and pile fabrics with its office and principal place of business located at 222 West Thirty-ninth Street, in the city of New York, State of New York. Said respondent sold to the respondent Gimbel Brothers, Inc., on or about March 1, 1938, 7,150 yards of certain dress goods or fabrics known as "Mill ends" purchased by it at different times from various manufacturers, a large part of which were composed of mixtures of wool, cotton and rayon in varying proportions at a price of \$1 per yard. The sale of said goods was made "as is" and consisted of "sample pieces" and "experimental pieces." The goods involved in this case were purchased by the buyer of Gimbel Brothers, Inc., after inspection at the place of business of the respondent Morris Kaplan & Son, Inc., and were then shipped to the New York store of Gimbel Brothers, Inc., and said shipment was not in interstate commerce. The respondent Morris Kaplan & Son, Inc., retained no control of said goods after the sale and delivery to Gimbel Brothers, Inc., and made no representation to the general public in connection with the retail sale thereof.

PAR. 2. Respondent Gimbel Brothers, 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 Broadway and Thirty-third Street, in the city of New York, and State of New York. It is now, and for many years last past has been, engaged in the business of operating a department store, from which it sells wools, woolens, and mixtures of wool, and rayon and cotton and other materials used in the making of women's coats, dresses and suits. Respondent causes, and at all times herein mentioned has caused, its said merchandise, including the products herein involved, to be sold and distributed to members of the purchasing public located in the various States of the United States and in the District of Columbia. It causes, and during the times herein mentioned has caused, its said merchandise when sold to be transported from its place of business in the city of New York, State of New York, to purchasers located in various States of the United States and in the District of Columbia. Respondent is now, and has been for many years last past, 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 engaged in the sale and distribution of wools, and mixtures of wool, rayon and cotton and other materials used in the making of women's coats, dresses, and suits.

PAR. 3. Respondent Gimbel Brothers, Inc., in the course and conduct of its business, as set out in paragraph 2 hereof, in soliciting the sale of and selling certain fabrics for use in the making of women's coats, dresses and suits, has caused advertisements to be published in newspapers of general circulation in various States of the United States in which advertisements said respondent represented and described as "woolens" and "luxurious woolens," a certain job-lot of fabrics, consisting of some pieces of all wool, some composed of wool and rayon, some composed of wool, rayon and cotton and others composed of wool and cotton. The said fabrics purchased from Morris Kaplan & Son, Inc., are known to the trade as "experimental pieces," and were at the time of purchase by respondent Gimbel Brothers, Inc., for the most part labeled "as are." Said fabrics were represented and described by Gimbel Brothers, Inc., as "woolens."

PAR. 4. The words "wool" or "woolen" for many years last past have had, and still have, in the minds of the manufacturers, retailers and the consuming public generally, a definite and specific meaning, to wit: the fleece or hair obtained from sheep. Woolen or wool products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities and have been woven into a variety of fabrics noted for their quality of warmth, durability,

## Findings

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and beauty. Dress, suit and coat fabrics for wearing apparel represented, designated, described, and referred to as "wool" or "woolens" have been for a long time, and at the present time still are, associated in the public mind with a fabric entirely made from the hair or fleece of sheep. There is a public preference for wool fabrics over mixtures of wool and other fibers, and the public is more likely to purchase fabrics advertised as "wool" or "woolens" than fabrics advertised as mixtures of wool and other fibers, if the prices are comparable. The public is generally unable to distinguish all-wool fabrics from fabrics containing mixtures of wool and other fibers and relies chiefly on the representations of the seller as to the wool content of fabrics.

The word "woolens" when used by respondent Gimbel Brothers, Inc., in the advertisement of the dress goods, or cloth purchased from Morris Kaplan & Son, Inc., as aforesaid, without qualification as to the materials from which said dress goods or cloth are composed has the tendency and capacity to mislead and deceive the public into believing that such dress goods or cloth are composed entirely of wool, and that they are not mixtures of wool and cotton, or wool, rayon, and cotton, or of wool and rayon or of wool and any other material. The use by respondent of such statements, representations and designations of the fabrics offered for sale by it, has the capacity and tendency to cause members of the public to purchase such fabrics in the erroneous belief that such goods were wholly of wool.

PAR. 5. The fabric advertised, represented and described by respondent Gimbel Brothers, Inc., as "woolens," as set out in paragraph 3 hereof, were not composed wholly of wool; a large percentage of same were composed of wool and rayon or wool, rayon, and cotton, or wool and cotton. The use by the respondent of such representations, statements, descriptions, and designations of said fabrics serve as representations to members of the purchasing public that such fabrics were "woolen" fabrics and were composed solely of wool.

Three separate and independent tests were made of the wool content of the merchandise involved in this proceeding, one by the National Bureau of Standards, Washington, D. C., a second by the Industrial By-Products and Research Corporation, acting as Gimbel's Bureau of Standards and the third by the Forstmann Woolen Co. The tests performed by the National Bureau of Standards were made on 10 pieces of cloth selected at random from the specific lot involved in this proceeding which was on sale at the New York store of respondent, Gimbel Brothers, Inc. Said tests showed that of these 10 pieces, only 4 were all wool, and the other 6 were composed in

large part of cotton and rayon in quantities varying from 65 percent to 75 percent. The tests, both microscopic and chemical, made by the Chief Chemist of the Forstmann Woolen Co. on 3 pieces of cloth chosen also at random showed that their wool content was only 30 percent, 34 percent, and 60 percent respectively. The tests made by the respondent, Gimbel Brothers, Inc., through its own Bureau of Standards, the Industrial By-Products and Research Corporation, showed that only 7 out of 12 pieces tested were all wool. The other 5 pieces contained from 31.1 percent rayon to 66.2 percent cotton and rayon.

It is established by the record in this case, and the Commission so finds, that a very large part of the dress goods advertised and sold by the respondent Gimbel Brothers, Inc., at this special sale in March 1938 were composed largely of cotton and rayon, and could not truthfully be advertised as "wool" or "woolens."

Commercial Standard CS 65-38 for wool and part wool fabrics, promulgated by the National Bureau of Standards, provides that the terms "wool," "woolens," or "worsted," when utilized in labeling or otherwise referring to fabrics of which the wool-fiber content is less than 95 percent by weight of the total fiber content, shall be preceded by a figure indicating the guaranteed minimum percentage of wool fiber. The figure stating the guaranteed percentage of wool shall be as visible, legible, clear, and distinct as the label word "wool," "woolen," or "worsted."

PAR. 6. There are among the competitors of respondent Gimbel Brothers, Inc., as mentioned in paragraph 2 hereof many who do not misrepresent the nature, character, or content of the fabrics offered for sale by them. In a special sale of similar merchandise offered by a competitor of the respondent Gimbel Brothers, Inc., at approximately the same date, the goods were truthfully represented as "Spring Woolens and Mixtures of Wool and Rayon." Many leading department stores, including the respondent, Gimbel Brothers, Inc., have their own Bureaus of Standards, in which tests can be made to ascertain the wool content of merchandise offered for sale. Some competitors of respondent, Gimbel Brothers, Inc., do make such tests, and hold the individual buyer responsible for the truthfulness of the advertising of the goods purchased by him and offered for resale by the store.

The statements, representations, descriptions, and designations made by respondent, Gimbel Brothers, Inc., as set out in paragraph 3 hereof, have the capacity and tendency to divert trade unfairly to respondent from said competitors. The advertising representations of respondent Gimbel Brothers, Inc., as heretofore set forth are

therefore definitely injurious to the trade of competitors who truthfully disclose the admixture of fibers other than wool in the fabrics offered for sale by them.

#### CONCLUSION

The acts and practices of the respondent Gimbel Brothers, Inc., as herein found, are all to the prejudice and injury of the public and of said respondent's competitors 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 answers of the respondents, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and briefs of counsel for the Commission and counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that the respondent Gimbel Brothers, Inc., a corporation, has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent Gimbel Brothers, 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 textile fabrics in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "wool," or "woolens" or any other word or term descriptive of wool, to describe, designate or in any way refer to any fabric or product which is not composed wholly of wool; *Provided, however*, That in the case of fabrics or products composed in part of wool and in part of other fibers such words may be used as descriptive of the wool content if there is used in immediate connection or conjunction therewith, in letters of at least equal size and conspicuousness, words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight, beginning with the largest single constituent, and provided further that if any particular fiber in said fabrics or products is not present in a substantial amount by weight, the percentage in which such fiber is present shall then be specifically disclosed.

2. Representing in any manner whatsoever that fabrics or products offered for sale or sold by it contain wool in greater quantity, percentage, or degree than is actually the case.

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

*It is further ordered,* That the complaint be dismissed as to the respondent Morris Kaplan & Son, Inc., a corporation.

IN THE MATTER OF  
MILTON MEYER, DOING BUSINESS AS MILTON 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 3825. Complaint, June 17, 1939—Decision, Dec. 29, 1939*

Where an individual engaged in sale of books on various subjects, including the playing of various musical instruments, ventriloquism, hypnotism, fortune telling, crystal gazing, mind reading, and the interpretation of dreams, and of watches, optical goods, skeleton keys, and a large number of other articles of various sorts and kinds, to purchasers in other States and in the District of Columbia; in listing and describing various articles sold and distributed by him in catalog containing some 2,000 items and distributed by the mails and otherwise to purchasers and prospective purchasers in various States and in said District—

- (a) Represented that through his said books of instruction one could learn to play various musical instruments quickly without personal instruction, tedious practice, or any knowledge of music, through such statements as "Learn to play the piano by easy method at home," "Play Hawaiian or steel guitar in five minutes," "The famous five minute courses," etc., facts being it is impossible to gain, by the use of his said books, the ability "to play," in the generally accepted sense of the word, the piano, Hawaiian or steel guitar, ukelele, or instruments covered in such "famous five minute courses";
- (b) Represented that through his said books of instruction in hypnotism, purchaser would acquire a power which would enable him to assert influence over those with whom he came in contact, direct affairs of others, increase his own self respect, will power, ambition, and magnetism of his personality, and be enabled to cure bad habits in others, including tobacco, morphine, and drug habits, facts being books in question would not give one such power as above described;
- (c) Represented that through said books of instruction in ventriloquism, fortune telling, crystal gazing, and mind reading, purchaser might become proficient therein, facts being use of said books would not enable purchaser to tell fortunes, foretell future events, read minds of others, or interpret or correctly define the meaning of dreams;
- (d) Represented that certain telescopes offered by him were of fine quality and were of 2½ power, and that the cases of certain watches were guaranteed gold finished and would never tarnish and had exclusive features, facts being said various representations were false; and
- (e) Represented that product "U-Kan-Plate" would give worn-down pieces a brilliant coating of silver, and that his skeleton keys would open all sorts of doors, facts being former would not result in articles upon which used being "silver plated" in generally accepted meaning of term, and any coating deposited would be readily and quickly removed in ordinary usage, and keys sold and distributed and thus referred to would be effective only upon locks of simplest and cheapest construction;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true, and that he had truthfully represented quality, material, construction, durability, and other characteristics of his various products, and with result that number of purchasing public, by reason of such erroneous and mistaken beliefs, were induced to buy his products aforesaid:

*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.

*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 Milton Meyer, an individual, trading and doing business under the name of Milton 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. Respondent Milton Meyer, an individual, conducts his business under the name and style of Milton Products Co., with an office and principal place of business at 2440 Lincoln Avenue, city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 8 months last past, engaged in the business of selling books of instruction in various subjects and other books, watches, optical goods, skeleton keys, and a large number of other articles of various sort and kinds.

The respondent causes and has caused the said books and articles when sold to be transported from the place where his business is conducted in the State of Illinois to purchasers thereof located in 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 his business the respondent publishes a catalog listing and describing the various articles of merchandise sold and distributed by him, which catalog contains approximately 2,000 items. Respondent distributes this catalog by United States mails and by other means to purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia.

For the purpose of inducing the purchase of the various products sold and distributed by him and listed in said catalog, the respondent in the course and conduct of his business has engaged in the practice of falsely representing the quality, material, construction, durability, and other characteristics of the products sold and distributed by him. In furtherance of this practice the respondent places in said catalog various descriptive statements concerning his various products, which statements are exaggerated, false and misleading, and which are designed to mislead and deceive the prospective purchaser of such products.

PAR. 4. Typical of these acts and practices are representations made by respondent with reference to certain books of instruction sold and distributed by him, such as "Learn to Play the Piano by Easy Method at Home," "Learn to Vamp Easily," "Play Hawaiian or Steel Guitar in Five Minutes," "Illustrated Five Minute Ukulele Course," "The Famous Five Minute Courses," and many others. In such advertising respondent represents that the purchaser can learn to play various musical instruments quickly without personal instruction, tedious practice or any knowledge of music. In truth and in fact it is impossible to gain by the use of the respondent's books the ability "to play" in the generally accepted sense of the word the piano, Hawaiian guitar, ukulele, or any other instrument covered by respondent's various books of instruction.

PAR. 5. Also typical of the acts and practices described above are representations that by the use of certain books of instruction sold and distributed by the respondent the purchaser could learn and become proficient in ventriloquism, clog dancing, hypnotism, fortune telling, crystal gazing, mind reading, and interpretation of dreams. It is further represented by the respondent that by means of the instructions on hypnotism the purchaser will acquire a power which will enable him to assert influence over those with whom he comes in contact, direct the affairs of others, increase his own self respect, will power, ambition, and the magnetism of his personality, and will enable him to cure bad habits in others including the tobacco, morphine, and drug habits.

In truth and in fact said books are of no value for self instruction. Respondent's instructions on hypnotism will not give one power to influence or direct the affairs of others, cure bad habits including drug addiction, or enhance the self respect, will power, or personal magnetism of the purchaser. The use of said various instruction books will not enable the purchaser to tell fortunes, foretell future events, read the minds of others, or enable him to interpret or correctly divine the meaning of dreams.

PAR. 6. Another typical example of the acts and practices above described is falsely representing the material, quality, construction, durability, and other characteristics of the various articles of merchandise sold and distributed by respondent. As an example of this practice are representations that respondent's telescopes are fine quality and 2½ power; that his watch cases are guaranteed gold finished, will never tarnish, and have exclusive features; that his product "U-Kan-Plate" will give worn-down pieces a brilliant coating of silver; that his skeleton keys will open all sorts of door locks.

In truth and in fact respondent's telescopes are not of fine quality or two and one-half power. Respondent's watch cases are not guaranteed, will quickly tarnish, and have no exclusive features. The product "U-Kan-Plate" will not result in coating metallic articles on which it is used with a plating of pure silver and any coating deposited by such use will be readily and quickly removed in ordinary usage. The skeleton keys sold and distributed by the respondent are effective only upon locks of the cheapest and simplest construction.

PAR. 7. The use by the respondent of the aforesaid acts and practices 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 all of said representations are true and that the respondent has truthfully represented the quality, material, construction, durability, and other characteristics of his various products. On account of this erroneous and mistaken belief a number of the purchasing public have been induced to purchase respondent's products.

PAR. 8. 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 17, 1939, issued, and on June 19, 1939, served its complaint in this proceeding upon respondent Milton Meyer, an individual trading and doing business as Milton 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 7, 1939, respondent filed his answer, in which he admitted certain material allegations of fact set forth in said complaint, denied other allegations of fact set forth therein, and waived all intervening procedure and further hearing on the charges set forth in the com-

## Findings

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plaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the 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 Milton Meyer, an individual, conducts his business under the name and style of Milton Products Co. with an office and principal place of business at 2440 Lincoln Avenue, City of Chicago, State of Illinois.

**PAR. 2.** Respondent is now, and was for more than 8 months prior to the issuance of the complaint herein, engaged in the business of selling books of instruction in various subjects and other books, watches, optical goods, skeleton keys, and a large number of other articles of various sorts and kinds.

Respondent causes and has caused the said books and articles, when sold, to be transported from the place where his business is conducted in the State of Illinois to purchasers thereof located in 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 his business the respondent published a catalog listing and describing the various articles of merchandise sold and distributed by him which catalog contains approximately 2,000 items. Respondent distributed this catalog by United States mails and by other means to purchasers and prospective purchasers located in the various States of the United States and in the District of Columbia.

For the purpose of inducing the purchase of various products sold and distributed by him and listed in said catalog, respondent in the course and conduct of his business has falsely represented the quality, material, construction, durability, and other characteristics of various of the products sold and distributed by him. In furtherance thereof respondent has placed in the said catalog descriptive statements concerning various products, which statements are exaggerated, false, and misleading, and which are designed to deceive and mislead prospective purchasers.

**PAR. 4.** Among the articles advertised by respondent as aforesaid are certain books of instruction among which are:

Learn to play the piano by easy method at home.

Learn to vamp easily.

Play Hawaiian or steel guitar in five minutes.

Illustrated five minute Ukelele course.

The famous five minute courses. .

In advertising the said books of instruction respondent has represented that the purchaser can learn to play various musical instruments quickly without personal instruction, tedious practice or any knowledge of music. In truth and in fact it is impossible to gain by the use of the respondent's books the ability "to play," in the generally accepted sense of the word, the piano, Hawaiian or steel guitar, ukelele or the instruments covered by the "Famous five minute Courses."

PAR. 5. Among the articles advertised by the respondent as aforesaid, are certain books of instruction in ventriloquism, hypnotism, fortune telling, crystal gazing, mind reading, and the interpretation of dreams. In advertising the said books of instruction respondent has represented that by means of the instructions in hypnotism the purchaser will acquire a power which will enable him to assert influence over those with whom he comes in contact, direct the affairs of others, increase his own self respect, will power, ambition, and the magnetism of his personality and will be enabled to cure bad habits in others, including the tobacco, morphine, and drug habits. Respondent has represented that by the use of his books of instruction in ventriloquism, fortune telling, crystal gazing, and mind reading, the purchaser may become proficient therein.

In truth and in fact respondent's instructions in hypnotism will not give one power to influence or direct the affairs of others, cure bad habits, including drug addiction or enhance the self respect, will power, or personal magnetism of the purchaser. The use of the other instruction books hereinbefore mentioned will not enable the purchaser to tell fortunes, foretell future events, read the minds of others, or enable him to interpret or correctly divine the meaning of dreams.

PAR. 6. Among the articles advertised by respondent as aforesaid are telescopes, watches, a preparation described by respondent as "U-Kan-Plate" and skeleton keys. In advertising the said articles respondent has represented that the said telescopes are of fine quality and are 2½ power, that the cases of the said watches are guaranteed gold finished, will never tarnish and have exclusive features, that the product "U-Kan-Plate" will give worn down pieces a brilliant coating of silver, and that his skeleton keys will open all sorts of door locks. In truth and in fact respondent's telescopes are not of fine quality or 2½ power. Respondent's watch cases are not guaranteed, will quickly tarnish and have no exclusive features. The use of the product "U-Kan-Plate" will not result in the articles upon which it is used being "silver plated" in the generally accepted meaning of

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the term and any coating deposited by such use will be readily and quickly removed in ordinary usage. The skeleton keys sold and distributed by respondent are effective only upon locks of simplest and cheapest construction.

PAR. 7. The use by the respondent of the aforesaid acts and practices 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 all of said representations are true, and that the respondent has truthfully represented the quality, material, construction, durability, and other characteristics of his various products. On account of this erroneous and mistaken belief a number of the purchasing public have been induced to purchase respondent's products.

## CONCLUSION

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 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 and the answer of the respondent, in which answer respondent admits certain material allegations of fact set forth in said complaint and denies other allegations of fact set forth therein, 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, Milton Meyer, individually, and trading as Milton Products Co., or under any other name or names, 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 his merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly that by the use of respondent's books of instruction on the playing of musical instruments, one can acquire the ability to play the piano, guitar or ukelele; or, that by the use of respondent's book of instructions on hypnotism, one can acquire the power to cure one's self of the addiction to drugs or other bad habits, enhance one's self respect, will power or personal magnetism, or influence or direct the affairs of others; or that, by the use of respond-

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ent's other books of instruction, one may be enabled to tell fortunes, foretell future events, read the minds of others, or interpret or divine the meaning of dreams; or that one can acquire any ability, power, or quality through or by means of any course of instruction, books or other literature of respondent, when such is not the fact.

2. Representing, directly or indirectly, that respondent's telescopes are of  $2\frac{1}{2}$  power or that such telescopes or other optical goods sold by respondent are of a quality and power which, in fact, they do not possess.

3. Representing, directly or indirectly, that any watches or jewelry sold by respondent will not tarnish, possess exclusive features or are finished in gold, when such is not the fact.

4. Representing, directly or indirectly, that respondent's product "U-Kan-Plate" or any similar product sold by respondent will, when applied to metal, "plate," as distinguished from "coat," such metal with silver.

5. Representing, directly or indirectly, that skeleton keys sold by respondent will open any and all kinds of door locks, when such is not the fact.

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

Complaint

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## IN THE MATTER OF

PRIME HAT COMPANY, INC., AND VINCENT GERBINO,  
SAMUEL SCIFO, VITO DIGREGORIO AND JOHN SCIFOCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3830. Complaint, June 22, 1939—Decision, Dec. 29, 1939*

Where a corporation and four individuals, who were general officers thereof and, as such, managed, controlled, and dominated its corporate affairs and activities, engaged in manufacture of hats from felt materials obtained from old, worn, and previously used products, and in so treating and processing, through cleaning, steaming, ironing, and shaping, and fitting with new trimmings, sweat bands and size labels, old, worn, and used felt hat bodies purchased by them that they had the appearance of new hats made from felts which had never been worn—

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 and wholesalers, by whose retail dealer vendees said hats were resold to purchasing public without disclosing facts aforesaid, and failed, through use of words "Made Over Hat" under such terms as "Quality Hats" and other similar words or names embossed on sweat bands attached thereto, to disclose to purchasers that articles in question were in fact made from old, worn, and previously used hat bodies, as distinguished from products made from shop-worn hat bodies which had never been worn or used, as made in many instances by manufacturers through similar process employed with new but shop-worn hats reclaimed by them from merchants' shelves;

With effect of misleading and deceiving substantial number of purchasing public into erroneous and mistaken belief that said products were made either from new and unused materials or from new but shop-worn bodies which had never been worn or used, and, by reason of such belief, into purchase of substantial number thereof:

*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.

*Mr. Alan G. Trebach*, 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 Prime Hat Co., Inc., a corporation, and Vincent Gerbino, Samuel Scifo, Vito Digre-

gorio, and John Scifo, individually and as officers of said Prime Hat 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 in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Prime Hat Co., Inc., is now and has been at all times mentioned herein, 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 97 East Houston Street, in the city and State of New York. Respondents Vincent Gerbino, Samuel Scifo, Vito Digregorio, and John Scifo are individuals and are president, vice president, secretary, and treasurer, respectively, of respondent Prime Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of said respondents have their office and principal place of business at No. 97 East Houston 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 hat bodies are cleaned, steamed, ironed, and shaped by respondents and then 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 made by respondents into hats with new trimmings, sweat bands, size labels, 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 in fact manufactured from old, worn, and previously used felt

hat bodies, which have been cleaned and renovated by respondents. 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, previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course of the operation of their business respondents use the words "Quality Hats" and other similar words or names in designating said merchandise. Respondents cause said words or similar words or names to be embossed on sweat bands which are attached to said hats. Immediately under the words "Quality Hats" or under similar terms and names used by respondents in designating said hats, respondents have 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 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.

By the use of the words "Made Over Hat" in the manner aforesaid, respondents fail 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 which have never been worn or used.

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 either from new and unused materials, 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 said hats because of such erroneous and mistaken beliefs.

PAR. 5. The aforesaid acts and practices of 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 22d day of June A. D. 1939, issued and served its complaint in this proceeding upon the respond-

ents Prime Hat Co., Inc., a corporation, and Vincent Gerbino, Samuel Scifo, Vito Digregorio, and John Scifo, individually and as officers of Prime Hat Co., Inc., a corporation, 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 thereto, evidence in support of the allegations of said complaint was introduced by Robert Mathis, Jr., attorney for the Commission, no evidence being introduced in opposition thereto by the respondents, before John L. Hornor, 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 the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the evidence, and brief in support of the 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. Respondent, Prime Hat Co. Inc., is now and has been at all times mentioned herein, 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 97 East Houston Street, in the city and State of New York. Respondents Vincent Gerbino, Samuel Scifo, Vito Digregorio, and John Scifo are individuals and are president, vice president, secretary, and treasurer, respectively, of respondent Prime Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of said respondents have their office and principal place of business at No. 97 East Houston 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 felt materials obtained from old, worn, and previously used hats, and of selling the same to jobbers and wholesalers located in the various States of the United States and in the District of Columbia.

PAR. 2. 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. 3. In the course and conduct of said business, described in paragraph 1 above, respondents buy old, worn, and used felt hats. The old, worn, and used felt hat bodies are cleaned, steamed, ironed, and shaped by respondents and then fitted with new trimmings, sweat bands, size labels.

PAR. 4. The aforesaid old, worn, and previously used hat bodies after having been made by respondents into hats with new trimmings, sweat bands, and size labels, as described in paragraph 3 above, have the appearance of new hats manufactured from felts which have never been worn, and said hats are sold by respondents to jobbers and wholesale dealers 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 respondents.

Said hats so sold to jobbers and wholesale dealers 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 that they are not in fact new hats.

In the course of the operation of their business respondents use the words "Quality Hats" and other similar words or names in designating said merchandise. Respondents cause said words or similar words or names to be embossed on sweat bands which are attached to said hats. Immediately under the words "Quality Hats" or under similar terms and names used by respondents in designating said hats, respondents have caused to be embossed the words "Made Over Hat."

PAR. 5. 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 are reclaimed from merchants' shelves by said hat manufacturers and which have never been worn or used.

In many instances said shop-worn hats are cleaned, steamed, renovated, and reblocked by said hat manufacturers, part of the methods used by such shop-worn hat manufacturers being similar to the methods used by manufacturers who make hats from old, worn, and previously used felt hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid, respondents failed 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 which have never been worn or used.

PAR. 6. The use by respondents of the acts and practices above set forth has the capacity and tendency to, and does, mislead and deceive, and has misled and deceived, a substantial number of the purchasing public into the erroneous and mistaken belief that the said hats are manufactured either from new and unused materials, 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 said hats because of such erroneous and mistaken belief.

#### 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 answer of respondents, testimony, and other evidence taken before John L. Hornor, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the complaint (respondents 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 respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That respondent, Prime Hat Co., Inc., a corporation, its officers, representatives, agents, and employees and respondents Vincent Gerbino, Samuel Scifo, Vito Digregorio, and John Scifo, 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 in commerce as 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-

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30 F. T. C.

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

## Syllabus

## IN THE MATTER OF

U-NEED CANDY CO., INC., AND LOUIS J. WEGER, MRS.  
LOUIS J. WEGER, AND CHARLES R. HOSEY, INDIVID-  
UALSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3855. Complaint, July 20, 1939—Decision, Dec. 29, 1939*

Where a corporation and three individuals who were officers and directors thereof and stockholders therein and, as case might be, controlled, formulated, and directed its practices and policies, and who acted together and in cooperation with each other in acts and things below set forth, engaged in manufacture of candy and in sale and distribution of certain assortments thereof 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 with which, as case might be, it included (1) push card for use in sale and distribution of certain assortments under plan by which person, for 5 cents paid, received, in accordance with number pushed by chance from one to four candy bars and last sale on card entitled purchaser to eight of such bars, and (2) various other push cards for use in sale and distribution of their said candy under plan similar to that described and varying therefrom in detail only and involving game of chance, gift enterprise, or lottery scheme;

Sold such assortments, along with such push cards to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers thereof, such assortments were exposed and sold to purchasing public in accordance with aforesaid sales plan involving game of chance or sale of chance to procure additional 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 them in sale and distribution of their candy and in element of chance involved therein and were thereby induced to buy and sell their said candy in preference to that of competitors aforesaid who do not use same or equivalent methods and with effect through use of such method and because of said game of chance of unfairly diverting trade to them from their competitors aforesaid:

*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

30 F. T. C.

## 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 U-Need Candy Co., Inc., a corporation, and Louis J. Weger, Mrs. Louis J. Weger, and Charles R. Hosey, 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent U-Need Candy Co., Inc., is a corporation organized and doing business under the laws of the State of Indiana, with its principal office and place of business located at 1231 West Washington Avenue, South Bend, Ind. Respondent Charles R. Hosey is an individual and prior to April 3, 1939, was secretary and treasurer, a stockholder, and a director of corporate respondent. Respondent Louis J. Weger, an individual, is and has been president, a stockholder, and director of the corporate respondent. Respondent Mrs. Louis J. Weger, an individual, is and has been a stockholder and director of corporate respondent. Respondents Louis J. Weger, Mrs. Louis J. Weger, and Charles R. Hosey, within the time mentioned herein, formulate, control, and direct the practices and policies of the corporate respondent. All of said individual respondents and said corporate respondent, within the time mentioned herein, acted together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are and have been, within the time mentioned herein, 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. Respondents cause and have caused, within the time mentioned herein, said products when sold to be transported from their principal place of business in the city of South Bend, Ind., to purchasers thereof, at their respective points of location in the various States of the United States other than Indiana and in the District of Columbia. There is and has been, within the time mentioned herein, a course of trade by respondents 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, respondents are and have been, within the time mentioned herein, in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce

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## Complaint

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, within the time hereinabove set forth, sell and have 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 herein fully described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of bars of candy together with the device commonly called a push card. The push card has 60 partially perforated disks, on the face of each of which is printed the word "Push." Concealed within the said disks are numbers. If the number punched corresponds with any of the numbers set out in the legend at the top of said card, the purchaser thereof is entitled to additional bars of candy without additional cost. Sales are 5 cents each and those not securing a winning number receive one bar of candy. The said card bears a legend or statement as follows:

5¢	Assortment No. 2	5¢
A SALE	DELICIOUS CANDY BARS	A SALE
All Winners—No Blanks		
EVERY SALE RECEIVES A 5¢ CANDY BAR		
No. 15 Receives 4 5¢ BARS—No. 25 Receives 3 5¢ BARS		
Numbers 7—14—21—28—35—42—49—56 Each Receive 2 5¢ BARS		
LAST SALE ON CARD RECEIVES 8 5¢ CANDY BARS		

Sales of respondents' candy are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk pushed or separated from said card. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondents furnish and have furnished, within the time hereinabove set forth, various push cards for use in the sale and distribution of their 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 respondents' said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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. The use by respondents of said sales plan or method

in the sale of their candy and the sale of said candy 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 candy 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 bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with 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 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 candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. The use of said methods 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 equivalent methods, 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 20, 1939, issued and subsequently served its complaint in this proceeding upon respondents, U-Need Candy Co., Inc., a corporation, and Louis J. Weger, Mrs. Louis J. Weger, and Charles R. Hosey, 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 August 18, 1939, the respondent Charles R. Hosey filed his answer, and on November 28, 1939, the respondents U-Need Candy Co., Inc., Louis J. Weger, and Mrs. Louis J. Weger, filed their answer. In such answers respondents

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 the proceeding regularly came on for final hearing before the Commission upon the said complaint and the answers 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 U-Need Candy Co., Inc., is a corporation organized and doing business under the laws of the State of Indiana, with its principal office and place of business located at 1231 West Washington Avenue, South Bend, Ind. Respondent Charles R. Hosey is an individual and prior to April 3, 1939, was secretary and treasurer of corporate respondent, and a stockholder and a director therein. Respondent Louis J. Weger, an individual, is and has been president, a stockholder, and director of the corporate respondent. Respondent, Mrs. Louis J. Weger, an individual, is and has been a stockholder and director of corporate respondent. Respondents, Louis J. Weger and Mrs. Louis J. Weger formulate, control, and direct the practices and policies of the corporate respondent. Prior to April 3, 1939, respondent, Charles R. Hosey, participated in controlling and formulating such policies. All of said individual respondents acted together and in cooperation with each other in doing the acts and things hereinafter found. Respondents are and have 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. Respondents cause and have caused, said products when sold to be transported from their principal place of business in the city of South Bend, Ind., to purchasers thereof, at their respective points of location in the various States of the United States other than Indiana and in the District of Columbia. There is and has been, a course of trade by respondents 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, respondents are and have 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.

## Findings

30 F. T. C.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents, sell and have sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy 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 herein fully described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of bars of candy together with the device commonly called a push card. The push card has 60 partially perforated disks, on the face of each of which is printed the word "Push." Concealed within the said disks are numbers. If the number punched corresponds with any of the numbers set out in the legend at the top of said card, the purchaser thereof is entitled to additional bars of candy without additional cost. Sales are 5 cents each and those not securing a winning number receive only one bar of candy. The said card bears a legend or statement as follows:

## Assortment No. 2

DELICIOUS

CANDY BARS

5¢  
A SALE

All Winners—No Blanks

5¢  
A SALE

EVERY SALE RECEIVES A 5C CANDY BAR

No. 15 Receives 4-5¢ BARS—No. 25 Receives 3-5¢ BARS Numbers 7-14-  
21-28-35-42-49-56—Each Receive 2-5¢ BARS

LAST SALE ON CARD RECEIVES 8-5C CANDY BARS

Sales of respondents' candy are made in accordance with the above legend. The numbers aforesaid are effectively concealed until a purchase has been made and the disk pushed or separated from said card. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

The respondents furnish and have furnished, various push cards for use in the sale and distribution of their 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 respondents' said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. 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. The use by respondents of said sales plan or

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method in the sale of their candy and the sale of said candy 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 candy 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 bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with 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 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 candy and in the element of chance involved therein and are thereby induced to buy and sell respondents' candy in preference to candy of said competitors of respondents who do not use the same or equivalent methods. 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 equivalent methods.

## 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 U-Need Candy Co., Inc., a corporation, its officers, and Louis J. Weger, Mrs. Louis J. Weger, and Charles R. Hosey, individuals, 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 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Syllabus

IN THE MATTER OF  
STONE BROS., INC.

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

*Docket 3878. Complaint, Aug. 26, 1939—Decision, Dec. 29, 1939*

Where a corporation engaged in sale and distribution of candy, liquor chests, utility chests, and other articles of merchandise to purchasers in the various other States and in the District of Columbia; in soliciting the sale of and in selling and distributing its 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 ultimate consumers wholly by lot or chance, and included (1) assortments consisting of liquor chests and candy filled section thereof and push card for sale and distribution of such merchandise under plan in accordance with which person selecting by chance from list displayed on card, feminine name corresponding to that concealed under card's master seal received such liquor "cabinet" and glasses filled with candies and in accordance with which amount paid for chance was dependent upon number secured as displayed by removal from card of particular disc selected, and (2) merchandise with which various other push cards for use in sale and distribution of such merchandise by means of game of chance, gift enterprise, or lottery scheme, and varying from that described in detail only, were supplied, and in accordance with which plans direct or indirect retail dealer purchasers of merchandise in question displayed and sold same to purchasing public; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of its said product 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 was determined wholly by lot or chance, and there was involved game of chance or sale of a chance to procure 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 it in sale and distribution of its merchandise and element of chance involved therein and were thereby induced to buy and sell its products in preference to merchandise offered and sold by its competitors aforesaid who do not use such or equivalent method, and with effect through use of and because of such game of chance of unfairly diverting trade in commerce to it from its competitors aforesaid:

*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.

## Complaint

30 F. T. C.

*Mr. L. P. Allen, Jr.* for the Commission.  
*Immenhausen & Banovitz*, 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 Stone Bros., 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, Stone Bros., Inc., is a corporation organized and existing under the laws of the State of Illinois. Its principal office and place of business was formerly located at 800 South Ada Street, Chicago, Ill., but is now located at 1838 West 33d Street, Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of candy, liquor chests, utility chests, 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 its aforesaid places of business in 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 corporations and with partnerships and individuals 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its 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 change. One of respondent's assortments substantially illustrates the sales plan or method used in the sale and distribution of its merchandise to the purchasing public, and is as follows:

This assortment consists of a liquor chest, 1 section of which is packed with candy, together with a device commonly called a push card. One of respondent's push cards bears 60 small, partially perforated discs on the face of which is printed the word "Push." Above each of said discs is printed a feminine name with ruled columns on the face of said push card for writing in the name of the customer opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until the disc 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 above the said discs. The person selecting the feminine name corresponding to one under the master seal receives a premium or prize. Persons selecting certain designated numbers also receive prizes. Push card bears a legend or instruction as follows:

Pick your Favorite Girl's Name  
WIN THIS BEAUTIFUL LIQUOR CABINET  
And Glasses Ready to Serve  
Filled With Delicious Candies  
Nos. 1 to 10 Pay What You Punch—All Others Pay 10¢  
Do Not Remove Seal Until All Punches Are Sold

Sales of respondent's 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 is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards for use in the sale and distribution of its 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. Retail dealers who purchase respondent's said merchandise, 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its merchandise and the sale of said

## Findings

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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 its 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 its 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 August 26, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Stone Bros., 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. On November 28, 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, Stone Bros., Inc., is a corporation organized and existing under the laws of the State of Illinois. Its principal office and place of business was formerly located at 800 South Ada Street, Chicago, Ill., but is now located at 1838 West 33d Street, Chicago, Ill. Respondent is now, and for some time last past has been engaged in the sale and distribution of candy, liquor chests, utility chests 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 its aforesaid places of business in 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 corporations and with partnerships and individuals 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its 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. One of respondent's assortments substantially illustrates the sales plan or method used in the sale and distribution of its merchandise to the purchasing public, and is as follows:

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This assortment consists of a liquor chest, 1 section of which is packed with candy, together with a device commonly called a push card. One of respondent's push cards bears 60 small, partially perforated discs on the face of which is printed the word "Push." Above each of said discs is printed a feminine name with ruled columns on the face of said push card for writing in the name of the customer opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until the disc 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 above the said discs. The person selecting the feminine name corresponding to one under the master seal receives a premium or prize. Persons selecting certain designated numbers also receive prizes. The push card bears a legend or instruction as follows:

"Pick your Favorite Girl's Name  
WIN THIS BEAUTIFUL LIQUOR CABINET  
And Glasses Ready to Serve  
Filled With Delicious Candies  
Nos. 1 to 10 Pay What You Punch—All Others Pay 10¢  
Do Not Remove Seal Until All Punches Are Sold"

Sales of respondent's 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 is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various push cards for use in the sale and distribution of its 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. Retail dealers who purchase respondent's said merchandise, 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its merchandise and the

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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 its 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 its 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 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.

## Order

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*It is ordered,* That the respondent, Stone Bros., 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 candy, liquor chests, utility chests 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 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  
MARTIN BENJAMIN ROTHMAN TRADING AS ESQUIRE  
PRODUCTS

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

*Docket 3902. Complaint, Sept. 28, 1939—Decision, Dec. 29, 1939*

Where an individual engaged in sale and distribution of radios, waffle irons, silverware, and other articles of merchandise to purchasers in various other States; in soliciting sale of and in selling and distributing his said merchandise—

(a) 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 ultimate consumers wholly by lot or chance and included distribution to purchasing public of certain literature and instructions and push cards, order blanks, and illustrations of goods concerned and circulars explaining his plan of selling his merchandise and allotting it as premiums or prizes to operators of said cards and to purchasing public, in accordance with which and push card's legend person selecting by chance from list of feminine names displayed on card name corresponding with that concealed under card's large master seal received choice of radio, automatic waffle iron, 34-piece Wm. A. Rogers tableware with chest, or table broiler griddle, and those securing by chance certain numbers as set out in legend received premiums or prizes, and amount paid or free chance was dependent upon number disclosed by disc selected on card; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in sale of his merchandise in accordance with aforesaid or similar plan under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid, or article free, and which of said articles, if any, purchaser received was determined wholly by lot or chance, 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 a 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 said individual in sale and distribution of his merchandise, and element of chance involved therein and were thereby induced to buy and sell his goods in preference to merchandise offered and sold by competitors who do not use same or equivalent method, and with effect through use of such method and because of said game of chance of unfairly diverting trade in commerce to him from his competitors aforesaid; and

(b) Represented through prices set out on his push cards and other printed matter circulated through the mails to customers and prospective customers in the various States and in the District of Columbia that his automatic pencils had a retail value in excess of the usual retail selling price thereof and had retail value and selling price of one dollar, facts being their said value and selling price was substantially less than such amount;

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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 pencils by reason of such belief, and with result that trade in commerce was thereby diverted unfairly to him from his competitors who do not falsely represent the retail value and selling price 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 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. 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 Martin Benjamin Rothman, an individual, trading as Esquire Products, 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, Martin Benjamin Rothman, is an individual, trading as Esquire Products. His principal office and place of business is located at 216 North Clinton Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, waffle irons, silverware, coffee tray sets, pencils, griddles, 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 the 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 small, partially perforated discs on the face of which is printed the word "push." Below each of said discs is printed a feminine name with ruled columns on the reverse side of said push card for writing in the name of the customer opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until the disc 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 below the said discs. The person selecting the feminine name corresponding to the one under the master seal receives a premium or prize. Persons selecting certain designated numbers set out in the legend at the top of said card or the last sale on the card also receive premiums or prizes. The push card bears a legend or instruction 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"

## Complaint

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Sales of respondent's 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 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 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. By prices set out on his push cards and other printed matter which are circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia, respondent represents and has represented to customers and prospective customers that his automatic pencils have a retail value in excess of the normal retail selling price of said pencils. The respondent represents and has represented his automatic pencils to have a retail value and selling price of \$1.00. In truth and in fact the said pencils have a retail value and selling price of substantially less than \$1.00.

PAR. 6. The use by respondent of the representations set forth in paragraph 5 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 automatic pencils as a result of such erroneous 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 respondent from his said competitors who do not falsely represent the retail value and selling price of their respective automatic pencils. As a consequence 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. 7. 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 September 28, 1939, issued and on September 29, 1939, served its complaint in this proceeding upon respondent, Martin Benjamin Rothman, an individual, trading as Esquire Products, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices

## Findings

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in commerce in violation of the provisions of said act. On November 28, 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, Martin Benjamin Rothman, is an individual, trading as Esquire Products. His principal office and place of business is located at 216 North Clinton Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, waffle irons, silverware, coffee tray sets, pencils, griddles, 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 Illionis 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 the 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 sixty-four small, partially perforated discs on the face of which is printed the word "push." Below each of said discs is printed a feminine name with ruled columns on the reverse side of said push card for writing in the name of the customer opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until the disc 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 below the said discs. The person selecting the feminine name corresponding to the one under the master seal receives a premium or prize. Persons selecting certain designated numbers set out in the legend at the top of said card or the last sale on the card also receive premiums or prizes. The push card bears a legend or instruction 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 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 or an article of mer-

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chandise 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.

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PAR. 5. By prices set out on his push cards and other printed matter which is circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia, respondent represents, and has represented, to customers and prospective customers and prospective customers that his automatic pencils have a retail value in excess of the normal retail selling price of said pencils. The respondent represents, and has represented, his automatic pencils to have a retail value and selling price of \$1.00. In truth and in fact the said pencils have a retail value and selling price of substantially less than \$1.00.

PAR. 6. The use by respondent of the representations set forth in paragraph 5 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 automatic pencils as a result of such erroneous 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 respondent from his said competitors who do not falsely represent the retail value and selling price of their respective automatic pencils. As a consequence 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.

## 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.

## Order

30 F. T. C.

*It is ordered,* That the respondent, Martin Benjamin Rothman, an individual, trading as Esquire Products 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, silverware, coffee tray sets, pencils, griddles, or any other merchandise 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 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. 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;

3. 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;

4. 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.

## Syllabus

## IN THE MATTER OF

LOUIS G. MEYERS, DOING BUSINESS AS NATIONAL PEN  
COMPANY AND PHOENIX 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 3796. Complaint, May 31, 1939—Decision, Jan. 15, 1940*

Where an individual engaged in sale and distribution of specialty merchandise, including fountain pens, pencils, jewelry, and various other products; in statements concerning his said products in various advertising circulars, coupons, and other printed matter and in newspapers and other publications distributed among prospective purchasers thereof in the various States and in the District of Columbia—

- (a) Represented, in connection with offer of his fountain pens, rings and necklaces, that the certificate or coupon referred to in connection with offer of such pens was worth \$4.41, and, together with 59 cents, entitled bearer to one of his "\$5.00 VACUUM FILLER SACKLESS FOUNTAIN PENS," and that coupon referred to in connection with offer of his rings and necklaces was worth similar amount and, with 59 cents, entitled bearer to one of his "regular \$5.00 Facsimile Diamond Rings" or one of his regular \$5.00 "CROSS NECKLACES," facts being the prices referred to as customary retail prices of such products were greatly in excess of those at which they were ordinarily offered and sold in normal course of business, and said certificates or coupons had no such value or any value whatever, as price charged in addition thereto was regular and customary one at which he sold his said products in usual course of business;
- (b) Represented, in such various advertisements, that said pens were tested in every case and guaranteed to be unbreakable for life, and held 200 percent more ink than ordinary fountain pen on market, and required no repairs, and that so-called "facsimile" diamonds in his said rings had practically same blue-white color, same perfect cutting and brilliance as genuine diamonds costing one hundred times as much, and were not mere imitations, but represented utmost skill of modern science, and that each ring carried with it a lifetime guarantee and that guarantee covered tarnish of mountings, loss of stone or brilliancy, facts being such pens did not have greater capacity than ordinary fountain pens, would not last a lifetime or be free from necessity of repair, and jewelry was not guaranteed against tarnish nor stones against loss of brilliancy, said jewelry was a very cheap grade and would tarnish immediately or shortly, and was not set with diamonds or facsimile diamonds having same quality, etc., as above set out, as the genuine stones, and purported stones were of no better grade or quality than ordinary cheap imitations; and said rings, necklaces and other articles of jewelry sold and distributed by him would not last a lifetime and were not guaranteed so to do; and
- (c) Represented, in such various advertisements, that offers there referred to of such products were limited and special or introductory, through such statements as "Limit 3 pens to each Certificate," "Price After Sale \$5.00," "MANUFACTURER'S INTRODUCTORY OFFER," "Limit Two Rings to a Coupon,"

## Complaint

30 F. T. C.

"This offer made possible by the manufacturer," and "introductory offer," facts being he was not conducting an introductory or special offer, but price charged, as above set forth, was regular and customary one at which he sold his products in usual course of business, and did not, as asserted by him, represent cost of advertising and sales expense, but, as aforesaid, was usual and ordinary retail price, and number of articles, as above set forth, was not limited by him, but he sold as many thereof as purchaser was willing to buy;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that all said representations were true and that he had truthfully represented quality, material, construction, and durability of his various products and price at which they were sold, and with result, by reason of such belief, that number of purchasing public bought substantial volume of his products and trade was thereby diverted unfairly to him from his competitors engaged in sale and distribution in commerce of fountain pens, pencils, jewelry, and similar products and who do not misrepresent quality and characteristics of their goods or price at which they are sold; to the 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. Lewis C. Russell*, trial examiner.

*Mr. DeWitt T. Puckett* for the Commission.

*Bergner & Bergner*, 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 Louis G. Meyers, an individual, doing business as National Pen Co. and Phoenix Sales 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, Louis G. Meyers, is an individual doing business as National Pen Co. and Phoenix Sales Co. and has his place of business located at Birmingham, Ala., and at various other points. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of specialty merchandise including fountain pens, pencils, jewelry, and various other products in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes said products, when sold, to be transported from his said places of business to the purchasers thereof, located in the various States of the United States other than the State of

origin of such shipments. Respondent maintains and at all times mentioned herein has maintained, a course of trade in said fountain pens, pencils, jewelry, and similar products sold and distributed by him 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 active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of specialty merchandise such as fountain pens, jewelry, and other 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 his business the respondent has engaged in the practice of falsely representing the quality, material, construction, and durability of his various products and the price at which said products are sold and distributed by him, by means of false statements in various advertising matter. In the furtherance of this practice and for the purpose of inducing the purchase of his said products, respondent has caused said false statements and representations to be inserted in various advertising circulars, coupons, and other printed matter and in advertisements appearing in newspaper 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, which false statements and representations purport to be descriptive of such products, their quality, construction, and durability and the price at which said products are offered for sale.

PAR. 3. Among and typical of the acts and practices above described are false statements and representations made and disseminated by the respondent in the manner aforesaid with reference to fountain pens and jewelry sold and distributed by the respondent. Among and typical of such statements and representations are the following:

1. Representations made in connection with the sale and distribution of Fountain Pens:

50¢—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. A lifetime guarantee with each pen.

Price After Sale \$5.00.

Every pen tested and guaranteed to be unbreakable for life.

This pen holds 200% more ink than any ordinary fountain pen on the market. No repair bills.

Limit 3 pens to each Certificate.

## Complaint

30 F. T. C.

2. Representations made in connection with the sale and distribution of rings:

**MANUFACTURER'S INTRODUCTORY OFFER.**

This Coupon worth \$4.41 Toward This Ring Purchase.

This Coupon and Only 59¢.

Entitles Bearer to One Facsimile \$5.

**DIAMOND RING**

Bring this coupon and 59¢ to our store and receive one of our regular \$5.00 Facsimile Diamond Rings.

**LIFETIME GUARANTEE ON EACH RING.**

These facsimile diamonds have practically the same blue-white color, the same perfect cutting, the same dazzling brilliance as genuine diamonds costing 100 times as much.

These facsimile diamonds are not merely imitations but represent the utmost skill of modern science.

Guarantee covers tarnish of mountings, loss of stone or brilliancy.

Limit Two Rings to a Coupon.

**CERTIFICATE OF GUARANTEE**

This ring is sold to you with an unlimited guarantee against tarnishing, loss of brilliancy, loss of stone, or defect in any other form.

Send fifteen cents in postage stamps to cover return postage, packing, handling, etc.

DO NOT RETURN THIS RING TO STORE WHERE PURCHASED BUT TO ADDRESS BELOW  
PHOENIX SALES CO.

P. O. Box 1272

Birmingham, Ala.

3. Representations made in connection with the sale and distribution of Cross Necklaces:

THIS COUPON AND ONLY 59¢ Entitles Bearer to One of our Regular \$5.00  
CROSS NECKLACES

In Plain or With 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 . . . This 59¢ merely helps pay for local advertising, expenses, salespeople, etc.

Limit 2 to a Coupon.

This offer made possible by the manufacturer.

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

Mail orders add 6¢ extra.

By means of the above representations and others similar thereto not specifically set out herein, the respondent represents, both directly and indirectly, that the customary and usual retail prices at which his 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 when offered as

part payment of the purchase price of any specified article. By the same means the respondent represents that he is conducting a special or introductory offer and that the price charged for said products in addition to the coupon is merely to pay local advertising expenses and cost of sale. The respondent further represents that the offer of said products at the price specified in said advertisements is a limited offer for a limited period of time and that the purchasers of said products are limited to two or three products to each coupon, as therein specified. By the same means the respondent further represents that the fountain pens sold and distributed by him are guaranteed to last a lifetime; that they have an ink capacity greater than the ordinary fountain pen and that the pens never need repair. By the same means also the respondent represents that the diamond rings, necklaces, and other articles of jewelry sold and distributed by him will not tarnish and will last a lifetime and that said fountain pens and articles of jewelry carry a lifetime guarantee and also a guarantee against tarnishing of mountings and loss of stone brilliancy. By use of the word "facsimile" as descriptive of his diamonds, respondent represents that the various articles of jewelry sold by him are equipped with stones having the general appearance, qualities, and brilliance possessed by diamonds and are of a quality and value greater than an imitation diamond.

PAR. 4. In truth and in fact the prices represented by the respondent as the customary retail prices of his products are, in fact, fictitious and greatly in excess of the prices at which such products are customarily offered for sale and sold by the respondent in the normal course of business. The respondent is 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 or any value whatsoever as the price charged by the respondent in addition to the certificate or coupon is the regular and customary price at which respondent sells his products in the usual course of business. The price charged by the respondent in addition to the coupon is not the cost of advertising and sales expense, but represents the retail price usually and ordinarily charged by the respondent for such products. The respondent does not limit the number of articles which may be purchased by any customer but sells as many of such articles as the purchaser is willing to buy. The fountain pens sold and distributed by the respondent do not have a greater capacity than ordinary fountain pens, will not last a lifetime or be free from necessity of repair. The diamond rings, necklaces, and other articles of jewelry sold and distributed by the respondent will not last a lifetime and said articles of jewelry and fountain pens are not guaranteed to last

a lifetime or the jewelry guaranteed not to tarnish or the stones to lose brilliancy. In fact said jewelry is of a very cheap grade and quality and will tarnish immediately or within a very short time. The jewelry sold and distributed by the respondent is not set with diamonds or facsimile diamonds and the purported stones do not have the same quality, color, or brilliance of genuine diamonds, and are not of any better grade or quality than ordinary cheap imitations.

PAR. 5. The use by the respondent 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 respondent has truthfully represented the quality, material, construction, and durability of his various products and the price at which said products are sold. On account of this erroneous and mistaken belief a number 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 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 fountain pens, pencils, jewelry, and similar products and who do not misrepresent the quality and characteristics of their products or the price at which said products are sold. As a consequence thereof, injury has been done and is now 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. 6. 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 31, 1939, issued and served its complaint in this proceeding upon respondent Louis G. Meyers, an individual, doing business as National Pen Co. and Phoenix 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. At a regularly scheduled hearing in the matter on November 8, 1939, the respondent dictated on the record an 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, Louis G. Meyers, is an individual doing business as National Pen Co. and Phoenix Sales Co. and has his place of business located at Birmingham, Ala., and at various other points. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of specialty merchandise including fountain pens, pencils, jewelry, and various other products in commerce among and between the various States of the United States and in the District of Columbia.

Respondent causes said products, when sold, to be transported from his said places of business to the purchasers thereof, located in the various States of the United States other than the State of origin of such shipments. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said fountain pens, pencils, jewelry and similar products sold and distributed by him 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 active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of specialty merchandise such as fountain pens, jewelry, and other 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 his business the respondent has engaged in the practice of falsely representing the quality, material, construction, and durability of his various products and the price at which said products are sold and distributed by him, by means of false statements in various advertising matter. In the furtherance of this practice and for the purpose of inducing the purchase of his said products, respondent has caused said false statements and representations to be inserted in various advertising circulars, coupons, and other printed matter and in advertisements appearing in newspapers 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, which false statements and

representations purport to be descriptive of such products, their quality, construction, and durability and the price at which said products are offered for sale.

PAR. 3. Among and typical of the acts and practices above described are false statements and representations made and disseminated by the respondent in the manner aforesaid with reference to fountain pens and jewelry sold and distributed by the respondent. Among and typical of such statements and representations are the following:

1. Representations made in connection with the sale and distribution of Fountain Pens:

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. A lifetime guarantee with each pen.

Price After Sale \$5.00.

Every pen tested and guaranteed to be unbreakable for life.

This pen holds 200% more ink than any ordinary fountain pen on the market. No repair bills.

Limit 3 pens to each Certificate.

2. Representations made in connection with the sale and distribution of rings:

MANUFACTURER'S INTRODUCTORY OFFER

This Coupon worth \$4.41 Toward This Ring Purchase.

This Coupon and Only 59¢.

Entitles Bearer to One Facsimile \$5.

#### DIAMOND RING

Bring this coupon and 59¢ to our store and receive one of our regular \$5.00 Facsimile Diamond Rings.

LIFETIME GUARANTEE ON EACH RING

These facsimile diamonds have practically the same blue-white color, the same perfect cutting, the same dazzling brilliance as genuine diamonds costing 100 times as much.

These facsimile diamonds are not merely imitations but represent the utmost skill of modern science.

Guarantee covers tarnish of mountings, loss of stone or brilliancy.

Limit Two Rings to a Coupon.

#### CERTIFICATE OF GUARANTEE

This ring is sold to you with an unlimited guarantee against tarnishing, loss of brilliancy, loss of stone, or defect in any other form.

Send fifteen cents in postage stamps to cover return postage, packing, handling, etc.

DO NOT RETURN THIS RING TO STORE WHERE PURCHASED BUT TO ADDRESS BELOW

PHOENIX SALES CO.

P. O. Box 1272

Birmingham, Ala.

### 3. Representations made in connection with the sale and distribution of Cross Necklaces:

THIS COUPON AND ONLY 59¢

Entitles Bearer to One of our Regular \$5.00

CROSS NECKLACES

In Plain Or With 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 . . . This 59¢ merely helps pay for local advertising, expenses, salespeople, etc.

Limit 2 to a Coupon.

This offer made possible by the manufacturer.

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

Mail orders add 6¢ extra.

By means of the above representations and others similar thereto not specifically set out herein, the respondent represents, both directly and indirectly, that the customary and usual retail prices at which his 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 when offered as part payment of the purchase price of any specified article. By the same means the respondent represents that he is conducting a special or introductory offer and that the price charged for said products in addition to the coupon is merely to pay local advertising expenses and cost of sale. The respondent further represents that the offer of said products at the price specified in said advertisements is a limited offer for a limited period of time and that the purchasers of said products are limited to two or three products to each coupon, as therein specified. By the same means the respondent further represents that the fountain pens sold and distributed by him are guaranteed to last a lifetime; that they have an ink capacity greater than the ordinary fountain pen and that the pens never need repair. By the same means also the respondent represents that the diamond rings, necklaces and other articles of jewelry sold and distributed by him will not tarnish and will last a lifetime and that said fountain pens and articles of jewelry carry a lifetime guarantee and also a guarantee against tarnishing of mountings and loss of stone brilliancy. By use of the word "facsimile" as descriptive of his diamonds, respondent represents that the various articles of jewelry sold by him are equipped with stones having the general appearance, qualities and brilliance possessed by diamonds and are of a quality and value greater than an imitation diamond.

PAR. 4. In truth and in fact the prices represented by the respondent as the customary retail prices of his products are, in fact, fictitious

and greatly in excess of the prices at which such products are customarily offered for sale and sold by the respondent in the normal course of business. The respondent is 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 or any value whatsoever as the price charged by the respondent in addition to the certificate or coupon is the regular and customary price at which respondent sells his products in the usual course of business. The price charged by the respondent in addition to the coupon is not the cost of advertising and sales expense but represents the retail price usually and ordinarily charged by the respondent for such products. The respondent does not limit the number of articles which may be purchased by any customer but sells as many of such articles as the purchaser is willing to buy. The fountain pens sold and distributed by the respondent do not have a greater capacity than ordinary fountain pens, will not last a lifetime or be free from necessity of repair. The rings, necklaces, and other articles of jewelry sold and distributed by the respondent will not last a lifetime and said articles of jewelry and fountain pens are not guaranteed to last a lifetime. The jewelry is not guaranteed against 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. The jewelry sold and distributed by the respondent is not set with diamonds or facsimile diamonds and the purported stones do not have the same quality, color, or brilliance of genuine diamonds, and are not of any better grade or quality than ordinary cheap imitations.

PAR. 5. The use by the respondent 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 the said representations are true and that the respondent has truthfully represented the quality, material, construction, and durability of his various products and the price at which said products are sold. On account of this erroneous and mistaken belief a number 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 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 fountain pens, pencils, jewelry, and similar products and who do not misrepresent the quality and characteristics of their products or the price at which said products are sold. As a consequence thereof, injury has been done and is now 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.

#### CONCLUSION

The aforesaid acts and practices of the respondent, Louis G. Meyers, an individual doing business as National Pen Co. and Phoenix Sales 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 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, Louis G. Meyers, an individual, doing business as National Pen Co. and as Phoenix Sales 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 any 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 any of 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 respondent's business.

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

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

Order

30 F. T. C.

4. Representing that any of 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 number of respondent's articles of merchandise which may be purchased by any customer is limited, or that such articles may be purchased for a limited time only.

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

7. Representing that respondent's rings or necklaces are set with diamonds or facsimile diamonds or possess color or brilliance in any way comparable to diamonds, or that they can be worn a lifetime or any appreciable period of time and remain free from tarnish, loss of brilliancy or loss of stones.

8. Representing that the respondent is conducting a special or introductory advertising offer or that the price charged for respondent's products, in addition to the coupon, is only to cover cost of advertising and sales expense.

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

## Syllabus

## IN THE MATTER OF

## MENTHO-MULSION, INCORPORATED (FORMERLY M. L. CLEIN &amp; COMPANY), AND MAX L. CLEIN AND SADIE B. CLEIN

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

*Docket 3674. Complaint, Dec. 23, 1938—Decision, Jan. 16, 1940*

Where a corporation, and two individuals who were president and vice president thereof and had dominant control of its advertising policies and business activities and cooperated with one another and acted in concert in doing acts and things below set forth, engaged in sale and distribution of certain cough and cold medicines under designation "Mentho-Mulsion" and "Malco Cold Tablets," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar and other medicinal products intended and sold for relief of such ailments and conditions, and including many who do not make any misrepresentations or false statements concerning the therapeutic value or efficacy of their respective products; in advertisements which they disseminated through the mails, newspapers and periodicals of general circulation, through circulars and other printed matter distributed in commerce among the various States, through continuities broadcast from radio stations of extrastate audience, and through various means, and which were intended and likely to induce purchase of their said preparations—

- (a) Represented that their said "Mentho-Mulsion" was a cure or remedy for coughs and would stop cough spasms, and remedy, cure or relieve every cough, irrespective of the cause thereof, through such statements as "\* \* \* quick, safe remedy for coughs", "The proven remedy for bad coughs," "\* \* \* stops cough spasms immediately" and others of similar tenor, facts being it did not constitute a cure or remedy for coughs generally, and would not stop cough spasms or relieve every cough, irrespective of cause thereof, and, while having a palliative effect in cases of coughs due to common colds, was not effective in frequent cases in which coughs are manifestations of certain serious physical disorders; and
- (b) Represented that their "Malco Cold Tablets" would drive common colds out of the system, and constituted a cure or remedy for colds, irrespective of the cause thereof, through such statements as "\* \* \* fight colds five ways" and "\* \* \* designed to drive common colds completely out of your system", facts being they would not accomplish such last result and, while having a palliative effect in partially relieving symptoms commonly encountered in colds, did not constitute remedies or cures therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that all such representations were true, and with consequence, as direct result thereof, that number of consuming public purchased their products and trade was diverted unfairly to them from competitors aforesaid, engaged in sale and distribution of similar and other products designed and sold for relief of such ailments and conditions, and who truthfully advertise their respective products and effectiveness thereof:

## Complaint

30 F. T. C.

*Held*, That such acts and practices, under the circumstances set forth, were all of 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 W. Addison*, trial examiner.

*Mr. Morton Nesmith* and *Mr. John M. Russell* for the Commission.

*Mr. Clarence H. Calhoun*, of Atlanta, Ga., 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 M. L. Clein & Co., a corporation, and Max L. Clein and Sadie B. Clein, 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. M. L. Clein & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, and respondents, Max L. Clein and Sadie B. Clein, 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 principal place of business is located at 219 Norris Building, Atlanta, Ga.

PAR. 2. Respondents now are and for more than 2 years last past have been engaged in the sale and distribution of certain cough and cold medicines known as Mentho-Mulsion and Malco Cold Tablets, respectively. Respondents cause said products, when sold, to be transported from their place of business in the State of Georgia 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 Mentho-Mulsion and said Malco Cold Tablets 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 said business respondents are now and for the time mentioned herein have been in substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar and other medicinal products intended and sold for the relief of coughs

and colds, respectively, 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 concerning the therapeutic value or efficacy of their respective products.

PAR. 4. In the course and conduct of their 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 and are likely to induce, directly or indirectly, the purchase of respondents' said medicinal preparations. Said false advertisements were and are disseminated by the 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 broadcast originates. 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. Among, and typical of, the statements and representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Mentho-Mulsion is a quick safe remedy for coughs

The proven remedy for bad coughs

The only creosote mixture that stops cough spasms immediately

\* \* \* And do not let the children hang on to a nagging cough—Mentho-Mulsion will stop coughs of children or grown-ups immediately

Metho-Mulsion is a mild sure remedy

Smokers

Cough

Mentho-Mulsion

Don't cough your head off—ask your druggist about Mentho-Mulsion \* \* \*  
the sure fire cough relief

Malco Cold Tablets fight colds five ways

Malco Cold Tablets are designed to drive common colds completely out of your system.

PAR. 5. All of said statements, together with similar statements occurring in respondents' aforesaid advertising literature and radio broadcasts, purport to be descriptive of respondents' products and

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of their effectiveness when taken. In all of such advertising, respondents represent through the statements and representations herein set out and through other statements of similar import and effect that Mentho-Mulsion is safe; that it constitutes a remedy or cure for every cough irrespective of the cause thereof; that it stops cough spasms and that it will relieve every cough irrespective of the cause thereof.

In all of such advertisements, respondents represent, through the statements and representations herein set out and through other statements of similar import and effect that Malco Cold Tablets constitute a remedy or cure for colds irrespective of the cause thereof and will drive colds completely out of the system.

PAR. 6. The representations and implications so made and used by respondents with respect to the nature and properties of their said products and of their effectiveness when taken are grossly exaggerated, false, and misleading. In truth and in fact Mentho-Mulsion is not entirely safe because of the presence of chloroform therein. The preparation known as Mentho-Mulsion does not constitute a cure or remedy for coughs generally and its use will not stop cough spasms. This preparation will not relieve every cough irrespective of the cause thereof but may have a palliative effect in cases of coughs due to common colds. Coughs are frequently manifestations of certain serious physical disorders of a systemic character and respondents' preparation is not effective in such cases.

Malco Cold Tablets do not constitute remedies or cures for colds though such preparation may have a palliative effect in partially relieving symptoms commonly encountered in colds. Malco Cold Tablets will not drive common colds out of the system.

PAR. 7. Respondents' 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 misleading representations, disseminated as aforesaid, in describing their said medicinal preparations and the effectiveness thereof, has had, and has, a tendency and capacity to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this mistaken and erroneous belief, a number of the consuming public have purchased respondents' products with a result that trade has been diverted unfairly to the respondents from competitors hereinabove described who are engaged in the business of selling and distributing similar and other products designed and sold for the relief of coughs and colds and who truthfully advertise their re-

spective products and the effectiveness thereof when used. As a result of respondents' acts and practices as herein described injury has been done and is now being done by respondents to their competitors 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 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 December 23, 1938, issued and subsequently caused its complaint to be served in this proceeding upon respondents M. L. Clein & Co., a corporation, and Max L. Clein and Sadie B. Clein, 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. After the issuance of said complaint and filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Morton Nesmith, attorney for the Commission, and in opposition thereto by Clarence H. Calhoun, attorney for respondents, 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 said complaint, the answer thereto, 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, M. L. Clein & Co., the name of which has now been changed to Mentho-Mulsion, Incorporated, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia. Respondents, Max L. Clein and Sadie B. Clein, individuals, are president and vice president, respec-

tively, 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 principal place of business was located at 219 Norris Building, Atlanta, Ga., but is now located at 409 Commercial Exchange Building, Atlanta, Ga.

PAR. 2. Respondents now are and for more than 2 years last past have been engaged in the sale and distribution of certain cough and cold medicines known as Mentho-Mulsion and Malco Cold Tablets, respectively. Respondents cause said products when sold, to be transported from their place of business in the State of Georgia 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 Mentho-Mulsion and said Malco Cold Tablets 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 said business respondents are now and for the time mentioned herein have been in substantial competition with other corporations and individuals and with partnerships and firms engaged in the sale and distribution of similar and other medicinal products intended and sold for the relief of coughs and colds, respectively, 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 concerning the therapeutic value or efficacy of their respective 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 and are likely to induce, directly or indirectly, the purchase of 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 broadcast originates. 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. Among and typical of the statements and representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Mentho-Mulsion is a quick, safe remedy for coughs

The proven remedy for bad coughs

The only creosote mixture that stops cough spasms immediately

\* \* \* And do not let the children hang on to a nagging cough—Mentho-Mulsion will stop coughs of children or grown-ups immediately

Mentho-Mulsion is a mild sure remedy

Smokers

Cough

Mentho-Mulsion

Don't cough your head off—ask your druggist about Mentho-Mulsion \* \* the sure fire cough relief

Malco Cold Tablets fight colds five ways

Malco Cold Tablets are designed to drive common colds completely out of your system.

Respondents have discontinued the advertising hereinabove set out, both in their radio continuity, and newspapers, magazine and other periodical publications, except where such statements are coupled with and used in juxtaposition with phraseology which indicates clearly that such coughs are due to colds.

PAR. 5. All of said statements, together with similar statements occurring in respondents' aforesaid advertising literature and radio broadcasts, purport to be descriptive of respondents' products and of their effectiveness when taken. In all of such advertising, respondents represent through the statements and representations herein set out and through other statements of similar import and effect that Mentho-Mulsion is safe; that it constitutes a remedy or cure for every cough irrespective of the cause thereof; that it stops cough spasms and that it will relieve every cough irrespective of the cause thereof.

In all of such advertisements, respondents represent, through the statements and representations herein set out and through other statements of similar import and effect that Malco Cold Tablets constitute a remedy or cure for colds irrespective of the cause thereof and will drive colds completely out of the system.

PAR. 6. The representations and implications so made and used by respondents with respect to the nature and properties of their said products and of their effectiveness when taken are grossly exaggerated, false, and misleading. In truth and in fact Mentho-Mulsion does not constitute a cure or remedy for coughs generally and its use will not stop cough spasms. This preparation will not relieve every cough

irrespective of the cause thereof but may have a palliative effect in cases of coughs due to common colds. Coughs are frequently manifestations of certain serious physical disorders of a systemic character and respondents' preparation is not effective in such cases.

Malco Cold Tablets do not constitute remedies or cures for colds though such preparation may have a palliative effect in partially relieving symptoms commonly encountered in colds. Malco Cold Tablets will not drive common colds out of the system.

The formula for Mentho-Mulsion indicates the presence of chloroform but not in sufficient quantity to render it unsafe if taken in accord with the directions on its container.

PAR. 7. Respondents' 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 misleading representations, disseminated as aforesaid, in describing their said medicinal preparations and the effectiveness thereof, 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 belief that all of said representations are true. As a direct result of this mistaken and erroneous belief, a number of the consuming public have purchased respondents' products with the result that trade has been diverted unfairly to the respondents from competitors hereinabove described who are engaged in the business of selling and distributing similar and other products designed and sold for the relief of coughs and colds and who truthfully advertise their respective products and the effectiveness thereof when used.

#### 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, 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, brief filed herein by John M. Russell, counsel for the Commission, and

the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents Mentho-Mulsion, Incorporated (formerly M. L. Clein & Co.), a corporation, and its officers, and Max L. Clein and Sadie B. Clein, individuals, and their respective 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 the medicinal preparations known as Mentho-Mulsion and Malco Cold Tablets, or any other medicinal preparation possessing 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 of said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent, directly or through implication:

1. That respondents' preparation Mentho-Mulsion is a cure or remedy for coughs, or that it will stop cough spasms or that it will have any therapeutic value in the treatment of coughs due to physical disorders of a systemic character, or that it has any therapeutic value in the treatment of coughs in excess of providing temporary relief in cases of coughs due to common colds.

2. That respondents' preparation Malco Cold Tablets will drive common colds out of the system or that said preparation constitutes a cure or remedy for colds or has any therapeutic value in the treatment thereof in excess of providing a palliative relief from some of the symptoms commonly encountered in colds.

*It is further ordered,* That the respondents shall, within 60 days from the date of 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

PITTSBURGH PLATE GLASS CO., STEWART-CAREY  
GLASS CO., CAPITOL GLASS CO., BROTHERHOOD OF  
PAINTERS, DECORATORS, AND PAPER HANGERS OF  
AMERICA, DISTRICT COUNCIL NO. 27, ETC., AND GLA-  
ZIERS' LOCAL UNION NO. 1165, ETC., AND VARIOUS IN-  
DIVIDUALS AS OFFICERS, AGENTS, AND REPRESENT-  
ATIVES

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

*Docket 3858. Complaint, July 22, 1939—Decision, Jan. 16, 1940*

Where corporate manufacturer and two other concerns, together with certain officers and employees thereof, engaged in the sale and distribution of glass to dealers and consumers in State of Indiana from Indianapolis branch or place of business therein and in conducting in said State glazing contracting business, namely—

I. Corporation engaged in manufacture of glass and in sale and distribution thereof and in conducting glazing contracting business throughout the United States, with factories or manufacturing plants in several States and some 75 warehouses or jobbing branches in various cities including Indianapolis one from which it sold and distributed its said product to dealers therein and consumers thereof in State of Indiana exclusively, and conducted therein also glazing contracting business; and

II. Two corporations respectively engaged in said city as wholesale distributors of glass purchased by them from various manufacturers in different States of the United States other than Indiana and in reselling such glass to dealers in or retailers and consumers of said product in Indianapolis trade area and in the State of Indiana exclusively and in also carrying on exclusively within said State glazing contracting business.

In carrying on, as aforesaid engaged, their businesses in competition with one another in sale and distribution of glass and in glazing contracting business within State of Indiana, and in competition also, as case might be with—

(1) Other jobbers and distributors of glass and glazing contractors with places of business in said State and in other States who undertook to sell and distribute glass and make contracts and installation thereof within same parts of Indianapolis trade area within which aforesaid concerns or distributors conducted their respective businesses and did in some instances thus sell, etc., and who were in competition in so doing with one another and with one or more of distributors aforesaid in area in question, and who, in some instances and in case of distributors with places of business in other States shipped or caused to be shipped glass for jobs secured in said trade area by glazing contractors located within and without such area, and who bid successfully thereon in competition with concerns above described; and

(2) Glazing contractors, not dealers in or distributors of glass, located in said State and in other States who sought to and did make glazing contracts within portion of Indianapolis trade area in which aforesaid distributors conducted glazing business, and were in competition with one or more of such distributors in seeking and securing such contracts in said area and who in some instances purchased glass for jobs therein in which they were in competition with some or all of such distributors, from dealers and distributors of such product in other States and caused shipment of glass thus purchased to be shipped into State in question from other States as aforesaid—

Entered into, accepted, signed or ratified as case might be, contract negotiated by recently formed local union, membership of which embraced from 85 percent to 95 percent of glaziers in said city and employment of which was then essential to securing and carrying out contracts on most construction or repair jobs therein, and especially those of any size, by which, among other things, it was provided that no member of union would be allowed "to work for any glazing contractor who has not signed this agreement," or "lived up to the provisions thereof" and that "to be recognized as a glazing contractor employer must be in glass and glazing business, evidence of which shall be the stocking of a reasonable quantity of flat glass products, necessary truck and warehouse equipment for legitimate glazing operation to service the building and replacement trade," and continuous employment of "at least three men"; and

Where said local, and district council of trade or trades concerned, and the national brotherhood of trade or trades concerned of which such local was member, and certain individuals who were agents, officers, or representatives of said organization, and as case might be—

Negotiated, ratified and approved contract aforesaid and decided compliance with terms thereof constituted prerequisite to recognition as union glazing contractor by any contractor seeking such recognition, and carried out and enforced provisions and decision aforesaid;

With effect that glazing contractors within State in question and in other States who, prior to signing and execution of contract in question by and between distributor concern involved and said local had in some instances performed glazing contracts within that part of Indianapolis trade area in which some or all of said distributor concerns had conducted such business were, as a result of quoted provisions of contract in question and during period thereof unable to bid upon or execute such contracts; and

With result that capacity and effect of provisions in question were to tend—

1. To prevent glazing contractors and glass distributors, located both within State of Indiana and in other States of United States, from bidding upon, or securing, glazing contracts, and from selling glass in that part of Indianapolis trade area in which distributor concerns conducted glazing contracting business;

2. To unreasonably lessen and suppress competition in the sale of glass and in procurement of glazing contracts within said Indianapolis trade area by glass distributors and glazing contractors located both in State of Indiana and in other States of the United States;

3. To unduly restrict glazing contractors, both within State of Indiana and in other States of United States, desiring to bid upon, and secure,

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glazing contracts in said Indianapolis trade area, but who did not enter into aforementioned contract because not then qualified to do so under provisions thereof;

4. To unduly interfere with natural flow in commerce of glass into State of Indiana from other States of United States; and

5. To unduly restrict and restrain sale of glass in trade and commerce between and among several States; and

With result further that capacity and tendency of such provisions for employment of glaziers in connection with installation of any plate, window, safety, or structural glass sold or distributed in interstate commerce and for structures or buildings, and requiring as prerequisite to employment of glaziers by glazing contractor, as above set forth, maintenance of specific stock, truck or warehouse equipment, and continuous employment of specified number of men in connection with operation of business, was to bring about results enumerated as above set forth:

*Held*, That such acts and practices of said various concerns, organizations, and individuals, under circumstances set forth, were all to prejudice of public and had dangerous tendency to hinder and prevent competition in glazing contracting business in that part of Indianapolis trade area in which aforesaid distributor concerns conducted such business, to place in said concerns, organizations and individuals power to control glazing contracting business therein, and to unduly restrict and restrain sale and distribution of glass in trade and commerce between the several States, and constituted unfair methods of competition.

*Mr. Fletcher G. Cohn* for the Commission.

*Mr. Leland Hazard* and *Mr. Joseph T. Owens*, of Pittsburgh, Pa., for Pittsburgh Plate Glass Co., Philip G. King and H. B. Higgins.

*Noel, Hickam, Boyd & Armstrong*, of Indianapolis, Ind., for Stewart-Carey Glass Co., and J. Morris Haines.

*Mr. Carl Wilde*, of Indianapolis, Ind., for Capitol Glass Co., W. J. Byrne and Robert W. Byrne.

*Mr. Joseph A. Padway*, of Washington, D. C., for Brotherhood of Painters, Decorators, and Paper Hangers of America; L. P. Lindelof; Clarence E. Swick; District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, of Indianapolis, Ind.; Courtney E. Hammond; Glaziers' Local Union No. 1165, of the Brotherhood of Painters, Decorators, and Paper Hangers of America, of Indianapolis, Ind.; and Joseph Schubert.

## 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 respondents herein named have violated the provisions of said act, and it appear-

ing 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 words and terms defined in this paragraph have the following meaning as used in this complaint:

“*glass*” means plate, window, safety, and structural glass;

“*respondent distributors*” refers to respondent Pittsburgh Plate Glass Company, Stewart-Carey Glass Co., and Capitol Glass Co.

“*Indianapolis trade area*” means the area including, surrounding and adjacent to the City of Indianapolis, Ind., both in the State of Indiana and in the adjoining States;

“*glazing contracting business*” means the business of contracting to sell and install glass in buildings and structures and also of selling glass therefor and installing the same therein;

“*glazing contractor*” means one who engages in the glazing contracting business;

“*sash and door manufacturers*” refers to concerns which manufacture sashes, doors and frames in which glass is set or fitted at the factory of the manufacturer.

PAR. 2. Respondent, Pittsburgh Plate Glass Co., 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 in the Grant Building, Pittsburgh, Pa. It is engaged in the business of manufacturing glass, and of selling and distributing same, and of conducting a glass glazing contracting business throughout the United States. It has factories or manufacturing plants in several States of the United States and maintains and operates approximately 75 warehouses or jobbing branches located in cities in various States of the United States, from which it sells and distributes its glass to dealers and consumers located in the same and different States and in which it conducts a glazing contracting business. Among said jobbing branches so maintained and operated by it is the Indianapolis, Ind., jobbing and distributing branch, which sells and distributes its glass to dealers in, and consumers of, glass in the Indianapolis trade area, and also conducts a glazing contracting business in said area.

Respondent Pittsburgh Plate Glass Co.’s Indianapolis branch is managed by respondent Philip G. King, who is an employee and representative and agent of the respondent Pittsburgh Plate Glass Co. in the Indianapolis trade area, and whose address is % Pittsburgh Plate Glass Co., Indianapolis, Ind.

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Respondent, H. B. Higgins is executive vice president of respondent Pittsburgh Plate Glass Co., and as such is the officer, representative, and agent of said respondent who supervises the activities of the Indianapolis, Ind., branch of respondent Pittsburgh Plate Glass Co.; his office is located at the Pittsburgh Plate Glass Co., Grant Building, Pittsburgh, Pa.

PAR. 3. Respondent, Stewart-Carey Glass Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at Virginia Avenue and South New Jersey Street, Indianapolis, Ind. It is a wholesale distributor of glass which it purchases from various manufacturers thereof located in different States of the United States; it resells such glass to retailer dealers therein, and it also does a glazing contracting business, in the Indianapolis trade area.

Respondent, J. Morris Haines is secretary and general manager of respondent Stewart-Carey Glass Co., and as such directs its policies; his office address is % Stewart-Carey Glass Co., Virginia Avenue and South New Jersey Street, Indianapolis, Ind.

PAR. 4. Respondent, Capitol Glass Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 401 West South Street, Indianapolis, Ind. It is a wholesale distributor of glass which it purchases from various manufacturers thereof located in different States of the United States; it resells said glass to dealers within the Indianapolis trade area. It likewise engages in the glazing contracting business in said area.

Respondents, W. J. Byrne and Robert W. Byrne are president and vice president, respectively, of said corporation, and are the executive officers who control and direct its affairs; the places of business of both are % Capitol Glass Co., 401 West South Street, Indianapolis, Ind.

PAR. 5. Respondent, Brotherhood of Painters, Decorators, and Paper Hangers of America, is an association incorporated under the laws of the State of Indiana, with its principal office and place of business located at 217 North 6th Street, La Fayette, Ind. It is an organization comprised of local unions, district councils, and subordinate bodies throughout the United States, whose members are employed in the several branches of the building trade enumerated in its constitution and including glaziers.

Respondents, L. P. Lindelof and Clarence E. Swick, individuals, are general president and general secretary, respectively, of respondent Brotherhood of Painters, Decorators, and Paper Hangers of America,

and as such are the executive officers of said Brotherhood with their offices located at 217 North 6th Street, La Fayette, Ind.

Respondents, District Council No. 27 and Glaziers' Local Union No. 1165, both of the Brotherhood of Painters, Decorators, and Paper Hangers of America, with their offices and principal places of business being located at 29 South Delaware Street, Indianapolis, Ind., and 250 Leeds Avenue, Indianapolis, Ind., respectively, are unincorporated associations of glaziers whose members are members of the respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, and which members are engaged in glazing and installing glass in buildings in the Indianapolis trade area.

Respondent, Courtney E. Hammond, an individual, is the secretary of said respondent, District Council No. 27, and his office is located at 29 South Delaware Street, Indianapolis, Ind.

Respondent, Joseph Schubert, an individual, is the business agent of said respondent, Glaziers' Local Union No. 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, and as such represent said respondent Union and its members in its and their dealings with respondent distributors and other glass distributors and glazing contractors in the Indianapolis trade area. His address is % Glaziers' Local Union 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, 250 Leeds Avenue, Indianapolis, Ind.

Respondents named in this paragraph are engaged in unfair methods and practices, hereinafter set out, which directly affect and restrain competition in the sale and distribution of glass in commerce between and among the several States of the United States.

PAR. 6. Respondent distributors are in competition with one another in the sale and distribution of glass and in the glazing contracting business in the Indianapolis trade area, except insofar as said competition has been hindered, lessened, restrained, or restricted, or potential competition among them forestalled, by the unfair practices and methods hereinafter set forth.

There are other jobbers and distributors of glass, with their places of business located both in the State of Indiana and in other States of the United States, who are engaged in the sale and distribution of glass in the Indianapolis trade area, and who are also engaged in the glazing contracting business therein, who are in competition with one another and with one or more of the respondent distributors, except insofar as such competition has been hindered, lessened, restrained, or restricted, or potential competition among them forestalled, by the use by respondent distributors and the other respondents named herein of the unfair practices and methods hereinafter set out.

There are also glazing contractors, located both in the State of Indiana and in other States of the United States, who were not dealers in, or distributors of, glass, but who seek to make, and do make, glazing contracts in the Indianapolis trade area, purchasing the necessary glass for such work from dealers and distributors of glass located both in the State of Indiana and in other States of the United States; such glazing contractors are in competition with one or more of respondent distributors in seeking to secure, and securing, glazing contracts in the aforementioned trade area, except insofar as such competition has been hindered, lessened, restricted, and restrained, or potential competition among them forestalled, by the use by respondent distributors and the other respondents named herein of the unfair practices and methods hereinafter set forth.

PAR. 7. Those glass distributors who are in competition with respondent distributors, as above described, and whose places of business are located in States other than the State of Indiana, in the course and conduct of their businesses sell glass to glazing contractors who bid on and secure glazing contracts on construction and repair jobs in the Indianapolis trade area, and, when they make such sales, said distributors ship, or cause to be shipped, the glass for said jobs, from their said places of business located in States other than the State of Indiana, into the State of Indiana.

Those competitors of respondent distributors who do not sell or distribute glass, but are glazing contractors, in the course and conduct of their businesses, in many instances purchase glass for those jobs in the Indianapolis trade area for which they have glazing contracts from dealers and distributors of same located in States other than the State of Indiana, which dealers and distributors as part of such purchases, ship, or cause to be shipped, said glass into the State of Indiana.

PAR. 8. All of respondent distributors are engaged in unfair methods and practices which directly affect and restrain competition in the sale and distribution of glass in commerce between and among the several States of the United States.

PAR. 9. In order to secure and execute contracts on most construction or repair jobs, especially those of any size, in the Indianapolis trade area, it is necessary for glazing contractors to employ glaziers who are members of respondent Glaziers' Local Union No. 1165.

PAR. 10. In 1938, respondent distributors, acting through and by means of their respective officers and agents, which officers and agents have hereinbefore been named as parties respondent, and respondent Glaziers' Local No. 1165, acting through and by means of respondent Joseph Schubert, and with the approval and sanction of

the other respondents heretofore named and described in paragraph 5, entered into and thereafter carried out an understanding and agreement to restrict and restrain the sale and distribution of glass in commerce between and among the several States of the United States and in the District of Columbia, and more particularly in the Indianapolis trade area.

PAR. 11. As a part of, and pursuant to, the aforementioned understanding and agreement, and in furtherance thereof, all of the respondents, among other acts and things, agreed:

1. To restrict and restrain, and they have restricted and restrained, the employment of members of respondent, Glaziers' Local Union No. 1165, by any one other than respondent distributors.

2. To prevent, and they have prevented, distributors of glass competing with respondent distributors, or desiring to compete with them, which distributors are located both within and outside the State of Indiana, from securing glaziers to install glass in buildings and structures being erected or repaired in the Indianapolis trade area.

3. To preclude, and they have precluded, such competing distributors, located both in the State of Indiana and in other States of the United States, from bidding on contracts for the supply and installation of glass in such buildings and structures in said trade area.

4. To preclude, and they have precluded, such competing distributors located both in the State of Indiana and in other States of the United States, from supplying and installing glass in buildings and structures being erected or repaired in said trade area.

5. To compel, and they have compelled, such competing distributors and also competing glazing contractors located both in the State of Indiana and other States of the United States, desiring to do glazing contracting business in the Indianapolis trade area, to employ at least three men continuously, regardless of whether or not such distributor or contractor could provide employment for such men.

6. To compel, and they have compelled, all glazing work to be done at the situs of each respective job.

7. To prevent, and they have prevented, any glazing work from being done in the shop unless permission first be secured from respondent Joseph Schubert, the business agent of respondent Glaziers' Local Union No. 1165.

8. To prevent, and they have prevented, sash and door manufacturers operating in the Indianapolis trade area from glazing glass and installing the same in sash and door frames in their respective factories.

9. To use, and they have used, other means, methods, and practices to restrict and restrain the employment of members of respondent

Glaziers' Local Union No. 1165 by any one other than respondent distributors.

PAR. 12. For the purpose of making effective the understandings and agreements heretofore set forth in paragraphs 10 and 11, and of requiring compliance therewith, respondent distributors, acting through and by means of their agents, officials, and representatives, herein named as parties respondent, did enter into and sign during the month of May 1933, and did thereafter carry into effect, a written agreement with respondent Glaziers' Local Union No. 1165, which union acted through and by means of respondent Joseph Schubert, and with the approval and sanction of the respondents heretofore named in paragraph 5; and all of the respondents did thereafter carry into effect such agreement; said agreement among other things provides that:

1. No member of the respondent Glaziers' Local Union No. 1165 will be allowed to work for any glazing contractor that has not signed the aforementioned agreement and has not lived up to its provisions.

2. To be recognized as a glazing contractor, one must be an employer engaged in the glass and glazing business.

3. Evidence that one is in such business shall be the stocking of a reasonable quantity of flat glass products, necessary truck and warehouse equipment, and legitimate glazing operations to service the building and replacement trade.

4. Further evidence that one is in the glass and glazing business shall be the continuous employment of at least three men.

5. All glazing work must be done at the situs of each respective job and no glazing work can be done in shops unless permission first be secured from the business agent of respondent Glaziers' Local Union No. 1165.

6. No firm, partnership, or corporation signing the aforementioned agreement shall be permitted to accept glazing contracts from, or sublet glazing contracts to, any glazing firm, partnership, or corporation who has not signed this agreement, or any agents of such glazing firm, partnership or corporation.

PAR. 13. Each of respondents, at the times herein mentioned, acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of the understanding and agreement heretofore set forth.

PAR. 14. The capacity, tendency and effect of said agreement and understanding, and the acts and things done by respondents in pursuance thereof, are and have been:

1. To monopolize in respondent distributors the glazing contracting business in the Indianapolis trade area.

2. To prevent glazing contractors and glass distributors located outside the State of Indiana from bidding upon or securing glazing contracts, and from selling glass, in the Indianapolis trade area.

3. To unreasonably lessen, eliminate, restrict, stifle, hamper, and suppress competition in the sale of glass and in the procurement of glazing contracts in the Indianapolis trade area by glass distributors and glass contractors located both in the State of Indiana and in other States of the United States.

4. To deprive the purchasing and consuming public and public agencies of the advantages in price, service, and other considerations which they would enjoy under conditions of normal, unrestricted, and free competition in the sale of glass and in the procurement of glazing contracts in said area, and to otherwise operate as a restraint upon, obstruction to, and detriment to the freedom of fair and legitimate competition in such sales and procurements.

5. To suppress, eliminate, and discriminate against glazing contractors both in and outside of the State of Indiana desiring to bid on glazing contracts in the Indianapolis trade area, but who do not, or cannot, enter into the aforementioned agreement with respondent Glaziers' Local Union No. 1165.

6. To obstruct and prevent the establishment of new glazing contractors in the Indianapolis trade area.

7. To eliminate and suppress competition among glass distributors and glazing contractors both in the State of Indiana and in other States of the United States in the sale of glass for glazing contracts in the Indianapolis trade area.

8. To burden, hamper, and interfere with the normal and natural flow of commerce in glass from the various States of the United States other than the State of Indiana into the State of Indiana;

9. To injure the competitors of respondent distributors, which competitors are engaged both in the sale and distribution of glass and in the glazing contracting business, by unfairly diverting business and trade from said competitors.

10. To prejudice and injure glass distributors and glazing contractors both in the State of Indiana and in other States of the United States who do not or cannot enter into the aforementioned agreement with respondent Glaziers' Local Union No. 1165.

11. To unduly and unlawfully restrict and restrain the sale of glass in trade and commerce between and among the several States of the United States.

PAR. 15. The understanding and agreement heretofore set out and the acts and things done by respondents thereunder and in furtherance thereof, as above alleged, constitute unfair methods of competi-

tion 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 22d day of July 1939, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Subsequently, all of the respondents filed their answers to said complaint. Thereafter, stipulations were entered into whereby it was stipulated and agreed that statements of fact signed and executed by respondents, Pittsburgh Plate Glass Co., a corporation, Philip G. King, individually and as manager of the Indianapolis, Ind., branch of the Pittsburgh Plate Glass Co., H. B. Higgins, individually and as vice president of the Pittsburgh Plate Glass Co., and their counsel Leland Hazard; respondents Stewart-Carey Glass Co., a corporation, and J. Morris Haines, individually, and as secretary and general manager of the Stewart-Carey Glass Co., and their counsel James W. Noel; Capitol Glass Co., a corporation, W. J. Byrne individually and as president of the Capitol Glass Co., Robert W. Byrne, individually and as vice president of the Capitol Glass Co., and their counsel, Carl Wilde; and Brotherhood of Painters, Decorators, and Paper Hangers of America, a corporation, L. P. Lindelof, individually and as general president of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Clarence E. Swick, individually and as general secretary of the Brotherhood of Painters, Decorators, and Paper Hangers of America, District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America of Indianapolis, Ind., an unincorporated association, Courtney E. Hammond, individually and as secretary of District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Glaziers' Local Union No. 1165, of the Brotherhood of Painters, Decorators, and Paper Hangers of America of Indianapolis, Ind., an unincorporated association, Joseph Schubert, individually and as Business Agent of Glaziers' Local Union No. 1165, of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Indianapolis, Ind., and their counsel Joseph A. Padway, and W. T. Kelley, chief counsel of 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 charge stated in the complaint, or in opposition thereto,

and that the 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 arguments or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers and stipulations, said stipulations having been approved, accepted and filed by 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 its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The words and terms defined in this paragraph have the following meaning as used in this findings as to the facts and conclusion:

“*glass*” means plate, window, safety, and structural glass;

“*respondents distributors*” refers to respondent Pittsburgh Plate Glass Company, Stewart-Carey Glass Co., and Capitol Glass Co.;

“*Indianapolis trade area*” means the area including, surrounding and adjacent to the City of Indianapolis, Ind., both in the State of Indiana, and in the adjoining States;

“*glazing contracting business*” means the business of contracting to sell and install glass in buildings and structures and also of selling glass therefor and installing the same therein;

“*glazing contractor*” means one who engages in the glazing contracting business.

PAR. 2. Respondent, Pittsburgh Plate Glass Co., 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 in the Grant Building, Pittsburgh, Pa. It is engaged in the business of manufacturing glass, and of selling and distributing same, and of conducting a glass contracting business, throughout the United States. It has factories or manufacturing plants in several States of the United States and maintains and operates approximately 75 warehouses or jobbing branches located in cities in various States of the United States, from which it sells and distributes its glass to dealers and consumers thereof. Among said jobbing branches so maintained and operated by it, is the Indianapolis, Ind., jobbing and distributing branch, from which it sells, and distributes its glass to dealers in, and consumers of, glass located in the States of Indiana, exclusively, and also conducts a glazing contracting business in such State.

Respondent, Pittsburgh Plate Glass Co.'s Indianapolis, Ind., branch is managed by respondent Philip G. King, who is an employee and representative and agent of Pittsburgh Plate Glass Co. in the aforementioned area in which the Indianapolis, Ind., branch of said respondent Pittsburgh Plate Glass Co. sells and distributes the glass of the Pittsburgh Plate Glass Co. and in which it also conducts a glazing contracting business. His address is in care of Pittsburgh Plate Glass Co., Indianapolis, Ind.

Respondent, H. B. Higgins is vice president of respondent Pittsburgh Plate Glass Co., and as such, is the officer, representative, and agent of said respondent who supervises the activities of the Indianapolis, Ind., branch of said respondent; his address is in care of Pittsburgh Plate Glass Co., Grant Building, Pittsburgh, Pa.

PAR. 3. Respondent Stewart-Carey Glass Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at Virginia Avenue and South New Jersey Street, Indianapolis, Ind. It is a wholesale distributor of glass which it purchases from various manufacturers thereof located in different States of the United States other than the State of Indiana; it resells said glass to retail dealers in the Indianapolis trade area and does a glazing contracting business, confined to its own sales of glass, solely within the State of Indiana.

Respondent, J. Morris Haines is secretary and general manager of respondent Stewart-Carey Glass Co., and as such directs its business policies; his address is in care of Stewart-Carey Glass Co., Virginia Avenue and South New Jersey Street, Indianapolis, Ind.

PAR. 4. Respondent, Capitol Glass Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its office and principal place of business located at 432 South Missouri Street, Indianapolis, Ind. It is a wholesale distributor of glass which it purchases from various manufacturers thereof located in different States of the United States; it resells said glass to dealers in, and consumers of, same, exclusively within the State of Indiana, and likewise does a glazing contracting business exclusively within such State.

Respondents, W. J. Byrne and Robert W. Byrne are president and vice president, respectively, of said corporation, and are the executive officers who control and direct its affairs, the place of business of both being in care of Capitol Glass Co., 432 South Missouri Street, Indianapolis, Ind.

PAR. 5. Respondent, Brotherhood of Painters, Decorators, and Paper Hangers of America is an association incorporated under the

laws of the State of Indiana, with its principal office and place of business located at 217 North Sixth Street, LaFayette, Ind. It is an organization comprised of local unions, district councils, and subordinate bodies throughout the United States, whose members are employed in the several branches of the building trade enumerated in its constitution and including glaziers.

Respondents, L. P. Lindelof and Clarence E. Swick are general president and general secretary, respectively, of respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, and as such are the executive officers of said Brotherhood of Painters, Decorators, and Paper Hangers of America, with their offices being located at 217 North Sixth Street, LaFayette, Ind.

Respondents, District Council No. 27 and Glaziers' Local Union No. 1165, both of respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, with their offices and principal places of business located at 29 South Delaware Street, Indianapolis, Ind., and 250 Leeds Avenue, Indianapolis, Ind., respectively, are unincorporated associations of glaziers, whose members are likewise members of respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, and which members are engaged in glazing and installing glass in buildings in the Indianapolis trade area; the jurisdiction of said respondent Glaziers' Local Union No. 1165 extends throughout the southwestern part of the State of Indiana and a small section of the eastern part of the State of Illinois.

Respondent, Courtney E. Hammond is the secretary of said respondent, District Council No. 27, with his office being located at 29 South Delaware Street, Indianapolis, Ind.

Respondent, Joseph Schubert was, during the period of time covered by the complaint in this case, business agent of said respondent Glaziers' Local Union No. 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, and as such represented during said period, said respondent Union and its members in its and their dealings with respondent distributors and other glass distributors and glazing contractors in the Indianapolis trade area. His address is in care of Glaziers' Local Union No. 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, 250 Leeds Avenue, Indianapolis, Ind.

PAR. 6. Respondent distributors are, and were, in competition with one another in the sale and distribution of glass and in the glazing contracting business within the State of Indiana.

There are, and were, in May 1938, other jobbers and distributors of glass, and glazing contractors with their places of business located both in the State of Indiana and in other States of the United

States, who undertake, and undertook, to sell, distribute, and make contracts for the installation of, glass, and who in some instances, do, and did, sell and distribute and contract for the installation of, glass within the same parts of the Indianapolis trade area, within which all of said respondent distributors conduct and conducted their respective businesses, and who are, and were, in competition with one another, and are, and were, in competition with one or more of the respondent distributors in said area in which respondent distributors conduct like businesses.

There are, and were, in May 1938, also glazing contractors located both in the State of Indiana and in other States of the United States, who are not dealers in, or distributors of, glass, but who seek to make, and sought to make, and do make, and did make glazing contracts within that portion of the Indianapolis trade area in which the respondent distributors conduct a glazing business. These other glazing contractors are, and were, in May 1938, in competition with one or more of the respondent distributors in seeking to secure, and securing, glazing contracts within the aforementioned part of the Indianapolis trade area in which respondent distributors, or some of them, make, or made, or seek to make, or sought to make, glazing contracts.

PAR. 7. Those competitors of respondent distributors who do not sell or distribute glass but are glazing contractors, in the course and conduct of their respective businesses, in some instances purchase, and did purchase, in May 1938, glass for those jobs within the Indianapolis trade area, where they are, and were, in competition with some, or all of the respondent distributors, from dealers and distributors of same, located in States other than the State of Indiana, and cause, and caused, said dealers and distributors as part of such purchases, to ship or cause to be shipped, said glass into the State of Indiana, from other States of the United States.

PAR. 8. Those glass distributors who are in competition with the respondent distributors, as above found, and whose places of business are located in States other than in the State of Indiana, in some instances, sell, and have sold, in May 1938, glass to glazing contractors who bid on and secure, and have bid on and secured, in May 1938, glazing contracts on construction and repair jobs in that part of the Indianapolis trade area in which some or all of the respondent distributors likewise bid on, have bid on, in May 1938, secured and have secured, in May 1938, glazing contracts, and when said glass distributors make such sales, they ship, have shipped, or cause to be shipped, or have caused to be shipped, the glass for said jobs, from their said

places of business located in States other than the State of Indiana, into the State of Indiana.

PAR. 9. Eighty-five percent to ninety-five percent of the glaziers in the city of Indianapolis, Ind., are members of said Union.

In order to secure and execute contracts on most construction or repair jobs, especially those of any size, in the city of Indianapolis, Ind., where all of the respondent distributors conduct a glazing contracting business, it is, and was in May 1938, necessary for glazing contractors to employ glaziers who are members of the respondent Glaziers' Local Union No. 1165.

PAR. 10. Respondent, Glaziers' Local Union No. 1165 was organized early in the year 1938 and none of the respondent distributors previously had entered into or signed any contracts with said respondent Union, for the employment by said respondent distributors of members of said respondent Union.

PAR. 11. During the first part of the year 1938, respondent, Joseph Schubert, acting for and on behalf of respondent Glaziers' Local Union No. 1165, entered into negotiations with the respondent distributors for the purpose of negotiating with them a contract, upon which all parties could agree, regarding the employment by said respondent distributors of members of respondent Glaziers' Local Union No. 1165, on the glazing contract work conducted by said respondent distributors within that part of the Indianapolis trade area in which said respondent distributors engaged in the glazing contracting business.

PAR. 12. As hereinbefore found, pursuant to, and as a result of the aforementioned negotiations by and between the respondent distributors and the respondent Joseph Schubert, acting for and on behalf of respondent Glazier's Local Union No. 1165, a contract was entered into, under date of May 6, 1938, by and between said respondent distributors and respondent Glaziers' Local Union No. 1165 concerning the employment by said respondent distributors of members of said respondent Glaziers' Local Union No. 1165, which contract remained in effect until on or about July 1, 1938, pertinent parts of which are as follows:

Entered into this Sixth day of May, 1938, between the Pittsburgh Plate Glass Company, Stewart-Carey Glass Company, and Capitol Glass Company, parties of the first part, herein referred to as the "companies", and the Brotherhood of Painters, Decorators and Paper Hangers of America, Glaziers' Local Union No. 1165, Indianapolis, Indiana, party of the second part, hereinafter referred to as the "Union", WITNESSETH:

ARTICLE II: No member of the Union will be allowed to work for any glazing contractor who has not signed this agreement or that has not lived up to the provisions of this agreement. To be recognized as a glazing contractor au

## Findings

30 F. T. C.

employer must be in the glass and glazing business, evidence of which shall be the stocking of a reasonable quantity of flat glass products, necessary truck and warehouse equipment for legitimate glazing operation to service the building and replacement trade and who continuously employs at least three men.

The aforementioned contract entered into under date of May 6, 1938, in addition to the sections above quoted, contained 13 other articles, covering, among other things, hours of work, rates of pay, and conditions of employment.

PAR. 13. After said contract of May 6, 1938, was signed by the three respondent distributors and by respondent Glaziers' Local Union No. 1165, it was adopted and approved by respondent District Council No. 27, and forwarded by respondent Courtney E. Hammond, secretary of said respondent District Council No. 27, to respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, at its office in LaFayette, Ind., it being required by the practice, rules, and regulations of said respondent Brotherhood of Painters, Decorators, and Paper Hangers of America that before such a contract was effective, same had to be approved by both the district council and the general executive board of the brotherhood of Painters, Decorators, and Paper Hangers of America.

Certain glazing contractors in the Indianapolis trade area, who took the position that, because of the aforementioned provisions of said contract, they were unable to comply with the same and were thereby unable to employ union glaziers in the Indianapolis trade area, over which respondent Glaziers' Local Union No. 1165 had jurisdiction, filed a complaint regarding said provisions of the contract of May 6, 1938, with respondent Brotherhood of Painters, Decorators, and Paper Hangers of America.

To such complaint, respondent Brotherhood of Painters, Decorators, and Paper Hangers of America through its general executive board, gave a decision that the terms of the aforesaid contract entered into by and between the three respondent distributors and respondent Glaziers' Local Union No. 1165, on May 6, 1938, had to be complied with if any contractor sought to be recognized as a union glazing contractor.

The executive board of said respondent, Brotherhood of Painters, Decorators, and Paper Hangers of America, did not return to respondent District Council No. 27, the aforementioned contract of May 6, 1938, sent to it by respondent Courtney E. Hammond, stamped with the approval of said board, as is its usual custom when such a contract is approved by the board.

PAR. 14. Respondents, L. P. Lindelof, general president of respondent Brotherhood of Painters, Decorators, and Paper Hangers

of America, and respondent Clarence E. Swick, general secretary of said respondent Brotherhood, both individually, and acting in their respective positions, carried out the aforesaid decisions of the general executive board of said respondent Brotherhood.

PAR. 15. The aforementioned contract of May 6, 1938, entered into, by, and between the three respondent distributors and respondent Joseph Schubert, acting for and on behalf of respondent Glaziers' Local Union No. 1165, was accepted, ratified, and enforced, for a period extending from May 6, 1938, to on or about July 1, 1938, by respondents Glaziers' Local Union No. 1165, by respondent Brotherhood of Painters, Decorators, and Paper Hangers of America, by L. P. Lindelof, individually and as general president of the Brotherhood of Painters, Decorators, and Paper Hangers of America, by Clarence E. Swick, individually and as general secretary of the Brotherhood of Painters, Decorators, and Paper Hangers of America, by District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, and by Courtney E. Hammond, individually and as secretary of District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America.

PAR. 16. The provisions of said contract of May 6, 1938, to the effect that no member of the Union can work for any glazing contractor who has not signed and lived up to the provisions of said contract are usual provisions in contracts between glaziers' local unions and employers, and no charge is made in this proceeding that said provisions are in violation of the Federal Trade Commission Act.

PAR. 17. There were glazing contractors, located both within the State of Indiana, and in other States of the United States, who, prior to the signing and execution of the aforementioned contract of May 6, 1938, by and between the respondent distributors and respondent Glaziers' Local Union No. 1165, had, in some instances, performed glazing contracts within that part of the Indianapolis trade area in which some or all of the respondent distributors had conducted such a business, and, who, because of the above quoted provisions of said contract regarding the requirements for recognition as a glazing contractor, were unable, during the period extending from May 6, 1938, to on or about July 1, 1938, to bid upon, or to execute, glazing contracts within the aforementioned parts of the Indianapolis trade area, in which some, or all, of said respondent distributors conducted a glazing contracting business in competition with said glazing contractors.

PAR. 18. Respondents, Philip G. King, individually, and as manager of the Indianapolis, Ind., branch of the Pittsburgh Plate Glass

Co.; H. B. Higgins, individually and as vice-president of the Pittsburgh Plate Glass Co.; J. Morris Haines, individually and as secretary and general manager of Stewart-Carey Glass Co.; W. J. Byrne, individually and as president of the Capitol Glass Co.; and Robert W. Byrne, individually and as vice president of the Capitol Glass Co., either signed, or ratified and approved the aforementioned contract of May 6, 1938.

PAR. 19. The aforementioned contract of May 6, 1938, through the mutual consent of all the respondents, did not remain in force and effect subsequent to on or about July 1, 1938. During the period extending from May 6, 1938, to on or about July 1, 1938, there were some glazing contractors who conducted such a business within that part of the Indianapolis trade area in which some, or all of the respondent distributors, conducted a like business, who did not comply with the particular provisions of said contract hereinbefore quoted in paragraph 12, but were able to secure, and did secure, union glaziers to perform work on glazing contracts which they had within said territory.

PAR. 20. During the aforesaid period from May 6, 1938, to on or about July 1, 1938, when the aforesaid contract was in force and effect, the capacity and effect of the provisions in said contract, which required evidence by an employer to show that he was a glazing contractor, to wit: that he had the stocking of a reasonable quantity of flat glass products, necessary truck and warehouse equipment for legitimate glazing operation to service the building and replacement trade, and to continuously employ at least three men, were that said provisions tended:

1. To prevent glazing contractors and glass distributors, located both within the State of Indiana and in other States of the United States, from bidding upon, or securing, glazing contracts, and from selling glass in that part of the Indianapolis trade area in which respondent distributors conducted a glazing contracting business.

2. To unreasonably lessen and suppress competition in the sale of glass and in the procurement of glazing contracts within that part of the Indianapolis trade area in which the respondent distributors conducted a glazing contracting business, by glass distributors and glazing contractors located both in the State of Indiana and in other States of the United States.

3. To unduly restrict glazing contractors, both within the State of Indiana and in other States of the United States, desiring to bid upon, and secure, glazing contracts in that part of the Indianapolis trade area in which respondent distributors conducted a glazing contracting business, but who did not enter into the aforementioned

contract on May 6, 1938, because they were not qualified to do so at that time under the provisions of said contract.

4. To unduly interfere with the natural flow in commerce of glass from States of the United States other than the State of Indiana, into the State of Indiana.

5. To unduly restrict and restrain the sale of glass in trade and commerce between and among the several States of the United States.

PAR. 21. The capacity and tendency of provisions in any agreement, contract, or understanding for the employment of glaziers in connection with the installation of any plate, window, safety, or structural glass, in structures or buildings, which glass is sold or distributed in interstate commerce, which require as a prerequisite to the right or privilege of any glass distributor or glazing contractor to employ such glaziers that:

1. Any such glass distributor or glazing contractor must have or maintain a stock of any specific quantity of flat-glass products, in connection with the operation of his business; or

2. Any such glass distributor or glazing contractor must have or maintain any trucking or warehousing equipment to service the building or replacement trade, in connection with the operation of his business; or

3. Any such glass distributor or glazing contractor must have or maintain the continuous employment of any specific number of men, in connection with the operation of his business;

Are the same as those resulting from similar provisions in the aforementioned contract of May 6, 1938, as heretofore found in paragraph 20.

#### CONCLUSION

The acts and practices of respondents, as hereinabove found, are all to the prejudice of the public, and have a dangerous tendency to hinder and prevent competition in the glazing contracting business in that part of the Indianapolis trade area in which the respondent distributors conduct such a business, to place in respondents the power to control the glazing contracting business therein, to unduly restrict and restrain the sale and distribution of glass in trade and commerce between the several States of the United States and constitute unfair methods of competition 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 respond-

ents and stipulations as to the facts entered into by and between the respondents herein, and W. T. Kelley, chief counsel for the Commission, which provide, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein and each of them, findings as to the facts and conclusion based thereon, and an order disposing of this proceeding, 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 respondents, Pittsburgh Plate Glass Co., a corporation, Stewart-Carey Glass Co., a corporation, Capitol Glass Co., a corporation, Brotherhood of Painters, Decorators, and Paper Hangers of America, a corporation, District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, of Indianapolis, Ind., an unincorporated association, Glaziers' Local Union No. 1165, of the Brotherhood of Painters, Decorators, and Paper Hangers of America, of Indianapolis, Ind., an unincorporated association, and the representatives, successors, assigns, officers, agents, and employees of each of said respondents; Philip G. King, individually, and as manager of the Indianapolis, Ind., branch of the Pittsburgh Plate Glass Co., H. B. Higgins, individually, and as vice president of the Pittsburgh Plate Glass Co., J. Morris Haines, individually, and as secretary and general manager of the Stewart-Carey Glass Co., W. J. Byrne, individually, and as president of the Capitol Glass Co., Robert W. Byrne, individually, and as vice president of the Capitol Glass Co., L. P. Lindelof, individually, and as general president of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Clarence E. Swick, individually, and as general secretary of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Courtney E. Hammond, individually, and as secretary of District Council No. 27 of the Brotherhood of Painters, Decorators, and Paper Hangers of America, Joseph Schubert, individually, and as business agent of Glaziers' Local Union No. 1165 of the Brotherhood of Painters, Decorators, and Paper Hangers of America; directly or indirectly, by any means, shall, in connection with the sale or distribution in interstate commerce of plate, window, safety, or structural glass, or in connection with the installation of such glass in structures or buildings, forthwith cease and desist from entering into, effectuating, approving, or recognizing any agreement, contract, or understanding which contain any of the following requirements or provisions as a prerequisite to the right or privilege of any glass distributor or glazing contractor to employ glaziers for the installation of such glass products in structures or buildings:

## Order

1. A requirement or provision that any such glass distributor or glazing contractor must have or maintain a stock of any specified quantity of flat glass products, in connection with the operation of his business.

2. A requirement or provision that any such glass distributor or glazing contractor must have or maintain any trucking or warehousing equipment to service the building or replacement trade, in connection with the operation of his business.

3. A requirement or provision that any such glass distributor or glazing contractor must have or maintain the continuous employment of any specific number of men, in connection with the operation of his business.

*It is further ordered,* That the respondents herein, 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  
THE AMERICAN PRODUCTS COMPANY, AND THE ZANOL  
PRODUCTS COMPANY

MODIFIED CEASE AND DESIST ORDER

*Docket 2836. Order, Jan. 25, 1940*

Order, in response to motion, modifying cease and desist order of November 8, 1939, 29 F. T. C. 1306, so as to require respondents, their officers, etc., in connection with offer, etc., in commerce, of food and toilet products and household cleaners, to cease and desist from misrepresenting volume of respondents' business or risk or expense incurred by their salesmen or distributors, or using term "free" to describe articles offered as compensation for distribution thereof, or misrepresenting earnings or profits of sales persons or dealers, as in said order below set forth.

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.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of W. T. Kelley, Chief Counsel for the Commission, to modify the order to cease and desist heretofore issued in this proceeding on November 8, 1939, 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 November 8, 1939, be, and the same hereby is, granted as prayed;

*It is further ordered*, That the order to cease and desist issued herein on November 8, 1939, 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 complaint of the Commission and the answer of the respondents, in which answer respondents admit the material allegations of facts 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 article or as to the services to be performed in connection with obtaining such articles.

4. Representing any specified sum of money as possible earnings or profits of sales persons or dealers for any stated period which is not a true representation of the net earnings or profits which have been made for such stated period of time by a substantial number of respondents' active sales persons or dealers 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 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 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  
FRYE COMPANY

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

*Docket 3741. Complaint, Mar. 21, 1939—Decision, Jan. 25, 1940*

Where a corporation engaged in sale and distribution of medicinal preparation under designation and label "Pancreobismuth," "Pancreo Bismuth" and "Pancreobismuth and Pepsin," to purchasers in other States, in substantial competition with others engaged in sale and distribution of similar preparations or other products designed and intended for similar usage, in commerce among the various States and in the District of Columbia; in advertisements in newspapers and other periodicals of general circulation, and in advertising folders and literature which it printed and circulated throughout the several States to customers and prospective customers, and in which it featured name "Pancreo Bismuth and Pepsin"—

- (a) Represented that its said product was effective in treatment of all cases of upset stomach and relieved indigestion due to acid condition of the stomach, and tended to neutralize excess acid and allay irritation, and constituted aid in digestion of starchy foods and helped to give relief from distress caused thereby; and
- (b) Represented, through use of name "Pancreo Bismuth and Pepsin" or "Pancreo Bismuth" or "Pancreobismuth" in connection with its said product, that same possessed physiological or therapeutic value due to presence of pancreatin or pepsin;

Facts being two ingredients in question were rendered physiologically inert when taken internally in preparation involved, active ingredients of which were bismuth subnitrate, sodium bicarbonate, and ginger, and, while product possessed therapeutic value of a simple antacid and carminative tending temporarily to neutralize excess acid and relieve symptoms of distress from gastric hyperacidity, it had no effect on causative factors thereof or systemic causes of excess acid in system, was not effective in treatment of upset stomach or relief of indigestion due thereto, other than as indicated, and statements and representations above set forth were otherwise false, deceptive, exaggerated, and misleading, with respect to therapeutic value of product in question; and

Where said corporation engaged as aforesaid; in advertisements which it disseminated concerning its said product through the mails and through insertion in circulars and other printed or written matter distributed in commerce among the various States, and which were intended and likely to induce purchase of its said product, and which were disseminated as above set forth through various means—

- (c) Represented, through use of trade name "Pancreobismuth," that product in question contained pancreatin as active ingredient thereof, facts being amount thereof was negligible and without physiological value and inert in preparation in question, active ingredients of which were as hereinabove set forth;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that principal active ingredients in product in question were indicated by names "Pancreobismuth," "Pancreo Bismuth," and "Pancreobismuth and Pepsin," and that representations with reference to therapeutic value thereof and results to be obtained from its use were true, and with result of unfairly diverting thereby trade to it from others also engaged in sale and distribution in commerce of similar preparations or other products designed and intended for similar usage, and who truthfully advertise the same:

*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. Webster Ballinger*, trial examiner.

*Mr. George Foulkes* and *Mr. R. P. Bellinger* for the Commission.  
*Perry, Saunders & Cheney*, 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 Frye 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, Frye Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business located at 36 Pleasant Street, Watertown, Mass.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing a medicinal preparation designated "Pancreo Bismuth & Pepsin" and "Pancreobismuth." Respondent causes said product, when sold, to be transported from its place of business in Massachusetts to purchasers thereof located 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 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

## Complaint

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and similar products, or other products and treatments intended 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 individuals to purchase its product, respondent 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 to customers and prospective customers certain advertising folders and literature, in all of which respondent has caused the name of its product "Pancreo Bismuth & Pepsin" to be prominently and conspicuously displayed, together with the following statements:

For distress due to upset stomach, FRYE'S PANCREO BISMUTH & PEPSIN.

Relieves indigestion due to acid stomach, FRYE'S PANCREO BISMUTH & PEPSIN.

For upset stomach—take PANCREO BISMUTH & PEPSIN.

PANCREO tends to neutralize excess of acid and allay irritation.

FRYE'S PANCREO BISMUTH aids in the digestion of starchy foods—that's how it helps to give you relief from the distress these foods often cause.

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. Its product is effective in the treatment of all cases of upset stomach.
2. Its product relieves indigestion due to acid stomach.
3. Its product tends to neutralize excess acid and allay irritation.
4. Its product aids in the digestion of starchy foods and helps to give relief from distress caused by starchy foods.

PAR. 5. The statements and representations made by respondent with respect to the therapeutic value of its product are false and misleading and untrue. Such product is not effective in the treatment of all cases of upset stomach and such product does not relieve all cases of indigestion due to acid stomach. While such product possesses the therapeutic value of a simple antacid and carminative which tends temporarily to neutralize excess acid and to relieve the symptoms of distress from gastric hyperacidity, such product does not have any effect on the causative factors of gastric hyperacidity and does not have any effect on the systemic causes of excess acid in the system. Respondent's product does not permanently tend to neutralize excess acid or allay irritation but only tends to give temporary relief from the distress of such symptoms. The product is not an aid in the digestion of starchy foods and does not help to give relief from distress caused by starchy foods.

PAR. 6. In its advertising matter respondent designates its product as "Pancreo Bismuth & Pepsin." The use by respondent of the name "Pancreo Bismuth & Pepsin" in designating its product, has the tendency and capacity to, and does, lead purchasers to believe that pancreatin and pepsin are substantial physiologically active ingredients of said product. In truth and in fact pancreatin and pepsin are not psychologically substantial active ingredients of the product. The principal active ingredients of respondent's product "Pancreo Bismuth & Pepsin" are sodium bicarbonate, bismuth subnitrate and ginger. The sodium bicarbonate in respondent's product prevents any effectiveness by reason of the pepsin contained in the product.

PAR. 7. Each and all of the false and misleading representations made by the respondent in its advertising and newspapers, magazines, and pamphlets in offering for sale and selling its product, as hereinabove set out, 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 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 said commerce 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 in said commerce 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. 8. In the course and conduct of its aforesaid business, 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 using the name "Pancreobismuth" in designating said product, by United States mails, by insertion 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, 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 Pancreobismuth, by various means, and 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 or representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

A formula—which will materially benefit your patients—Pancreobismuth.

Pancreobismuth

Antacid—Digestant

A formula which will materially benefit your patients.

The use by respondent of the name "Pancreobismuth" in designating its product has the tendency and capacity to, and does, lead purchasers to believe that pancreatin is an active ingredient of the product. In truth and in fact the amount of pancreatin in respondent's product is negligible, having no physiological value. The active ingredients of Pancreobismuth are sodium bicarbonate, bismuth, subnitrate and ginger.

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 the 21st day of March 1939, issued its complaint and thereafter caused the same to be served upon the respondent, Frye Co., a corporation. 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 before Webster Ballinger, 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.

Thereupon the proceeding regularly came on for final hearing upon the said complaint, the answer thereto, testimony and other evidence and brief in support of the allegations of the complaint, and the Commission having duly considered the matter, and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Frye Co., is a corporation organized in 1935 under the laws of the State of Massachusetts, and has ever since its incorporation maintained its principal office and place of business at 36 Pleasant Street, Watertown, Mass. Respondent is now, and was, for more than 1 year prior to the issuance of the complaint,

engaged in the sale and distribution of a medicinal preparation designated and labelled "Pancreobismuth," "Pancreo Bismuth," and "Pancreobismuth and Pepsin."

PAR. 2. Respondent, being engaged in business as aforesaid, caused said preparation when sold, to be transported from its place of business in Watertown, Mass., to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation, distributed and sold by it, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and had been, in substantial competition with other individuals, and with corporations and firms also engaged in the business of selling and distributing similar preparations, or other preparations or 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 4. In the course and conduct of its said business, during the time mentioned in paragraph 1, and for the purpose of inducing individuals to purchase its preparation, respondent caused advertisements to be inserted in newspapers and other periodicals of general circulation throughout the United States, and printed and circulated throughout the several States of the United States to customers and prospective customers certain advertising folders and literature, in all of which respondent caused the name of its product "Pancreo Bismuth and Pepsin" to be prominently and conspicuously displayed, together with the following statements:

For distress due to upset stomach, FRYE'S PANCREO BISMUTH & PEPSIN.

Relieves indigestion due to acid stomach, FRYE'S PANCREO BISMUTH & PEPSIN.

For upset stomach—take PANCREO BISMUTH & PEPSIN.

PANCREO tends to neutralize excess of acid and allay irritation.

FRYE'S PANCREO BISMUTH aids in the digestion of starchy foods—that's how it helps to give you relief from the distress these foods often cause.

Through the use of the aforesaid statements and representations and others of similar import or meaning, not herein set out, the respondent represented, directly or by implication, that:

1. Its product is effective in the treatment of all cases of upset stomach;
2. Its product relieves indigestion due to acid stomach;
3. Its product tends to neutralize excess acid and allay irritation;
4. Its product aids in the digestion of starchy foods and helps to give relief from distress caused by starchy foods.

PAR. 5. The use of the said name "Pancreo Bismuth and Pepsin" or "Pancreo Bismuth" or "Pancreobismuth," in connection with said preparation, is deceptive and misleading, and each of the representations set out in paragraph 4 made by respondent with respect to the therapeutic value of its said preparation and the results to be obtained from its use, were, and are, exaggerated, misleading, and untrue.

Respondent's product contains milk sugar, bismuth subnitrate, sodium bicarbonate and small amounts of pepsin, powdered ginger, and pancreatin. Pancreatin and pepsin, the ingredients referred to in the name of the product, are rendered physiologically inert when taken internally in the preparation involved herein. The active ingredients in this preparation are bismuth subnitrate, sodium bicarbonate, and ginger. The name "Pancreo Bismuth and Pepsin" or "Pancreobismuth" or "Pancreo Bismuth" has a tendency to lead prospective purchasers into the erroneous belief that they are going to obtain some physiological effect from the presence of pancreatin and pepsin, whereas in truth and in fact these two ingredients as used in the preparation are rendered physiologically inert.

While said preparation possesses the therapeutic value of a simple antacid and carminative, which tends temporarily to neutralize excess acid and to relieve the symptoms of distress from gastric hyperacidity, said preparation does not have any effect on the causative factors or gastric hyperacidity or the systemic causes of excess acid in the system. Such product is not effective in the treatment of upset stomach or in the relief of indigestion due to acid stomach in excess of being a simple antacid and carminative. Respondent's said preparation does not tend to permanently neutralize excess acid or allay irritation but only tends to give temporary relief from the distress of such symptoms. It is not an aid in the digestion of starchy foods; and it does not help to give relief from distress caused by starchy foods.

PAR. 6. In the course and conduct of its aforesaid business, since March 21, 1938, the respondent, by using the name "Pancreobismuth" in designating said product, 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 circulars and other printed or written matter, 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 its said products, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements

concerning Pancreobismuth, 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 or representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

A formula—which will materially benefit your patients—Pancreobismuth.

Pancreobismuth

Antacid—Digestant

A formula which will materially benefit your patients.

The use by respondent of the name "Pancreobismuth" in designating its product has the tendency and capacity to, and does, lead purchasers to believe that pancreatin is an active ingredient of the product. In truth and in fact the amount of pancreatin in respondent's product is negligible, having no physiological value and being inert in said preparation. The active ingredients of Pancreobismuth are sodium bicarbonate, bismuth subnitrate and ginger.

PAR. 7. The use of the aforesaid deceptive and misleading names, Pancreobismuth, Pancreo Bismuth, and Pancreobismuth and Pepsin, and the aforesaid exaggerated and misleading representations made by respondent, in offering for sale and selling its product, as hereinbefore set out, had, and 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 the principal active ingredients in said preparation are indicated by the aforesaid names, and that said representations with reference to the therapeutic value of the preparation, and the results to be obtained from its use, are true. As a result, trade is now, and has been, unfairly diverted to respondent from corporations, copartnerships, firms, and individuals also engaged in the business of selling and distributing in commerce among and between the various States of the United States similar preparations or other products designed and intended for similar usage, and who truthfully advertise their preparations or 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, and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Order

30 F. T. C.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Webster Ballinger, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed herein by the counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, Frye Co., a corporation, its officers, agents, representatives, and employees, in connection with the offering for sale, sale and distribution of a medicinal preparation now designated as "Pancreobismuth," "Pancreo Bismuth," or "Pancreobismuth and Pepsin," or any other preparation containing substantially the same 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 has therapeutic value in the treatment of upset stomach, or in the relief of indigestion due to acid stomach, or in the neutralization of excess acid and allaying of irritation, in excess of being a simple antacid and carminative tending to give temporary relief from distress caused by such symptoms.

2. Representing that said preparation is beneficial in aiding the digestion of starchy foods or in relieving distress caused by starchy foods.

3. Representing that said preparation possesses physiological or therapeutic value due to the presence of pancreatin or pepsin when such ingredients are not present in such amounts and in such form as to be active ingredients thereof.

4. Using the trade names "Pancreobismuth," "Pancreo-Bismuth," or "Pancreobismuth and Pepsin," or any other trade names containing the words "pancreatin" or "pepsin" or any other adaptation of such words, to designate, describe or in any way refer to respondent's present product or any other similar product which does not possess pancreatin and pepsin in such amounts and in such form as to be active ingredients therein.

*It is further ordered*, That the respondent, Frye Co., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

## Order

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 a medicinal preparation now known or designated by the name of "Pancreobismuth" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, 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, by the use of the trade name "Pancreobismuth," or any other trade name containing the word "Pancreatin," or any adaptation thereof, or in any other manner, that said preparation contains pancreatin as an active ingredient 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  
**ROY D. BURNSED, TRADING AS SOUTHERN ART STONE  
 COMPANY**

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

*Docket 3697. Complaint, Feb. 2, 1939—Decision, Jan. 26, 1940*

Where an individual engaged in manufacture of imitation marble and granite tombstones and memorials which (1) were produced from a mixture of crushed marble or granite, cement and other ingredients, called "Marble-texture" and "Granitexture," respectively, and (2) simulated in shape, design, color and appearance memorials carved from natural marble or granite, and in sale and distribution of said products, depictions of which in his catalogs had general appearance of natural marble and granite memorials similarly pictured, to purchasers, who did not usually see samples thereof until ordered and paid for, and who were situated in other States and in the District of Columbia, in substantial competition in commerce among the various States and in said District with others engaged in sale and distribution of tombstones and memorials made of similar materials and with those engaged in sale and distribution of such products made from natural marble and granite; in advertising his said tombstones and memorials in catalogs, circular letters, mail order solicitations, magazines, and farm papers—

- (a) Represented that they were natural marble or granite, and would retain as high a polish as said substances, and were superior to and would last longer than the natural or ordinary marble or granite, and would not crack, crumble or disintegrate from natural causes, and were everlasting, through such statements as "\* \* \* manufactured from the finest marble and granite \* \* \*," "\* \* \* will outlast ordinary marble and granite," "\* \* \* the marble or granite monument that is so beautiful today, may in a few short years discolor, crumble or crack. \* \* \*," "\* \* \* withstands all the elements, it does not absorb moisture and is not susceptible to influences which so often cause gradual decomposition, loss of polish \* \* \*," etc., facts being his said products were not natural marble or granite, would not take or retain as high a polish as the other or last as long, and were not superior thereto or less porous, etc., but were in fact inferior in every particular and would crack, crumble and disintegrate under ordinary weather conditions; and
- (b) Represented that a footstone was given free by him with every order for tombstone or memorial, and that his products were from 33½ percent to 50 percent lower in price, through so stating, and through such statements as "FREE Footstone with Every Order Without additional cost to you, we include with each order a footstone to match," facts being a footstone was not given free, as above set forth, but price thereof was included in that asked for tombstone or memorial, so-called "free" offer was in fact a continuing combination offer regularly made by him, and prices of his said products were not 33½ percent to 50 percent lower than those asked by his competitors for products of the same or substantially the same quality and weight, but were approximately the same;

## Complaint

With effect of leading members of purchasing public to believe that his said memorials were carved from natural marble and granite, and of causing substantial part of purchasing public, through such various false and misleading statements and representations concerning his said memorials, to buy said products in preference to those of his competitors, and of thereby diverting trade in commerce unfairly to him from his competitors aforesaid:

*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. John W. Addison*, trial examiner.

*Mr. J. M. Russell* and *Mr. Morton Nesmith* for the Commission.

*Mr. Marvin G. Russell*, 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 Roy D. Burnsed, an individual, trading as Southern Art Stone 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. The respondent, Roy D. Burnsed, is an individual, trading as Southern Art Stone Co., having his office and principal place of business located at 1927 Piedmont Road, N. E., Atlanta, Ga.

He is now and for several years last past has been engaged in the business of manufacturing and selling imitation marble and granite tombstones and memorials produced from a mixture of crushed marble or granite, cement and other ingredients called Marbletexture and Granitexture, respectively. Respondent causes said products when sold to be transported from his place of business in the State of Georgia 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 Marbletexture and Granitexture tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, respondent is now, and for the time mentioned herein, has been in substantial competition with other individuals, firms, partnerships, and corporations engaged in the sale and distribution of tombstones and memorials

made of materials, and in a manner, similar to the said products of respondent, and of tombstones and memorials made of other materials other than marble and granite, who do not misrepresent their said products and their prices in the manner respondent is hereinafter alleged to misrepresent his products and their prices; and in the sale and distribution of tombstones and memorials made of natural marble and granite; doing such business 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 the respondent, in connection with the promotion of the sale and the sale of his said products in such commerce, and as an inducement for the purchase thereof, has caused and is now causing many false and misleading statements and representations respecting the nature and price of his said products and as to his alleged guarantee of his claims therefor to be inserted in catalogs, circular letters, mail order solicitations, magazines, and farm papers, such as Progressive Farmer, Southern Ruralist, Southern Planter and Grit, which are circulated in the various States of the United States. Among and typical of the statements and representations contained in said false advertisements so used and disseminated as aforesaid, are the following:

\* \* \* our products are manufactured from the finest marble and granite \* \* \*

\* \* \* Artstone is given permanence that will outlast ordinary marble and granite. Artstone Marble texture and Granite texture Monuments are very hard, very dense, but are not porous or brittle \* \* \*

Located in the great marble and granite section of America \* \* \*

Our monuments will not crack, fade or crumble, they will stand throughout the ages \* \* \* vastly superior \* \* \* and cost less than ones \* \* \* purchased from other concerns.

\* \* \* This highly polished product will not chip, crack, crumble, fade or otherwise disintegrate from natural causes.

\* \* \* a product that is an eternal tribute and a permanent satisfaction.

\* \* \* The marble or granite monument that is so beautiful today, may in a few short years discolor, crumble or crack. It is a long-proven fact that genuine marble slabs suffer total destruction in less than a century.

\* \* \* Changeable weather and temperature cause no deterioration. Artstone withstands all the elements, it does not absorb moisture and is not susceptible to influences which so often cause gradual decomposition, loss of polish, crumbling, and finally loss of character and appearance.

33 $\frac{1}{3}$ % to 50%

Lower in Price

Besides the fact that Artstone is more beautiful and durable than other monuments, its prices are considerably lower.

Artstone will outlast ordinary marble and granite. Our monuments are not affected by weather or temperature, and will not deteriorate, discolor or decompose from any natural causes.

FREE Footstone with Every Order

Without additional cost to you, we include with each order a footstone to match.

We guarantee our monuments conform exactly with all descriptions and specifications.

PAR. 4. In all of said statements, together with similar statements not herein set out, the respondent has represented that his said synthetic products are genuine natural marble and granite tombstones and memorials; that they take and retain a higher polish and luster than natural marble or granite; that they will last forever; that they are superior to natural marble or granite in that they are less porous and stronger and more enduring; that they are sold to customers by respondent for from 33 $\frac{1}{3}$  to 50 percent less than similar products of the same quality and weight are sold by respondent's competitors; that a footstone is given free by respondent with every order for a tombstone or memorial.

PAR. 5. The statements and representations so made and used by respondent in connection with the promotion of the sale and sale of his said products are false and misleading. In truth and in fact Marbletexture and Granitexture tombstones and memorials which respondent advertises for sale and sells as aforesaid are not natural marble or granite, but are manufactured by respondent from cement and other ingredients and are known as cast stone. They will not take or retain as high a polish as natural marble or granite. They will not last forever, or as long as natural marble or granite. They are not superior to natural marble or granite, or less porous or stronger or more enduring. They are in fact inferior in every particular thereto and will crack, crumble and disintegrate under ordinary weather conditions. The prices asked for respondent's said products are not 33 $\frac{1}{3}$  to 50 percent lower than those asked by his competitors for products of the same or substantially the same quality and weight, but are approximately the same. A footstone is not given "free" with each order, but the price thereof is included in the price respondent asks for the tombstone or other material and the so-called "free offer" is in fact a continuing combination offer regularly made by respondent.

Respondent's tombstones and other memorials in shape, design, color and appearance simulate memorials carved from natural marble or granite. The pictures of the memorials in respondent's catalogs have the general appearance of natural marble and granite memorials similarly pictured. Nowhere in his advertisements is it disclosed

that they are synthetic or cast stone memorials. Purchasers do not usually see samples of them before they are ordered and paid for, all of which, especially in conjunction with the respondent's misleading and false statements, is calculated to and has a tendency and capacity to, and it has, and does, lead members of the purchasing public to believe respondent's memorials are carved from natural marble or granite.

PAR. 6. Each and all of the false and misleading statements and representations disseminated as aforesaid by respondent concerning his said products, as hereinabove set out have, and have had, a tendency and capacity to and do cause a substantial part of the purchasing public to purchase respondent's said products in preference to those of his said competitors, and thus trade in said commerce has been diverted, and is being diverted, unfairly to respondent from his said competitors. 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. 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 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 2d day of February 1939, issued, and on the 6th day of February 1939, served its complaint in this proceeding upon respondent Roy D. Burnsed, an individual trading as Southern Art Stone 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 thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Morton Nesmith, attorney for the Commission, and in opposition to the allegations of the complaint by Marvin G. Russell, Atlanta, Ga., attorney for the respondent, 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, 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, Roy D. Burnsed, is an individual, trading as Southern Art Stone Co., having his office and principal place of business located at 1927 Piedmont Road, N. E., Atlanta, Ga.

He is now and for several years last past has been engaged in the business of manufacturing and selling imitation marble and granite tombstones and memorials produced from a mixture of crushed marble or granite, cement and other ingredients called Marbletexture and Granittexture, respectively. Respondent causes said products when sold to be transported from his place of business in the State of Georgia 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 Marbletexture and Grain texture tombstones and monuments 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, the respondent is now, and 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 firms, partnerships, and corporations engaged in the sale and distribution of tombstones and memorials made of materials similar to those used by the respondent in his tombstones and memorials and also with individuals, firms, partnerships, and corporations engaged in the sale and distribution of tombstones and memorials made from natural marble and granite.

PAR. 3. In the course and conduct of his said business the respondent, in connection with the promotion of the sale and the sale of his said products in such commerce, and as an inducement for the purchase thereof, has caused and is now causing many statements and representations respecting the nature and price of his said products and as to his alleged guarantee of his claims therefor to be inserted in catalogs, circular letters, mail order solicitations, magazines, and farm papers, such as Progressive Farmer, Southern Ruralist, Southern Planter and Grit, which are circulated in the various States of the United States. Among and typical of the statements and representa-

tions contained in said advertisements so used and disseminated as aforesaid, are the following:

\* \* \* our products are manufactured from the finest marble and granite \* \* \*.

\* \* \* Artstone is given permanence that will outlast ordinary marble and granite. Artstone Marble texture and Granite texture Monuments are very hard, very dense, but are not porous or brittle \* \* \*.

Located in the great marble and granite section of America \* \* \*.

Our monuments will not crack, fade or crumble, they will stand throughout the ages \* \* \* vastly superior \* \* \* and cost less than ones \* \* \* purchased from other concerns.

\* \* \* This highly polished product will not chip, crack, crumble, fade or otherwise disintegrate from natural causes.

\* \* \* a product that is an eternal tribute and a permanent satisfaction.

\* \* \* The marble or granite monument that is so beautiful today, may in a few short years discolor, crumble, or crack. It is a long-proven fact that genuine marble slabs suffer total destruction in less than a century.

\* \* \* Changeable weather and temperature cause no deterioration. Artstone withstands all the elements, it does not absorb moisture and is not susceptible to influences which so often cause gradual decomposition, loss of polish, crumbling, and finally loss of character and appearance.

33½% to 50%

Lower in Price

Besides the fact that Artstone is more beautiful and durable than other monuments, its prices are considerably lower.

Artstone will outlast ordinary marble and granite. Our monuments are not affected by weather or temperature, and will not deteriorate, discolor or decompose from any natural causes.

Free Footstone with Every Order Without additional cost to you, we include with each order a footstone to match.

We guarantee our monuments conform exactly with all descriptions and specifications.

PAR. 4. In all of said statements, together with similar statements not herein set out, the respondent has represented that his said synthetic products are genuine natural marble and granite tombstones and memorials; that they take and retain a higher polish and luster than natural marble or granite; that they will last forever; that they are superior to natural marble or granite in that they are less porous and stronger and more enduring; that they are sold to customers by respondent for from 33½ percent to 50 percent less than similar products of the same quality and weight are sold by respondent's competitors; that a footstone is given free by respondent with every order for a tombstone or memorial.

PAR. 5. The statements and representations so made and used by respondent in connection with the promotion of the sale and sale of

his said products are false and misleading. In truth and in fact Marbletexture and Granitexture tombstones and memorials which respondent advertises for sale and sells as aforesaid are not natural marble or granite, but are manufactured by respondent from cement and other ingredients and are known as cast stone. They will not take or retain as high a polish as natural marble or granite. They will not last forever, or as long as natural marble or granite. They are not superior to natural marble or granite, or less porous or stronger or more enduring. They are in fact inferior in every particular thereto and will crack, crumble and disintegrate under ordinary weather conditions. The prices asked for respondent's said products are not 33 $\frac{1}{3}$  percent to 50 percent lower than those asked by his competitors for products of the same or substantially the same quality and weight, but are approximately the same. A footstone is not given "free" with each order, but the price thereof is included in the price respondent asks for the tombstone or other material and the so-called "free offer" is in fact a continuing combination offer regularly made by respondent.

Respondent's tombstones and other memorials in shape, design, color and appearance simulate memorials carved from natural marble or granite. The pictures of the memorials in respondent's catalogs have the general appearance of natural marble and granite memorials similarly pictured. Nowhere in his advertisements is it disclosed that they are synthetic or cast stone memorials. Purchasers do not usually see samples of them before they are ordered and paid for, all of which, especially in conjunction with the respondent's aforesaid misleading and false statements, is calculated to and has a tendency and capacity to, and does, lead members of the purchasing public to believe respondent's memorials are carved from natural marble or granite.

PAR. 6. Each and all of the false and misleading statements and representations concerning his said products disseminated by respondent as hereinabove set out have, and have had, a tendency and capacity to and do cause a substantial part of the purchasing public to purchase respondent's said products in preference to those of his said competitors. Thus trade in commerce, among and between the various States of the United States and in the District of Columbia, has been diverted, and is being diverted, unfairly to respondent from his said competitors.

#### CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of competitors of the 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 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, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed in support of the complaint 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, Roy D. Burnsed, an individual trading as Southern Art Stone 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 imitation marble and granite tombstones and memorials composed of crushed marble, granite or any similar material mixed with cement and other ingredients, 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 natural marble or granite, or that they will retain as high a polish as marble or granite, or that such products are superior to, or will last longer than natural or ordinary marble or granite.

2. Representing that respondent's products will not crack, crumble or disintegrate from natural causes, or that they are everlasting or will last forever.

3. Using the term "free" or any other term of similar import or meaning to designate, describe or in any way refer to articles of merchandise regularly included in a combination offer with tombstones or other merchandise.

4. Representing that respondent's products are from 33 $\frac{1}{3}$ % to 50% lower in price than similar products of comparable quality and weight sold by respondent's competitors or that they are to any extent lower in price than such products unless and until they are in fact lower to such extent, quality and weight considered.

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

## Syllabus

## IN THE MATTER OF

CHARLES V. HERRON, RYON GRAIN COMPANY, AND Mc-  
LAUGHLIN, WARD & COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 3916. Complaint, Oct. 6, 1939—Decision, Jan. 27, 1940*

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE OR COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS—SERVICES RENDERED CLAUSE—BROKER-DEALER OWN ACCOUNT PURCHASES.

Where broker-dealer received from sellers, on own account purchases, allowance of money in lieu of brokerage, *held*, as matter of law, no services rendered by broker-dealer on such purchases, notwithstanding denial by both broker-dealer and sellers involved. *Biddle Purchasing Company v. Federal Trade Commission*, 96 F. (2d) 687, certiorari denied 305 U. S. 634; *Oliver Brothers v. Federal Trade Commission*, 102 F. (2d) 763; *The Great Atlantic & Pacific Tea Company v. Federal Trade Commission*, 106 F. (2d) 667, certiorari denied January 2, 1940, 308 U. S. 625.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE OR COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS—BROKER-DEALER OWN ACCOUNT PURCHASES.

Where an individual engaged in buying and selling of beans for his own account and in business of and acting as broker in sale of foodstuffs, grocery products, canned goods and allied commodities purchased, sold, and distributed by him in commerce among the various States, and in selling and distributing own account purchases in commerce, and shipping and transporting such commodities pursuant to sales to customers in Kentucky, Illinois, and Indiana—

Received from corporate sellers engaged, from their respective Michigan places of business, in sale and distribution of beans and other foodstuffs and allied commodities in commerce among the various States, and in causing said beans, etc., to be shipped and transported from said places of business to purchasers thereof in the various States for use in resale therein, and on purchases for his own account therefrom, allowance of 6 cents per bag of beans in lieu of brokerage upon such purchases in commerce from said corporate sellers; and

Where said corporate sellers engaged, as aforesaid, in sale and distribution of said products from their respective Michigan places of business to purchasers thereof in the various States—

Paid and transmitted to said individual, on own account purchases, allowances of 6 cents per bag of beans in lieu of brokerage upon such purchases in commerce from them:

*Held*, (1) That said individual violated provisions of Subsection (c) of Section 2 of statute in question by receiving and accepting from said sellers allowance as aforesaid; and

## Complaint

30 F. T. C.

- (2) That said corporate sellers violated provisions of said subsection and section of law in question by making and granting to said individual, on own account purchases, allowance as aforesaid in lieu of brokerage upon sales of beans by them in commerce to said individual on own account purchases.

Before *Mr. Webster Ballinger*, trial examiner.

*Mr. Frank Hier* for the Commission.

*Mr. Forrest M. Condit*, of Evansville, Ind., for Charles V. Herron.

*Mr. William P. Smith*, of Washington, D. C., for Ryon Grain Co. and along with *Whiting, Kleinstiver & Anderson*, of Jackson, Mich., for McLaughlin, Ward & Co.

## COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, section 13), issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Charles V. Herron is an individual, doing business under the firm name and style of Charles V. Herron Co., a sole proprietorship, and has his principal office and place of business at 101 North Governor Street, Evansville, Ind., and has been prior to June 19, 1936, and is now engaged in the buying and selling, for his own account, of beans, and also engaged in the business of and acting as broker in the sale of foodstuffs, grocery products, canned goods, and allied commodities. Respondent buys, sells, and distributes said commodities in commerce between and among the various States of the United States, causing said commodities to be shipped and transported to him from the various place of business of those from whom respondent purchases said commodities located in States other than the State of Indiana, and sells and distributes the commodities so purchased for his own account in commerce and ships and transports said commodities pursuant to said sales to his customers located in the States of Kentucky, Illinois, and Indiana.

PAR. 2. Respondent Ryon Grain Co. is a corporation organized and existing under the laws of the State of Michigan with its principal office and place of business located at 428 Mutual Building, Lansing, Mich., and has been and is engaged in the business of selling and distributing grain and beans in commerce between and among the various States of the United States, causing said grain and beans to be shipped and transported from said place of business in Lansing, Mich., to purchasers

thereof located in the various States of the United States for use and resale within said States.

PAR. 3. McLaughlin, Ward & Co. is a corporation organized and existing under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 200 East Pearl Street, Jackson, Mich., and has been and is engaged in the sale and distribution of beans and other foodstuffs and allied commodities in commerce between and among the various States of the United States, causing said beans, foodstuffs, and allied commodities to be shipped and transported from its place of business in Jackson, Mich., to purchasers thereof located in the various States of the United States, for use and resale within said States.

PAR. 4. In the course and conduct of his business as aforesaid since June 19, 1936, respondent Charles V. Herron, trading as Charles V. Herron Co., has been and is now making purchases of beans in commerce from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., which said beans are shipped or caused to be shipped by said seller respondents from the State of Michigan into the State of Indiana and in the course of making said purchases in commerce, for his own account, of said beans from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Company, said respondent Charles V. Herron, trading as Charles V. Herron Company, has been and is now receiving and accepting from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., and said seller respondents have been and are now making and granting to respondent Charles V. Herron, trading as Charles V. Herron Co., an allowance of 6 cents per bag of beans in lieu of brokerage upon said purchases in commerce from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., for which said allowance upon said purchases so made in commerce no services whatsoever have at any time been rendered or are now being rendered by respondent Charles V. Herron, trading as Charles V. Herron Co.

PAR. 5. The aforesaid acts of the respondents constitute a violation of the provisions of subsection (c) of section 2 of the above mentioned Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, section 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 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (title 15, section 13), the Federal Trade Commission on October 16,

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 said act as amended. After the issuance and service of said complaint, separate answers on behalf of each of said respondents were filed by their counsel. Thereafter, pursuant to motions filed by each of said respondents through counsel, the Commission entered its order permitting all of said respondents to withdraw the answers theretofore filed by them and to file in lieu thereof substitute answers, which said substitute answers were duly filed by each of said respondents and which said substitute answers admitted all of the material allegations of fact alleged in the complaint to be true, with the exception that each of said answers expressly denied that no services were rendered by said respondent Charles V. Herron, trading as Charles V. Herron Co., to said respondents Ryon Grain Co. and McLaughlin, Ward & Co. upon sales of beans made by said respondents Ryon Grain Co. and McLaughlin, Ward & Co. to said Charles V. Herron, trading as Charles V. Herron Co.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answers filed thereto, and the Commission having fully 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 respondent Charles V. Herron is an individual doing business under the firm name and style of Charles V. Herron Co., a sole proprietorship, and has his principal office and place of business at 101 North Governor Street, Evansville, Ind., and that he has been, prior to and since June 19, 1936, engaged in the buying and selling of beans for his own account and is also engaged in the business of, and acting as, broker in the sale of foodstuffs, grocery products, canned goods and allied commodities. That respondent buys, sells, and distributes said commodities in commerce between and among the various States of the United States, causing said commodities to be shipped and transported to him from the various places of business of those from whom respondent purchases said commodities located in States other than the State of Indiana, and sells and distributes the commodities so purchased for his own account in commerce, and ships and transports said commodities, pursuant to said sales, to his customers located in the States of Kentucky, Illinois, and Indiana.

PAR. 2. That respondent Ryon Grain Co. is a corporation organized and existing under the laws of the State of Michigan and has its prin-

cipal office and place of business located at 428 Mutual Building, Lansing, Mich., and has been and is engaged in the business of selling and distributing grain and beans in commerce between and among the various States of the United States, causing said grain and beans to be shipped and transported from its said place of business in Lansing, Mich., to purchasers thereof located in the various States of the United States for use and resale within said States.

PAR. 3. That respondent McLaughlin, Ward & Co. is a corporation organized and existing under and by virtue of the laws of the State of Michigan with its principal office and place of business at 200 East Pearl Street, Jackson, Mich., and has been and is engaged in the sale and distribution of beans and other foodstuffs and allied commodities in commerce between and among the various States of the United States, causing said beans, foodstuffs, and allied commodities to be shipped and transported from its place of business in Jackson, Mich., to purchasers thereof, located in the various States of the United States, for use and resale within said States.

PAR. 4. That in the course and conduct of his business as aforesaid, since June 19, 1936, respondent Charles V. Herron, trading as Charles V. Herron Co., has been making purchases of beans in commerce from said seller respondents Ryon Grain Co. and McLaughlin, Ward & Co., which said beans are shipped or caused to be shipped by said seller respondents from the State of Michigan into the State of Indiana and that in the course of making said purchases in commerce, for his own account, of said beans from the said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., said respondent Charles V. Herron, trading as Charles V. Herron Co., has been, since June 19, 1936, receiving and accepting from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., an allowance of 6 cents per bag of beans in lieu of brokerage upon said purchases in commerce from said seller respondents and said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., have been, since June 19, 1936, making and granting to respondent Charles V. Herron, trading as Charles V. Herron Co., an allowance of 6 cents per bag of beans in lieu of brokerage upon such said purchases in commerce from them by said respondent Charles V. Herron, trading as Charles V. Herron Co.

#### CONCLUSION

All respondents denied, as hereinabove set forth, that no services were rendered by the respondent Charles V. Herron, trading as Charles V. Herron Co., to the seller respondents Ryon Grain Co. and McLaughlin, Ward & Co., but the Commission, on the basis of the

facts above found, concludes as a matter of law that no services were rendered by the respondent Charles V. Herron, trading as Charles V. Herron Co., to the aforesaid seller respondents Ryon Grain Co. and McLaughlin, Ward & Co. in connection with purchases made from them by him for his own account and in his own name (*Biddle Purchasing Co. v. Federal Trade Commission*, 96 F. (2d) 687, certiorari denied 305 U. S. 634; *Oliver Brothers v. Federal Trade Commission*, 102 F. (2d) 763; *The Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 106 F. (2d) 667, certiorari denied January 2, 1940, 308 U. S. 625.<sup>1</sup>

The Commission further concludes that the respondent, Charles V. Herron, trading as Charles V. Herron Co., has violated the provisions of said subsection (c) of section 2 of said statute by receiving and accepting from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co. an allowance of 6 cents per bag of beans in lieu of brokerage upon purchases in commerce from said seller respondents, Ryon Grain Co. and McLaughlin, Ward & Co., by said respondent Charles V. Herron, trading as Charles V. Herron Co.

The Commission also concludes that the respondents, Ryon Grain Co. and McLaughlin, Ward & Co., have violated the provisions of said subsection (c) of section 2 of said statute by making and granting to respondent Charles V. Herron, trading as Charles V. Herron Co., an allowance of 6 cents per bag of beans in lieu of brokerage upon sales of beans by them in commerce to said respondent Charles V. Herron, trading as Charles V. Herron Co.

#### ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answers filed herein by the 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 a provision 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, section 13).

*It is ordered*, That respondent Charles V. Herron, trading as Charles V. Herron Co. or in or under any other trade name, his agents, employees, representatives, successors, or assigns, in connection with the purchase by him of beans in interstate commerce, do forthwith cease

<sup>1</sup> Cases before Commission respectively reported in 25 F. T. C. 564, 26 F. T. C. 200, and 26 F. T. C. 486.

and desist from receiving or accepting from respondents, Ryon Grain Co. and McLaughlin, Ward & Co., any commission, brokerage or other compensation or any allowance or discount in lieu thereof upon such purchases of beans by said respondent Charles V. Herron outright and for his own account, whether trading under the name Charles V. Herron Co., or in or under any other name.

*It is further ordered,* That respondents, Ryon Grain Co. and McLaughlin, Ward & Co., and their successors or assigns, their officers, agents, employees, and representatives, in connection with the sale and distribution of beans in interstate commerce, do forthwith cease and desist from making, granting, or allowing, or causing or permitting to be made, granted, or allowed to respondent Charles V. Herron, trading as Charles V. Herron Co., or in or under any other name, or to any agent, employee or representative of his, any commission, brokerage, or other compensation or allowance or discount in lieu thereof upon sales of beans to the said respondent Charles V. Herron, trading as Charles V. Herron Co. or in or under any other name.

*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 it has complied with this order.

IN THE MATTER OF  
MILTON S. KRONHEIM & SON, INC., ET AL.

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

*Docket 3400. Complaint, May 5, 1938—Decision, Feb. 9, 1940*

Where five concerns engaged in sale and shipment of alcoholic beverages at wholesale in commerce in the District of Columbia to licensed retail package stores located throughout said District, for resale to ultimate consumers, and in purchasing such beverages from various distillers, sellers, and selling agencies located without such District, and in causing products thus purchased to be shipped into the District from the various States in which said distillers, etc., were located, and, as thus engaged, in substantial competition with others likewise engaged in the wholesaling of alcoholic beverages in commerce in the District aforesaid;

In carrying out and making effective a system or policy of merchandising, which they adopted, established, and maintained, of setting up specified standard and uniform minimum resale prices, discounts and markups at which their said products should be sold at retail, and in the maintenance of which they solicited and secured active support and cooperation of District Retail Liquor Dealers Association, some 175 members of said Association, and secretary thereof, who was its chief administrative officer—

- (a) Entered into unlawful contracts, agreements, and understandings with retail dealers, directly and through instrumentality of their said retail association, and through said wholesalers' own association, with intent of binding such retailers and wholesalers and their said associations to maintenance of said uniform minimum resale prices, discounts, or markups, and in pursuance of aforesaid contracts, etc., and with purpose and effect of obtaining and maintaining fixed uniform minimum resale prices of such beverages sold to and by various retail liquor dealers in such District, unlawfully combined, confederated, and agreed, among themselves and with retail liquor dealer members of said retail association and other retailers, and with retail association itself, to accept, cooperate in, maintain, and enforce the said fixed uniform minimum resale price maintenance system and policy of their said wholesale association and its members; and

Where said wholesale association and wholesalers, and each of them, pursuant to said policy——

- (b) Entered into agreements and understanding with each other and with their respective retail dealer vendees, and with aforesaid retail association, with intent and effect of maintaining specified standard or uniform minimum resale price, discount, and markup at which such alcoholic beverages were to be sold by said wholesalers and resold by retail dealer members of said retail association and others; and

Where said wholesalers, acting directly and through agency of such wholesale association, in attempting to enforce and enforcing resale of such alcoholic beverages at specified standard or uniform minimum resale prices, etc..

as above described, and through combining and agreeing directly and indirectly with various retailers and with said retail association and its members, to do and cause to be done, as case might be, acts and things below described—

- (c) Reinstated as their customers price-cutting retailers whom they had theretofore refused to sell, upon agreement or understanding therewith and with said retail association that suggested minimum resale prices, etc., would thereafter be maintained, and circulated and threatened to circulate among retailers, wholesalers, and distributors of such products reports or lists of those retailers who had cut prices thereon and reports of those wholesalers who had continued to sell such beverages to price-cutting retailers; and
- (d) Secured and endeavored to secure, through contract, agreement, or understanding, active support and cooperation of each one of their own number and of other liquor wholesalers in such District, and of retail dealer members of said retail association and other retailers in such District, and of retail association itself and its said secretary, in carrying out such minimum resale price policy; and

Where said wholesale association, in furtherance of its objectives—

- (e) Sought and secured active support and cooperation of such retail association, retailer members thereof, and its secretary, whereby, under agreements entered into, said retailers were obligated not to sell products purchased from such wholesalers at prices below those given to them by such wholesalers, and to conform to standards and regulations agreed to by both associations, and wholesalers were obligated not to sell to any members of retail association or other retailers who violated provisions of agreement by cutting prices or otherwise, until retailer member had been restored to good standing by such retail association and nonmembers had complied with both associations' requirements to discontinue price cutting; and

Where such wholesalers and their association—

- (f) Engaged in activities directed to securing support and cooperation of distillers in enforcing and carrying out policies and objectives of both associations respecting price maintenance, and under which representatives of their own and distiller missionary representatives and distiller salesmen shopped and policed retailers and reported to wholesalers and retail association results of such activities, and such distillers' representatives participated in meetings of both associations and actively cooperated in aims and objectives thereof and of their members in enforcing price maintenance policy hereinabove described; and

Where said retail association—

- (g) Took steps against several distilling companies which had lowered their prices without notifying such association or members thereof, with result that situations involved were corrected in practically every such instance, and concerned itself also with activities of dealers outside of District and in nearby Virginia, where well-known brands were being sold below prices obtained by dealer members of local association, with intent to bring about markup price by Virginia seller; and

Where said retail association, acting directly and through agency of its retailer members and said secretary thereof, in concert with association and its members—

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- (h) Unlawfully combined, conspired, confederated and agreed with each other to fix minimum resale prices and markups at which such liquors were to be sold at retail in said District, and combined, conspired, etc., with said wholesale association and its members to accept, cooperate in and enforce such fixed uniform minimum resale price maintenance system or policy as above described; and

Where such retail association and secretary thereof—

- (i) Agreed with each other and with various retail dealer members that (1) retailers' profits should be increased through fixing and maintaining uniform prices for alcoholic beverages, (2) fixed prices on various brands should be maintained between retailer members, (3) products of those wholesalers who permitted their liquors to be sold to price-cutting retailers should be boycotted and threatened therewith, and that (4) only such wholesale dealers in said District as conformed to resale price maintenance policy, formulated and agreed upon as above, should be supplied with alcoholic beverages by distillers, and that through resolutions and joint action of committees distiller sellers and their distributors should be so informed and requested to conform under penalty of concerted boycotts and threats thereof by retailer members, and that (5) wholesalers in District should be notified not to supply any price-cutting retailers under threatened penalty of forfeiture and boycott; and

Where said wholesalers, their association, and such retail association and members thereof and its secretary, pursuant to and in execution of such unlawful combinations, etc., and with intent and effect of making same effective—

- (f) Performed acts and things by each agreed to be done, and appointed committees and joint committees to confer with respective associations and held joint meetings with each other and, through exertion of improper and unlawful pressure, influence, coercion, boycott, and threats thereof, demanded and received from such distiller sellers and distributors outside District, and from each other, adoption, establishment and maintenance of aforesaid and similar systems or policies of merchandising under which standard uniform minimum resale prices, discounts, and markups were fixed at which alcoholic beverages of various distillers should be and were resold by wholesalers and retailers in commerce in such District; and

Where said retail association's secretary, in furtherance and execution of such combinations, etc.—

- (k) Spied upon retailers and reported price cutting, and demanded of distiller sellers and wholesalers herein that they blacklist price cutters, and, as such secretary and individually, sought to and did enforce such demands with boycott and threats thereof upon wholesalers aforesaid, who refused to cooperate fully in maintaining uniform minimum resale prices; and

Where both associations and their members—

- (l) Directed efforts to stop retail price cutting and to prevent wholesalers from making such price cuts possible through deals, discounts and other schemes, permitting offer by retailers of advertised brands below prices obtained by majority of association members, and participated in one another's meetings and exchanged ideas and appointed committees and joint committees directed to bringing about price maintenance policy advocated by both, with result that definite agreement and understanding was reached between the two and their members whereby retail association and members undertook to continue active surveillance, shopping and policing of retail business and

to act promptly to correct price cutting by citing offending members to show cause why they should not be expelled, and wholesale association and members agreed that, upon notification from other of citation or expulsion of any retail dealer, they would refuse him further merchandise pending promise of future conformance and reinstatement as member, or promise of conformance if non-member, and with further result that various retailers branded as price-cutters were thereafter refused supplies by said wholesalers; and

Where said retail association and its members—

- (m) Instituted boycott against wholesaler of whom they had theretofore purchased, for sale to cut price liquor store and thereafter refused to purchase from said offender, with result that wholesaler incurred loss of thousands of dollars and valuable special franchise for sale and distribution of all products made and sold by certain company in said District, and considered as best in trade; and

Where two of said wholesalers—

- (n) Advised all retailers in such District by circular letter that they were, in effect, establishing practice under which they would enter into sub-franchise agreements for sale of their products only with those retailers agreeing to respect minimum suggested resale prices named by them therefor, and secured thereby signatures of some 400 retailers to such agreements, and refused further sales to retailers declining thus to obligate themselves, with result that such refusing retailers were not supplied and, in case of one of their number, was unable, by reason of activities aforesaid, to purchase same even from dealer in other city; and

Where members of such wholesale association, following meetings by committees of both and members thereof—

- (o) Deposited with their secretary, and to be held by him, checks for \$1,000 each to bind respective members to their agreement and understanding that knowing sale by wholesale dealer member to price-cutting retailer subjected him to forfeiture of said amount or portion thereof; and

Where said retail association and its secretary, as further means of forcing adherence to agreements and understandings between retailers and wholesalers and their associations—

- (p) Employed well-known detective agency to spy upon certain dealers to ascertain whether wholesalers were shipping to cut price retailers, or those alleged to have been cutting prices, in quantities above those agreed upon by the two associations and members thereof, and at prices other than those agreed upon; and

Where such wholesalers, pursuant to their agreements and understandings with retailers and their association and wholesale association—

- (q) Adopted price and discount schedule aimed and intended further to prevent price cutting, and under which provision was made for 1 percent discount on purchase of one case of advertised standard brand whiskies, 2 percent on three-case purchases, and 3 percent on five-case purchases, with latter, limit to be sold to retailer, and which replaced theretofore discounts ranging from 2 to 15 percent on purchases; and
- (r) Furnished to retailers at all times price lists covering products concerned and disclosing suggested resale price per bottle at which retailers, under contracts, etc., entered into by them and their association with wholesalers and their association, were to resell to consumers; and

Where retail and wholesale associations, members of which, but for matters and things herein set out, would be naturally and normally in competition with each other in price and otherwise, and were in competition with others in sale and distribution of such beverages to retailers or consumers, as case might be, in said District—

- (e) Had many meetings and conferences through their respective attorneys with counsel for Distilled Spirits Institute, comprising all distillers in United States, to secure aid in joint endeavor of such associations and members to fix standard minimum resale prices for such products in such District;

With result that capacity, tendency and effect of said agreements, combinations, conspiracies and undertakings, and acts and things performed thereunder, as above set forth, were—

(a) To unreasonably lessen, restrain, stifle, hamper, and suppress competition in said alcoholic beverages, and to deprive wholesale dealers, distributors and retail dealers, and the purchasing public generally, of the advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unrestricted or free and fair competition in trade in alcoholic beverage business; and otherwise to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in commerce; and

(b) To prejudice and injure the public, producers of alcoholic beverages, retail dealers, distributors, wholesalers, and others who do not conform to, or cooperate in, the program of said various wholesale and retail concerns, associations and individual, as above set forth:

*Held*, That such acts and practices of said various wholesale and retail concerns, associations and individual, under the conditions and circumstances set forth, were all to the prejudice of the public and competitors, and constituted unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

*Mr. Floyd O. Collins* and *Mr. DeWitt T. Puckett* for the Commission.

*Mr. Alvin L. Newmyer*, *Mr. David G. Bress* and *Mr. F. Joseph Donohue*, of Washington, D. C., for *Milton S. Kronheim & Son, Inc.*

*Mr. William E. Furey*, of Washington, D. C., for *Marvin & Snead Sales Corporation*.

*Siegel & Siegel*, of Baltimore, Md., for *Phillip Horwitz* and *Leon Samet*.

*Mr. Norman J. Morrison* of *Cooke & Beneman*, of Washington, D. C., for *International Distributing Co.*

*Mr. John R. Fitzpatrick*, of Washington, D. C., for *Washington Wholesale Liquor Corporation*.

*Mr. Hyman M. Goldstein*, of Washington, D. C., for *Globe Distributing Co., Inc.*

*Mr. Manuel J. Davis*, *Mr. F. Joseph Donohue* and *King & Nordlinger*, of Washington, D. C., for *Manuel J. Davis* and *D. C. Exclusive Retail Liquor Dealers Association*.

*Mr. Milford F. Schwartz*, of Washington, D. C., for *Wholesale Liquor Dealers of Washington*.

## Complaint

## 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 each and all of the parties named in the caption hereof, 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 Milton S. Kronheim & Son, Inc., 3301 K Street, NW.; Marvin & Snead Sales Corporation, 219 G Street, NW.; International Distributing Corporation, 917 E Street, NW.; Washington Wholesale Liquor Corporation, 1119 Twenty-first Street, NW.; and Globe Distributing Co., Inc., 2410 Eighth Place, NE., are corporations separately organized, existing and doing business under and by virtue of the Code of the District of Columbia, with principal office and place of business at the street addresses respectively stated, in the city of Washington, in said District.

Respondent Philip Horwitz and Leon Samet are partners trading under the name and style Roma Wine & Liquor Co., having their place of business at 1006 Fifth Street, NW., in the city of Washington, in the District of Columbia.

Each of the respondents named in paragraph 1 is now, and for more than 1 year last past, has been engaged in selling in commerce in the District of Columbia, beverages at wholesale to licensed retail package stores located throughout the said District, for resale to the ultimate consumer thereof. Said respondents are hereinafter referred to as "respondent wholesalers." Said respondent wholesalers purchase such alcoholic beverages from various distiller sellers and selling agencies located outside of the District of Columbia and upon such purchases being made, cause the same to be shipped into the District of Columbia from the various States of the United States in which said distiller sellers and selling agencies are located. In the course and conduct of their respective businesses as aforesaid, each of the respondent wholesalers is in substantial competition with other corporations, individuals, and partnerships likewise engaged in the wholesaling of alcoholic beverages in commerce in the District of Columbia.

PAR. 2. Respondent D. C. Exclusive Retail Liquor Dealers Association is an incorporated trade association of retail liquor dealers, located and doing business in the District of Columbia, said corporation having been organized, existing, and doing business under and by virtue of

the Code of the District of Columbia, having its office and principal place of business at Room 829, Woodward Building, in the city of Washington, in said District. Said Association has about 150 members, who operate licensed retail stores selling packaged liquors. It is now, and for more than 1 year last has been engaged in attempting to procure national legislation and local regulations by it deemed to be beneficial to its members; in enforcing observance by its members and others of the price maintenance policies as hereinafter described; with respect to the sales of all alcoholic beverages; and in otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage. This respondent is hereinafter referred to as the "Retail Association."

Respondent Manuel Davis is now, and for more than 1 year last past, has been secretary of D. C. Exclusive Retail Liquor Dealers Association, and is the chief administrative officer of such Association, Manuel Davis, individually, and in his said executive capacity, actively participated in each act and practice hereinafter alleged against the said Retail Association.

PAR. 3. Respondent Wholesale Liquor Dealers of Washington, Inc., is a corporation organized, existing and doing business under and by virtue of the Code of the District of Columbia, having its office and principal place of business in the Investment Building, at Fifteenth and K Streets, NW., in the city of Washington, in said District. It was organized in 1935 and has a membership of 14 wholesale liquor dealers, including the respondent wholesalers. It is now, and for more than 1 year last past, has been engaged in attempting to procure national legislation and local regulations by it deemed to be beneficial to its members; in enforcing observance by its members and others of the price maintenance policies as hereinafter described, with respect to the sales of all alcoholic beverages; and in otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage. This respondent is hereinafter referred to as the "Wholesale Association."

PAR. 4. Respondent wholesalers, in the course and conduct of their respective businesses, in order to stabilize and make uniform the resale prices of the products by them and each of them sold, as aforesaid, adopted, established and have maintained a system or policy of merchandising whereby they and each of them fix specified, standard, and uniform resale prices, discounts and "mark-ups" at which said products should be resold at retail, and have solicited and secured the active support and cooperation of retail dealers and of respondent retail association and Manuel Davis, individually and collectively, in the

maintenance of said resale prices, discounts and "mark-ups." In order to carry out and make effective said system or policy, said respondent wholesalers have entered into unlawful agreements and understandings with retail dealers directly and through the instrumentality of both the respondent retail association and the respondent wholesale association, purporting to bind said retail dealers and said respondent wholesalers and said respondent associations to the maintenance of said resale prices, discounts and "mark-ups."

Pursuant to such contracts, understandings and agreements, the respondent wholesalers and each of them, acting separately and through the instrumentality of respondent wholesale association, with the purpose and effect of obtaining and maintaining a fixed, uniform, minimum resale price of alcoholic beverages, sold to and by the various retail dealers in the District of Columbia, have unlawfully combined, confederated and agreed among themselves and with said retail liquor dealers, and with respondent retail association, to accept, cooperate in, maintain and enforce the said fixed, uniform, minimum resale price maintenance system and policy of the said respondent wholesale association and its members, hereinafter fully described.

Pursuant to such policy, the respondent wholesalers and each of them have entered into agreements or understandings with each other and with their respective retail dealer vendees and with the respondent retail association, the purpose and effect of which is to maintain a specified, standard or uniform minimum resale price, discount and "mark-up" at which the said alcoholic beverages are to be sold by respondent wholesalers and at which the said alcoholic beverages are to be resold by the retail dealer members of the respondent retail association.

Further pursuant to such policy, acting directly and through the agency of the said respondent wholesale association, the respondent wholesalers herein named have attempted to enforce the resale of said alcoholic beverages at specified, standard or uniform minimum resale prices, discounts of "mark-ups" by, among others, the following methods or means:

1. By reinstating as their customers price-cutting retail dealers whom they have theretofore refused to sell, upon the agreement or understanding with such retail dealers that the suggested minimum resale prices, discounts or "mark-ups" will thereafter be maintained.
2. By circulating and threatening to circulate among retailers, wholesalers and other distributors of alcoholic beverages reports or lists of those retailers who have cut prices on said products, and reports of those wholesalers who have continued to sell alcoholic beverages to

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retail dealers who have cut prices on said products to a figure below the minimum resale price so fixed.

3. By combining and agreeing, directly and indirectly with various retailers and with the respondent D. C. Exclusive Retail Liquor Dealers Association, to do and to cause to be done the foregoing acts and things.

4. By securing and endeavoring to secure through contract, agreement and understanding, the active support and cooperation of each respondent wholesaler and of other wholesalers of liquor in the District of Columbia, of retail dealer members of the respondent retail association and of other retail dealers in the District of Columbia, individually and collectively, in carrying out the minimum resale price policy aforesaid.

PAR. 5. Pursuant to the policy and system of merchandising hereinbefore described, respondent Milton S. Kronheim & Son, Inc., circulated the retail trade in the District of Columbia, requesting and soliciting all of that respondent's retail customers to enter into signed agreements to maintain the suggested resale prices of respondent Milton S. Kronheim & Son, Inc., and of approximately 400 retailers located in the city of Washington, District of Columbia, as of February 18, 1938, secured the signatures of approximately 392 of such retailers to these agreements, and said respondent refuses to sell any retailer who will not sign such agreement, known and described by respondent as the "Kronheim Franchise Agreement." In soliciting such agreements, respondent stated in part:

Your signature will entitle you to buy our goods and receive our best cooperation. We will promise you not to sell to anyone else who does not agree to the same conditions under which you, and all others who sign, will operate.

We cannot control any other wholesaler's merchandise, but we will control our own to the limit of the law. Unfortunately, some of the laws designed to protect legitimate business are so constructed that they also permit undue freedom to unethical operators. Right now we operate under definite standards. Our franchises from our distillers impose certain obligations which we cannot maintain without the support of the retailers \* \* \*

WE ARE CLOSING OUR OFFICE TOMORROW AND KEEPING IT CLOSED UNTIL OUR SALESMEN HAVE COVERED EVERY "A" LICENSEE IN WASHINGTON.

Upon the obtaining of the retail dealer vendee's signature to such agreement, respondent Milton S. Kronheim & Son, Inc. issued and delivered to such contracting party a lithographed certificate reading as follows:

An Agreement by which  
MILTON S. KRONHEIM & SON, INC.  
awards Sub-Franchise to

-----  
For Better Cooperation between Wholesaler and Retailer  
in the Maintenance of  
FAIR PRICES AND FAIR TRADE PRACTICES  
In the District of Columbia  
for the Benefit and Protection of the Public  
and to Maintain the  
High Standards of the Wine and Spirits Industry

-----  
(Proprietor of Licensee)

MILTON S. KRONHEIM. (S).  
(MILTON S. KRONHEIM & SON, INC.)

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PAR. 6. Pursuant to the policy and system of merchandising hereinbefore described, respondent Globe Distributing Co., Inc., circularized the retail trade in the District of Columbia, requesting and soliciting all of that respondent's retail customers to enter into written agreements to maintain the suggested resale prices of Globe Distributing Company, Inc., and upon the obtaining of the retail dealer vendee's signature to such agreement, this respondent issued and delivered to such contracting party a lithographed certificate of "sub-franchise" identical (except as to the names of the contracting parties) with that issued by respondent Milton S. Kronheim & Son, Inc., described in paragraph 5 hereof.

PAR. 7. Respondent D. C. Exclusive Retail Liquor Dealers Association, acting directly and through the agency of its retail dealer members, and the respondent Manuel J. Davis, individually and as Secretary of said retail association, and each of them, in concert with said association and its said members have unlawfully combined, confederated and agreed with each other to fix uniform resale prices and "mark-ups" at which said liquors are to be sold at retail in the District of Columbia, and have unlawfully combined, confederated and agreed with respondent wholesale association, its members, and with respondent wholesalers to accept, cooperate in and enforce the same fixed uniform minimum resale price maintenance system and policy as fully described in paragraph 4 hereof. And on their part and the part of each of them, respondent retail association and respondent Manuel J. Davis have agreed with each other and with the various retail dealer members of said retail association in substance and effect as follows:

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1. That the retail dealers' profits should be increased by fixing and maintaining a uniform price for alcoholic beverages.

2. That fixed prices on various brands should be maintained between the retail dealer members of the said respondent retail association.

3. That the products of those wholesalers, including the respondent wholesalers, who have permitted their liquors to be sold to retail dealers known to engage in price-cutting activities, shall be boycotted and threatened with boycott.

4. That only such wholesale liquor dealers in the District of Columbia as conform to the established resale price maintenance policy formulated and agreed upon as aforesaid should be supplied with alcoholic beverages by the distillers thereof and the distributing agencies of such distillers, and that through resolutions, and joint action of committees appointed for that purpose, the various distiller sellers and their distributors should be so informed and requested to conform to such policy, under penalty of concerted boycott and threats of such boycott by the retail dealer members of said retail association.

5. That wholesalers in the District of Columbia, including respondent wholesalers, should be notified not to supply any price-cutting retailers under threatened penalty of forfeiture and boycott.

PAR. 8. Pursuant to and in execution of the aforesaid unlawful combinations, confederacies, and agreements or understandings, and with the purpose and effect of making them effective, the respondent wholesalers, respondent wholesale associations, the respondent retail association, and Manuel J. Davis, and each of them, executed and performed the acts and things by each of them agreed to be done pursuant thereto; appointed committees and joint committees to confer with the respective respondent associations, and held joint meetings with each other, and by means of exerting improper and unlawful pressure, influence, coercion, boycotts, and threats of boycott, demanded and received from the aforesaid distiller-sellers and distributors outside of the District of Columbia, and from each other, the adoption, establishment and maintenance of the aforesaid and similar systems or policies of merchandising, fixing standard, uniform resale prices, discounts and "mark-ups" at which the said alcoholic beverages of the various distiller-suppliers should be and were resold by wholesalers and retail dealers in commerce in the District of Columbia.

The said Manuel J. Davis, in furtherance and execution of said conspiracies, combinations, confederacies and agreements, did spy upon retailers, report price-cutting and make demands upon distiller-sellers and respondent wholesalers that they "black-list" such

price-cutters, and acting individually and on behalf of the respondent D. C. Exclusive Retail Liquor Dealers Association, sought to and did enforce such demand with boycotts, and threats of boycott, both upon the said distiller-sellers and the respondent wholesalers, who refused to maintain the uniform, minimum resale prices agreed upon by the members of the said D. C. Exclusive Retail Liquor Dealers Association.

PAR. 9. Respondents, by the aforesaid agreements, combinations, conspiracies, and by the aforesaid acts and practices by them undertaken and done pursuant to such agreements, hindered, obstructed, and restrained commerce in the District of Columbia and the flow of commerce into the District of Columbia, and the direct effect thereof was to suppress competition among wholesalers and retail dealers in the distribution and sale of liquors in the District of Columbia, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs, and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which would otherwise obtain from a natural and unobstructed flow of commerce in said products, tending unduly to hinder and suppress competition in the resale of said products in commerce in the District of Columbia.

PAR. 10. The aforesaid acts and practices of the respondents and each of them as herein alleged, are all to the prejudice of the public and constitute an unfair method 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 May 5, A. D., 1938, issued and served its complaint in this proceeding upon the respondents specifically named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of the said act. After the issuance and service of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Floyd O. Collins, Esq., and D. T. Puckett, Esq., attorneys for the Commission, and in opposition to the allegations of the complaint by Milton W. King, Esq., Manuel J. Davis, Esq., Norman J. Morrison, Esq., John R. Fitzpatrick, Esq., F. Joseph Donohue, Esq., William E. Furey, Esq., Milford F. Schwartz, Esq., Henry M.

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Siegel, Esq., and Hyman M. Goldstein, Esq., all members of the bar of the District of Columbia, attorneys for the respondents, before John J. Keenan, a trial examiner of the Commission theretofore duly designated by it, and the said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on or for final hearing before the Commission on said complaint, the answers thereto, the 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. Respondents Milton S. Kronheim & Son, Inc., 3301 K Street, NW.; Marvin & Snead Sales Corporation, 219 G Street, NW.; International Distributing Corporation, 917 E Street, NW.; Washington Wholesale Liquor Corporation, 1119 Twenty-first Street, NW.; and Globe Distributing Company, Inc., 2410 Eighth Place, NE., are, with the exception of the Globe Distributing Company, Inc., all corporations separately organized, existing and doing business under and by virtue of the Code of the District of Columbia, with principal offices and places of business at the street addresses as stated above, in the city of Washington, in the District of Columbia. The Globe Distributing Company, Inc. (designated in the complaint as a District of Columbia corporation), was organized and exists under and by virtue of the laws of the State of Maryland.

Respondents Philip Hurwitz (named Phillip Horwitz in the complaint), and Leon Samet are copartners trading under the name and style Roma Wine & Liquor Co., having their place of business at 1006 Fifth Street, NW., in the city of Washington, in the District of Columbia.

Each of the above named respondents is now and for more than a year last past has been engaged in selling and shipping alcoholic beverages at wholesale in commerce in the District of Columbia to licensed retail package stores located throughout the said District for resale to the ultimate consumer thereof. Said respondent wholesalers purchased such alcoholic beverages from various distillers, sellers and selling agencies located outside of the District of Columbia and upon such purchases being made, caused the same to be shipped into the said District from the various States of the United

States in which said distillers, sellers and selling agencies are located, to said respondent wholesalers in the District of Columbia.

In the course and conduct of their business as aforesaid, each of the respondent wholesalers is in substantial competition with other corporations, individuals, firms, and partnerships likewise engaged in the wholesaling of alcoholic beverages in commerce in the District of Columbia.

PAR. 2. Respondent D. C. Exclusive Retail Liquor Dealers Association, organized in 1935, is an incorporated trade association of retail liquor dealers, incorporated, existing, and doing business under and by virtue of the Code of the District of Columbia, having its office and principal place of business at Room 829 Woodward Building, in the city of Washington, in said District. Said Association has approximately 175 members who operate licensed retail liquor stores selling packaged liquors. It is now, and for more than 1 year last past has been, engaged in attempting to procure national legislation and other regulations by it deemed to be beneficial to its members; in enforcing observance by its members and others of the price maintenance policies as hereinafter described, with respect to the sale of alcoholic beverages; and in otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage. The officers for 1938, elected at a meeting held on February 3, 1938, at the Hay-Adams House were:

President, William Stein.

2d Vice President, I. Jacobson.

Secretary, Manuel J. Davis.

Sergeant at Arms, J. Abramson.

Each of the retail liquor dealer members of the D. C. Retail Liquor Dealers Association is now and for more than a year last past has been engaged in the sale of alcoholic beverages at retail in commerce in the District of Columbia to consumers of said liquor. The said retail dealer members purchase large quantities of alcoholic beverages from the respondent wholesalers and others in the District of Columbia, and in addition thereto purchase alcoholic beverages from various distillers, and selling agencies located outside the District of Columbia, upon permits secured from the Alcoholic Beverage Control Board of the said District, and upon such purchases being made, cause the same to be shipped into the District of Columbia from the various States of the United States in which said distillers, sellers, and selling agencies are located. In the course and conduct of their respective businesses as aforesaid, each of the retail dealer members of the D. C. Exclusive Retail Liquor Dealers Association, Inc., is in

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substantial competition with other firms, corporations, individuals, and partnerships likewise engaged in the sale of alcoholic beverages in commerce in the District of Columbia. This respondent is hereinafter referred to as "Retail Association."

PAR. 3. Respondent Manuel J. Davis, (named in the complaint as Manuel Davis) is now, and since its organization, has been secretary and attorney for the said Retail Association, and the chief administrative officer of same. Said Manuel J. Davis, individually and in his said executive capacity, actively participated in each and every act and practice hereinafter set forth.

PAR. 4. Respondent Wholesale Liquor Dealers of Washington (listed in complaint as "Wholesale Liquor Dealers of Washington, Inc."), is a voluntary mutual association organized, existing and doing business under and by virtue of the Code of the District of Columbia, having its office and principal place of business in the Investment Building, at Fifteenth and K Streets, NW., in the city of Washington, in said District. It was organized in 1935 and at the time of the issuance of the complaint herein had a membership of 14 wholesale liquor dealers, including respondent wholesalers. It is now, and since its organization has been, engaged in attempting to procure national legislation and local regulations by it deemed to be beneficial to its members; and in enforcing observance by its members and others of the price maintenance policies hereinafter described, with respect to the sale of all alcoholic beverages, and otherwise in promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage. It does not have any regularly elected officers, except a secretary, who, as in the Retail Association, is also attorney for the said Association. This respondent is hereinafter referred to as the "Wholesale Association."

PAR. 5. The respondent wholesale dealers, in the course and conduct of their respective businesses, in order to stabilize and make uniform the minimum resale prices of the products by them and each of them sold, as aforesaid, adopted, established, and have maintained a system or policy of merchandising whereby they and each of them set specified standard and uniform minimum resale prices, discounts and "mark-ups," at which said products should be sold at retail by the retail dealers; and have solicited and secured the active support and cooperation of the Retail Association, the retail dealer members thereof and Manuel J. Davis, individually and collectively, in the maintenance of said minimum resale prices, discounts and "mark-ups."

In order to carry out and make effective the said system or policy, the said respondent wholesale dealers have entered into unlawful con-

tracts, agreements and understandings with retail dealers, directly and through the instrumentality of the respondent Retail Association and the respondent Wholesale Association, for the purpose of binding said retailers and said respondent wholesalers and said respondent Associations to the maintenance of the said uniform, minimum resale prices, discounts, or "mark-ups."

Pursuant to such contracts, understandings and agreements the respondent wholesalers, and each of them, acting separately and through the instrumentality of respondent Wholesale Association, and with the purpose and effect of obtaining and maintaining the said fixed uniform, minimum resale prices of alcoholic beverages, sold to and by the various retail liquor dealers in the District of Columbia, having unlawfully combined, confederated, and agreed among themselves and with the said retail liquor dealer-members of the Retail Association, and with other retail dealers and the Retail Association, to accept, cooperate in, maintain and enforce the said fixed uniform, minimum resale price maintenance system and policy of respondent Wholesale Association and its members.

PAR. 6. The said respondent Wholesale Association and respondent wholesalers, and each of them, pursuant to such policy have entered into agreements and understandings with each other and with their respective retail dealer vendees and with respondent Retail Association, the purpose and effect of which is to maintain a specified standard or uniform, minimum resale price, discount and "mark-up" at which said alcoholic beverages are to be sold by respondent wholesalers, and resold by the retail dealer-members of the respondent Retail Association and others.

Further pursuant to such policy, and acting directly and through the agency of the said respondent Wholesale Association, the respondent wholesalers herein named attempted to and did enforce the resale of the said alcoholic beverages at specified standard or uniform minimum resale prices, discounts or "mark-ups," by, among others, the following methods or means:

(a) By reinstating as their customers price-cutting retail dealers whom they have theretofore refused to sell, upon the agreement or understanding with such retail dealers and the Retail Association, that suggested minimum resale prices, discounts or "mark-ups" will thereafter be maintained.

(b) By circulating and threatening to circulate among retailers, wholesalers, and distributors of alcoholic beverages reports or lists of those retail dealers who have cut prices on said products, and reports of those wholesalers who have continued to sell alcoholic bever-

ages to retail dealers who have cut prices on said products to a figure below the minimum resale price so fixed.

(c) By combining and agreeing, directly and indirectly, with various retailers and with respondent Retail Association and its members to do, and to cause to be done, the foregoing acts and things.

(d) By securing and endeavoring to secure through contract, agreement or understanding, the active support and cooperation of each respondent wholesaler and of other wholesalers of liquor in the District of Columbia; of retail dealer-members of the respondent Retail Association and other retail dealers in the District of Columbia, of the Retail Association, and of Manuel J. Davis, individually and as secretary of said Association, and all individually and collectively, in carrying out the minimum resale price policy aforesaid.

PAR. 7. The respondent Wholesale Association, in furtherance of its objectives, sought and secured the active support and cooperation of the respondent Retail Association, the retail dealer-members of said Association, and Manuel J. Davis, individually and as secretary of said Association, whereby agreements were entered into by the terms of which it was agreed that the said retail dealers would not sell their products purchased from respondent wholesalers at prices below the prices given to said retailers by the said respondent wholesalers; that they would conform to standards and regulations agreed to by both Associations; that the wholesale liquor dealers would not sell to any members of the Retail Association or other retail dealers who violate the provisions of the agreement by cutting prices or otherwise until such retail dealer-member is restored to good standing by said Retail Association, and others not members of the Association have complied with the requirements of both Associations to discontinue price cutting.

The respondent wholesalers and respondent Wholesale Association were active in securing the support and cooperation of the distillers in the enforcing and carrying out of the policies and objectives of both Associations respecting price maintenance.

PAR. 8. Representatives of the respondent wholesale dealers and distiller missionary representatives (men employed by the various distilling companies to visit the retail and wholesale trade throughout the United States as good-will representatives who distribute advertising matter and window displays; check all sales and prices obtained for their products by wholesale and retail dealers; adjust differences and complaints, and generally do whatever may be necessary to keep the various dealers favorably disposed toward their products), and salesmen of said distillers shopped and policed the retail dealers, reporting to the respondent wholesale dealers and Retail Association the results of their activities. Said distillers' repre-

sentatives participated in meetings of both Associations and actively cooperated in the aims and objects of said Associations and members thereof to enforce the price maintenance policy hereinbefore mentioned.

PAR. 9. The respondent Wholesale and Retail Association members constitute a large and important part of the wholesale and retail distributors of alcoholic beverages in the District of Columbia; and such members constitute a group so powerful and influential in the trade as to be able to substantially control and influence the flow of trade and commerce in alcoholic beverages into and in the District of Columbia.

PAR. 10. From the inception or organization of the Retail and Wholesale Associations, the said Associations and the dealer-members thereof directed their efforts to bringing about price maintenance. The Retail Association was particularly active, and as early as October 1935, took active steps against several distilling companies, because said companies lowered their prices without notifying the said Association or its members.

Davis, upon direction of the Association, addressed the following letter to the Schenley Products Corporation:

D. C. EXCLUSIVE RETAIL  
LIQUOR DEALERS ASSOCIATION  
829-831 WOODWARD BUILDING  
WASHINGTON, D. C.

NOVEMBER 19, 1935.

Mr. LOU ROSENSTEIL,  
20 W. 40th Street, New York City, N. Y.

DEAR MR. ROSENSTEIL: The D. C. Exclusive Retail Liquor Dealers Association, at a regular meeting, informed me to send you this letter bearing out the following information:

Schenleys Red Label Whiskey, priced at \$1.33 per pint was reduced to \$1.19 per pint with no notice given of the contemplated change in price but to a few retailers.

The organization, comprised of one hundred and twenty-three (123) retail package stores out of one hundred seventy-five (175), feel that some definite steps should be taken whereby the respective distillers should take cognizance of the fact that such an organization is in being. Heretofore this organization has co-operated with every distillery desiring co-operation from the retailers. In the past such distilleries as Seagram's and National Distillers have informed us of any change in price or policy. This arrangement annured to the ultimate benefit of both parties concerned. We personally believe that there is no reason in the world why a similar agreement can not be worked out between Schenley Products Corporation and the respective retailers throughout the country.

The notice of a contemplated change in price or policy by the distilleries to the retailer would give the retailer a sufficient amount of time within which to dispose of your goods in the event that you intended to reduce the price.

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Under your present policy the retailer receives no notice of any change in policy or of price.

If your distillery had contemplated to repay the respective retailers the difference in prices to the retailer, such a policy would be equally as agreeable to us. That policy or the one that the Penn-Maryland organization used with us prior to bringing their new "Town Tavern" on the market is equally as agreeable to the retailers. The Penn-Maryland Corporation gave us more than 10 days notice that the age of "Penn-Maryland" would be changed, thereby enabling us to dispose of the younger whiskey on our shelves. In the case of "Old Overholt," the retailer was permitted to exchange the old "Old Overholt" for the new.

There is no reason in the world why the retailer should not be able to work out its problem with the Schenley Products Company in the same manner as it has with other distilleries.

When this industry was still in its infancy and when all the price-cutting was going on in this city, this organization stepped to the front and called in all the distilleries' representatives. If I recall correctly, Mr. Dyer represented your organization and you also sent a man down from New York City to represent your Import Corporation. At this meeting we retailers who sell over eighty percent (80%) of the liquor in package form in the District of Columbia went on record to uphold and maintain the suggested retail prices by the distilleries with the thought in view that it would be properly policed and advertised.

Because of that meeting, we in the District of Columbia enjoy a healthier and more stable liquor trade than practically any city in the country. We police our own members and co-operate with the respective distilleries to the utmost extent.

We want you to feel that this organization is one with whom you can co-operate and who is willing to co-operate with your distillery at all times. Such meetings as the one which I mentioned above should be given your utmost consideration for there is no reason in the wide world why such agreements should not exist between the distiller and some one hundred package stores.

The organization desired that I express their regrets as to the manner in which you handled the situation and are willing to meet you on any working basis to remedy the situation.

Yours very truly,

(Sgd) MANUEL J. DAVIS  
Manuel J. Davis.

According to the minutes of meetings of said Retail Association, in practically every instance said Association was successful in bringing about a correction of the situations where distillers reduced a price without consulting the Retail Association. The Association also concerned itself with activities of dealers outside the District of Columbia. The Alexandria State Liquor Store, of Alexandria, Va., was selling well-known brands of liquors at prices below those obtained by the dealer-members of the local Association; Davis, upon instruction of the members, contacted various distillers for the purpose of bringing about a marking-up of price by the Virginia State Store.

PAR. 11. Respondent Retail Association, acting directly and through the agency of its retail dealer-members, and the respondent Manuel J. Davis, individually and as secretary of said Retail Association, and each of them, in concert with said Association and its members, have unlawfully combined, conspired, confederated and agreed with each other to fix uniform, minimum resale prices and "mark-ups" at which said liquors were to be sold at retail in the District of Columbia, and have unlawfully combined, conspired, confederated and agreed with respondent Wholesale Association and its members to accept, cooperate in, and enforce the said fixed uniform, minimum resale price maintenance system or policy as described herein. And, on their part, and on the part of each of them, respondent Retail Association and respondent Manuel J. Davis, individually and as secretary of said Association, have agreed with each other and with the various retail dealer-members of said Retail Association in substance and effect as follows:

1. That the retail dealers' profits should be increased by fixing and maintaining a uniform price for alcoholic beverages.

2. That fixed prices on various brands should be maintained between the retail dealer members of the said respondent Retail Association.

3. That the products of those wholesalers, including the respondent wholesalers, who have permitted their liquors to be sold to retail dealers known to be engaged in price-cutting activities, shall be boycotted and threatened with boycott.

4. That only such wholesale liquor dealers in the District of Columbia as conform to the established resale price maintenance policy formulated and agreed upon as aforesaid should be supplied with alcoholic beverages by the distillers, and that through resolutions, and joint action of committees appointed for that purpose, the various distiller sellers and their distributors should be so informed and requested to conform to such policy, under penalty of concerted boycott and threats of boycott by the retail dealer members of said Retail Association.

5. That wholesalers in the District of Columbia, including respondent wholesalers, should be notified not to supply any price-cutting retailers under threatened penalty of forfeiture and boycott.

PAR. 12. Pursuant to and in execution of the aforesaid unlawful combinations, conspiracies, confederacies, agreements or understandings, and with the purpose and effect of making them effective, the respondent wholesalers, respondent Wholesale Association, respondent Retail Association and its members, and Manuel J. Davis, and each of them, executed and performed the acts and things by each of

them agreed to be done pursuant thereto; appointed committees and joint committees to confer with the respective respondent Associations, and held joint meetings with each other, and by means of exerting improper and unlawful pressure, influence, coercion, boycotts, and threats of boycotts, demanded and received from the aforesaid distiller-sellers and distributors outside the District of Columbia, and from each other, the adoption, establishment, and maintenance of the aforesaid and similar systems or policies of merchandising, fixing standard, uniform minimum resale prices, discounts and "mark-ups" at which the said alcoholic beverages of various distillers should be and were resold by wholesalers and retail dealers in commerce in the District of Columbia.

The said Manuel J. Davis, in furtherance and execution of said combinations, conspiracies, confederacies, agreements or understandings, did spy upon retailers, report price cutting and make demands upon distiller-sellers and respondent wholesalers that they "black-list" price-cutters, and acting individually and on behalf of respondent Retail Association, sought to and did enforce such demand with boycotts, and threats of boycott, upon the said respondent wholesalers, who refused to cooperate fully in maintaining uniform minimum resale prices.

PAR. 13. The efforts of both Associations, and their members, were intensified during the Christmas holidays of 1937-38, to stop the cutting of prices by retail dealers, and to prevent wholesalers from making it possible for retail dealers to cut prices by making deals with said retail dealers, giving discounts and by other schemes, which so reduced the prices of standard advertised brands of whiskeys as to permit certain retail dealers to sell said whiskeys at prices below those obtained by a majority of the members of the Retail Association. Officers and members of the Retail Association attended meetings of the Wholesale Association; officers and members of the Wholesale Association attended meetings of the Retail Association and at each and all of these meetings the representatives of the two Associations participated in the business being conducted at said meetings, and put forward their various ideas as to how to accomplish the purpose in mind. Committees and joint committees were appointed by each Association to bring about the price maintenance policy advocated by both Associations.

Pursuant thereto, and as a result of the meetings of the committees and joint committees and other activities, there was finally a definite agreement and understanding between the said Associations and the members thereof whereby the Retail Association and members thereof agreed they would continue the active surveillance, shopping, and

policing of the retail business, and take prompt steps to correct the cutting of prices by citing price-cutter members of the said Association to show cause why they should not be expelled from membership in the said Association.

The Wholesale Association and its members agreed that upon notification from the Retail Association of the citation or expulsion of any retail dealer from membership, they would refuse further merchandise to such retail dealer until said retail dealer had, upon promise to maintain prices, been reinstated in the Retail Association, or if said price-cutter was not a member, had promised and agreed to maintain the suggested retail prices. Immediately thereafter, Acme Liquor Store, Famous Brands Liquor Store, Slavitt's Liquor Store, and several others were branded as price-cutters.

PAR. 14. The above named and other retail liquor stores, shortly after these activities and agreements, were refused supplies of whiskey by respondent wholesalers. The said refusals dated from on or about December 24, 1937, to January 20, 1938. After refusal by all of the respondent wholesalers, the Acme Liquor Store, under dates of January 5, 6, 7, and 8, 1938, directed registered letters and telegrams to each of the above named respondent wholesalers, ordering certain well-known advertised brands of whiskey, and all of said wholesalers refused to fill said orders because of Acme Liquor Store price-cutting activities. The same course was followed by the wholesaler respondents with respect to other retail dealers, both members and non-members of the Retail Association.

The above mentioned retail stores, and others, were cited by the Retail Association to show cause why they should not be expelled from membership because of violation of Article V of the Constitution and By-Laws, which provides:

A member is subject to being suspended or expelled for not complying with the regulations and purposes adopted by the Association.

The minutes of meetings and record establish that these dealers were charged with price cutting, and the cited members were refused the right of counsel at said hearings. Several of those cited were expelled from membership in the Retail Association. Those who agreed to abide by the price maintenance system were restored to membership, as is evidenced by the following extract from the minutes of the Retail Association meeting of January 20, 1938:

The said committee (here the reference to the special committee) met in the office of the Association Tuesday, January 11, 1938, 10:00 a. m., at which it heard the statements made by Mr. Wilner, Famous Brands Liquor Store. Mr. Wilner admitted the fact that he had cut prices, but attempted to justify his acts by stating that he was meeting competition from several dealers whom

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he named. To summarize Mr. Wilner's statements and testimony would be to state that Mr. Wilner assured the committee that he was more than willing to abide by the Constitution and By-Laws of the Association and support any resolution that it adopted in the interest of licensees. He was more than willing to maintain suggested prices, and in fact would do so whether the Association caused his suspension from its presence or not. He now felt that the Association was sincere in its efforts to see that suggested prices were maintained, and that they now can call upon him to do his share.

Mr. Wilner further volunteered to remove his electric sign which he had in his window, "We will not knowingly be undersold."

PAR. 15. About this time respondent Globe Distributing Co., Inc. sold liquor to a cut-price liquor store. A boycott was instituted against the said company by the Retail Association and its members, and practically every member of the Retail Association who theretofore had purchased liquors from the Globe Distributing Co., Inc. refused to purchase any merchandise from said company resulting in the loss of many thousands of dollars and also a very valuable special franchise held by the Globe Distributing Co., Inc., as the agent for the sale and distribution of all alcoholic beverages manufactured and sold by the National Distilling Co. in the District of Columbia. (This contract is considered the best in the trade.)

PAR. 16. Soon thereafter, to wit, January 11, 1938, Milton S. Kronheim & Son, Inc., forwarded to every retail dealer in the District of Columbia a circular letter in which, among other things, the following statements were made:

\* \* \* Tomorrow, or as soon as possible, you will be offered a Kronheim franchise agreement. You will be asked to sell our brands on a basis of fair practices and fair prices. Your signature will entitle you to buy our goods and receive our best cooperation. We will promise you not to sell anyone else who does not agree to the same conditions under which you, and all others who sign, will operate.

We cannot control any other wholesaler's merchandise, but we will control our own to the limit of the law. Unfortunately, some of the laws designed to protect legitimate business are so constructed that they also permit undue freedom to unethical operators. Right now we operate under definite standards. Our franchisees from our distillers impose certain obligations which we cannot maintain without the support of the retailers.

Therefore our sub-franchise agreements will be obtainable only by retailers whose business standards enable us to maintain our own standards. This agreement will protect us as wholesalers, you as a retailer and allow the consumer to buy at a fair price. Anything that will accomplish all three points is worthy of your support. Anything that does otherwise should not interest you.

When our salesman calls upon you, please give him your sincere attention, and sign the agreement with the assurance that it means better business for you.

Following this, and bearing the same date, a contract was distributed

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to all of the retailers in the said District. This contract provided as follows:

You are hereby designated by Milton S. Kronheim & Son, Inc., as distributor in the District of Columbia of our imported and domestic wines and liquors, a list of which is hereto attached, for a term to begin upon the acceptance by you of the terms of this letter, signified by your signature upon the enclosed duplicate copy, and to continue until terminated upon notice by one party to the other.

#2. During the term of this agreement you agree to use your best efforts and all your facilities in actively promoting the sale of our products.

#3. You agree not to advertise or sell our products in any way that violates the spirit or letter of the local A. B. C. Board laws.

#4. You agree to maintain the suggested consumer prices of Milton S. Kronheim & Son, Inc., as given the 12th day of January, subject to change at all times with due notice.

#5. You will at all times carry floor stocks in reasonable amount of the brands of Milton S. Kronheim & Son, Inc., enumerated in the lists submitted to you.

#6. This agreement shall be subject to cancellation by us without notice if your bills are not paid when due and shall be automatically terminated in the event of your bankruptcy, insolvency, receivership or liquidation.

#7. It is further agreed that we shall cooperate with you in every way, with every facility of our organization, in the interest of the public, the liquor industry, and you.

MILTON S. KRONHEIM & SON, INC.  
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Accepted by:  
-----

Proprietor or manager.

Accompanying this letter, there was submitted in certificate form a Sub-Franchise Agreement, as follows:

An Agreement by which  
MILTON S. KRONHEIM & SON, INC.  
awards Sub-Franchise to

-----  
for Better Cooperation between Wholesaler and Retailer  
in the Maintenance of  
FAIR PRICES AND FAIR TRADE PRACTICES  
in the District of Columbia  
for the Benefit and Protection of the Public  
and to Maintain the  
High Standards of the Wine and Spirits Industry

-----  
(Proprietor or Licensee.)

MILTON S. KRONHEIM (Sgd.)  
(MILTON S. KRONHEIM & SON, INC.)

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Approximately 400 retail dealers signed this contract. If a retail dealer refused to sign the said contract or said franchise agreement and contract, he would not be supplied with alcoholic beverages. As an instance of the effect of retailers refusing to sign the franchise agreement, Kronheim's letter of January 25, 1938, to Luther A. Butler, liquor dealer, 1829 Columbia Road, NW., Washington, D. C., is an example. In this letter Kronheim states as follows:

I am very sorry that you have not signed our dealer franchise agreement.

We have always enjoyed doing business with you. You have been one of our valued accounts and it has been for just such accounts as yours our "dealer franchise" was originated. Three hundred eighty-two of the four hundred package stores have signed this agreement. Three hundred eighty-two licensed dealers can't be wrong. Our plan has been received by them with a great deal of enthusiasm. Other plans and other ideas have failed, and this might be the one effective idea to bring order to a disorganized business.

We hope you will give it a little further thought and get on our bandwagon. We need your support and we are most anxious for your business.

I assure you that it is not our purpose to be arbitrary in this matter—but we simply are trying to promote an idea that will insure legitimate profits for you and the rest of our customers.

Respectfully,

MILTON S. KRONHEIM & SON, INC.

(sgd.) BERNARD COHEN.

Bernard Cohen.

Butler refused to sign the contract and thereafter could secure no merchandise from Kronheim or others. As a result of which, Butler secured from the Alcoholic Beverage Control Board of the District of Columbia permits to purchase his requirements from without the District. He attempted to secure same from Pierce & Hebnér, of Baltimore, Md. The franchise agreements between the wholesalers and retailers and their respective Association's activities were in some manner brought to the attention of the Baltimore wholesaler who had contacted Kronheim and other wholesale dealers of the District of Columbia, following which, Pierce & Hebnér refused to ship the merchandise for which said Pierce & Hebnér had accepted Butler's check for \$548.15. Their refusal was brought to the notice of Butler by their letter of March 28, 1938, as follows:

PIERCE AND HEBNÉR

Incorporated

WINES AND LIQUORS

LaFayette Avenue at Mt. Royal

BALTIMORE, MD.

MAR. 28, 1938.

BUTLER'S BEER & LIQUOR STORE

1829 Columbia Rd., Washington, D. C.

GENTLEMEN: It is with great regret that I am returning to you the enclosed check and District of Columbia permits #8928 and #8930.

We certainly hope you appreciate the situation, as we would like to take care of this business for you. However, the various developments in the past few days would make it extremely embarrassing if this business were handled as outlined in your letter.

Without going further into the matter the writer is quite sure you will understand the factors which have governed this decision.

With kindest regards, we are,  
Sincerely,

(Sgd.) GEO. HEBNER, JR.

GH GW  
ENCL.

PAR. 17. Two days after the issuance of the contracts, circulars and franchise agreements by respondent Milton S. Kronheim & Son, Inc., the Globe Distributing Co., Inc., issued identical circulars, agreements, and franchises, which were signed by approximately the same number of retailers as had signed the Kronheim agreements.

PAR. 18. In addition to the above, and during the time which these latter activities were taking place, and following meetings by committees of both Associations and members thereof, the members of the Wholesale Association, at a meeting in the office of Milford Schwartz, on or about January 8, 1938, each deposited a check for \$1,000.00, the money to be held by Mr. Schwartz for the purpose of binding each member to adhere to their agreement and understanding that if a wholesale dealer-member of the Wholesale Association sold knowingly to price-cutting retailers his \$1,000.00, or a portion thereof, was subject to forfeiture.

PAR. 19. As a further means of forcing adherence to the agreements and understandings between the retailers and the wholesalers and their Associations, the Burns Detective Agency was employed by the Retail Association and Manuel J. Davis, to spy upon certain dealers for the purpose of ascertaining whether wholesalers were shipping to cut-price retail dealers or those alleged to have been cutting prices, in quantities above that which had been agreed upon by the two associations and members thereof, and at prices other than agreed-upon prices. When Davis was called upon for a copy of the agreement between his Association and the Burns Detective Agency, he at first stated that he had no agreement, and later admitted that there were some memoranda, but that he or his Association never retained any such matter in the files. This was after denial by Davis that the said spying by the Detective Agency was for the purpose of checking on price cutters. The evidence, however, discloses the purpose of this spying, as is shown by Commission's Exhibit 41-A, a copy of the work journal of the Burns Detective Agency concerning this employment

deal, dated December 22, 1937, upon which the following statement is found:

Client desires us to check the liquor deliveries to four retail stores for three days. This check is to cover ten hours time a day and client desires the number of cases, brands, and identity of the house or firm making the delivery.

PAR. 20. Beginning on or about December 24, 1937, the respondent wholesale dealers, pursuant to their agreements and understandings with the retail dealers and Retail Association and Wholesale Association, adopted a price and discount schedule aimed and intended to further prevent any price cutting. This agreement provided for the allowance of 1 percent discount on the purchase of one case of advertised standard brand whiskeys, 2 percent on three-case purchases, and 3 percent on five-case purchases. The limit to be sold the retail dealer was five cases. These discounts replaced discounts ranging from 2 percent to 15 percent theretofore allowed on purchases.

PAR. 21. At all times, the wholesale dealers furnished to the retail dealers certain price lists covering spirits, wines, and liquors, disclosing the per case price, and the wholesalers suggested resale price per bottle, the latter being the price at which the retailer, under the contracts, agreements and understandings entered into by them and their Association with the wholesalers and the Wholesale Association, was to resell to consumers.

PAR. 22. The Retail Association and the Wholesale Association, through their attorneys Manuel J. Davis and Milford Schwartz, had many meetings and conferences with the counsel for the Distilled Spirits Institute—an organization composed of all of the distillers in the United States—for the purpose of securing aid in the joint endeavor of their Associations and members to fix standard, minimum resale prices for alcoholic beverages in the District of Columbia.

PAR. 23. In the course and conduct of their respective businesses, respondent wholesale dealers, but for the matters and things herein set out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships and corporations also engaged in the sale and distribution in commerce of alcoholic beverages to retail dealers in the District of Columbia.

In the course and conduct of their respective businesses, the members of the respondent Retail Association, but for the matters and things herein set out, would be naturally and normally in competition with each other, in price and otherwise, and they are in competition with other individuals, partnerships and corporations engaged in the sale and distribution in commerce of alcoholic beverages to the consumers thereof in said District.

PAR. 24. The capacity and tendency and effect of said agreements, combinations, conspiracies and undertakings, and the acts and practices performed thereunder by the said respondents, as herein set forth, have been, and now are:

(a) To unreasonably lessen, restrain, stifle hamper, and suppress competition in said alcoholic beverages, and to deprive wholesale dealers, distributors and retail dealers, and the purchasing public generally, of the advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unrestricted or free and fair competition in trade in alcoholic beverage business; and otherwise to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in commerce.

(b) To prejudice and injure the public producers of alcoholic beverages, retail dealers, distributors, wholesalers, and others who do not conform to, or cooperate in, the program of respondents.

#### CONCLUSION

The aforesaid acts and practices of respondents herein, under the conditions and circumstances set forth in the foregoing findings of facts are all to the prejudice of the public and respondents' competitors, and constitute unfair methods of competition in commerce in violation of section 5 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 J. Keenan, 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 Floyd O. Collins and DeWitt T. Puckett counsel for the Commission, and by Milton W. King, counsel for the respondents Manuel J. Davis, and D. C. Exclusive Retail Liquor Dealers Association. Norman J. Morrison, counsel for the respondent International Distributing Corporation, John R. Fitzpatrick, counsel for the respondent Washington Wholesale Liquor Corporation, F. Joseph Donohue, counsel for respondent Milton S. Kronheim & Son, Inc., William E. Furey, counsel for respondent Marvin & Snead Sales Corporation, Milford Schwartz, counsel for respondent Wholesale Liquor Dealers of Washington, Henry M. Seigal, counsel for respondents Philip Hurwitz and Leon Samet, individually and as copartners trading under the name and style Roma Wine and Liquor Co., Hyman M. Goldstein, counsel for respondent Globe Distributing Co., Inc., 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 wholesalers, Milton S. Kronheim & Son, Inc., a corporation, its officers, representatives, agents, and employees, Marvin & Snead Sales Corporation, a corporation, its officers, representatives, agents, and employees, International Distributing Corporation, a corporation, its officers, representatives, agents and employees, Globe Distributing Company, Inc., a corporation, its officers, representatives, agents and employees, Philip Hurwitz and Leon Samet, individually, and as partners trading under the name and style Roma Wine & Liquor Co., their representatives, agents, and employees, Washington Wholesale Liquor Corporation, a corporation, its officers, representatives, agents, and employees, and the respondent Wholesale Liquor Dealers of Washington, an unincorporated association of wholesale liquor dealers, its members, officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale and offering for sale of whiskies, wines, and other alcoholic beverages in the District of Columbia, and in connection with the shipment of whiskies, wines and other alcoholic beverages into the District of Columbia for resale therein, do forthwith cease and desist from:

1. Entering into or enforcing the provisions of any contract, agreement or understanding, verbal or written, with any retail dealer, jobber or wholesaler, distiller or other distributor of alcoholic beverages, the purpose or effect of which is to maintain a specified standard or uniform minimum resale price discount or "mark-up" at which whiskies, wines or other alcoholic beverages are to be sold by such retail dealers, jobbers, wholesalers or distributors.

2. Enforcing or attempting to enforce the maintenance of standard or uniform minimum resale prices, discounts or "mark-ups" by any of the following methods or means:

- (a) Collectively refusing to sell or threatening to refuse to sell whiskies, wines or other alcoholic beverages to price cutting retail dealers.

- (b) Reinstating as their customers price cutting retail dealers, whom they have therefore refused to sell, upon an agreement or understanding with such retail dealers that such suggested minimum resale prices, discounts or "mark-ups" will thereafter be maintained.

- (c) Circulating and threatening to circulate among retail dealers, wholesalers and other distributors of whiskies, wines and alcoholic beverages reports or lists of those retail dealers who have cut prices on said products and reports of wholesalers who have given dis-

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counts greater than those agreed upon and reports of those wholesalers who have continued to sell alcoholic beverages to retail dealers who have cut prices on said products to a price below the minimum resale price so fixed.

(d) Combining and agreeing directly or indirectly with distillers, retail dealers or with the D. C. Exclusive Retail Liquor Dealers Association to do or cause to be done any of the foregoing acts or things.

(e) Securing and endeavoring to secure through contracts, agreements or understandings the active support and cooperation of respondent wholesalers or other wholesale liquor dealers or distillers or of respondent D. C. Exclusive Retail Liquor Dealers Association or retail dealer members of said respondent Association or of respondent Manuel J. Davis, or of other retail dealers in the District of Columbia individually or collectively in carrying out the minimum resale price policy aforesaid.

*It is further ordered*, That the respondents D. C. Exclusive Retail Liquor Dealers Association, a corporation, its members, officers, agents, servants, or employees, and Manuel J. Davis, individually and as secretary of said D. C. Exclusive Retail Liquor Dealers Association, in connection with the sale and offering for sale of whiskies, wines and other alcoholic beverages in the District of Columbia and in connection with the shipment of whiskies, wines and other alcoholic beverages into the District of Columbia for resale therein do forthwith cease and desist from:

1. Entering into or enforcing the provisions of any contract, understanding or agreement, either verbal or written, with any retail dealer, jobber, distiller, wholesaler, or other distributor of alcoholic beverages in the District of Columbia, the purpose and effect of which is to maintain a specified standard or uniform minimum resale price, discount or "mark-up" at which said alcoholic beverages are to be re-sold by such retail dealers, jobbers, wholesalers or other distributors.

2. Enforcing or attempting to enforce the maintenance of standard or uniform minimum resale prices, discounts or "mark-ups" by any of the following methods or means:

- (a) Boycotting or threatening to boycott any wholesaler, distiller, jobber, retail dealer or other distributor of alcoholic beverages for selling such merchandise to retail dealers known to engage in price cutting activities.

- (b) Notifying or threatening to notify the wholesalers in the District of Columbia, including respondent wholesalers, not to sup-

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ply any price cutting retail dealers under threatened penalties of forfeiture and boycott.

(c) Notifying or threatening to notify distillers of any wholesaler not conforming to the aforesaid price maintenance policy.

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

## Syllabus

IN THE MATTER OF  
AFFILIATED 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 3734. Complaint, Mar. 9, 1939—Decision, Feb. 14, 1940*

Where corporation engaged as business successor in selling and distributing under various names, including names "Edna Wallace Hopper's Special Restorative Cream" and "Edna Wallace Hopper's White Youth Pack (Clay)," cosmetics to customers in other States, in active and substantial competition with others engaged in sale and distribution of cosmetics in such commerce and including many who do not misrepresent the character or effectiveness of their said products; in (1) advertisements which it disseminated through newspapers and periodicals of general circulation in and through the various States and through broadcasts from radio stations of extra-state audience, and which, prepared, placed and contracted for by its business predecessor and running or in press on date of its acquisition of business it continued and employed for a time, and in (2) advertisements which it thereafter disseminated through radio continuities, street and sub-way car cards and retail store window displays—

- (a) Made use of word "restorative" in designating and referring to its said Edna Wallace Hopper's Special Restorative Cream and represented, as case might be, directly or by implication that its said product was a discovery of a great French scientist or famous beauty expert which would rejuvenate the skin and restore the oils of youth and a youthful appearance to skin discolored by the natural consequences of age and would make user's face appear ten years younger than it was and keep skin young and prevent and erase wrinkles and age lines, facts being said cream was not such a discovery but was made from a formula developed by a cosmetician and graduate chemist, and would not rejuvenate skin or accomplish other results claimed therefor as above set forth; and
- (b) Represented and implied that its said Edna Wallace Hopper's White Youth Pack (Clay) was of French origin and a preparation which would cause the blood to nourish and revive the skin, and would remove blackheads and eliminate enlarged pores, facts being said White Youth Pack was not of French origin and would not cause blood to nourish and revive skin, and, while it might loosen and aid in removal of blackheads, would not itself thus remove such defects nor eliminate enlarged pores;

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 with result as consequence thereof that number of consuming public purchased substantial volume of its product and trade in commerce was diverted unfairly to it from those competitors who truthfully advertise their respective products and effectiveness thereof; to the injury of competition in commerce:

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*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.

*Mr. J. W. Brookfield, Jr.*, 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 the Affiliated Products, Inc., a corporation, hereinafter referred to as the 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, Affiliated Products, Inc., 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 257 Cornelison Avenue, Jersey City, N. J.

PAR. 2. Respondent, on January 8, 1936, purchased the business formerly conducted by Edna Wallace Hopper Inc., including its physical assets, good will and trade marks and since January 8, 1936, has been engaged in the sale and distribution of a line of cosmetics under various names, among which are "Edna Wallace Hopper's Special Restorative Cream" and "Edna Wallace Hopper's White Youth Pack (Clay)." The respondent causes said products when sold to be transported from its place of business in the State of New Jersey 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 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 the 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 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 false statements and representations contained in said advertisements concerning Edna Wallace Hopper's Special Restorative Cream, disseminated and caused to be disseminated as aforesaid, are the following:

HERE'S WAY TO LOOK HALF YOUR AGE

\* \* \* \* \*

I am past sixty, says Edna Wallace Hopper, yet boys scarcely above college age often try to flirt with me. I've been booked from one theatre to the other as "The one woman in the world who never grew old." People can't believe I'm over thirty. At a grandmother's age, I still enjoy all the thrills of youth.

Now let me tell you how I do it. Follow it and I promise if you're 50, you'll look 40. If you're 40, you'll look 30. And if you're 30, you'll gain back the skin of eighteen. Women I've given it to, call it a miracle—say it takes 10 years from the face in 10 minutes.

It is the discovery of a Famous French Scientist, who startled the cosmetic world by discovering that the Oils of Youth could be *artificially re-supplied* to the skin of fading women. He found that after 25, most women were deficient in certain youth oils. Oils that kept the skin free of age lines and wrinkles. And then, by a notable scientific discovery, he found a way to re-supply the skin daily with these oils.

This method puts those oils back in your skin every day. Without them you are old. With them you are young—alluring, charming.

\* \* \* \* \*

Your skin will absorb every bit of it—*literally drink in the youth oils it contains*. It's one of the most amazing demonstrations in scientific youth restoration known. Lines and hollow places soon go. You look years younger after the first treatment. Youth and allure come back. At over 60—I am *living proof*.

\* \* \* \* \*

It was developed by one of the most celebrated beauty scientists, Dr. Bonaventura Pacini, whose cosmetic creations have contributed so much to the

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beauty of women the world over. This particular method of skin lubrication Dr. Pacini calls Edna Wallace Hopper's Special Restorative Cream. \* \* \*

Among and typical of the false statements and representations contained in said advertisements concerning Edna Wallace Hopper's White Youth Pack (Clay) disseminated and caused to be disseminated as aforesaid, are the following:

HERE'S WAY TO REDUCE  
ENLARGED PORES QUICKLY

Relieve Blackheads, Too

A method that's amazingly effective, and will leave your skin clear, glowing . . . even in a close-up.

Countless young women are asking how to relieve blackheads and reduce large pores.

The answer is, "Purge the pores." Use a laxative on your skin just as you would a laxative on your system. Maybe most of you didn't know you could do this. You're surprised such a thing can be done. But it can. And very simply and quickly.

You use Edna Wallace Hopper's White Youth Pack (Clay). The very same kind of a pack that women in Paris through the beauty salons to get because of the way it transforms their skin.

Hopper's White Youth Pack quickens the circulation, brings the blood surging to the skin to nourish and revive it. Old dead skin is removed, giving you a new velcety complexion . . . vitally alive and healthy.

You'll be thrilled at the new smoothness and lovely texture of your skin. Dirt and impurities which clog the pores are drawn out of all the hidden places where blemishes usually start. Blackheads are loosened and after a few treatments even the most stubborn ones are easily removed. Enlarged pores are reduced to normal.

\* \* \* \* \*

It's a special White Youth Pack called Edna Wallace Hopper's White Youth Pack. And, it does what famous beauty scientists agree must be done to loosen blackheads and help reduce enlarged pores. For it cleanses the pores. Taking OUT of the skin the things that should not be there . . . the very accumulations that clog the pores and that cause so many imperfections and unattractive complexions.

\* \* \* \* \*

And after even one treatment you'll be amazed to see how it loosens blackheads so they are easily removed and how wonderfully it treats enlarged pores.

PAR. 5. Through the use of the word "Restorative" as part of the name of its preparation and 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 respondent's preparations and their effectiveness in use, respondent has represented and does now represent, directly and indirectly, that

its preparation "Edna Wallace Hopper's Special Restorative Cream" is a discovery of a great French scientist or a famous beauty expert which will rejuvenate the skin and restore the oils of youth and youthful appearance to skins disfigured by the natural consequences of age; that it will take 10 years off the user's face and that it will keep the skin young and will prevent or erase wrinkles and age lines. By the same means respondent represents that its preparation "Edna Wallace Hopper's White Youth Pack (Clay)" is a preparation of French origin which will cause the blood to nourish and revive the skin, and that it will remove blackheads and enlarged pores.

PAR. 6. The aforesaid representations and claims used and designated by the respondent, as hereinabove described, are grossly exaggerated, misleading, and untrue. In truth and in fact, respondent's preparation "Edna Wallace Hopper's Special Restorative Cream" is not a discovery of a great French scientist or a famous beauty expert, and will not rejuvenate the skin, restore the oils of youth or youthful appearance to skins disfigured by the natural consequences of age. Its use will not take 10 years, or any number of years, off the user's face. Said preparation will not keep the skin young and will not prevent or erase wrinkles and age lines.

Respondent's preparation "Edna Wallace Hopper's White Youth Pack (Clay)" is not of French origin and will not cause the blood to nourish and revive the skin. This preparation will not remove blackheads and enlarged pores.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and advertisements in designating and describing its said products and their effectiveness when used, as hereinbefore 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 such false statements, representations and advertisements 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. 8. The aforesaid 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 and unfair and de-

ceptive 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 its complaint in this proceeding and thereafter served the same upon the respondent, Affiliated Products, 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 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 by its counsel, Simon Michelet, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the 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 and that the said Commission might 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 conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Affiliated Products, Inc., 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 257 Cornelison Avenue, Jersey City, N. J.

Respondent, since April 13, 1936, has been engaged in the sale and distribution of cosmetics under various names, among which are "Edna Wallace Hopper's Special Restorative Cream" and "Edna Wallace Hopper's White Youth Pack (Clay)." The respondent causes said products when sold to be transported from its place of business in the State of New Jersey 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 main-

tained 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.

On or about the 13th day of April, 1936, respondent acquired said business, including the assets, trade-marks and good will appurtenant thereto, from its predecessors through an outright purchase and for a substantial consideration. Respondent has and had no connection, directly or indirectly, before, on or after the date of said acquisition with respondent's said predecessors.

In the course and conduct of its business respondent is in actual 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, many of whom do not misrepresent the character or effectiveness in use of their respective products.

PAR. 2. In the course and conduct of its aforesaid business it has been and is the practice of the respondent to solicit purchasers for its cosmetics including "Edna Wallace Hopper's Restorative Cream" and "Edna Wallace Hopper's White Youth Pack (Clay)," and to offer said products for sale and sell them by means of advertisements in newspapers and magazines of general circulation in and through the various States of the United States, and by means of radio 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. Prior to the date of acquisition of said business by respondent, respondent's predecessors solicited purchasers of said cosmetics by similar methods. At the time of the acquisition of said business by respondent, respondent's predecessors had prepared, contracted for and placed certain advertising copy for said cosmetics which was running or in press on said date. Among and typical of statements and representations contained in said advertisements concerning "Edna Wallace Hopper's Restorative Cream" disseminated and caused to be disseminated by respondent's predecessors, are the following:

#### HERE'S WAY TO LOOK HALF YOUR AGE

I am past sixty, says Edna Wallace Hopper, yet boys scarcely above college age often try to flirt with me. I've been booked from one theatre to the other as "The one woman in the world who never grew old." People can't believe I'm over thirty. At a grandmother's age, I still enjoy all the thrills of youth.

Now let me tell you how I do it. Follow it and I promise if you're 50, you'll look 40, if you're 40, you'll look 30. And if you're 30, you'll gain back the skin of eighteen. Women I've given it to, call it a miracle—say it takes 10 years from the face in 10 minutes.

It is the discovery of a Famous French Scientist, who startled the cosmetic world by discovering that the Oils of Youth could be *artificially re-supplied* to the skin of fading women. He found that after 25, most women were deficient in certain youth oils. Oils that keep the skin free of age lines and wrinkles. And then, by a notable scientific discovery, he found a way to re-supply the skin daily with these oils.

This method puts those oils back in your skin every day. Without them you are old. With them you are young—alluring, charming.

Your skin will absorb every bit of it—*literally drink in the youth oils it contains*. It's one of the most amazing demonstrations in scientific youth restoration known. Lines and hollow places soon go. You look years younger after the first treatment. Youth and allure come back. At over 60—I am *living proof*.

It was developed by one of the most celebrated beauty scientists, Dr. Bonaventura Pacini, whose cosmetic creations have contributed so much to the beauty of women the world over. This particular method of skin lubrication Dr. Pacini calls Edna Wallace Hopper's Special Restorative Cream. . .

Advertisements containing the above and similar statements and representations continued to appear for a few months during the remainder of 1936, and were employed and sponsored by respondent, subsequent to the acquisition of said business by respondent, said advertising having been placed and contracted for prior to the date of said acquisition. No advertising containing said statements has been used by respondent since December 1936, and since February 1937, the only advertising disseminated by respondent has been in the form of radio continuities, street and subway car cards and retail store window displays. Among and typical of statements and representations contained in said advertisements concerning "Edna Wallace Hopper's Special Restorative Cream", disseminated and caused to be disseminated by respondent since its acquisition of said business as aforesaid are the following:

Not only Helen Trent but women the world over are making their life from thirty-five on, glamorous and romantic. And if you are over thirty-five and have that sinking feeling which comes to every woman when she sees that her skin is losing freshness, looks tired and drawn, here's the message this program brings: If you want to keep yourself lovely-looking . . . you must have a beautiful skin—a skin of romance!

And there is a way for every woman to have a more beautiful skin. So, if your skin is drawn, fagged or tired looking, you'll be delighted to know about it.

It is one of the most important of all the marvelous contributions to creating beauty science that the well-known beauty scientist, Dr. Bonaventura Pacini, has made. It is called Edna Wallace Hopper's Special Restorative Cream. And, is based on a most effective method of skin lubrication.

You use it daily to oil, lubricate and freshen your skin. Apply it just as you would cold cream but don't remove it immediately. Let it remain on your skin

for at least ten minutes. Feel the pleasant sensation the delicate lubricating oils have on the skin. And, when you remove it, you'll be delighted with the way your skin looks, glowing, fresh and radiant. And it will feel firmer \* \* \* softer \* \* \*.

The years from thirty-five onwards are often a new romantic age, for women who have the irresistible appeal of the "skin of romance." You can get Edna Wallace Hopper's Special Restorative Cream at all cosmetic counters and at a price every woman can afford.

If that dreaded "faded" look is beginning to rob you of charm and appeal \* \* \* that look that comes when your skin is drawn or tired \* \* \* begin today to use Edna Wallace Hopper's Special Restorative Cream. It is an amazing method of skin lubrication and you use it daily to oil, lubricate and freshen your skin. Your skin will have a glow, a radiance that gives to any woman or girl a loveliness beyond words. That brings compliments and may perhaps bring the things you long for most \* \* \* romance, happiness \* \* \* success.

Among and typical of the statements and representations contained in said advertisements concerning "Edna Wallace Hopper's White Youth Pack (Clay)" disseminated and caused to be disseminated by respondent as aforesaid are the following:

HERE'S WAY TO REDUCE ENLARGED PORES QUICKLY Relieve Blackheads, too.

A method that's amazingly effective, and will leave your skin clear, glowing \* \* \* even in a close-up.

Countless young women are asking how to relieve blackheads and reduce large pores.

The answer is, "Purge the pores." Use a laxative on your skin just as you would a laxative on your system. Maybe most of you didn't know you could do this. You're surprised such a thing can be done. But it can. And very simply and quickly.

You use Edna Wallace Hopper's White Youth Pack (Clay). The very same kind of a pack that women in Paris through the beauty salons to get because of the way it transforms their skin.

Hopper's White Youth Pack quickens the circulation, brings the blood surging to the skin to nourish and revive it. Old dead skin is removed, giving you a new velvety complexion \* \* \* vitally alive and healthy.

You'll be thrilled at the new smoothness and lovely texture of your skin. Dirt and impurities which clog the pores are drawn out of all the hidden places where blemishes usually start. Blackheads are loosened and after a few treatments even the most stubborn ones are easily removed. Enlarged pores are reduced to normal.

It's a special White Youth Pack called Edna Wallace Hopper's White Youth Pack. And, it does what famous beauty scientists agree must be done to loosen blackheads and help reduce enlarged pores. For it cleanses the pores. Taking OUT of the skin the things that should not be there . . . the very accumulations that clog the pores and that cause so many imperfections and unattractive complexions.

And after even one treatment you'll be amazed to see how it loosens blackheads so they are easily removed and how wonderfully it treats enlarged pores.

PAR. 3. Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out

herein, used in connection with respondent's product, Edna Wallace Hopper's Special Restorative Cream, and the use of the word "Restorative" in said trade name, all of which purport to be descriptive of respondent's said preparation, Edna Wallace Hopper's Special Restorative Cream, and its effectiveness in use, respondent has represented and is now representing, directly and by inference, that its said preparation, Edna Wallace Hopper's Special Restorative Cream, is a discovery of a great French scientist or a famous beauty expert which will rejuvenate the skin and restore the oils of youth and a youthful appearance to skin disfigured by the natural consequences of age; that it will make the user's face appear ten years younger than it is; and that it will keep the skin young and will prevent and erase wrinkles and age lines.

Through the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, used in connection with respondent's preparation, Edna Wallace Hopper's White Youth Pack (Clay), all of which purport to be descriptive of said preparation and its effectiveness in use, respondent represents and implies that said preparation is of French origin; that it will cause the blood to nourish and revive the skin; and that said preparation will remove blackheads and eliminate enlarged pores.

PAR. 4. In truth and in fact, respondent's preparation now designated Edna Wallace Hopper's Special Restorative Cream is not the discovery of a great French scientist but is made from a formula developed by Dr. A. B. Pacini, a cosmetician and graduate chemist. Said product will not rejuvenate the skin nor will it restore the oils of youth or restore a youthful appearance to skin disfigured by the natural consequences of age. It will not make the user's face appear ten or any other number of years younger, nor will it keep the skin young or erase wrinkles or age lines.

Respondent's preparation designated Edna Wallace Hopper's White Youth Pack (Clay) is not of French origin, and it will not cause the blood to nourish and revive the skin, and, while this preparation may loosen and aid in the removal of blackheads, it will not itself remove blackheads, nor will it eliminate enlarged pores.

PAR. 5. The acts and practices of the respondent as above set out in using the word "Restorative" in the trade name of said preparation, now designated Edna Wallace Hopper's Special Restorative Cream, and in using the false, deceptive and misleading statements, representations and advertisements in describing both of its said preparations and their effectiveness when used, as hereinabove set forth, 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 such false statements, representations and advertisements are true. As a result of such erroneous and mistaken belief a number of the consuming public has 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.

#### 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 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, Affiliated 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 cosmetics 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 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 cosmetics now designated by the names Edna Wallace Hopper's Special Restorative Cream and Edna Wallace Hop-

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per's White Youth Pack (Clay) or any other cosmetics composed of substantially similar ingredients or possessing substantially similar 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 cosmetics, (1) which advertisements represent, directly or through implication, that respondent's cosmetic now designated Edna Wallace Hopper's Special Restorative Cream is the discovery of a great French scientist; that its use will rejuvenate the skin or restore the oils of youth or restore youthful appearance to aged skin; that its use will make one's face appear ten or any number of years younger; that it will keep the skin young and prevent or erase wrinkles or age lines; or that it is a restorative cream; (2) which advertisements represent, directly or through implication, that respondent's product now designated Edna Wallace Hopper's White Youth Pack (Clay) is of French origin; that it will nourish or revive the skin; that said preparation will remove blackheads or eliminate enlarged pores or have any beneficial effect thereon other than that the use of this preparation may loosen blackheads and thereby aid in the removal thereof, or (3) which advertisements use the word "Restorative," or any word or words of similar import or meaning, in the trade name designating, or otherwise in describing, the preparation now designated Edna Wallace Hopper's Special Restorative Cream.

*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

## THE STEEL OFFICE FURNITURE INSTITUTE 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 3319. Complaint, Mar. 9, 1938<sup>1</sup>—Decision, Feb. 20, 1940*

Where twelve corporations engaged in manufacture and sale of more than 50 percent of all the steel office furniture made in the United States, and consisting of filing cabinets, sections, book, index and transfer cases, and desks and tables, and storage cabinets and wardrobes, and certain other units or products, and in price competition with one another in sale in interstate commerce of their said products, and members of their unincorporated institute which, during period involved, (1) collected, compiled and made available to members and public monthly statistical compilations and tabulations of total wholesale value of industry's shipments for month preceding and existing future delivery contracts, (2) conducted industry tests to encourage standardization and interchangeability, (3) disseminated such information as Federal and State legislation and Governmental rulings of interest, (4) collected from members and others published price lists and distributed among members requesting same such lists, and (5) encouraged members and industry to comply with Commission's Trade Practice Conference Rules, and with and through which "institute" below-described agreements were entered into and carried out—

- (a) Agreed among themselves to and, in some instances, did fix and maintain identical delivered prices, uniform discounts, terms and conditions in sale of products in question;
- (b) Agreed to and, in some instances, did induce or cause dealers and customers purchasing such products for resale to maintain resale prices fixed by said manufacturing companies, and to join and form local dealer associations having such objectives; and
- (c) Agreed to and many times did abide by and not deviate from identical delivered prices and uniform discounts and terms and conditions of sale filed by them with institute aforesaid;

With result that price competition theretofore existing among them was substantially suppressed by such activities, and with effect of hindering and preventing such competition in sale of said products in commerce throughout the United States, and with dangerous tendency so to do;

*Held*, That such acts and practices of said manufacturing companies in entering into and carrying out such agreements, and in doing acts and things done thereunder, pursuant thereto and in furtherance thereof, were all to the prejudice of the public, and constituted unfair methods of competition.

*Mr. Edward L. Smith* for the Commission.

*Donovan, Leisure, Newton & Lumbard*, of Washington, D. C., for The Steel Office Furniture Institute, Corry-Jamestown Manufacturing Corporation, Metal Office Furniture Co., The Shaw-Walker Co., Emerson's, Inc. and George Andrew Carnegie, and also, in conjunc-

<sup>1</sup> Amended.

tion with various other counsel, as below set forth, for all respondents, excepting last, as there named.

*Franchot & Schachtel*, of New York City, and *Mr. J. A. W. Simson*, of Buffalo, N. Y., for Remington Rand, Inc. and Victor Safe & Equipment Co., Inc.

*Mr. Lou L. Landman*, of Muskegon, Mich., for Brown-Morse Co.

*Roper & Caldwell*, of Philadelphia, Pa., for Columbia Steel Equipment Co.

*Harrington, Husley & Smith*, of Youngstown, Ohio, for The General Fireproofing Co.

*Slee, O'Brian, Hellings & Ulsh*, of Buffalo, N. Y., for Art Metal Construction Co.

*Kunkel & Kunkel*, of Cleveland, Ohio, for The Globe-Wernicke Co.

*Nash & Nash*, of Manitowoc, Wisc., for Invincible Metal Furniture Co.

*Goodwin, Nixon, Hargrave, Middleton & Devans*, of Rochester, N. Y., for Yawman and Erbe Manufacturing Co.

*Mr. William M. Phipps*, of Norfolk, Va., for Norfolk Stationery Co., Inc. and Hampton Roads Paper Co., and along with *Mr. Clyde H. Jacob*, of Norfolk, Va., for Frank B. Hodgson.

*Mr. Thomas F. Patton*, of Cleveland, Ohio, for Bentson Manufacturing Co., and, separately for The Berger Manufacturing Co.

#### AMENDED COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the parties described in the caption hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Steel Office Furniture Institute, hereinafter referred to as the respondent institute, is a voluntary incorporated association of firms engaged in the manufacture, sale, and distribution of steel office furniture and equipment. Its principal office is in Room 604 Chester Avenue, and Ninth Street Bldg., in the city of Cleveland, Ohio. Respondent institute was organized in 1935 by certain of the member respondents hereinafter described, as a trade

association for the promotion of the interests of its members, and it has, since its organization so acted.

The activities of said member respondents hereinafter described were carried out through, and under the supervision of, said respondent institute. Approximately 85 percent of all the steel office furniture and equipment sold in the United States is produced and sold by the members of respondent institute.

PAR. 2. Respondent Art Metal Construction Co., Inc., is a corporation with its principal office and place of business in Jamestown, N. Y.

Respondent Bentson Manufacturing Co. is a corporation with its principal office and place of business in Aurora, Ill.

Respondent Berger Manufacturing Co.<sup>2</sup> is a corporation with its principal office and place of business in Canton, Ohio.

Respondent Browne-Morse Co. is a corporation with its principal office and place of business in Muskegon, Mich.

Respondent Corry-Jamestown Manufacturing Corporation is a corporation with its principal office and place of business in Corry, Pa.

Respondent General Fire Proofing Co. is a corporation with its principal office and place of business in Youngstown, Ohio.

Respondent The Globe-Wernicke Co. is a corporation with its principal office and place of business in Norwood, Cincinnati, Ohio.

Respondent Invincible Metal Furniture Co. is a corporation with its principal office and place of business in Manitowoc, Wis.

Respondent Metal Office Furniture Co. is a corporation with its principal office and place of business in Grand Rapids, Mich.

Respondent Remington-Rand, Inc. is a corporation with its principal office and place of business in Buffalo, N. Y.

Respondent The Shaw-Walker Co. is a corporation with its principal office and place of business in Manitowoc, Wis.

Respondent Victor Safe and Equipment Co., Inc., is a corporation with its principal office and place of business in North Tonawanda, N. Y.

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<sup>2</sup> Commission on August 3, 1938, granted motion to dismiss complaint as to The Berger Manufacturing Co. by the following order:

This matter coming on to be heard before the Commission on the motion of Thomas F. Patton, attorney for respondent, The Berger Manufacturing Company, that the complaint herein be dismissed as to said respondent for the reason that respondent corporation was dissolved on or about November 1, 1937, 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 said motion be, and the same is hereby, granted and that the complaint herein be, and the same is hereby dismissed as to respondent, The Berger Manufacturing Company.

## Complaint

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Respondent The Yawman & Erbe Manufacturing Co. is a corporation with its principal office and place of business in Rochester, N. Y.

Respondent Columbia Steel Equipment Co. is a corporation with its principal office in Philadelphia, Pa.

All of the respondents named and described in this paragraph are members of the respondent institute except Columbia Steel Equipment Co., and are all engaged in the manufacture, sale and distribution of steel office furniture and equipment. Each of said member respondents sells and distributes its said products to wholesalers, retailers, and others purchasers in the United States, and causes said products when sold to be transported from its principal place of business, as hereinbefore set out, into and through the several States of the United States, and the District of Columbia, to such purchasers located at various points in the several States of the United States, other than in the State of the origin of such shipments, and in the District of Columbia. Remington-Rand, Inc., is also a member of the respondent association hereinafter described.

Before the adoption of the practices hereinafter alleged, these member respondents were in active and substantial price competition with each other and with other members of the industry, in making and seeking to make sales of their said products 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 price competition would have continued to the present time and said member respondents would now be in active and substantial price competition with each other in said commerce. Said member respondents maintain a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

These member respondents manufacture and sell approximately 85 percent of the steel office furniture and equipment manufactured and sold in the United States and they occupy such a dominant and powerful position in the industry as to enable them, through the respondent institute, to dictate, dominate, and control the practices and policies of the industry as a whole.

PAR. 3. Respondent Tidewater Office Equipment Dealer's Association is an unincorporated association composed of corporations, partnerships and individuals engaged in the sale and distribution, among other things, of office furniture, equipment and supplies, with its office in the city of Norfolk, Va. Said respondent will hereinafter be referred to on occasion as respondent association. Respondent association was formed in 1936 by the respondents named in paragraph 4 hereof and other corporations and individuals located in the

city of Norfolk, Va., for the purpose of practicing and promoting the interests of said members and protecting the interests of the respondents named in paragraph 2 hereof. The activities of the members of respondent association hereinafter set out were carried out through and under the supervision of, said respondent association.

PAR. 4. Respondent Norfolk Stationery Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business in the city of Norfolk, Va.

Respondent Hampton Roads Paper Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business in the city of Norfolk, Va.

Respondent Emmerson's, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office and place of business in the city of Norfolk, Va.

Respondent Frank B. Hodgson is an individual trading as Frank B. Hodgson Office Furniture with his office and place of business in the city of Norfolk, Va.

Respondent George Andrew Carnegie is an individual trading as Carnegie Office Appliance Co., with his office and place of business in the city of Norfolk, Va.

The respondents in this paragraph named are now, or have been, members of the respondent association and will hereinafter, on occasion, be referred to as respondent association members.

The membership of said respondent association varies from time to time as the result of the dropping out of old and the addition of new members, and they constitute a class so numerous and fluctuating that it is impracticable at any given time to name as parties respondent and bring before the Commission each and all of said members without manifest inconvenience and delay, and the respondent association members named are made parties respondent individually and separately, and as representatives of each and all other members as a class.

Members of said respondent association are all engaged in the sale and distribution of office furniture, equipment, and supplies and they purchase from some one or more of the respondent members of respondent institute, or act as agents for some one or more of said respondent members of respondent institute in the sale of, some of the products sold and distributed by said member respondents of said respondent institute.

Members of said respondent association, in the course and conduct of their said businesses in the purchase and sale of said products, are engaged in trade and commerce between, among, in, and with the several States of the United States and in and with the District of Columbia. Said members cause said products, when sold by them, to be shipped from points in various States of the United States other than Virginia to the purchasers thereof located in the State of Virginia, and, on occasion, from their respective places of business in the State of Virginia to purchasers located in States of the United States other than the State of Virginia and in the District of Columbia. Said members maintain a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

Before the adoption of the practices hereinafter alleged, said members were in active and substantial price competition with each other, and with others engaged in the same business, in making and seeking to make sales of their said products in said commerce between, among, in, and with 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 and said members would now be in active and substantial price competition with each other in said commerce.

PAR. 5. On or about June 15, 1935, and on divers days and dates thereafter, said member respondents of said respondent institute entered into and thereafter carried out understandings, agreements, combinations, and conspiracies, hereinafter, at times, referred to as an undertaking, for the purpose and with the effect of restricting, restraining, and monopolizing, and suppressing and eliminating price competition in, the sale of steel office furniture and equipment in trade and commerce between, among, in and with the several States of the United States and in the District of Columbia, and for the purpose and with the effect of restricting, restraining, suppressing, and eliminating price competition in the sale of such products between jobbers, retailers and others in said commerce purchasing such products for resale.

PAR. 6. Pursuant to said understandings, agreements, combinations, and conspiracies, said member respondents of said respondent institute and said respondent institute have done and performed, and still do and perform, the following acts and things:

1. Said member respondents agreed to fix and maintain and do fix and maintain, identical delivered prices for said products;
2. Said member respondents agreed to fix and maintain, and do fix and maintain, minimum delivered prices for said products;

3. Said member respondents agreed to fix and maintain, and do fix and maintain, uniform maximum discounts which are allowed in the sale of said products;

4. Said member respondents agreed to fix and maintain, and do fix and maintain, uniform terms and conditions, including but without limitation, maximum discounts, brokerage fees, freight and other allowances, in the sale of said products;

5. Said member respondents have caused, through coercion and other means, their agents and customers purchasing for resale to form and join local associations having for their objective the maintenance of the resale prices fixed by said member respondents;

6. Said member respondents agreed to require, and do require agents and wholesalers, retailers and others purchasing said products for resale, to maintain the resale prices on said products fixed by said members. To secure the cooperation of agents and of wholesalers, retailers, and others purchasing said products for resale, in maintaining the resale prices fixed by said member respondents, said member respondents, acting through respondent institute, have formed, and caused to be formed, local associations of such agents and purchasers for resale, at various and sundry points throughout the United States; and they have induced and coerced members of said local associations of agents and purchasers for resale, and the members of other local associations of agents and purchasers for resale, theretofore in existence, and into entering into and thereafter carrying out understandings, agreement, combinations and conspiracies to maintain the resale prices fixed by said member respondents in furtherance of said undertaking. The respondent association Tidewater Office Equipment Dealers' Association, is typical of the type of association formed and used by said member respondents and the respondent institute in inducing and coercing agents and purchasers for resale to maintain the resale prices fixed by said member respondents in furtherance of said undertaking.

7. Each of the respondent members agreed to file and does file with the respondent institute a schedule of the delivered prices, including discounts and the terms and conditions of all sales at which said member will and does sell said products.

8. Each said respondent member agreed that it would not deviate from the delivered prices, discounts and terms and conditions of sale stated in its delivered prices filed with the respondent institute.

9. The respondent institute collects from and disseminates among the member respondents information as to delivered prices, discounts and terms and conditions of sale, and other information used and

useful in carrying out said undertaking. Said respondent members and the respondent institute have adopted and agreed upon detailed rules and regulations designed and intended to prevent deviation on the part of respondent members from the delivered prices, discounts and terms and conditions of sale announced by such members.

10. Said respondents have adopted and used and are using other methods and means designed to carry out said undertaking.

PAR. 7. Each of said member respondents of said respondent institute acted in concert and cooperation with one or more of the other member respondents and with the respondent institute in doing and performing the acts and things hereinabove alleged in furtherance of said undertaking, and in concert and cooperation with the members of the respondent association in the doing of the acts and things hereinafter alleged.

PAR. 8. On or about June 4, 1936, and on divers days and dates thereafter, said respondent association members and the other members of the respondent association entered into and thereafter carried out understandings, agreements, combinations and conspiracies for the purpose and with the effect of restricting, restraining, and monopolizing, and suppressing and eliminating price competition between and among said members in, the sale of steel office furniture and equipment and other office supplies in trade and commerce between, among, in and with the several States of the United States and in the District of Columbia.

PAR. 9. Pursuant to such agreements, combinations, and conspiracies, said respondent association members and said respondent association have done, performed, and still do and perform, the following acts and things:

1. Said respondent association members agreed to fix and maintain, and do fix and maintain, uniform resale prices for said products.

2. Said respondent association members agreed to fix and maintain, and do fix and maintain, minimum resale prices for said products.

3. Said respondent association members agreed to fix and maintain, and do fix and maintain uniform maximum discounts which are allowed in the sale of said products.

4. Said respondent association members agreed to fix and maintain, and do fix and maintain, uniform terms and conditions in the sale of said products.

5. Said respondent association members agreed to submit and do submit identical bids to agencies of municipal, county, State, and Federal Governments, when bids are requested by such agencies on said products.

6. Said respondent association members agreed to adopt and maintain, and have adopted and maintained, the resale prices and discounts fixed and established by the member respondents of said respondent institute, described in paragraph 2 hereof.

7. Said respondent association members induced the respondents described in paragraph 2 hereof to refuse to sell steel office furniture and equipment to certain dealer competitors of said respondent association members who had refused to participate in and become parties to said understandings, agreements, combinations and conspiracies to fix and maintain resale prices and maintain discounts and terms and conditions of sale as above alleged, thereby interfering with the source of supply of said non-cooperating competitors in an effort to compel them to become participants in such understandings, agreements, combinations and conspiracies.

8. Said respondent association members agreed and did attempt, by threats, coercion and persuasion, and through other means, to induce competitors who were not parties to said understandings, agreements, combinations and conspiracies to cooperate with them in carrying out the same.

PAR. 10. Respondent members of said respondent institute and said respondent association members and the Columbia Steel Equipment Company cooperated with each other in carrying out and making effective the understandings, agreements, combinations, and conspiracies hereinabove alleged.

PAR. 11. Said understandings, agreements, combinations, and conspiracies between and among said member respondents of said respondent institute and between and among said respondent association members and Columbia Steel Equipment Co., and the things done thereunder and pursuant thereto, and in furtherance thereof, including the cooperation between the members of the respondent institute and the members of the respondent association, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining the sale of steel office furniture and equipment and other office supplies in trade and commerce between, among, in, and with the several States of the United States and in the District of Columbia; of unduly and unlawfully restricting and restraining trade in said products in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition between and among the respondent members of said respondent institute and between and among said respondent association members; of eliminating price competition, with the tendency and capacity of creating a monopoly, in the sale of said products

in said commerce. Said understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto, and in furtherance thereof, as herein alleged, constitute unfair methods of competition in commerce within the intent and meaning of an Act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 9th day of March 1938, issued and served its amended complaint in this proceeding upon said respondents, The Steel Office Furniture Institute, Remington Rand, Inc., Browne-Morse Co., Columbia Steel Equipment Co., The General Fireproofing Co., Art Metal Construction Co., Bentson Manufacturing Co., Corry-Jamestown Manufacturing Corporation, The Globe-Wernicke Co., Invincible Metal Furniture Co., Metal Office Furniture Co., The Shaw-Walker Co., Victor Safe & Equipment Co., Inc., Yawman and Erbe Manufacturing Co., Tidewater Office Equipment Dealers' Association, Norfolk Stationery Co., Inc., Hampton Roads Paper Co., Emmerson's, Inc., Frank B. Hodgson, trading as Frank B. Hodgson Office Furniture, and George Andrew Carnegie, trading as Carnegie Office Appliance Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, each of the respondents, except Emmerson's, Inc., filed its answer in this proceeding. Thereafter, under date of January 15, 1940, a stipulation was entered into whereby it was stipulated and agreed that a statement signed and executed by the respondents, The Steel Office Furniture Institute, Remington Rand, Inc., Browne-Morse Co., The General Fireproofing Co., Art Metal Construction Co., Bentson Manufacturing Co., Corry-Jamestown Manufacturing Corporation, The Globe-Wernicke Co., Invincible Metal Furniture Co., Metal Office Furniture Co., The Shaw-Walker Co., Victor Safe & Equipment Co., Inc., and Yawman and Erbe Manufacturing Co., by their counsel, and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, solely for the purpose of this proceeding, the enforcement of review thereof in the Circuit Court of Appeals, and for any review in the Supreme Court of the United States, or for any other court proceeding in enforcement of the order to be entered herein or to recover any penalty for violation thereof which may be brought or instituted pursuant to authority contained in the Federal Trade Commission Act as amended, and approved

March 21, 1938, and for no other purpose, that the Commission can adduce the evidence as hereinafter set forth in the following Statement, which is to be taken and considered as a part of the record herein the same, and with the same effect as if said evidence had been adduced at hearings in the usual course, in lieu of testimony in support of the charges stated in the complaint, and that said respondents waive their rights to adduce evidence in opposition thereto and do not contest this proceeding; and that the said Commission may proceed upon said statement to make its report stating its findings as to the facts (including inferences which it may draw therefrom), and its conclusion based thereon, and enter its order disposing of this 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 amended complaint, said 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. The respondent, The Steel Office Furniture Institute, hereinafter referred to as the Institute, during the period from about June 15, 1935, to and including March 9, 1938, hereinafter referred to as the period specified in the amended complaint, was an unincorporated association of manufacturers of steel office furniture industry products, hereinafter referred to as industry products, which consist of

Steel vertical filing cabinets.

Steel horizontal sections and half-sections, and book-cases.

Steel Hi-line and book-shelf units.

Steel card index cases.

Steel transfer cases.

Steel desks and tables.

Steel storage cabinets and wardrobes.

The Institute was formed on or about April 10, 1931, by some of the respondents named in paragraph 2 and others, and has been active since its formation except for the period from November 4, 1933 to June 5, 1935. During its existence, including the period specified in the amended complaint, the Institute performed the following functions:

*a.* Collected and compiled statistical information which it made available to its members and the public. This information during the period specified in the amended complaint consisted of

1. a compilation each month of the total wholesale value of shipments of industry products for the previous month,
2. a monthly tabulation of existing future delivery contracts.

*b.* Conducted tests of industry products to encourage standardization and interchangeability of product.

*c.* Disseminated among its members information of interest to them such as federal and State legislation, and rulings of governmental bodies.

*d.* Collected from its members and other members of the industry the published price lists of industry products and distributed such price lists among such members of the industry as had requested the same.

*e.* Encouraged its members and the industry to comply with the Trade Practice Conference Rules approved by the Federal Trade Commission for this industry.

*f.* Miscellaneous temporary activities.

PAR. 2. Respondent Art Metal Construction Co. is a corporation with its principal office and place of business in Jamestown, N. Y.

Respondent Bentson Manufacturing Co. is a corporation with its principal office and place of business in Aurora, Ill.

Respondent Browne-Morse Co. is a corporation with its principal office and place of business in Muskegon, Mich.

Respondent Corry-Jamestown Manufacturing Corporation is a corporation with its principal office and place of business in Corry, Pa.

Respondent The General Fireproofing Co. is a corporation with its principal office and place of business in Youngstown, Ohio.

Respondent The Globe-Wernicke Co. is a corporation with its principal office and place of business in Norwood, Cincinnati, Ohio.

Respondent Invincible Metal Furniture Co. is a corporation with its principal office and place of business in Manitowoc, Wis.

Respondent Metal Office Furniture Co. is a corporation with its principal office and place of business in Grand Rapids, Mich.

Respondent Remington Rand, Inc., is a corporation with its principal office and place of business in Buffalo, N. Y.

Respondent The Shaw-Walker Co. is a corporation with its principal office and place of business in Muskegon, Mich.

Respondent Victor Safe & Equipment Co., Inc., is a corporation with its principal office and place of business in North Tonawanda, N. Y.

Respondent Yawman and Erbe Manufacturing Co. is a corporation with its principal office and place of business in Rochester, N. Y.

The above-named respondents, hereinafter referred to as respondent manufacturing companies, during the period specified in the amended complaint, were each engaged in the manufacture and sale of some or all of the said industry products, and had caused some of said products to be sold and shipped in interstate commerce, and, each of said respondents was a member of the Institute during all or a portion of said period. Said respondent manufacturing companies prior to the said period specified in the amended complaint were in price competition with each other in making sales of their said products in interstate commerce, and said competition has been substantially suppressed by the activities hereinafter set forth. Said respondent manufacturing companies manufacture and sell more than 50 percent of all of the said industry products manufactured and sold throughout the United States.

PAR. 3. Respondent manufacturing companies, during the said period specified in the amended complaint, agreed among themselves to fix and maintain identical delivered prices, uniform discounts and uniform terms and conditions in the sale of said industry products, and pursuant to such agreement, in certain instances, did fix and maintain said prices, discounts, and terms.

PAR. 4. Respondent manufacturing companies, during the period specified in the amended complaint, agreed among themselves to induce or cause, and pursuant to such agreement in some instances, did induce or cause their dealers and customers purchasing said industry products for resale to maintain resale prices fixed by said respondent manufacturing companies and to join and form local associations of dealers having for an objective the maintenance of said resale prices.

PAR. 5. Respondent manufacturing companies, during the period specified in the amended complaint, agreed among themselves to abide by and not to deviate from the identical delivered prices, uniform discounts and uniform terms and conditions of sale filed by said respondent manufacturing companies with the Institute, and pursuant to such agreement many times did abide by and not deviate from said prices, discounts, and terms in the sale of said industry products.

PAR. 6. The agreements hereinabove described in paragraphs 3, 4, and 5 were entered into and carried out through and by means of the Institute.

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## CONCLUSION

The aforesaid acts and practices of the said respondent manufacturing companies in entering into and carrying out such agreements, and in doing the acts and things done thereunder, pursuant thereto and in furtherance thereof, are all to the prejudice of the public, and have a dangerous tendency to and have hindered and prevented price competition between and among the said respondent manufacturing companies in the sale of said industry products in commerce throughout the United States, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission, the separate answers of the respondents, and a stipulation dated January 15, 1940, entered into between certain of the respondents herein by their attorneys and W. T. Kelley, Chief Counsel for the Commission, which stipulation has been approved by the Commission, and which provides, among other things, that without other evidence and without 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 certain of said respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, The Steel Office Furniture Institute, Remington Rand, Inc., Browne-Morse Co., The General Fireproofing Co., Art Metal Construction Co., Bentson Manufacturing Co., Corry-Jamestown Manufacturing Corporation, The Globe-Wernicke Co., Invincible Metal Furniture Co., Metal Office Furniture Co., The Shaw-Walker Co., Victor Safe & Equipment Co., Inc., and Yawman and Erbe Manufacturing Co., their officers, representatives, agents, and employees, directly or through any corporate or other device, or through the respondent The Steel Office Furniture Institute, in connection with the offering for sale, sale, and distribution of steel vertical filing cabinets; steel horizontal sections and half-sections, and bookcases; steel hi-line and bookshelf units; steel card index cases; steel transfer cases; steel desks and tables; steel storage cabinets and wardrobes in interstate commerce or in the District of Columbia, do forthwith cease and desist from doing any of the following acts and things:

1. Agreeing, combining or conspiring among themselves to fix and maintain identical delivered prices, uniform discounts and terms and conditions of sale;

2. Agreeing among themselves to induce and, pursuant to such agreement, inducing their dealers and customers, or the dealers and customers of any of them to join or form local associations having for their objective the maintenance of resale prices.

3. Agreeing among themselves to require and, pursuant to such agreement, requiring their dealers and customers purchasing for resale to maintain resale prices fixed by the manufacturing company respondents.

4. Agreeing among themselves to abide by and not to deviate from prices, discounts, terms, and conditions of sale filed by respondent manufacturing companies with respondent Institute, and pursuant to such agreement, abiding by and not deviating from such prices, discounts, and terms of sale.

5. Filing prices with the respondent Institute for the purpose or having the effect of fixing and maintaining such prices arrived at by agreement among themselves.

6. Disseminating prices filed with the respondent Institute among said respondents for the purpose of fixing said prices by agreements among themselves.

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

*It is further ordered,* That this proceeding be and the same hereby is dismissed as to Columbia Steel Equipment Co. and Tidewater Office Equipment Dealers' Association and its former respondent members without prejudice to the right of the Commission should the facts so warrant to reopen the same and resume prosecution of the complaint in accordance with its regular procedure insofar as Columbia Steel Equipment Co. and Tidewater Office Equipment Dealers' Association and its former respondent members are concerned.

## IN THE MATTER OF

CHESTER L. THOMAS, TRADING AS THOMAS QUILT  
FACTORIES

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

*Docket 3375. Complaint, Apr. 9, 1938—Decision, Feb. 23, 1940*

Where an individual engaged in manufacture, sale, and distribution of quilts, bed pads, and similar products, to purchasers in various States and in the District of Columbia; in advertisements of his said quilts by mail, newspapers, advertising folders, pamphlets, circulars, letters and other literature published and circulated to purchasers and prospective purchasers throughout the United States, and through agents personally soliciting orders—

Represented that his Thomas Feather-Quilts usually retailed at \$37.50, and that quoted price of \$18.75 was introductory and special, limited as to time, and one-half of customary selling price therefor, and that quilts in question were of a value of \$37.50, specially offered as aforesaid, through such statements as "Save 50%. Introductory Half Price Offer \* \* \* During the next 5 days you and your friends may reserve the right to purchase two famous Thomas Feather-Quilts for the usual price of one! \* \* \*" and "'Factory irregular' Thomas Feather-Quilt only \$20.00 (or two for \$37.50) \* \* \* Identical in every way to the first quality \* \* \* originally retailed for \$37.50 \* \* \* YOU SAVE OVER \$17.50 PER QUILT \* \* \*, and "Hurry! Save one-half Regular Retail Price by mailing This Card AT ONCE. This special offer is Limited \* \* \* During the next few days only \* \* \* Our extremely low price will be discontinued after this sale! So don't wait. Beat the price rise," and others of similar tenor, facts being said price of \$18.75 was neither reduced, special nor introductory, nor limited as to time, but customary one at which said quilts were sold by him in usual and regular course of business at all times;

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 thereof, that number of consuming public purchased substantial volume of his said products and trade was diverted unfairly to him from competitors engaged in sale and distribution of said and similar goods:

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

Before *Mr. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

*Mr. Carrel F. Rhodes* for the Commission.

*Mr. J. Frederick Schneider*, of Denver, Colo., 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 Chester L. Thomas, individually, and trading as Thomas Quilt Factories, 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, Chester L. Thomas, is an individual operating and doing business under the trade name, Thomas Quilt Factories, with his principal office and place of business located at 1040 Acoma Street, Denver, Colo.

PAR. 2. Respondent, Chester L. Thomas, has been for more than 1 year last past, and is now, engaged in the business of manufacturing, advertising, selling, and distributing quilts under the name of Thomas Feather-Quilts. Said respondent now causes, and for more than 1 year last past has caused, his said products to be sold by agents and through various advertising mediums. He has caused the same, when sold, to be transported from his principal place of business in Denver, Colo., to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Colorado 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 quilts 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 his said business respondent is now, and has been, in competition with other individuals, partnerships, and corporations likewise engaged in the business of selling and distributing quilts and other similar products intended and used for the same purpose for which respondent's said quilts are used 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 business set out and described in paragraphs 1 and 2 hereof, respondent, for the purpose of inducing the purchase of the commodities offered for sale by him, has circulated to purchasers and prospective customers throughout the United States, by mail, newspaper advertisements, advertising folders, pamphlets, circulars, letters, and other literature, and through agents personally soliciting orders, false and misleading statements concern-

## Complaint

30 F. T. C.

ing the nature, value and quality of the various products sold by him. Among such statements and representations the following are typical examples:

Save 50%

Introductory Half Price Offer on "World's Warmest" Thomas Feather-Quilts!

During the next 5 days you and your friends may reserve the right to purchase two famous Thomas Feather-Quilts for the usual price of one! \* \* \*

You can now take advantage of "double economy!"

Save half the original cost \* \* \*

Recently designed by well known sleep specialists.

The beautiful Thomas Quilt treats you to an entirely new kind of rest.

$\frac{1 \text{ price} - 5 \text{ DAYS ONLY} - 1}{2 \text{ sale} - \text{Save One-Half} - 2}$

Save by Ordering During our Special Sale—Have Delivery Made Later if Desired \* \* \*

Thomas Feather-Quilts \* \* \*

"Factory Irregular" Thomas Feather-Quilt only \$20.00 (or two for \$37.50)  
\* \* \*

Identical in every way to the first quality Thomas Feather-Quilt originally retailed for \$37.50 \* \* \*

YOU SAVE OVER \$17.50 PER QUILT \* \* \*

A pictorial representation of two ladies, seated in conversation, together with the following statement:

Did you say two for one?

Limited Half price offer on genuine Thomas Feather-Quilts!

\* \* \* During the next 5 days you and other quality minded residents of this city may reserve the right to purchase two genuine Thomas Feather-Quilts for the price of one \* \* \*

THE FAMOUS AND ORIGINAL THOMAS FEATHER-QUILTS.

Hurry! Save One-Half Regular Retail Price by Mailing This Card AT ONCE. This special offer is Limited. The World's warmest, newest, most healthful sleeping companion—the Famous Thomas FETH-R-ET! During the next few days only, you may reserve the right to participate in a special half-price sale soon to be conducted in your community. Count yourself in on our unusual offer and secure further details by mailing this postage-free, "option" card

TODAY \* \* \*

Our extremely low price will be discontinued after this sale! So don't wait. Beat the price rise.

The aforesaid statements and representations, together with other similar statements and representations not herein set out in full, purport to be descriptive of respondent's various products and also serve as representations on the part of the respondent to members of the purchasing public that said Thomas Feather-Quilts were designed by specialists and are recommended by doctors and other specialists; that \$37.50 is the usual, regular and customary retail price for Thomas

Feather-Quilts; that the quoted price of \$18.75 is an introductory or other special price limited as to time and is one-half of the usual, regular, and customary selling price therefor; and that the so-called factory irregular quilts sold at \$20 or two for \$37.50 are identical in every way to the first-quality Thomas Feather-Quilts having a usual, regular, and customary selling price of \$37.50 each.

PAR. 4. In truth and in fact, the statements and representations hereinabove set out are deceptive, false, and misleading. Respondent's quilts are not designed and recommended by doctors or other specialists. Said quilts have never had the usual, regular, and customary retail sales price of \$37.50. The purported introductory or other special reduced price is not in fact a reduced introductory price or a specially reduced price for a limited period of time. The prices quoted as alleged introductory or other special prices and having an alleged limited period of time are in fact the usual, regular, and customary retail selling price of said quilts at all times, and respondent has regularly and customarily sold said quilts to all purchasers for a period of several years at such prices. The so-called factory irregulars sold at \$20 or two for \$37.50 are not identical in quality to the Thomas Feather-Quilts alleged to be ordinarily and customarily retailed for \$37.50 each.

PAR. 5. The use by the respondent of the aforesaid deceptive, misleading, and false representations has had, and now has, the capacity and tendency to mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true and that respondent's products have the qualities, values, and prices represented, and into the purchase of respondent's quilts in and on account of such erroneous and mistaken beliefs induced as aforesaid. As a result thereof, trade is diverted unfairly to respondent from competitors likewise engaged in selling quilts and other similar products intended and used for the same purposes in commerce among and between the various States of the United States who do not misrepresent the nature, value, quality, or prices of their respective products. 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. 6. 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 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 9th day of April 1938, issued its complaint and caused same to be served upon the respondent, Chester L. Thomas, individually, and trading as Thomas Quilt Factories, 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 and in opposition thereto, were introduced before 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, this 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 and brief 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, Chester L. Thomas, is an individual, operating under the trade name Thomas Quilt Factories, with his office and principal place of business in Denver, Colo. The respondent is engaged in the manufacture, sale, and distribution of quilts, bed pads, and similar products. Respondent causes said products, when sold, to be transported by express and otherwise from his place of business in Denver, Colo. to purchasers thereof, some located in the State of Colorado and others located in 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 in commerce by said respondent, in said products, between and among various States of the United States and in the District of Columbia. In the course and conduct of said business, the respondent is in competition with other individuals, firms, and corporations also engaged in the sale and distribution of quilts, bed pads, and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, and in the distribution of his products, as described in paragraph 1 hereof, respondent, for the purpose of inducing the purchase of the commodities

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## Findings

offered for sale by him, has published and circulated to purchasers and prospective customers throughout the United States by mail, newspaper advertisements, advertising folders, pamphlets, circulars, letters and other literature, and through agents personally soliciting orders the following and other similar statements and representations:

Save 50%

Introductory Half Price Offer on "World's Warmest" Thomas Feather-Quilts! During the next 5 days you and your friends may reserve the right to purchase TWO famous Thomas Feather-Quilts for the usual price of one! \* \* \*

You can now take advantage of "double economy." Save half the original cost \* \* \* Recently designed by well known sleep specialists. The beautiful Thomas Quilt treats you to an entirely new kind of rest.

½ price—5 DAYS ONLY—½

sale—Save One-Half

Save by Ordering During our Special Sale—Have Delivery Made Later if Desired \* \* \* Thomas Feather-Quilts \* \* \*

"Factory irregular" Thomas Feather-Quilt only \$20.00 (or two for \$37.50) \* \* \* Identical in every way to the first quality Thomas Feather-Quilt originally retailed for \$37.50 \* \* \*

YOU SAVE OVER \$17.50 PER QUILT \* \* \*

A pictorial representation of two ladies seated in conversation, together with the following statement:

Did you say two or one?

Limited Half price offer on genuine Thomas Feather-Quilts! \* \* \* During the next 5 days you and other quality minded residents of this city may reserve the right to purchase two genuine Thomas Feather-Quilts for the price of one \* \* \* THE FAMOUS AND ORIGINAL THOMAS FEATHER-QUILTS.

Hurry! Save one-half Regular Retail Price by mailing This Card At ONCE. This special offer is Limited. The World's warmest, newest, most healthful sleeping companion—the Famous Thomas FETH-B-ET! During the next few days only, you may reserve the right to participate in a special half-price sale soon to be conducted in your community. Count yourself in on our unusual offer and secure further details by mailing this postage-free, 'option' card TODAY \* \* \* Our extremely low price will be discontinued after this sale! So don't wait. Beat the price rise.

PAR. 3. The statements and representations to the effect that the Thomas Feather-Quilts usually, regularly and customarily retail for \$37.50 and that the quoted price of \$18.75 is an introductory or other special price, limited as to time, and is one-half of the usual, regular, and customary selling price therefor, combined with inferences drawn therefrom, serve as representations that the quilts are of a value of \$37.50 and that \$18.75 is an introductory or special price limited as to time and is one-half the usual, regular, and customary price of said products.

PAR. 4. Respondent does not sell his said quilts for \$37.50 but the price of said quilts is only \$18.75. Said price of \$18.75 is not a reduced price or a special or introductory price and is not limited as to time but is the customary price at which such quilts are sold by respondent in the usual and regular course of business at all times.

PAR. 5. Each and all of the foregoing false and misleading statements and representations made by the respondent in describing the said products as hereinbefore set out in paragraphs 2 and 3 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 the result of this erroneous belief, a number of the consuming public have purchased a substantial volume of respondent's said products with the result that trade has been diverted unfairly to respondent from competitors engaged in the business of selling and distributing quilts, and similar products.

#### CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice of the public, and of competitors of respondent, 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, answer of the respondent, testimony and other evidence taken before 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 Carrel F. Rhodes, counsel for the Commission, and by J. Frederick Schneider, counsel for the respondent, 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, Chester L. Thomas, trading as Thomas Quilt Factories, or trading 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 quilts or other bed covering 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 of quilts or other bed covering prices and values which are in excess of the prices at which such products are regularly and customarily sold by respondent in the normal and usual course of business.

2. Representing that the prices at which respondent offers for sale and sells his products constitute a discount to the purchaser, or that such prices are special or reduced, or introductory prices, or that such prices are applicable for a limited time only, when in fact such prices are the usual and customary prices at which respondent sells such products in the normal and usual course of business.

*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  
J. W. COOPER AND JAMES J. COOPER, TRADING AS  
"CURL-O-WAVE COMPANY"

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

*Docket 3524. Complaint, Aug. 4, 1938—Decision, Feb. 23, 1940*

Where two individuals engage in manufacture, sale, and distribution of hair curling preparation under designation "Curl-O-Wave," to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of such preparations in commerce as aforesaid, and including many who distribute and sell such hair curling fluids and do not in any way misrepresent quality and character of their products or effectiveness thereof; in advertising circulars and folders, and in advertisements in magazines and newspapers circulated generally throughout the United States—

Represented that their said product was odorless and beneficial to hair, and that use thereof made straightest hair naturally curly, and would transform obstinate hair into dainty curls and improve hair texture, and constituted a new discovery, and was not an ordinary curling fluid, facts being it was such ordinary curling fluid, and various representations otherwise made by them were grossly exaggerated, misleading and untrue, and it would not accomplish results and did not have qualities claimed therefor;

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 thereof, that number of consuming public purchased substantial volume of their preparation and trade was diverted unfairly to them from competitors also engaged in distribution and sale of such preparations in commerce, and who truthfully advertise their products and 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.

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

*Mr. John R. Phillips, Jr.* and *Mr. DeWitt T. Puckett* for the Commission.

*Mr. James J. Cooper*, pro se.

COMPLAINT<sup>1</sup>

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. W. Cooper, an

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<sup>1</sup> Commission on February 23, 1940, amended complaint to include as additional party respondent, James W. Cooper.

individual, trading as "Curl-O-Wave Company," 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, J. W. Cooper, is an individual trading as "Curl-O-Wave Company," with his office and principal place of business located at 201 North Wells Street, in the city of Chicago, State of Illinois. Said respondent is engaged in the manufacture, sale and distribution of a hair-curling preparation designated "Curl-O-Wave."

Respondent causes its product, when sold, to be transported from his place of business in Chicago, in the State of Illinois, to the purchasers thereof located in the States of the United States other than the State of Illinois and in the District of Columbia.

Respondent now maintains, and for more than 6 years last past has maintained, a course of trade in the aforesaid hair curling preparation so distributed and sold by him 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 said business, the respondent is now, and has been for more than 6 years last past, in competition with other individuals and with corporations, firms, and partnerships engaged in the business of selling and distributing hair-curling preparations 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, and for the purpose of inducing the purchase of said preparation, respondent has made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers circulated generally throughout the United States, many representations concerning the character and nature of said preparation, and concerning the results obtained from its use. Among said representations made by respondent are the following:

Curls—the straightest hair can be made naturally curly with Curl-O-Wave.

Free booklet and sample. Send 10¢ to cover mailing.

A few pleasant moments with the new Curl-O-Wave transforms the most obstinate straight hair into soft dainty curls.

Curl-O-Wave is greaseless, odorless and absolutely safe—its beneficial ingredients are actually good for the hair.

A new simple method of waving with Curl-O-Wave transforms lifeless scraggly hair into beautiful soft curls.

Curl-O-Wave is absolutely harmless and is actually good for the hair, keeps it soft and manageable—You'll be amazed at the Magic of Curl-O-Wave.

## Complaint

30 F. T. C.

Curl-O-Wave makes the most obstinate straight hair wave into alluring curls which will last from one to three weeks.

It is now within one's power to acquire brilliant natural waves. Curl-O-Wave will give a soft, fluffy, billowy texture no matter how obstinate and straight the hair may be.

Curl-O-Wave is not an ordinary curling fluid.

Curl-O-Wave Company made a discovery which makes natural curls a possibility for everyone.

It is only by keeping the hair waved that it will gradually become naturally curly.

All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's product and of its effectiveness in use. In all of its advertising literature, 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 preparation will make the straightest hair naturally curly; that it transforms obstinate straight hair into dainty curls; that it is greaseless, odorless, beneficial, and harmless; that it is not an ordinary curling fluid, but a new discovery; that it will improve the texture of the hair; and that the cost of mailing respondent's booklet and sample is 10 cents.

PAR. 4. The representations made by respondent with respect to the nature and effect of his preparation when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact "Curl-O-Wave" is not greaseless or odorless. It is not beneficial to the hair or harmless. It will not make the straightest hair naturally curly, and it will not transform obstinate hair into dainty curls. It is not a new discovery, but it is an ordinary curling fluid and will not improve the texture of the hair. The cost of mailing respondent's booklet and sample is less than 10 cents.

The true fact is that the frequent application of respondent's preparation may be dangerous and injurious, rather than harmless and beneficial, for the reason that it contains ingredients and intermediate products of such ingredients which, under some conditions, are poisonous.

PAR. 5. There are among respondent's competitors many who distribute and sell cosmetics who do not in any way misrepresent the quality or character of their respective products of their effectiveness when used.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in advertising his hair-curling preparation and its effectiveness when used, as hereinabove set out, were, and are calculated to, and 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 said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparation, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of distributing and selling hair-curling preparations, and who truthfully advertise their respective products and the effectiveness thereof when used. 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 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 August 4, 1938, issued and subsequently served its complaint in this proceeding upon respondent, J. W. Cooper, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter, respondent, J. W. Cooper, filed his answer and subsequently, as a result of a stipulation entered into upon the record, James J. Cooper was made a party respondent and adopted the answer of J. W. Cooper as his answer. Subsequently the Commission, by order, approved such action. Testimony and other evidence in support of the allegations of the complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by James J. Cooper, pro se, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence and brief in support of the allegations of the complaint, and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, J. W. Cooper, and James J. Cooper, are individuals trading as "Curl-O-Wave Company," with their office and principal place of business located at 201 North Wells Street, in the city of Chicago, in the State of Illinois. Said respondents are engaged in the manufacture, sale and distribution of a hair-curling preparation designated "Curl-O-Wave." Respondents cause said product, when sold, to be transported from their place of business in Chicago, Ill., to purchasers thereof located in the various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents now maintain, and for more than 6 years last past have maintained, a course of trade in the aforementioned hair-curling preparation, so distributed and sold by them 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 respondents are now, and have been at all times mentioned herein, in competition with other individuals and with corporations and partnerships engaged in the business of selling and distributing hair-curling 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 said business, and for the purpose of inducing the purchase of said hair-curling preparation designated "Curl-O-Wave," respondents have made, by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers, circulated generally throughout the United States, many representations concerning the character and nature of said preparation and concerning the results obtained from its use. Among said representations made by respondents are the following:

Curls—the straightest hair can be made naturally curly with Curl-O-Wave. Free booklet and sample. Send 10¢ to cover mailing.

A few pleasant moments with the new Curl-O-Wave transforms the most obstinate straight hair into soft dainty curls.

Curl-O-Wave is greaseless, odorless and absolutely safe—its beneficial ingredients are actually good for the hair.

A new simple method of waving with Curl-O-Wave transforms lifeless scraggly hair into beautiful soft curls.

Curl-O-Wave is absolutely harmless and is actually good for the hair, keeps it soft and manageable—You'll be amazed at the Magic of Curl-O-Wave.

Curl-O-Wave makes the most obstinate straight hair wave into alluring curls which will last from one to three weeks.

It is now within one's power to acquire brilliant natural waves. Curl-O-Wave will give a soft, fluffy, billowy texture no matter how obstinate and straight the hair may be.

## Findings

Curl-O-Wave is not an ordinary curling fluid.

Curl-O-Wave Company made a discovery which makes natural curls a possibility for everyone.

It is only by keeping the hair waved that it will gradually become naturally curly.

PAR. 3. All of said statements, together with similar statements appearing in respondents' advertising literature, purport to be descriptive of respondents' product, and of its effectiveness in use. In all of respondent's advertising literature and through other means, the respondents represent that said preparation (Curl-O-Wave) will make the straightest hair naturally curly; that said preparation transforms obstinate, straight hair into dainty curls; that it is greaseless, odorless, beneficial and harmless; that Curl-O-Wave is not an ordinary curling fluid, but is a new discovery; and that it will improve the texture of the hair.

The representations made by respondents with respect to the nature and effect of their preparation, when used, are grossly exaggerated, misleading, and untrue. In truth and in fact "Curl-O-Wave" is not odorless and it is not beneficial to the hair. It will not make the straightest hair naturally curly, and it will not transform obstinate hair into dainty curls. It is not a new discovery, but it is an ordinary curling fluid. The use of said product will not improve the texture of the hair.

PAR. 4. There are among respondents' competitors many who distribute and sell hair-curling fluids who do not in any way misrepresent the quality and character of their respective products or their effectiveness when used.

PAR. 5. The Commission finds that the aforesaid false and misleading statements and representations made by the respondents in advertising their hair curling preparation and its effectiveness when used, are calculated to, and 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 said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondents' preparation, with the result that trade has been diverted unfairly to respondents from their competitors who are also engaged in the business of distributing and selling hair curling preparations in commerce among and between the various States of the United States and in the District of Columbia, and who truthfully advertise their respective products and the effectiveness thereof when used.

Order

30 F. T. C.

## 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 the respondents, J. W. Cooper and James J. Cooper, and upon the testimony and other evidence taken before W. W. Sheppard, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and upon brief filed herein by John R. Phillips, Jr., counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, J. W. Cooper and James J. Cooper, individually and trading as Curl-O-Wave Company or trading under any other name or names, their agents, servants, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a hair-curling preparation now designated as "Curl-O-Wave," or of any hair-curling preparation possessing similar properties whether sold under the same 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 respondents' preparation is odorless or that such preparation is beneficial to the hair;

2. Representing that the use of respondents' preparation will make the straightest hair naturally curly, or that such preparation will transform obstinate hair into dainty curls, or that such preparation is a new discovery or is anything other than an ordinary hair-curling fluid, or that the use of such preparation will improve the texture of the hair.

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

Syllabus

IN THE MATTER OF

BUFORD & OWENS COLLEGE, AND GUSSIE BUFORD,  
MARY OWENS BOONE WELLINGHAM AND GEORGE  
BUFORD

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

*Docket 3790. Complaint, May 12, 1939—Decision, Feb. 23, 1940*

Where a corporation and three individuals, who were general officers thereof and formulated, controlled, and directed its policies, acts and practices, engaged in sale and distribution, under their trade or corporate name, of hair oil, pressing oil, and shampoo, and acting together in cooperation with each other in acts and things below set forth; in advertisements which they disseminated by the mails, by newspaper of general circulation, and by circulars distributed in commerce among the various States, and by other means in commerce, and which were intended and likely to induce purchase of their said products—

- (a) Represented that said hair preparations were cure or remedy for dandruff, falling hair and scalp diseases, and would promote growth of hair, through such statements as, "As a Dandruff Remover it cannot be beaten," "As a Hair Grower it cannot be excelled and has no equal," "It stops the hair from falling out, cures many cases of scalp diseases, and causes stubborn hair to grow," and others of similar tenor, facts being said products were of no value in promoting growth of hair or preventing same from falling out, and said representations and claims were otherwise also grossly exaggerated, misleading and untrue; and

Where said corporation and individuals, engaged as aforesaid—

- (b) Made use of word "College" in corporate name employed by them, and thereby represented that they were conducting an institution of higher learning, facts being said corporation was not college, as commonly understood by public, and institution of higher learning empowered to confer degrees, with faculty of learned instructors in various branches of learning, and including liberal arts and sciences;

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 of causing portion of said public, because of such belief, to purchase 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 newspapers and other publications of general circulation throughout various

*Mr. Karl Stecher* for the Commission.

*Jarman, Brown, Looney & Watts*, of Oklahoma City, Okla., for respondents.

Complaint

30 F. T. C.

## 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 Buford & Owens College, a corporation, and Gussie Buford, Mary Owens Boone Wellingham, and George Buford, as individuals and officers of Buford & Owens College, 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. Buford & Owens College is a corporation, organized and existing under the laws of the State of Oklahoma, with its office and principal place of business at 812 North East Third Street in Oklahoma City, Okla. Gussie Buford, Mary Owens Boone Wellingham, and George Buford are, respectively, president, vice-president, and secretary of said corporate respondent, and have their office at the same address as said Buford & Owens College.

Respondents, Gussie Buford, Mary Owens Boone Wellingham, and George Buford, as individuals and as officers of said corporate respondent, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of certain hair and scalp preparations known as Buford & Owens preparations and more specifically described as Buford & Owens Hair Oil, Buford & Owens Pressing Oil, Buford & Owens Special Oil, and Buford & Owens Shampoo. In the course and conduct of their business the respondents cause said preparations when sold to be transported from their place of business in the State of Oklahoma to 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 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 said preparations by United States mails, by insertion in a newspaper having a general circulation, and also in circulars, 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 preparations; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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:

Buford & Owens College, makers of wonderful B. & O. Hair Oil—Shampoo.

We wish to call your attention to the wonderful uses and results obtained by using our wonderful B. & O. Hair Oil.

As a Dandruff Remover it cannot be beaten.

As a Hair Grower it cannot be excelled and has no equal.

It stops the hair from falling out, cures many cases of scalp diseases, and causes stubborn hair to grow.

We grow your hair.

We recommend and guarantee it to grow any person's hair under any climate.

Don't forget to use B. & O. Hair Oil and obtain these results.

We recommend this special treatment for customers who cannot attend our College.

The B. & O. Preparations have stood the test as a hair grower, dandruff remover.

By the use of B. & O. Shampoo you get a genuine treatment for dandruff. Promote the growth of the hair and aids in preventing it from falling out.

PAR. 4. 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 respondents' preparations, respondents have represented and do now represent directly and indirectly that their preparations are a cure or remedy for dandruff, falling hair, scalp diseases, and that said preparations will promote the growth of hair.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading, and untrue. In truth and in fact respondents' preparations are not a cure or remedy for dandruff, falling hair or scalp diseases and do not constitute a competent treatment therefor. Respondents' preparations are of no value in promoting the growth of hair or preventing hair from falling out.

PAR. 6. In addition to the false and misleading statements hereinabove set forth the respondents represent that they are conducting an

institution of higher learning by use of the word "college" in the corporate name.

In truth and in fact said corporate respondent is not a college as commonly understood by the public and is not an institution of higher learning empowered to confer degrees, with a faculty of learned instructors in the various branches of learning, including the liberal arts and sciences.

PAR. 7. The use by the respondents 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 causes a portion of the purchasing public because of said erroneous and mistaken belief to purchase respondents' said preparations.

PAR. 8. 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 May 12, 1939, issued, and on May 15, 1939, served, its complaint in this proceeding upon respondents Buford & Owens College, a corporation, and Gussie Buford, Mary Owens Boone Wellingham and George Buford, individually, and as officers of Buford & Owens College, 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. Buford & Owens College is a corporation, organized and existing under the laws of the State of Oklahoma, with its office and principal place of business at 812 North East Third Street in Oklahoma City, Okla. Gussie Buford, Mary Owens Boone Wellingham, and George Buford are, respectively, president, vice-president, and secretary of said corporate respondent, and have their office at the same address as said Buford & Owens College.

Respondents, Gussie Buford, Mary Owens Boone Wellingham, and George Buford, as individuals and as officers of said corporate respondent, formulate, control, and direct the policies, acts, and practices thereof. Respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged.

PAR. 2. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of certain hair and scalp preparations known as Buford & Owens preparations and more specifically described as Buford & Owens Hair Oil, Buford & Owens Pressing Oil, Buford & Owens Special Oil and Buford & Owens Shampoo. In the course and conduct of their business the respondents cause said preparations when sold to be transported from their place of business in the State of Oklahoma to 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 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 said preparations by United States mails, by insertion in a newspaper having a general circulation, and also in circulars, 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 preparations; and have disseminated, and are now disseminating, and have caused, and are now causing, the dissemination of false advertisements concerning their said preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their 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:

**Buford & Owens College, makers of wonderful B. & O. Hair Oil—Shampoo.**

We wish to call your attention to the wonderful uses and results obtained by using our wonderful B. & O. Hair Oil.

As a Dandruff Remover it cannot be beaten.

As a Hair Grower it cannot be excelled and has no equal.

It stops the hair from falling out, cures many cases of scalp diseases, and causes stubborn hair to grow.

We grow your hair.

We recommend and guarantee it to grow any person's hair under any climate.

Don't forget to use B. & O. Hair Oil and obtain these results.

We recommend this special treatment for customers who cannot attend our College.

The B. & O. Preparations have stood the test as a hair grower, dandruff remover.

By the use of B. & O. Shampoo you get a genuine treatment for dandruff. Promote the growth of the hair and aids in preventing it from falling out.

PAR. 4. 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 respondents' preparations, respondents have represented and do now represent, directly and indirectly, that their preparations are a cure or remedy for dandruff, falling hair, scalp diseases, and that said preparations will promote the growth of hair.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondents as hereinabove described are grossly exaggerated, misleading and untrue. In truth and in fact respondents' preparations are not a cure or remedy for dandruff, falling hair or scalp diseases and do not constitute a competent treatment therefor. Respondents preparations are of no value in promoting the growth of hair or preventing hair from falling out.

PAR. 6. In addition to the false and misleading statements hereinabove set forth the respondents represent that they are conducting an institution of higher learning by use of the word "college" in the corporate name.

In truth and in fact said corporate respondent is not a college as commonly understood by the public and is not an institution of higher learning empowered to confer degrees, with a faculty of learned instructors in the various branches of learning, including the liberal arts and sciences.

PAR. 7. The use by the respondents 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

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substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and causes a portion of the purchasing public because of said erroneous and mistaken belief to purchase respondents' said preparations.

## CONCLUSION

The aforesaid acts and practices of 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 substitute 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 respondents Buford & Owens College, a corporation, and its officers and Gussie Buford, Mary Owens Boone Wellingham, and George Buford, individually, and as officers of Buford & Owens College, and respondents' representatives, agents, and employers, 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 respondents' cosmetic preparations now designated by the names of "Buford & Owens Hair Oil," "Buford & Owens Pressing Oil," "Buford & Owens Special Oil," and "Buford & Owens Shampoo," 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 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 cosmetic preparations which said advertisements represent, directly or through implication:

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That said cosmetic preparations, or any of them, are a cure or remedy for dandruff, falling hair or diseases of the scalp, or that said preparations, or any of them, will promote the growth of hair, or will prevent hair from falling out.

*It is further ordered,* That the respondents, Buford & Owens College, a corporation, and its officers, and Gussie Buford, Mary Owens Boone Wellingham, and George Buford, individually, and as officers of Buford & Owens College, and 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 cosmetic preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "College" as part of the corporate name of the corporate respondent, or in any way representing that the respondents conduct an institution of higher learning.

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

## Syllabus

## IN THE MATTER OF

## W. T. WAGNER'S 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 3932. Complaint, Oct. 19, 1939—Decision, Feb. 23, 1940*

Where a corporation engaged in manufacture of soda water and other soft drinks and in sale and distribution thereof to purchasers in various other states, in offer and advertisement of its "Wagner English Club Soda" in newspapers and other publications of general circulation throughout various States—

Represented directly or by implication that its product aforesaid was imported from England or made of ingredients imported therefrom and that only soda water there made had properties possessed by said product, through use of word "English" in designation thereof and through such depictions as head of one of British Buckingham guards, large bottle labeled "Wagner English Club Soda," Westminster Clock or Big Ben, and head of London policeman in characteristic helmet, together with such accompanying statements as "British as the Buckingham Guards" and "\* \* \* like the sodas served in regimental clubs," "\* \* \* distinctively British in the added leisure it gives to drinking \* \* \*," "Pour Wagner's in your glass and discover what every Englishman knows: It's the soda that makes or mars the drink," "Wagner English Club Soda guards the liveliness of your drink \* \* \* just as Big Ben, brooding over the House of Parliament, guards the hours for wayfaring Londoners," "\* \* \* has the true British quality of holding life and flavor in a drink," and featured in advertisements aforesaid "Wagner The *English* Club Soda";

Notwithstanding fact neither product in question nor ingredients thereof were made in and imported from England, such as preferred by substantial number of members of purchasing public in the United States, but product aforesaid was made in United States from domestic ingredients and did not have any properties possessed by soda water made in England not possessed by other such water made in United States from domestic ingredients;

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, by reason thereof, into purchase of substantial quantities of its said product;

*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. Karl Stecher* for the Commission.

*Bettinger, Schmitt & Kreis*, of Cincinnati, Ohio, for respondent.

Complaint

30 F. T. C.

## 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 W. T. Wagner's Sons Co., a corporation, hereinafter referred to as the respondent, has violated and is now violating 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, W. T. Wagner's Sons Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and having its office and principal place of business located at 1920-26 Race Street in the city of Cincinnati, State of Ohio, and a branch office and place of business in the city of Dayton, State of Ohio. Respondent is now, and has been for several years last past, engaged in the business of manufacturing soda water and other soft drinks and in the sale and distribution thereof in commerce between and among various States of the United States. Respondent causes said products when sold to be transported from its aforesaid places of business to the purchasers thereof at their respective points of location in various States of the United States other than the State of Ohio. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said soda water and other soft drinks in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of one of two cargoes, respondent has caused said product to be branded "Wagner English Club Soda" and has caused various statements and representations, including pictorial representations relative to said product, to be inserted in advertisements in newspapers and other publications having a general circulation throughout various States of the United States. Among and typical of said statements and representations relative to said product "Wagner English Club Soda" are the following:

A large picture showing the head of one of the British Buckingham guards and also a large bottle labeled "Wagner English Club Soda." On said picture is the following printing: "BRITISH AS THE BUCKINGHAM GUARDS." Beneath said picture is the following:

\* \* \* And as crisp as a guardsman's salute! Chill-charging gives this fine mixer its greater liveliness \* \* \* Its linger-longer bubbles \* \* \* makes it like the sodas served in regimental clubs. Wagner English Club Soda is distinctively British in the added leisure it gives to drinking \* \* \* just as

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British in the way it points up the liquor flavor. Made for zestful drinking \* \* \* as tangy on the tongue as a barrack-room yarn that takes time in the telling \* \* \* Wagner's makes any drink taste better. Pour Wagner's in your glass and discover what every Englishman knows: It's the soda that makes or mars the drink.

A large picture showing the "Westminster Clock" in the Parliament Clock Tower, London, with the following shown in large letters to the side of the tower and above other spires of the Parliament House: "BRITISH as Big Ben." Beneath the letter "B" in BRITISH is the head of a London policeman wearing the characteristic helmet. Beneath the picture is the following:

Wagner ENGLISH Club Soda guards the liveliness of your drink \* \* \* just as Big Ben, brooding over the House of Parliament, guards the hours for way-faring Londoners. There's time for leisurely appreciation when you mix with Wagner's, for it has the true British quality of holding life and flavor in a drink \* \* \* right 'til the last drop's gone. It's the same long life you would get in the fine sodas served in Mayfair drawing-rooms \* \* \* the same crisp, zestful tang that points up the bouquet of any liquor. Pour Wagner's in your glass and enjoy your drink \* \* \* with its British accent on good taste.

In this advertisement there also appears a large bottle labeled "Wagner English Club Soda."

In large conspicuous letters on each of the above advertisements appear the words "WAGNER THE ENGLISH CLUB SODA."

The above quotations and advertisements are not exclusive, but are merely illustrative of the type and character of the representations used by respondent in advertising its product "Wagner English Club Soda."

PAR. 3. Through the use of the aforesaid statements and representations by respondent and others of similar import or meaning not herein set out, including the use of the word "English" in the designation of said product, the respondent represents directly or by implication that said "Wagner English Club Soda" is imported from England, or that it is made of ingredients imported from England, and that only soda waters made in England have the properties possessed by "Wagner English Club Soda."

PAR. 4. The aforesaid statements and representations by respondent are false and misleading. Respondent's "Wagner English Club Soda" is not manufactured in England and imported into the United States. The ingredients of said soda water are not imported from England. Said soda water is made in the United States from domestic ingredients. Said soda water does not have any properties possessed by soda waters made in England which are not possessed by other soda waters made in the United States from domestic ingredients.

PAR. 5. There is a substantial number of members of the purchasing public in the United States who have a preference for soda waters made in England or made from ingredients imported from England.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations had and has the tendency and capacity to, and did 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 "Wagner English Club Soda" 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 October 19, 1939, issued and on October 20, 1939, served its complaint in this proceeding upon the respondent, W. T. Wagner's Sons 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 26, 1939, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint, and stated that prior to the issuance of said complaint it had discontinued the statements, representations, and advertisements set forth in said complaint and that it would not in the future make such statements or representations. Thereafter, the respondent having waived all intervening procedure and further hearing as to said facts, this 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 now being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, W. T. Wagner's Sons Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, and having its office and principal place of business located at 1920-26 Race Street in the city of Cincinnati, State of Ohio, and a branch office and place of business in the city of Dayton,

State of Ohio. Respondent is now, and has been for several years last past, engaged in the business of manufacturing soda water and other soft drinks and in the sale and distribution thereof in commerce between and among various States of the United States. Respondent causes said products, when sold, to be transported from its aforesaid places of business to the purchasers thereof at their respective points of location in various States of the United States other than the State of Ohio. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in soda water and other soft drinks in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of one of its products, respondent caused said product to be branded "Wagner English Club Soda" and caused various statements and representations, including pictorial representations relative to said product, to be inserted in advertisements in newspapers and other publications having a general circulation throughout various States of the United States. Among and typical of said statements and representations relative to said product, "Wagner English Club Soda" are the following:

A large picture showing the head of one of the British Buckingham guards and also a large bottle labeled "Wagner English Club Soda". On said picture is the following printing: "BRITISH AS THE BUCKINGHAM GUARDS." Beneath said picture is the following:

\* \* \* And as crisp as a guardsman's salute! Chill-charging gives this fine mixer its greater liveliness \* \* \* its linger-longer bubbles \* \* \* makes it like the sodas served in regimental clubs. Wagner English Club Soda is distinctively British in the added leisure it gives to drinking \* \* \* just as British in the way it points up the liquor flavor. Made for zestful drinking \* \* \* as tangy on the tongue as a barrack-room yarn that takes time in the telling \* \* \* Wagner's makes any drink taste better. Pour Wagner's in your glass and discover what every Englishman knows: It's the soda that makes or mars the drink.

A large picture showing the "Westminister Clock" in the Parliament Clock Tower, London, with the following shown in large letters to the side of the tower and above other spires of the Parliament House: "BRITISH as Big Ben." Beneath the letter "B" in BRITISH the head of a London policeman wearing the characteristic helmet. Beneath the picture is the following:

Wagner ENGLISH Club Soda guards the liveliness of your drink \* \* \* just as Big Ben, brooding over the House of Parliament, guards the hours for way-faring Londoners. There's time for leisurely appreciation when you mix with Wagner's, for it has the true British quality of holding life and flavor in a drink \* \* \* right 'til the last drop's gone. It's the same long life you would

get in the fine sodas served in Mayfair drawing-rooms \* \* \* the same crisp, zestful tank that points up the bouquet of any liquor. Pour Wagner's in your glass and enjoy your drink \* \* \* with its British accent on good taste.

In this advertisement there also appears a large bottle labeled "Wagner English Club Soda."

In large conspicuous letters on each of the above advertisements appear the words "WAGNER THE ENGLISH CLUB SODA."

The above quotations and advertisements are not exclusive, but are merely illustrative of the type and character of the representations used by respondent in advertising its product "Wagner English Club Soda".

PAR. 3. Through the use of the aforesaid statements and representations by respondent and others of similar import or meaning not herein set out, including the use of the word "English" in the designation of said product, the respondent represented directly or by implication that said "Wagner English Club Soda" was imported from England, or that it was made of ingredients imported from England, and that only soda waters made in England had the properties possessed by "Wagner English Club Soda."

PAR. 4. The aforesaid statements and representations by respondent were false and misleading. Respondent's "Wagner English Club Soda" was not and is not manufactured in England and imported into the United States. The ingredients of said soda water were not and are not imported from England. Said soda water was made and is made in the United States from domestic ingredients. Said soda water did not and does not have any properties possessed by soda waters made in England which were not and are not possessed by other soda waters made in the United States from domestic ingredients.

PAR. 5. There is a substantial number of members of the purchasing public in the United States who have a preference for soda waters made in England or made from ingredients imported from England.

PAR. 6. The use by respondent of the aforesaid false and misleading statements and representations had the tendency and capacity to, 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 were true and into the purchase of substantial quantities of respondent's said "Wagner English Club Soda" because of said erroneous and mistaken belief.

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## 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 the respondent, having 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 respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, W. T. Wagner's Sons 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 soda water in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. The use of the word "English" to designate or describe its soda water.

2. Representing, directly or by implication, that its soda water is imported from England, or that such soda water is made of ingredients imported from England.

3. Representing, directly or by implication, that only soda waters made in England have the properties possessed by its soda water.

*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

## I. SEKINE 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 3624. Complaint, Oct. 7, 1938—Decision, Feb. 24, 1940*

Where a corporation engaged in manufacturing or assembling and preparing for trade toothbrushes through boring and inserting in imported handles, imported bristles, and in selling and distributing its said toothbrushes to customers in other States and in District of Columbia, in active and substantial competition with others engaged in sale and distribution of toothbrushes and hand brushes in commerce as aforesaid—

Obliterated words or legends "Japan" or "Made in Japan." set forth on bristle head of such handles in harmony with practice and requirement in protection of consuming public of marking imported articles conspicuously and as legibly, indelibly and permanently as nature thereof will permit so as to indicate to ultimate purchaser name of country of origin, by bristles' insertion in holes bored in handles aforesaid at precise location of such marks of origin, and stamped elsewhere in conspicuous place on handle of finally assembled commodity in bold gold lettering words "This Brush Is Made in U. S. A."; notwithstanding fact toothbrushes in question were not wholly there made but facts were as above set out and representations thus made by it with respect to character, origin and nature of manufacture of its said products were false, misleading and untrue;

With effect of misleading and deceiving purchasers or prospective purchasers of said toothbrushes through use of aforesaid sales methods whereby identification mark was obliterated or concealed in final fabrication of finished article and words aforesaid were placed thereon, into erroneous belief that said products had been made wholly from materials produced in United States, and as products there made were such as were decidedly preferred and purchased by substantial portion of purchasing public as American-made and superior to similar articles made in foreign countries, and with result that trade was thereby diverted to it from others likewise engaged in manufacture, distribution and sale of toothbrushes and who truthfully represent their products, including character and origin thereof; to 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.

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

*Mr. John R. Phillips, Jr.*, for the Commission.

*Mr. James W. Bevans*, of New York City, for respondent.

## Complaint

## 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 I. Sekine Co., 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. I. Sekine Co., Inc., is a corporation created and existing under the laws of the State of New York with its principal offices and place of business located at 232 Madison Avenue in the city of New York, State of New York, and with its factory located at 2400-2442 Stoddard Place in the city of Baltimore, State of Maryland.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing tooth brushes and hand brushes.

Respondent causes said tooth brushes and hand brushes, when sold, to be transported from its place of business in the State of New York and from its factory in the State of Maryland to its customers located in States of the United States other than the State of New York and Maryland and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said tooth brushes and handbrushes 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 actual and substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of tooth brushes and hand brushes 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 tooth brushes, respondent has caused to be marked or stamped, in plain and legible gold letters, on the handles thereof, the words or legend "This Brush is Made in U. S. A." The handles of said tooth brushes were, and have been, imported from Japan and have had, and still have, the word "Japan" stamped or marked upon them in such a place and manner that the subsequent insertion of bristles into the handles thereof, by the respon-

dent, thus completing the manufacture of the toothbrushes, effectively obscures and obliterates from the vision of purchasers of such tooth brushes the word "Japan." This obscuration and obliteration has been made and is done to a degree by which the word "Japan" is discernible and discoverable only through the use of a magnifying glass or through the removal of the bristles.

PAR. 5. The representations made by respondent with respect to the character, origin, nature, and manufacture of its tooth brushes, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the tooth brushes of respondent are not in whole "Made in U. S. A.," the handles thereof having been made and manufactured in Japan.

A substantial number of purchasers and users of tooth brushes have an active preference for merchandise of this nature manufactured wholly in the United States.

PAR. 6. There are, among respondent's competitors, many who manufacture, distribute, and sell tooth brushes, who do not in any way misrepresent the character, origin, and manufacture of their respective tooth brushes.

PAR. 7. Each and all of the false and misleading statements and representations made by respondent in designating its tooth brushes to be "Made in U. S. A.," as hereinabove set out, 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 erroneous belief that all of said representations are true and that said tooth brushes are "Made in U. S. A." and of and from materials wholly having their origin and manufacture in the United States of America, and into the purchase of a substantial volume of respondent's tooth brushes on account of said belief so induced, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of manufacturing, distributing, and selling tooth brushes who truthfully represent the origin and manufacture of said products. 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. 8. 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 the 7th day of October 1938, issued and thereafter served its complaint in this proceeding upon respondent, I. Sekine Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto testimony and other evidence in support of the allegations of said complaint were introduced by John R. Phillips, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by James W. Bevans, attorney for the 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, and briefs in support of the complaint and in opposition thereto, oral argument not having been requested; and the Commission, having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, I. Sekine Co., Inc., is a corporation created and existing under the laws of the State of New York with its principal offices and place of business located at 232 Madison Avenue, in the city of New York, State of New York, and with its factory located at 2400-2442 Stoddard Place, in the city of Baltimore, State of Maryland.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing tooth brushes and hand brushes. Respondent causes said tooth brushes and hand brushes, when sold, to be transported from its place of business in the State of New York and from its factory in the State of Maryland to its customers located in States of the United States other than the States of New York and Maryland, and in the District of Columbia. At all times mentioned herein respondent has maintained a course of trade in said tooth brushes and hand brushes 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 actual and substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of tooth brushes and hand brushes in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent's manufacturing plant is located in Baltimore, Md., where its products, including tooth brushes, are assembled and prepared for the trade. The principal component parts or material used in the manufacture of tooth brushes are handles and bristles, and both handles and bristles so used by respondent in the manufacture of its said products are imported. The handles used by respondent are imported from Japan. Said handles when received by respondent as imported are marked or branded "Japan" or "Made in Japan" on the inside of the bristle head. In the process of preparing the commodity for sale respondent thereafter causes holes to be bored in the handle in the precise location where such marks denoting Japanese origin appear, and therein at such place or location are inserted the bristles for the said tooth brushes. The words "Japan" or "Made in Japan" are thus and thereby obscured and obliterated by the insertion in the handle of the brush of the bristles as aforesaid, and this process so employed by respondent in producing the commodity serves to hide or conceal from the ordinary purchaser of the tooth brush the fact that the handle thereof was imported from Japan. When the commodity is finally assembled the words "This brush is made in U. S. A." are stamped in bold gold lettering in a conspicuous place elsewhere on the handle of the brush.

PAR. 5. In truth and in fact the representations made by respondent with respect to the character, origin, and nature of manufacture of its tooth brushes are and were false, misleading, and untrue. The said tooth brushes of respondent are not wholly "Made in U. S. A.," the handles thereof, an important component part of said brushes, having been made in Japan and appear so stamped until said mark of identity is obliterated and concealed by respondent, and said original marking indicating foreign origin is superseded by the new and wholly deceptive legend reading "Made in U. S. A."

PAR. 6. A substantial portion of the purchasing public has, and has indicated, a decided preference for products, including tooth brushes, which are manufactured in the United States. There is, in fact, a substantial portion of the purchasing public which desires to purchase exclusively American made merchandise because of their belief in its superior quality over similar articles manufactured in foreign countries and thereafter imported into the United States.

PAR. 7. There obtains in the United States as a protection to the consuming public, the practice and requirement of marking imported articles in a conspicuous place as legibly, indelibly, and permanently as the nature of the article will permit so as to indicate to the ultimate purchaser thereof the name of the country of the origin of the article. The use by respondent of sales methods whereby tooth brushes made from imported handles from which the identification mark of the country of origin has been obliterated or concealed in the final fabrication of the finished article, and the placing thereon of the words "Made in U. S. A." has, and has had, the capacity to mislead and deceive, and does mislead and deceive purchasers or prospective purchasers of said tooth brushes into the erroneous belief that said tooth brushes have been manufactured wholly from materials produced in the United States. As a consequence of the aforesaid acts and practices of respondent trade has been diverted to respondent from other individuals, firms, partnerships, and corporations likewise engaged in the business of manufacturing, distributing, and selling tooth brushes, who truthfully represent their products, including the character and origin thereof. As a result of the acts and practices of respondent as aforesaid, injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

#### CONCLUSION

The aforesaid acts and practices of 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 in support of the allegations of said complaint, and in opposition thereto taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, 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, I. Sekine Co., Inc., a corporation, its officers, agents, employees, and representatives, directly or through any corporate device, in connection with the offering for sale,

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sale and distribution of tooth brushes in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "This brush is made in U. S. A." or any words of similar import or meaning on tooth brushes made from imported handles, or on the containers in which they are packaged, or in any other manner in connection with such brushes.

2. Representing, directly or by implication, through the use of the words "This brush is made in U. S. A.", or any other words of similar import or meaning, or by the unnecessary obliteration or concealment of the word or words indicating the foreign origin of the handles of such brushes in processing said handles, or in any other manner, that tooth brushes made from imported handles are of domestic manufacture.

*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

ECONOMY MEN'S HAT COMPANY, INC., AND ROSALIND  
NISSENBAUM, LENA NISSENBAUM, AND NAT GILMAN,  
INDIVIDUALLY AND AS OFFICERS OF ECONOMY MEN'S  
HAT 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 3837. Complaint, June 28, 1939—Decision, Feb. 24, 1940*

Where a corporation and three individuals who were general officers thereof and as such managed, controlled, and dominated its affairs and activities, and fourth individual who acted as general manager thereof, engaged in manufacture of hats from felt and other materials obtained from old, worn, and previously used hats or products and in so treating and processing through cleaning, steaming, ironing, and shaping and fitting with new trimmings, sweat bands and size labels, old, worn, and used felt hat bodies purchased by them that they had the appearance of new hats made from felts which had never been worn—

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 used bodies cleaned and renovated as above set forth, to jobber, wholesaler, and retailer dealers by whom as direct or indirect purchasers from it said hats were resold to purchasing public without disclosing facts aforesaid, and failed through use of words "Made Over Hat" immediately preceding such terms as "DeLuxe Quality" or other similar terms and names embossed on sweat bands of hats in question to disclose to purchasers that articles concerned were in fact made from old, worn, and previously used hat bodies as distinguished from products made from shop worn hat bodies never worn or used, as made in many instances by manufacturers through similar process employed with new but shop worn hats reclaimed by them from merchants' shelves;

With effect of misleading and deceiving substantial number of wholesale dealers, 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 shop worn hat bodies which had never been worn or used and into purchase of substantial numbers of said hats because of such mistaken beliefs:

*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. Max Bergman*, of New York City, for respondents.

Complaint

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## 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 Economy Men's Hat Co., Inc., a corporation, and Rosalind Nissenbaum and Lena Nissenbaum, individually and as officers of Economy Men's Hat Co., Inc., a corporation, and Samuel Gilman, 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 this complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Economy Men's Hat Co., Inc., is now and has been at all times mentioned herein, 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 5 Elizabeth Street, in the city and State of New York. Respondents, Rosalind Nissenbaum and Lena Nissenbaum, are individuals and are president, and secretary and treasurer, respectively, of respondent Economy Men's Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. Respondent, Samuel Gilman, is an individual and is employed by and acts as general manager for respondent corporation. All of said respondents have their office and principal place of business at 5 Elizabeth 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 previously used felt hats. The old, worn, and used felt-hat bodies are cleaned, steamed, ironed, and shaped by respondents and then 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 made by respondents into hats with new trim-

mings, sweat bands, size labels, 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 in fact manufactured from old, worn, and previously used felt-hat bodies, which have been cleaned and renovated by respondents. 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, previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course of the operation of their business respondents use the words "De Luxe Quality" and other similar words or names in designating said merchandise. Respondents cause said words or similar words or names to be embossed on sweat bands which are attached to said hats. Immediately preceding the words "De Luxe Quality" or other similar terms and names used by respondents in designating said hats respondents have cause 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 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 said hat manufacturers in the same manner as hats made from old, worn, and previously used felt-hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid, respondents fail 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 which have never been worn or used.

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 said hats are manufactured from either new and unused materials, 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 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 said respondents, Economy Men's Hat Co., Inc., a corporation, and Rosalind Nissenbaum, Lena Nissenbaum, Nat Gilman (herein erroneously designated as Samuel Gilman), individually and as officers of Economy Men's Hat Co., Inc., a corporation, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 15, 1939, the respondents by their attorney, Max Bergman, Esq., 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' counsel, Max Bergman, Esq., and W. T. Kelley, chief counsel for the 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, Economy Men's Hat Co., Inc., is now and has been at all times mentioned herein, 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 5 Elizabeth Street, in the city and State of New York. Respondents, Rosalind Nissenbaum and Lena Nissenbaum, are indi-

viduals and are president, and secretary and treasurer, respectively, of respondent Economy Men's Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. Respondent Nat Gilman, herein erroneously designated as Samuel Gilman, is an individual and is employed by and acts as general manager for respondent corporation. All of said respondents have their office and principal place of business at 5 Elizabeth 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 previously used felt hats. The old, worn, and used felt hat bodies are cleaned, steamed, ironed and shaped by respondents and then 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 made by respondents into hats with new trimmings, sweat bands, size labels, 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 in fact manufactured from old, worn, and previously used felt hat bodies, which have been cleaned and renovated by respondents. 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, previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course of the operation of their business respondents use the words "De Luxe Quality" and other similar words or names in designating said merchandise. Respondents cause said words or similar words or names to be embossed on sweat bands which are attached to

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said hats. Immediately preceding the words "De Luxe Quality" or other similar terms and names used by respondents in designating said hats respondents have 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 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 said hat manufacturers in the same manner as hats made from old, worn, and previously used felt-hat bodies.

By the use of the words "Made Over Hat" in the manner aforesaid, respondents fail 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 which have never been worn or used.

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 said hats are manufactured from either new and unused materials, 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 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, the answer of the respondents, and a stipulation as to the facts entered into between counsel for the respondents herein, Max Bergman, 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 Economy Men's Hat Co., Inc., a corporation, its officers, representatives, agents, and employees, and respondents Rosalind Nissenbaum, Lena Nissenbaum and Nat Gilman, (herein erroneously designated as Samuel Gilman), 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 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 said hats then such stamping must appear on the bodies of such hats in conspicuous or 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  
RATHJEN BROS., INC.

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

*Docket 3909. Complaint, Oct. 4, 1939—Decision, Feb. 29, 1940*

Where a corporation engaged as rectifier and wholesaler of whiskies, gins, rum, brandy, and liquors in sale of its said merchandise to purchasers in the several other states and in the District of Columbia, in competition with others engaged in manufacture and distillation of whiskies, gins, and other alcoholic beverages who truthfully use word "distilling" or words of similar import or meaning as part of their corporate or trade name or on their stationery, labels and other advertising matter and with those engaged as wholesalers and distributors of such products who do not thus use said word or words—

Represented through use of word "distilling" in trade name employed by it on labels and letterheads that it was a distiller and that the whiskies, gins, and other alcoholic beverages offered by it and by it described by such statements as "Waldens Royal Toddy \* \* \* manufactured by United States Distilling Company, etc.," "Waldens No. 100 Liqueur \* \* \* Made by United States Distilling Company, etc.," "Old Braddock Brand \* \* \* Bottled by United States Distilling Company," were by it made through process of distillation from mash, wort, or wash;

Notwithstanding fact it did not distill said various products sold and distributed by it as aforesaid nor operate or control any places where alcoholic beverages are manufactured by process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until manufacture is complete, as long definitely understood from word "distilling" used in connection with liquor industry and products thereof in wholesale and retail trade and by ultimate purchasing public, and it was not a distiller, for the purchase of the alcoholic liquors of which, direct, there is a preference on the part of a substantial portion of purchasing public as affording, in its belief, elimination of middleman's profit and other advantages;

With effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that it was distiller of the whiskies, gins, and other alcoholic beverages sold and distributed by it, and into the purchase of substantial quantities of said product because of such erroneous and mistaken belief, and with result that trade and commerce was diverted unfairly to it from its said competitors who do not falsely represent themselves as distillers of their respective products; 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 constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

*Mr. Clark Nichols* for the Commission.

*Sefton & Quattrin*, of San Francisco, 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 Rathjen Bros., 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 Rathjen Bros., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of California and having its office and principal place of business at 135 Berry Street in the city of San Francisco, State of California. Respondent is now, and has been for several years last past, engaged in the business of a rectifier and wholesaler of whisky, gin, rum, brandy, and liqueurs, which it sells under the trade name of United States Distilling Co. Respondent causes said products, when sold by it, to be transported from its 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 and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products 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 aforesaid business, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, individuals and partnerships engaged in the manufacture by distillation of whiskies, gin, rum, and other alcoholic beverages from mash, wort, or wash, and in the sale and distribution thereof 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 aforesaid business, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business of rectifying, blending, and bottling whiskies, gins, and other alcoholic beverages and in the sale and distribution thereof 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 aforesaid business, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the business

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of selling and distributing whiskies, gins, and other alcoholic beverages 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 aforesaid business and in furtherance of the sale of said products, the respondent has made false and misleading representations that it is the distiller of the products which it sells and distributes as aforesaid. Among and typical of said false and misleading statements and representations appearing on labels attached to the containers of said products are the following:

**WALDENS Royal Toddy,**

contains rum and brandy and neutral spirits, manufactured by United States Distilling Company, San Francisco, California.  
90 proof

**WALDENS NO. 100 LIQUEUR**

90 proof  
Made by United States Distilling Company  
San Francisco, California

**OLD BRADDOCK BRAND**

Straight Bourbon Whiskey  
90 proof  
Bottled by United States Distilling Company  
San Francisco, California

**OLD GLENDON Brand**

90 proof  
Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**KENTUCKY MASTER**

Kentucky Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**KENTUCKY GRAND**

Kentucky Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

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**BRIAR CLUB**

90 proof  
Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**ACE HIGH**

Special Reserve  
90 proof  
Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**FORUM CLUB**

Special Reserve  
93 proof  
Kentucky Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**DON GALVEZ Brand**

90%  
Kentucky Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**LORD BRIGHTON**

Distilled Dry Gin  
90 proof  
Bottled by United States Distilling Company  
San Francisco, California

**BRIAR CLUB**

85 proof  
Distilled Dry Gin  
Bottled by United States Distilling Company  
San Francisco, California

**BIRKSHIRE**

90 proof  
Distilled London Dry Gin  
Bottled by United States Distilling Company  
San Francisco, California

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PAR. 4. Through the use of the aforesaid statements and representations, including the use of the word "distilling" in respondent's trade name United States Distilling Company, and other statements and representations of similar import or meaning not herein set out, the respondent represents that it is a distiller and that said whiskies, gins, and other alcoholic beverages were manufactured by respondent through the process of distillation from mash, wort, or wash. In truth and in fact, respondent is not a distiller and does not distil the said whiskies, gins, and other alcoholic beverages sold and distributed by it as aforesaid. Respondent does not operate or control any place or places where alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, and wash.

PAR. 5. The word "distilling" when used in connection with the liquor industry and with the products thereof has had, and now has, a definite significance in meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacturing of alcoholic liquors by an original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is complete, and a substantial portion of the purchasing public prefers to buy alcoholic liquors direct from the distilleries thereof in the belief that elimination of the middleman's profit and various other advantages may be obtained thereby.

PAR. 6. There are among the competitors of respondent described in paragraph 2 hereof, corporations, firms, and individuals who manufacture and distill from mash, wort, or wash as aforesaid, whiskies, gins, and other alcoholic beverages and who truthfully use the word "distilling" or other words of similar import or meaning as a part of their corporate or trade names or on their stationery, labels, or other printed matter. There are also among such competitors corporations, firms, and individuals engaged in the business of rectifying, blending, bottling, and selling whiskies, gins, and other alcoholic beverages and who do not use the word "distilling" or words of similar import or meaning as a part of their corporate or trade names or on their stationery, labels, or other advertising matter. There are also among such competitors of respondent, corporations, firms, and individuals engaged in business as wholesalers and distributors of whiskies, gins, and other alcoholic beverages and who do not use the word "distilling" or words of similar import or meaning as part of their corporate or trade names or on their stationery, labels, or other advertising matter.

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 respondent is the distiller of the whiskies, gins, and other alcoholic beverages which it sells and distributes and into the purchase of substantial quantities of 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 who do not falsely represent that they are the distillers of their respective products. In consequence thereof, substantial injury is being and has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

#### 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 October 1939, issued and served its complaint in this proceeding upon the respondent, Rathjen Bros., 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 by respondent of its answer dated November 15, 1939, 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, Rathjen Bros., Inc., is a corporation organized and doing business under and by virtue of the laws of the State of California and having its office and principal place of business at 135 Berry Street in the city of San Francisco in the State of California. Respondent is now and has been for several years last past engaged in the business of a rectifier and wholesaler of whiskies, gins, rum, brandy, and liquors, a portion of which it sells under the trade name of United States Distilling Co.

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PAR. 2. The respondent, in the conduct of such business, has caused said merchandise when sold to be shipped to purchasers thereof located at various points in the several States of the United States other than the State from which said shipments are made, and in the District of Columbia.

PAR. 3. In the course and conduct of such business the respondent is and has been in competition with other persons and with corporations, firms, and partnerships, engaged in the manufacture and distillation of whiskies, gins, and other alcoholic beverages and who truthfully use the word "distilling" or words of similar import or meaning as a part of their corporate or trade names or on their stationery, labels, and other advertising matter. There are also among such competitors of respondent, corporations, firms, and individuals engaged in business as wholesalers and distributors of whiskies, gins, and other alcoholic beverages and who do not use the word "distilling," or words of similar import or meaning as part of their corporate or trade names or on their stationery, labels, or other advertising matter.

PAR. 4. In the course and conduct of its aforesaid business and in furtherance of the sale of said products, the respondent has made on its labels and its letterheads representations which would lead the purchasing public to believe that the respondent distills the whiskies, gins, and other alcoholic beverages which it sells. Among and typical of said statements and representations are the following:

**WALDENS Royal Toddy,**

contains rum and brandy and neutral spirits, manufactured by  
United States Distilling Company, San Francisco, California.  
90 proof

**WALDENS NO. 100 LIQUEUR**

90 proof  
Made by United States Distilling Company  
San Francisco, California

**OLD BRADDOCK BRAND**

Straight Bourbon Whiskey, 90 proof  
Bottled by United States Distilling Company  
San Francisco, California.

**OLD GLENDON Brand**

90 proof  
Straight Bourbon Whiskey  
Bottle by United States Distilling Company  
San Francisco, California

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**KENTUCKY MASTER**

Kentucky Straight Bourbon Whiskey  
Bottle by United States Distilling Company  
San Francisco, California

**KENTUCKY GRAND**

Kentucky Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**BRIAR CLUB**

90 proof  
Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**ACE HIGH**

Special Reserve  
90 proof  
Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**FORUM CLUB**

Special Reserve  
93 proof  
Kentucky Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**DON GALVEZ Brand**

90 %  
Kentucky Straight Bourbon Whiskey  
Bottled by United States Distilling Company  
San Francisco, California

**LORD BRIGHTON**

Distilled Dry Gin  
90 proof  
Bottled by United States Distilling Company  
San Francisco, California

**BRIAR CLUB**

85 proof  
Distilled Dry Gin  
Bottled by United States Distilling Company  
San Francisco, California

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## BIRKSHIRE

90 proof

Distilled London Dry Gin

Bottled by United States Distilling Company

San Francisco, California

PAR. 5. Through the use of the aforesaid statements and representations, including the use of the word "Distilling" in respondent's trade name, United States Distilling Company, and other statements and representations of similar import or meaning not herein set out, the respondent represents that it is a distiller and that said whiskies, gins, and other alcoholic beverages were manufactured by respondent through the process of distillation from mash, wort, or wash. Respondent is not a distiller and does not distil the said whiskies, gins, and other alcoholic beverages sold and distributed by it as aforesaid. The respondent does not operate or control any place or places where alcoholic beverages are manufactured by a process of original and continuous distillation from mash, wort, and wash. The word "Distilling," when used in connection with the liquor industry and with the products thereof, has had and now has a definite significance in meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, viz, the manufacturing of alcoholic liquors by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete. A substantial portion of the purchasing public prefers to buy alcoholic liquors direct from the distillers thereof in the belief that the elimination of the middleman's profit and various other advantages may be obtained thereby.

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 respondent is the distiller of the whiskies, gins, and other alcoholic beverages which it sells and distributes and into the purchase of substantial quantities of 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 respondent from its said competitors who do not falsely represent that they are distillers of their respective products. In consequence thereof substantial injury is being and has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

## CONCLUSION

The aforesaid acts and practices of the respondent Rathjen Bros., Inc., a corporation, are all to the prejudice of the public and to 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 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, Rathjen Bros., 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 whiskies, gins, and other alcoholic beverages in interstate commerce or in the District of Columbia do forthwith cease and desist from:

1. Using the word "Distilling" on the labels of any of its products, on its letterheads, or any other form of advertising matter, or in its corporate or trade name, or any other word or words of similar import or meaning, unless and until it is actually engaged in the manufacture of such alcoholic beverages by an original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is complete.

2. Representing, through the use of the word "Distilling" on its stationery, advertising, or on the labels attached to the bottles in which it sells and ships said products, or in any way by a word or words of like import, (a) that respondent is a distiller of the said whiskies, gins, or other alcoholic beverages; or (b) that the said whiskies, gins, or other alcoholic beverages were manufactured by it through a process of distillation; or (c) that respondent owns, operates, or controls a place or places where such products are manufactured by a process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until the manufacture thereof is complete, unless and until respondent actually owns, operates, or controls such a place or places.

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*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

UNIVERSAL STUDIOS, INC., AND HARRY I. SMITH,  
SANDER R. SMITH, AND LORRAINE H. SMITH

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

*Docket 3684. Complaint, Jan. 6, 1939—Decision, Mar. 1, 1940*

Where a corporation and two individuals, partners and former incorporators and shareholders thereof, and successors to business thereof, engaged, with studios in several cities, in mail order photography and in sale and distribution of photographs in commerce among the various States, and in causing their said product, when sold, to be transported from their finishing office and principal place of business to purchasers in various other States, in substantial competition with others also engaged in sale of photographs in commerce as aforesaid;

In carrying on their aforesaid business under practice by which (1) they sent advance agent or crew manager to various towns in proposed itinerary to distribute to various local merchants, for distribution free of charge to latter's customers, free coupons giving such customers opportunity to acquire photographs of themselves for 59 cents or 69 cents, as case might be, upon presentation of coupon on specified date and place, at which time and place employee photographer and assistant photographed those presenting coupon and paying amount called for, (2) negatives were shipped by photographer to their said place of business and developed, and (3) proofs were mailed to employee-salesman or "proof-passer", who made appointments with customer for selection of proof desired and attempted to sell each as many photographs additional as possible, (4) coloring of photograph was done at said office and finishing studio, and (5) advance agent and "proof-passer" salesman were compensated on commission basis wholly and in accordance with sittings and photographs sold—

- (a) Represented and described as "hand painted" or "paintings" colored or tinted photographs or photographic enlargements thus offered and called for, and applied thereto such terms as "portraits in oil colors," "oil portraits," "gold tone oil paintings," and "oil colored portraits," facts being products in question were not paintings or, in ordinarily accepted meaning, or likeness, image, or scene depicted with paints and without photographic aid, nor portrait or picture of person drawn from life, nor likeness or oil painting done by hand with brushes in plastic oil colors on canvas or other material without such aid, but photographic enlargements of small negatives, tinted or colored by cotton or paper swab and smearing of transparent oils over uncolored original; and
- (b) Represented that so-called "portraits" or "paintings" offered and described in coupons distributed as above set forth, had value of \$5.00 and were offered for 59 cents or 69 cents, as case might be, together with certificate represented as being worth \$4.41, and entitling holder to one of their regular "\$5.00 Oil Portraits," facts being said tinted enlargements did not have any such value, were not reasonably worth more than 59 cents or 69 cents paid therefor by customer, products in question were usually and customarily sold for said amounts, and advertising coupons did not have value of \$4.41 or any such

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sum, but were solely device to induce customer to have photograph taken, and latter received no financial or other advantage by use of coupon, and offer in question was not at reduced or special price, and coupon did not represent aforesaid or any other amount or special trade concession on part of local merchants;

With tendency and capacity to mislead and deceive members of purchasing public concerning nature, quality, and value of photographs sold and distributed by them, and with effect of thereby inducing substantial portion of such public to purchase said products under erroneous and mistaken beliefs that same were high-grade oil portraits or paintings and that distinct financial advantage would be obtained by use of coupons distributed by them, and with result, as consequence of such erroneous and mistaken beliefs, that trade was diverted unfairly from their competitors engaged also in sale and distribution of tinted or colored photographs or photographic enlargements in commerce as aforesaid, and who do not employ and maintain sales methods and practices such as used by them, but truthfully represent their products and quality 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. Merle P. Lyon* for the Commission.

*Mr. Leo A. Reuther*, of Breckenridge, Minn., 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 Universal Studios, Inc., a corporation, Harry I. Smith, Sanders R. Smith, and Lorraine H. Smith, copartners, trading as Universal Studios, 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, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Universal Studios, Inc., is a corporation organized under the laws of the State of Minnesota, with its principal office and place of business located at 187 East Seventh Street, St. Paul, Minn. Respondents Harry I. Smith, Sanders R. Smith, and Lorraine H. Smith, are copartners trading under the name and style of Universal Studios, with their principal office and place of business located at 187 East Seventh Street, St. Paul, Minn.

The above-named individual respondents were and are officers and principal stockholders of the above-named corporate respondent, and in active charge and control of its activities. The false and deceptive

sales practices and representations carried on by it as hereinafter alleged have been or are now also being carried on by the above-named individual respondents doing business as a partnership.

PAR. 2. Said respondents are now and for some time last past have been engaged in the business of mail-order photography, and in the sale and distribution of photographs and photographic products in commerce among and between the various States of the United States and in the District of Columbia. Respondents sell said products through the medium of salesmen and agents appointed by them to customers located in States other than the State of Minnesota. Respondents cause said photographs and photographic products when sold to be transported from their place of business in St. Paul, Minn., to the respective purchasers thereof located in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents have been, and are now, engaged in direct and substantial competition with various corporations, partnerships, firms, and individuals likewise engaged in the sale in commerce, between and among the various States of the United States, of photographs and photographic products, and likewise with corporations, partnerships, firms, and individuals engaged in the sale of genuine original paintings and portraits, in commerce between and among the various States of the United States.

PAR. 4. A painting, in its ordinarily accepted meaning, is a likeness, image, or scene depicted with paints without the aid of photography. A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 5. In the course and conduct of their said business, respondents cause agents and representatives employed by them to visit the homes of prospective customers in the cities, towns, and rural communities of the various States of the United States. These agents and representatives ordinarily travel in groups or "crews" from town to town, each crew consisting of four persons, one of whom ordinarily travels in advance, making arrangements with local merchants to attract customers by the distribution to prospective customers of coupons or "certificates" as more particularly hereinafter set forth. The advance agent is followed by a photographer and a helper who take the photographs, and later a fourth member of the crew calls on the customers and exhibits the proofs and takes orders for the pic-

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tures. The members of the crew work on a commission basis with the exception of the photographer, who is paid a salary.

Certain of the coupons or "certificates" distributed by the advance agents read as follows:

<b>\$5.00</b> <b>Value</b>	<i>Christmas Offer</i> <b>Portrait In Oil Colors</b>	<b>\$5.00</b> <b>Value</b>
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For Only 59¢

Taken By

*Universal Studios, Inc.*

187 East Seventh St., St. Paul, Minn.

The above Studios thru a special arrangement  
made with (Merchant) \_\_\_\_\_

the bearer of this certificate is entitled to a  
*Beautiful 7x10 Gold Tone Oil Painting*

Unmounted

**For**  
**Only**

59¢

*Four Proofs Shown*  
**All Work Guaranteed**

Only one certificate may be used by one person.

This certificate must be signed by above merchant.

*This Certificate Is Worth \$4.41*

59¢ This coupon and 59¢ entitles you to 59¢  
one of our regular \$5.00 Oil Portraits,  
to be taken in your town by one of our  
professional Protographers at Hotel.

Other certificates used by respondents read as follows:

**Big**  
**Value**

*Portrait In Oil Colors*

**Big**  
**Value**

For Only 69¢

Taken By

*Universal Studios, Inc.*

187 East Seventh St., St. Paul, Minn.

The above Studios thru a special arrangement  
made with (Merchant) \_\_\_\_\_

the bearer of this certificate is entitled to a  
*Beautiful 8x10 Oil Colored Portrait*

Unmounted

**For**  
**Only**

69¢

*Four Proofs Shown*  
**All Work Guaranteed.**

Only one certificate may be used by one person.

This certificate must be signed by above merchant.

Signature of Merchant \_\_\_\_\_

PAR. 6. Through the use of the statements and representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent that they are making a special "Christmas Offer" or an offer at a reduced or special price whereby the prospective purchaser by use of a special coupon can obtain a picture variously represented as "an oil painting," "a portrait

in oil colors," "a gold tone painting," or "an oil colored portrait" of the "value of \$5.00" or "a big value" for the sum of 59¢ or 69¢. The respondents further represent that said coupon distributed by them or under their direction is worth to the holder thereof the sum of \$4.41 and represents a special trade concession on the part of certain local merchants.

PAR. 7. In truth and in fact the pictures sold and distributed by the respondents by the method hereinabove set forth were not and are not of a "\$5.00 value" or a "big value" and \$5.00 was not and is not the regular price charged therefor. The offer made by the respondents was not and is not a special Christmas offer or an offer at a reduced or special price, but instead 59¢ and 69¢ were and are the usual, ordinary and customary selling prices of such pictures in the respective 7x10 and 8x10 sizes. Furthermore, the coupon or certificate was not and is not worth \$4.41 or any other amount and does not represent a special trade concession on the part of certain local merchants.

In truth and in fact the pictures sold by respondents through the sales methods hereinabove described were not and are not "oil paintings," "portraits in oil colors," "gold tone oil paintings," and "oil portraits," or "oil colored portraits," but were and are merely tinted or colored photographs. Such tinted or colored photographs are not portraits, paintings, oil portraits, or oil paintings in the commonly accepted uses of said terms.

PAR. 8. There are among the competitors of respondents corporations, partnerships, firms and individuals who are engaged in the sale of tinted or colored photographs or photographic enlargements in commerce between and among the various States of the United States and in the District of Columbia who do not employ and maintain sales methods and practices such as are used by the respondents, but who truthfully represent their products and honestly vend the same. There are also among the competitors of respondents corporations, partnerships, firms, and individuals engaged in the business or profession of painting genuine oil portraits and paintings who truthfully represent their products as being portraits or paintings.

PAR. 9. The use by the respondents of the aforesaid false and misleading representations and practices in the sale and offering for sale of purported oil portraits and paintings which are in fact merely tinted or colored photographs or photographic enlargements, has had, and now has, the tendency and capacity to deceive, and has deceived and now does deceive, the public concerning the nature, quality, and value of their products sold as hereinbefore described, and has thereby induced, and is inducing, the public to purchase said

products under the erroneous belief that the same were and are high grade quality oil portraits or paintings of exceptional merit and value. The use of the so-called "certificates," and the representations contained therein, have had, and have, the tendency and capacity to deceive, and have deceived the public into the erroneous belief that they have thus received a distinct financial advantage and will thereby be entitled to receive a valuable oil painting or portrait upon payment of a trifling sum of money, at a reduced or special price, or as a Christmas offer, or as a trade concession to certain local merchants in the locality where the customers reside, when such is not the fact. The use by the respondents of the false and deceptive representations and trade practices hereinbefore set forth tends to, and does, unfairly divert trade from competitors, and thereby 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. 10. The aforesaid acts and practices employed by 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 Federal Trade Commission Act, the Federal Trade Commission on the 6th day of January 1939, issued its complaint and thereafter caused the same to be served upon the respondents, Universal Studios, Inc., a corporation, and upon Harry I. Smith, Sandar R. Smith, and Lorraine H. Smith, copartners trading as Universal Studios, 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 thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Merle P. Lyon, attorney for the Commission, before A. F. Thomas, a trial examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of said complaint by Leo A. Reuther, attorney for the respondents, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceedings regularly came on for final hearing before the Commission on said complaint, the answer thereto, 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, Harry I. Smith, has been a photographer since 1913, and in 1925 formed a partnership with respondent Sander R. Smith, his brother, and engaged in the business of photography under the trade name, Universal Studios. This partnership continued until January 1937 when respondent Universal Studios, Inc. was incorporated under the laws of the State of Minnesota, Harry I. Smith, Sander R. Smith and Lorraine H. Smith being the incorporators and shareholders thereof, with its office and principal place of business located at 187 East Seventh Street, St. Paul, Minn. Lorraine H. Smith held only two shares of the capital stock of the corporation, and took no active part in the control and management of its business. Said corporation was dissolved on April 25, 1938, since which date the business has been conducted as a partnership consisting of Harry I. Smith and Sander R. Smith, under the trade name of Universal Studios, in which partnership Lorraine H. Smith has no financial or other interest. Said respondents, with the exception of Lorraine H. Smith, were, during the times hereinbefore mentioned, engaged in the business of mail order photography, and in the sale and distribution of photographs in commerce among and between the various States of the United States. At the present time the respondents Harry I. Smith and Sander R. Smith, trading as Universal Studios, maintain studios in the cities of Flint and Holland, in the State of Michigan, and in the city of Minneapolis, in the State of Minnesota, and also maintain their principal office and finishing studio in the city of St. Paul, in the State of Minnesota. Said respondents, and also the respondent Universal Studios, Inc., a corporation during the period of its corporate existence, now cause and have caused their photographs, when sold, to be transported from their finishing office and principal place of business in St. Paul, Minn., to 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 photographs in commerce between and among the various States of the United States. Said respondents, during the times hereinbefore mentioned have been, and the respondents Harry I. Smith and Sander R. Smith are now, in substantial competition with other corporations, persons, firms,

and partnerships also engaged in the sale of photographs in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of their business, the respondents would send an advance agent or crew manager to various towns in a proposed itinerary, to distribute coupons free to various local merchants. Said coupons were redistributed by said merchants free of charge to their own customers, giving said customers an opportunity to acquire photographs of themselves represented variously as "portraits in oil colors," "oil portraits," "gold tone oil paintings," and "oil colored portraits" for only 59 cents or 69 cents, as the case might be, upon presentation of said coupon at a specified date and place. The said coupons were represented as having a value of "\$4.41," and the "oil colored portraits" or "gold tone paintings" to be secured through the medium of said coupons were represented as having a "\$5.00 Value". Upon the coupons was designated the place, usually some hotel in the town, and the date, usually two or three weeks in the future, at which time and place the holder of the coupon might present himself for a sitting. A photographer and assistant employed by said respondents on a salaried basis would engage a room at the specified time and place and take photographs of all persons presenting the coupon and paying the 59 cents or 69 cents called for by the coupon. The negatives taken at such sittings were then shipped by the photographer to the respondents' place of business in St. Paul, Minnesota, where they were developed and proofs made. Said proofs were then mailed to another salesman employed by the respondents, called a "proof-passer," who made appointments with the customers to select the proof desired. After the proof was selected by the customer, the coloring of the photograph was done at the St. Paul office of the respondent by persons employed for that purpose. The "proof-passer" attempted to sell as many additional photographs as possible to each customer. The salesmen, both advance agent and proof-passer, worked wholly on a commission basis, and their compensation depended upon the number of sittings and the number of additional photographs sold.

The gross volume of business done by respondents during the year 1937 was about \$150,000 and during the year 1938 was between \$170,000 and \$180,000. The business methods hereinbefore detailed were continued during the years 1937 and 1938, but most of the traveling crews were dismissed on or about December 1, 1938, and since that date said respondents only have one crew operating.

PAR. 3. In the course and conduct of their business, as described in paragraph 2, the respondents, Universal Studios, Inc., a corporation, and Harry I. Smith and Sander R. Smith, trading as Universal Studios

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## Findings

issued printed coupons which were distributed in the manner hereinbefore outlined. Such coupons read:

\$5.00	CHRISTMAS OFFER	\$5.00
VALUE		VALUE
	Portrait in Oil Colors	
	For only 59¢	
	Taken by	
	Universal Studios, Inc.	
	187 East Seventh Street,	
	St. Paul, Minnesota.	

The above Studios thru a special arrangement with (merchant) -----

THE BEARER OF THIS CERTIFICATE IS ENTITLED TO  
A BEAUTIFUL 7 x 10 GOLD TONE OIL PAINTING  
Unmounted

For Only 59¢. Four Proofs Shown. All Work Guaranteed. Only One Certificate May Be Used By One Person.

This certificate must be signed by above merchant.

This Certificate is worth \$4.41.

59¢. This Coupon and 59¢ entitles you to one of our regular \$5.00 Oil Portraits to be taken in your town by one of our Professional Photographers at Hotel.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent that they are making an offer at a reduced or special price whereby the prospective purchaser, by use of a special coupon, can obtain a picture variously represented as "an oil painting," "a portrait in oil colors," "a gold tone painting," or "an oil colored portrait" of the "value of \$5.00" for the sum of 59 cents or 69 cents. The respondents further represent that said coupons distributed by them and under their direction are worth to the holders thereof the sum of \$4.41 and represent a special trade concession on the part of certain local merchants.

PAR. 5. The Commission finds that pictures sold by the respondents through the sales method hereinabove described were not and are not "oil paintings," "portraits in oil colors," "gold tone oil paintings," or "oil colored portraits," but were and are merely tinted or colored photographs or photographic enlargements.

The photographs sold by the respondents in the manner hereinabove set forth are photographic enlargements of small negatives which are tinted or colored by the use of a cotton or paper swab and the smearing of transparent oils over the original uncolored photographic enlargement.

A painting, in its ordinarily accepted meaning, is a likeness, image, or scene depicted with paints without the aid of photography. A portrait, in its ordinarily accepted meaning, is a picture of a person drawn from life, especially a picture or representation of a face; a likeness, particularly in oil. An oil painting is a painting done by hand with brushes in plastic oil colors on canvas, or other material, without the aid of photography.

PAR. 6. The Commission further finds that the tinted or colored photographs sold and distributed by the respondents in the manner hereinabove set forth do not have a "\$5.00 Value" and are not reasonably worth more than the 59 cents or 69 cents paid for them by the customer. The advertising coupon does not have a value of \$4.41 or any similar amount since the regular price for which the respondents' colored photographs are usually and customarily sold is not more than the 59 cents or 69 cents paid for them. The advertising coupon is solely a device for inducing the customer to have his photograph taken and the customer does not receive any financial or other advantage by the use of said coupon. Said coupons are merely for the purpose of getting the customer into the studio to give respondents an opportunity to sell him additional photographs. The offer made by the respondents was not an offer at a reduced or special price and the coupon or certificate distributed by the respondents was not and is not worth \$4.41 or any other amount, and does not represent a special trade concession on the part of certain local merchants.

PAR. 7. The use by the respondents of the aforesaid false and misleading representations and practices in the sale and offering for sale of their tinted and colored photographs has had and now has a tendency and capacity to mislead and deceive members of the purchasing public concerning the nature, quality and value of the photographs sold and distributed by the respondents and has thereby induced a substantial portion of the purchasing public to purchase said photographs under the erroneous and mistaken belief that the same were and are high-grade oil portraits or paintings and that a distinct financial advantage would be obtained by the use of the coupons distributed by the respondents. As a result of such erroneous and mistaken belief trade has been diverted unfairly from respondents' competitors who are also engaged in the sale and distribution of tinted or colored photographs and photographic enlargements in commerce among and between the various States of the United States and in the District of Columbia and who do not employ and maintain sales methods and practices such as those used by the respondents but who truthfully represent their products and the quality thereof.

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Order

## CONCLUSION

The aforesaid acts and practices of the respondents, with the exception of Lorraine H. Smith, 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, testimony and other evidence taken before A. F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the brief of counsel for the Commission in support of the complaint, and the Commission having made its findings as to the facts and its conclusion that respondents, with the exception of Lorraine H. Smith, have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, Universal Studios, Inc., a corporation, and its officers, and Harry I. Smith and Sander R. Smith, individually and as copartners trading as Universal Studios, or trading under any other name, and their respective salesmen, employees, and agents, 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 colored or tinted photographs or enlargements having a photographic base, do forthwith cease and desist from:

1. Representing directly or in any manner, that colored or tinted photographs or photographic enlargements are handpainted or are paintings.

2. Using the terms "gold tone oil painting," "oil portrait," "portrait in oil colors" or "oil colored portrait," 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.

3. Representing, as the customary or regular prices or values for such pictures, prices and values which are in fact fictitious and greatly in excess of the prices at which such pictures are customarily offered for sale and sold by respondents in the normal course of business.

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4. 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.

5. 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 such coupon or similar device at the price required to be paid.

*It is further ordered,* That each of the said respondents, Universal Studios, Inc., a corporation, Harry I. Smith and Sander R. Smith, 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 the respondent Lorraine H. Smith without prejudice to the right of the Commission to reopen and resume prosecution thereof in the event developments so warrant.

## Syllabus

IN THE MATTER OF  
STANDARD CONTAINER MANUFACTURERS ASSOCIA-  
TION, INC. ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 3289. Complaint, Jan. 3, 1938—Decision, Mar. 5, 1940*

Where some twenty-six concerns composed of corporations, firms, and individuals, engaged in manufacture, sale, and distribution or in sale and distribution of wooden fruit and vegetable containers used in packing fruits and vegetables for transportation from the producers thereof to ultimate consumers, with principal offices and places of business in Georgia and Florida, and who, (1) shipped their products from their respective places of business to customers in other States and in Florida, as case might be, for use by producer purchasers in trade areas in question, in which were grown substantial percentage of fruits and vegetables produced in the United States, in preparing their products for transportation to markets in various States where products in question, thus containered, were distributed to wholesalers and retailers and others for ultimate distribution to the consuming public, and who, (2) with one exception, were or had been members of Association created by members for the promotion and protection of their interests, and who, (3) long prior to and but for acts and practices below set forth, were in active and substantial competition with each other in sale and distribution of products in aforesaid trade area consisting of southeastern portion of the United States and more particularly of Georgia and Florida, and with manufacturers of like products located in various other States, and (4) in case of Florida members sold greater portion of such products sold in said States and controlled and dominated wooden container industry therein and also practice of industry as a whole in such State—

- (a) Entered into and carried out understandings, agreements, combinations, and conspiracies, intent and effect of which were to restrict, restrain and monopolize and suppress and eliminate competition in the sale of unpatented wooden fruit and vegetable containers in trade and commerce among the several States and to which the said Association and three individuals, who were general officers thereof, and, with others, served as board of directors thereof, became parties, and in the carrying out of which they participated; and, in furtherance of such combinations and conspiracies
- (1) Entered into understandings and agreements to fix and maintain uniform and minimum prices, including uniform maximum discounts, brokerage fees, freight allowances and time limitation of contracts, and through medium of their said Association and two of said individuals, i. e., the president and secretary and directors thereof, and, acting in conformity with said understandings and agreements, did thus fix uniform and minimum prices, including maximum discounts, brokerage fees, and time limitations of contracts in sale of wooden fruit and vegetable containers and parts thereof;
- (2) Entered into understandings and agreements to curtail and did curtail production and sale of certain wooden fruit and vegetable containers and parts thereof; and

- (3) Entered into understandings and agreements to secure enforcement through meeting of their said Association and said individuals, of such understandings and agreements to curtail production and sale of such products and whereby designated member and their said president would and did ascertain production figures of some other designated member and file reports as to such member's compliance with understandings and agreements to curtail production and sale during period involved; and

Where said Association by means of understandings and agreements entered into by and between its members—

- (b) Caused its Secretary from time to time to issue and distribute among members of the Association and manufacturers and distributors price list designated "Fair Market Value" and setting forth in detail terms and conditions of sale of various types of wooden fruit and vegetable containers as agreed upon by members; and which lists, changed from time to time in accordance with instructions secured from the Association President and other representatives, were issued and distributed to show changes aforesaid by said Association Secretary; and
- (c) Caused through understandings and agreements of members production to be curtailed in manufacture of products in question and parts thereof and directed that no citrus fruit crates during period involved were to be fabricated, sold or shipped for use in Florida except for current use, and that none were to be sold or offered for sale at less than the present prevailing prices; and
- (d) Provided means whereby compliance with understandings to fix prices and curtail production by members could be investigated and effective corrective methods administered in enforcing adherence to understandings and agreements; and

Where said members and said individual Association president, in cases when there were violations or alleged violations of provisions of understandings and agreements entered into by and between such members;

- (e) Caused to be investigated such alleged violations and threatened, intimidated and coerced violator, and thereby induced such violator to cancel orders and conform to such understandings and agreements with which, but for such threats, intimidations and coercion, he would not have complied; and

Where said individual, Association president, designated and appointed and duly authorized as their representative by said Association and said members to determine, after consultation of members and others, prices at which said wooden fruit and vegetable containers, and parts thereof, were to be sold, acting as such duly authorized agent—

- (f) Met from time to time with other duly authorized representatives of said members and determined current prices at which products in question were to be sold, and caused to be transmitted by telegram, mail and other means, to all members and to others in industry who were not members, fixed and established current prices, terms, and conditions at which were to be sold said wooden fruit and vegetable containers, and parts thereof; and

Where said individual, further authorized and delegated as their agent to investigate activities of members regarding compliance with understandings, agreements, and question and to enforce and secure same—

- (g) Did investigate, enforce and secure adherence of members and non-members to prices, terms, and conditions of sale fixed and established by said members Association and individuals aforesaid; and

Where said Association and members or former members, as case might be,

- (h) Voted said individual substantial compensation as compensation for performing duties above set forth and additional sum to cover portion of expense account during period involved and made regular contribution to assist in defraying expenses in connection with his said work; and

Where said Association, acting through its said Secretary and its said president, as officers and agents thereof, and in accordance with understanding and agreements entered into by and between the members and with intent of carrying out such understandings and agreements—

- (i) Collected from and disseminated among members statistical information used and useful in enforcing compliance with said understandings and agreements made and entered into at such meetings held from time to time of members generally or various members interested in particular container or type of container, and at which prices and terms and conditions of sale were discussed and agreed upon, and transmitted to said secretary either directly or through said president for dissemination among members generally;

With the result that such understandings, agreements, combinations and conspiracies and things done thereunder and pursuant thereto and in furtherance thereof, and in which said various members, association and individuals acted in concert and in cooperation with one or more of the others, had the effect of unduly and unlawfully restricting and restraining sale of said wooden fruit and vegetable containers, and parts thereof, in trade in commerce in the several States, and of unduly and unlawfully restricting and restraining such trade in commerce in said products and of substantially enhancing prices to consuming public and maintaining same at artificial levels and otherwise depriving public of benefits that would flow from normal competition among and between such members and of eliminating competition, with tendency and capacity of creating monopoly in sale of said products in commerce as aforesaid:

*Held*, That such understandings, agreements, combinations and conspiracies and things done thereunder and pursuant thereto and in furtherance thereof, as above set forth, constituted unfair methods of competition.

Before *Mr. E. J. Hornibrook* and *Mr. John L. Hornor*, trial examiners.

*Mr. Edw. W. Thomerson* and *Mr. Richard P. Whiteley* for the Commission.

*Treadwell & Treadwell*, of Arcadia, Fla., *Mr. F. C. Hillyer*, of Jacksonville, Fla. and *Mr. R. Granville Curry*, of Washington, D. C., for respondents in general, excepting *Keysville Lumber Co.* and *Roux Crate and Box Co.*, who were represented by *Raney & Raney*, of Tampa, Fla.

#### 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 associa-

tion, the individuals, and the corporations, hereinafter described and named as respondents, have been, and are now, using unfair methods of competition in commerce, as "commerce" is defined in said act; 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. Standard Container Manufacturers' Association, Inc., hereinafter referred to as respondent association, is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Florida. Its offices and place of business are at 301 Hildebrant Building, Jacksonville, Fla.

Respondent association was organized, and for the past several years has acted, as a trade association for the promotion and protection of the interests of the respondents hereinafter described as being members of said respondent association. Said members are engaged in the manufacture and sale of one or more of the various types of wooden containers used in packaging fruits and vegetables for transportation from the producers of said fruits and vegetables to ultimate consumers. These containers are described and designated as crates, baskets, boxes, hampers, lugs, cups, trays, cartons, and by various and sundry other names commonly used in the industry in referring to wooden containers, and the parts thereof, for the packaging of fruits and vegetables.

PAR. 2. Respondent, Adkins Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Gainesville, Fla.

Respondent, Consumers Lumber & Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Apopka, Fla.

Respondent, Elberta Crate & Box Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Bainbridge, Ga. This respondent operates two manufacturing plants, one at Bainbridge, Ga., and the other at Tallahassee, Fla. It also owns and controls the respondent Southern Crate & Veneer Co., whose principal office and place of business is at Macon, Ga. Respondent, Hector Supply Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 235 South Miami Avenue, Miami, Fla., and is, and acts as, a sales agent for respondent Elberta

Crate & Box Co., and it cooperated with the other respondents named in this paragraph in doing the acts and things hereinafter alleged.

Respondent, Georgia Veneer & Package Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Brunswick, Ga.

Respondent, Georgia Crate & Basket Co.,<sup>1</sup> is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Thomasville, Ga.

Respondent, The Greenville Veneer & Crate Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Greenville, Fla.

Respondent, Keysville Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Keysville, Fla.

Respondents, Walton E. Nants and R. A. Nants, are individuals, trading and doing business under the firm name Nants Manufacturing Co., with their principal office and place of business at Live Oak, Fla.

Respondent, Nocatee-Manatee Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Nocatee, Fla. It also owns and operates a mill at Manatee, Fla.

<sup>1</sup> R. C. Balfour, Jr., and J. V. Hawthorne, partners doing business under the name Georgia Crate & Basket Co., were substituted as parties respondent for said corporation by order amending complaint and substituting parties, dated June 25, 1938, as follows:

This matter coming on to be heard by the Commission upon the request of R. C. Balfour, Jr., and J. V. Hawthorne, individuals, doing business as a copartnership under the name Georgia Crate & Basket Co., that the complaint herein be amended and that they be substituted as parties respondent in lieu and in stead of the Georgia Crate & Basket Co., a corporation, named in said complaint as one of the parties respondent herein; and it appearing to the Commission that the Georgia Crate & Basket Co., a corporation, named in said complaint as a party respondent has been dissolved; that a copy of said complaint has been served on said copartnership composed of R. C. Balfour, Jr., and J. V. Hawthorne, trading as Georgia Crate & Basket Co.; that said copartnership has continued the business formerly conducted by the Georgia Crate & Basket Co., a corporation, under the name of Georgia Crate & Basket Co.; that said copartnership accepted service of the copy of the complaint herein directed to said corporation and have filed their answers to said complaint; and that the other parties respondent herein have waived the service of notice of amendment of said complaint and the substitution of parties; and the Commission having duly considered said request and being now fully advised in the premises.

*It is ordered*, That the complaint herein be, and the same hereby is amended so as to name the said R. C. Balfour, Jr., and J. V. Hawthorne, copartners, doing business under the name Georgia Crate & Basket Co., as parties respondent herein in lieu and in stead of the Georgia Crate & Basket Co., a corporation; and

*It is further ordered*, That R. C. Balfour, Jr., and J. V. Hawthorne be, and they hereby are, substituted as parties respondent in lieu and in stead of the Georgia Crate & Basket Co., a corporation,

Respondent, Ocala Manufacturing, Ice & Packing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Ocala, Fla.

Respondent, The Pierpont Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Savannah, Ga.

Respondent, Roux Crate & Lumber Company, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Bartow, Fla.

Respondent, Shollar Crate & Box Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Shamrock, Fla.

Respondent, Southern Crate & Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Macon, Ga.

Respondent, Southern Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Palatka, Fla.

Respondent, Walling Crate Company,<sup>2</sup> is a corporation organized, existing, and doing business under and by virtue of the laws of the

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<sup>2</sup> L. B. Walling, Hugh Walling, and Frieda Walling, partners doing business under the name Walling Crate Co., were substituted as parties respondent for said corporation by order amending complaint and substituting parties, dated June 24, 1938, as follows:

This matter coming on to be heard by the Commission upon the request of L. B. Walling, Hugh Walling, and Frieda Walling, individuals, doing business as a copartnership under the name Walling Crate Co., that the complaint herein be amended and that they be substituted as parties respondent in lieu and in stead of Walling Crate Co., a corporation, named in said complaint as one of the parties respondent herein; and it appearing to the Commission that Walling Crate Co., a corporation, named in said complaint as a party respondent, has been dissolved; that a copy of said complaint has been served on said copartnership composed of L. B. Walling, Hugh Walling, and Frieda Walling, trading as Walling Crate Co.; and that said copartnership has continued the business formerly conducted by Walling Crate Co., a corporation, under the name of Walling Crate Co.; that said copartnership accepted service of the copy of the complaint herein directed to said corporation and have filed their answers to said complaint; and that the other parties respondent herein have waived the service of notice of amendment of said complaint and the substitution of parties, and the Commission having duly considered said request and being now fully advised in the premises.

*It is ordered*, That the complaint herein be, and the same hereby is, amended so as to name the said L. B. Walling, Hugh Walling, and Frieda Walling, a copartnership doing business under the name Walling Crate Co., as parties respondent herein in lieu and in stead of Walling Crate Co., a corporation; and

*It is further ordered*, That L. B. Walling, Hugh Walling, and Frieda Walling be, and they hereby are, substituted as parties respondent in lieu and in stead of Walling Crate Co., a corporation.

State of Florida, with its principal office and place of business at Leesburg, Fla.

Respondent, Frank R. Pounds Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 314 North Garland Street, Orlando, Fla.

Respondent, Lake Crate & Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Mount Dora, Fla.

Respondent, Osceola Crate Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at Kissimmee, Fla.

Respondent, Zachary Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Sanford, Fla. It also owns and operates a mill at Palatka, Fla.

Respondent, Montbrook Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Baldwin, Fla.

Respondent, Southern Container Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Commodore's Point, Jacksonville, Fla.

Respondent, Cummer Sons Cypress Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 1616 Barnett National Bank Building, Jacksonville, Fla. It also owns and operates manufacturing plants at Lacooshee and Otter Creek, Fla.

Respondent, Zack Russ, is an individual, trading and doing business under the firm name Russ Crate Co., with his principal office and place of business at Coleman, Fla.

Respondent, Stephen O. Shinholzer, is an individual, with his principal office and place of business at Sanford, Fla.

All of the respondents named in this paragraph, except respondent, Hector Supply Co., are now, or have been during the time mentioned herein, members of the respondent association. These respondents will hereinafter on occasion be referred to as member respondents. These member respondents are engaged in the manufacture, sale, and distribution, or in the sale and distribution, of some one or more of the wooden fruit and vegetable containers described in paragraph 1 hereof, and

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said member respondents cause such containers, when sold, to be transported from their respective places of business, as aforesaid, in the States of Georgia and Florida, as the case may be, to the purchasers of said containers at their respective locations in the various States of the United States. Many purchasers of said containers are located in States other than the State of the origin of the shipment of said containers by said member respondents.

Before the adoption of the practices hereinafter alleged, these member respondents were in active and substantial competition with each other, and with other members of the industry, some of whom have been members of the respondent association and others of whom have not been members of the respondent association, in making and seeking to make sales of their said products in commerce between and among the several States of the United States, and, but for the facts hereinafter alleged such active and substantial competition would have continued to the present time and the said member respondents would now be in active and substantial competition with each other and with members of the industry not presently members of the respondent association in such commerce.

The trade area in which the member respondents sell and distribute their said products covers the southeastern portion of the United States, including the States of Florida, Georgia, South Carolina, North Carolina, Virginia, and New Jersey. Within the trade area of said member respondents there is produced a substantial percentage of the fruits and vegetables produced in the United States. The wooden containers sold and distributed by the member respondents are used by the producers of fruits and vegetables in this area in preparing said products for transportation to markets located in various States of the United States, where said fruits and vegetables in said containers are distributed to wholesalers, retailers, and others for ultimate distribution to the consuming public.

The wooden containers sold by the member respondents in the trade area hereinabove described, constitute substantially all of said products sold in said trade area, and especially so in the States of Georgia and Florida. Said member respondents control and dominate the wooden container industry in the trade area above described, and especially so in the States of Georgia and Florida, and they control the practices of the industry as a whole in said trade area.

PAR. 3. Respondent James B. Adkins is president of the member respondent Adkins Manufacturing Company, and is president and chief executive officer of the respondent association. He is located in Gainesville, Fla.

Respondent Charles P. Chazal is an employee of the member respondent Ocala Manufacturing, Ice & Packing Co., Inc., and is the vice-president of the respondent association. He is located in Ocala, Fla.

Respondent Russell W. Bennett is secretary, treasurer, and general manager of the respondent association, and is the individual through whom the information hereinafter mentioned is gathered and disseminated. He is located at 301 Hilderbrant Building, Jacksonville, Fla.

These three respondents, and other individuals not named herein as respondents, serve as a board of directors for the respondent association and in that capacity, and in the respective capacities hereinabove named, they control and direct the policies and practices of said respondent association.

PAR. 4. Prior to July 15, 1935, the member respondents caused the organization of the respondent association for the promotion and protection of the interests of said member respondents. On or about July 15, 1935, and on divers days and dates thereafter, said member respondents entered into and thereafter carried out understandings, agreements, combinations and conspiracies, hereinafter, at times, referred to as an undertaking, for the purpose and with the effect of restricting, restraining, and monopolizing, and suppressing and eliminating competition in, the sale of wooden fruit and vegetable containers in trade and commerce between, among, in and with the several States of the United States.

PAR. 5. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said member respondents have done and performed, and still do and perform, the following acts and things:

1. Said member respondents agreed to fix and maintain, and have fixed and maintained, uniform prices in the sale of said wooden fruit and vegetable containers, and the parts thereof.

2. Said member respondents agreed to fix and maintain, and have fixed and maintained, minimum prices in the sale of said wooden fruit and vegetable containers, and the parts thereof.

3. Said member respondents agreed to fix and maintain, and have fixed and maintained, uniform terms and conditions, including, but without limitation, maximum discounts, brokerage fees, freight and other allowances, and time limitations of contracts, in the sale of said wooden fruit and vegetable containers, and the parts thereof.

4. Said member respondents agreed to curtail, and have curtailed, the production of said wooden fruit and vegetable containers, and the parts thereof, and for the purpose of securing the enforcement

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of the agreement to curtail production, each member respondent checks upon the production of some other designated member and files reports as to the compliance of such designated member with the agreement to curtail production during the period when such curtailment is in effect.

5. Said member respondents have threatened, coerced, and intimidated members and nonmembers of the respondent association and induced such members and nonmembers to become parties to and thereafter carry out said undertaking, when, but for the threats, coercion, and intimidation, such members and nonmembers would not have become parties to and carried out said undertaking.

6. Said respondent James B. Adkins from time to time meets with duly authorized representatives of said member respondents and determines the prices at which said wooden fruit and vegetable containers, and the parts thereof, are to be sold, and from time to time, by telegraphic messages and other means of communication, transmits to all of the member respondents, and to others in the industry who are not members of the respondent association, the current prices and terms and conditions at which said wooden fruit and vegetable containers, and the parts thereof, are to be sold.

7. Said member respondents have designated and appointed said respondent James B. Adkins, and he has so acted, as the person to whom is delegated the duty of determining, after consultation with member respondents and others, the prices to be charged for the products of the industry, and as the person to secure the adherence of the member respondents and nonmembers to the prices, terms and conditions of sales, etc., so fixed and established.

8. Said respondent association, through the respondents Russell W. Bennett and James B. Adkins, collects from, and disseminates among, member respondents and other participants in said undertaking, statistical information used and useful in carrying out said undertaking, and it distributes from time to time among said member respondents and nonmembers participating in said undertaking, detailed lists showing the current prices, terms and conditions of sale, and other information used and useful in carrying out said undertaking.

9. Said member respondents have used, and are now using, other methods and means designed to suppress and prevent competition and restrict and restrain the sale of said wooden fruit and vegetable containers, and the parts thereof, in said commerce.

PAR. 6. Each of said respondents acted in concert and in cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 7. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining the sale of said wooden fruit and vegetable containers, and the parts thereof, in trade and commerce between, among, in and with the several States of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said wooden fruit and vegetable containers, and the parts thereof, in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said wooden fruit and vegetable containers, and the parts thereof, in said commerce. Said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and are to the prejudice of the public.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 3, 1938, issued and served its complaint in this proceeding upon the respondents Standard Container Manufacturers' Association, Inc., a corporation, and its members; James B. Adkins, Charles P. Chazal, Russell W. Bennett, individually and as president, vice-president, and secretary, treasurer, and manager, respectively, and as members of the board of directors of Standard Container Manufacturers' Association, Inc.; Adkins Manufacturing Co., a corporation; Consumers Lumber & Veneer Co., a corporation; Elberta Crate & Box Co., a corporation; Georgia Veneer & Package Co., a corporation; Georgia Crate & Basket Co., a corporation; The Greenville Veneer & Crate Co., a corporation; Keysville Lumber Co., a corporation; Walton E. Nants and R. A. Nants, trading as Nants Manufacturing Co.; Nocatee-Manatee Crate Co., a corporation; Ocala Manufacturing, Ice & Packing Co., Inc., a corporation; The Pierpont Manufacturing Co., a corporation; Roux Crate & Lumber Co., Inc., a corporation; Shollar Crate & Box Co.,

Inc., a corporation; Southern Crate & Veneer Co., a corporation; Southern Veneer Co., a corporation; Walling Crate Co., a corporation; Frank R. Pounds Crate Co., a corporation; Lake Crate & Lumber Co., a corporation; Osceola Crate Mills, Inc., a corporation; Zachary Veneer Co., a corporation; Montbrook Crate Co., a corporation; Southern Container Co., a corporation; Cummer Sons Cypress Co., a corporation; Hector Supply Co., a corporation; Zack Russ, an individual, trading as Russ Crate Co.; Stephen O. Shinholzer, an individual, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On June 24, 1938, it issued its order amending complaint and substituting parties, serving its amended complaint on a copartnership, composed of L. B. Walling, Hugh Walling, and Frieda Walling, trading as Walling Crate Co., in the place and stead of Walling Crate Co., a corporation, which had been dissolved. On June 25, 1938, it issued its order amending complaint and substituting the parties R. C. Balfour, Jr., and J. V. Hawthorne, copartners, trading as Georgia Crate & Basket Co., in the place and stead of respondent Georgia Crate & Basket Co., a corporation, which had been dissolved. After the issuance of said complaint and said amended complaints and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Edw. W. Thomerson and Richard P. Whiteley, attorneys for the Commission, and in opposition to the allegations of the complaint by F. C. Hillyer and J. H. Treadwell, attorneys for all respondents except Keysville Lumber Co., a corporation, and Roux Crate & Lumber Co., Inc., a corporation, and George P. Raney, attorney for respondent Keysville Lumber Co., a corporation, and Roux Crate & Lumber Co., Inc., a corporation, before E. J. Hornibrook and John L. Hornor, 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 and said amended complaints, the answers thereto, testimony and other evidence, brief in support of the complaint and in opposition thereto, and the oral argument of counsel Edw. W. Thomerson for the Commission and F. C. Hillyer for 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. Standard Container Manufacturers' Association, Inc., is a nonprofit corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business at 301 Hildebrant Building, Jacksonville, Fla., and since prior to July 15, 1935, has acted as a trade association for the promotion and protection of the interests of the respondents hereinafter described as members of said respondent association, which said members are engaged in the manufacture and sale of one or more of the various types of wooden containers used in packaging fruits and vegetables for transportation from the producers of said fruits and vegetables to ultimate consumers. These containers are described and designated as crates, baskets, boxes, hampers, lugs, cups, trays, and by various and sundry other names commonly used in the industry in referring to wooden containers, and the parts thereof for packaging of fruits and vegetables in preparing such products for transportation to markets in various States. Some of the member respondents hereinafter described manufacture patented wooden containers which are not involved in this proceeding.

PAR. 2. Respondent, James B. Adkins, is president of the member respondent, Adkins Manufacturing Co., and was president and chief executive officer of the Standard Container Manufacturers' Association, Inc., from December 18, 1935, to January 1939, being succeeded by C. P. Chazal as president thereof. He is located in Gainesville, Fla.

Respondent, Charles P. Chazal, an employee of the member respondent Ocala Manufacturing, Ice & Packing Co., Inc., was the vice-president of the respondent Standard Container Manufacturers' Association, Inc., until January 1939. At that time he was elected president of said Association, succeeding J. B. Adkins in that office. He is located in Ocala, Fla.

Respondent, Russell W. Bennett, is secretary, treasurer, and general manager of the respondent Standard Container Manufacturers' Association, Inc., and is the individual through whom the information relating to the activities of the respondent Standard Container Manufacturers' Association, Inc., was gathered and disseminated. He is located at 301 Hildebrant Building, Jacksonville, Fla.

The three above-named respondents will hereinafter be referred to on occasion as the individual respondents.

PAR. 3. Respondent, Adkins Manufacturing Co., is a corporation organized and existing and doing business under and by virtue of

the laws of the State of Florida, with its principal office and place of business at Gainesville, Fla.

Respondent, Consumers Lumber & Veneer Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Apopka, Fla.

Respondent, Elberta Crate & Box Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Bainbridge, Ga. This respondent operates two manufacturing plants, one at Bainbridge, Ga., and the other at Tallahassee, Fla. It also owns and controls the respondent Southern Crate & Veneer Co., whose principal office and place of business is at Macon, Ga.

Respondent, Hector Supply Co., is a corporation organized and existing and doing business under and by virtue of the laws of the State of Florida, with its office and place of business at 235 South Miami Avenue, Miami, Fla., and is, and acts as, a sales agent for respondent, Elberta Crate & Box Co., and owns and controls a substantial amount of stock in said Elberta Crate & Box Co. and had a representative present at meetings with the individual respondent Adkins when current prices as to wooden containers were agreed upon.

Respondent, Georgia Veneer & Package Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Brunswick, Ga.

Respondents, R. C. Balfour, Jr. and J. V. Hawthorne, are copartners doing business as the Georgia Crate & Basket Co., with their principal office and place of business at Thomasville, Ga.

Respondent, The Greenville Veneer & Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Greenville, Fla.

Respondent, Keysville Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Keysville, Fla.

Respondents, Walton E. Nants and R. A. Nants, are individuals, trading and doing business under the firm Nants Manufacturing Co., with their principal office and place of business at Live Oak, Fla.

Respondent, Nocatee-Manatee Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Florida, with its principal office and place of business at Nocatee, Fla. It also owns and operates a mill at Manatee, Fla.

Respondent, Ocala Manufacturing, Ice & Packing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Ocala, Fla.

Respondent, The Pierpont Manufacturing Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Savannah, Ga.

Respondent, Roux Crate & Lumber Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Bartow, Fla.

Respondent, Shollar Crate & Box Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Shamrock, Fla.

Respondent, Southern Crate and Veneer Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its principal office and place of business at Macon, Ga.

Respondent, Southern Veneer Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Palatka, Fla.

Respondents, L. B. Walling, Hugh Walling and Frieda Walling, are copartners doing business as Walling Crate Company, with their principal office and place of business at Leesburg, Fla.

Respondent, Frank R. Pounds Crate Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 314 North Garland Street, Orlando, Fla.

Respondent, Lake Crate and Lumber Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Mount Dora, Fla.

Respondent, Zachary Veneer Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Sanford, Fla. It also owns and operates a mill at Palatka, Fla.

Respondent, Osceola Crate Mills, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of Delaware with its principal office and place of business at Kissimmee, Fla.

Respondent, Montbrook Crate Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Baldwin, Fla.

Respondent, Southern Container Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at Commodore's Point, Jacksonville, Fla.

Respondent, Cummer Sons Cypress Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its principal office and place of business at 1616 Barnett National Bank Building, Jacksonville, Fla. It also owns and operates manufacturing plants at Lacoochee and Otter Creek, Fla.

Respondent, Zack Russ, is an individual, trading and doing business under the firm name Russ Crate Company, with his principal office and place of business at Coleman, Fla.

Respondent, Stephen O. Shinholzer, is an individual with his principal office and place of business at Sanford, Fla.

The respondents named in this paragraph will hereinafter on occasion be described and referred to as member respondents. All of the member respondents named above, except respondent Hector Supply Co., are now, or have been at some time since July 15, 1935, members of the respondent Standard Container Manufacturers' Association, Inc. All of the member respondents are engaged in the manufacture, sale, and distribution, or in the sale and distribution, of some one or more of the wooden fruit and vegetable containers described above.

PAR. 4. In the regular course of business the respondents Keyville Lumber Co., Nocatee-Manatee Crate Co., Hector Supply Co., Russ Crate Co., Ocala Manufacturing, Ice & Packing Co., Inc., Consumers Lumber & Veneer Co., Elberta Crate & Box Co., The Pierpont Manufacturing Co., Sholler Crate & Box Co., Inc., Georgia Veneer & Package Co., Nants Manufacturing Co., Southern Crate & Veneer Co., Southern Container Co., Cummer Sons Cypress Co., and Adkins Manufacturing Co., upon receipt of orders, shipped their products from their respective places of business in the States in which they are located to customers located in States of the United States other than the State of origin of such shipments. Respondents, Southern Veneer Co., R. C. Balfour, Jr., and J. V. Hawthorne, copartners, doing business as Georgia Crate & Basket Co., Greenville

Veneer & Crate Co., Roux Crate & Lumber Co., Inc., L. B. Walling, Hugh Walling, and Frieda Walling, copartners, doing business as Walling Crate Co., Frank R. Pounds Crate Co., Lake Crate & Lumber Co., Osceola Crate Mills, Inc., Zachary Veneer Co., Montbrook Crate Co., and Stephen O. Shinholzer, upon receipt of orders, shipped their products from their places of business in Florida to customers located in the State of Florida.

PAR. 5. All of the member respondents of respondent Standard Container Manufacturers' Association, Inc., before the adoption of the practices hereinafter set forth, and for long periods of time prior thereto, were in active and substantial competition with each other in the sale and distribution of said products in the trade area in which they operate, namely, in the southeastern portion of the United States, and more particularly in the States of Georgia and Florida, and with manufacturers of like products located in various other States of the United States. Such active and substantial competition would have continued to the present time and said member respondents would now be in active and substantial competition with each other but for the understandings, agreements, combinations and conspiracies hereinafter set forth. Within the trade area of said member respondents there is produced a substantial percentage of the fruits and vegetables produced in the United States. The wooden containers sold and distributed by the member respondents are used by the producers of fruits and vegetables in this area in preparing said products for transportation to markets located in various States of the United States, where said fruits and vegetables in said containers are distributed to wholesalers, retailers, and others for ultimate distribution to the consuming public. The wooden containers sold by the member respondents in the State of Florida constitute the greater portion of said products sold in said State and said member respondents control and dominate the wooden container industry therein, and they control the practices of the industry as a whole in said State.

PAR. 6. Respondents, James B. Adkins, Charles P. Chazal, and Russell W. Bennett, hold and have held their respective positions in respondent Standard Container Manufacturers' Association, Inc., as set forth above and they and other individuals serve as a Board of Directors for the respondent Standard Container Manufacturers' Association, Inc.

PAR. 7. Prior to July 15, 1935, the member respondents caused the organization of the respondent association for the promotion and protection of the interests of said member respondents. Beginning about July 15, 1935, and at various times thereafter, said member

respondents entered into and thereafter carried out understandings, agreements, combinations and conspiracies for the purpose and with the effect of restricting, restraining and monopolizing, and suppressing and eliminating competition in, the sale of nonpatented wooden fruit and vegetable containers in trade and commerce between, among, in and with the several States of the United States. Respondent association and said individual respondents became parties to, and participated in, the carrying out of said understandings, agreements, combinations, and conspiracies.

PAR. 8. In furtherance of said combinations and conspiracies, respondents have done and performed, among others, the acts and things hereinafter set out in this paragraph.

Said member respondents entered into understandings and agreements to fix and maintain uniform and minimum prices including uniform maximum discounts, brokerage fees, freight allowances, and time limitation of contracts; and acting in conformity with said understandings and agreements did fix and maintain, through the medium of respondent association and respondents Adkins and Bennett, uniform and minimum prices including maximum discounts, brokerage fees, freight allowances and time limitation of contracts in sale of wooden fruit and vegetable containers and parts thereof. Said member respondents entered into understandings and agreements to curtail, and did curtail, the production and sale of certain wooden fruit and vegetable containers and parts thereof, and entered into understandings and agreements for the purpose of securing enforcement, through the medium of respondent association and respondents Adkins and Bennett, of said understandings and agreements to curtail the production and sale thereof whereby a said designated member respondent and respondent James B. Adkins would and did ascertain the production figures of some other designated member respondent and file, and they did file, reports as to the compliance of such designated member respondent with the said understandings and agreements to curtail production and sale during the period when such curtailment was in effect.

Said respondent association, through understandings and agreements, entered into by and between its members, caused its secretary, Russell W. Bennett from time to time to issue and distribute among members of the respondent association and manufacturers and distributors price lists designated "Fair Market Value" setting forth in detail the terms and conditions of sales of various types of wooden fruit and vegetable containers agreed upon by the member respondents. Typical of the lists circulated by respondent, Russell W. Bennett, is the following:

## Findings

Manufacturers Wholesale

## FAIR MARKET VALUES

Effective December 6, 1936

**Terms and Conditions of sale:**

No orders will be accepted for future delivery at a stipulated price.

Quotations are for immediate acceptance and prompt shipment, including delivery at public carrier rates to points in Florida consuming territory in straight or mixed carlot volume.

Unless otherwise specified, prices are for standard specifications and dimensions.

Each shipment constitutes a closed transaction. Invoices are not subject to rebate or refund other than shown thereon, except in case of proven shortage or sub-standard quality.

Terms may not exceed thirty days at net price except on citrus fruit crates shipped prior to January 1, each year, on which terms may not exceed sixty days at net price.

**Discounts:**

2%—10 days, cash discount, is applicable to all sales.

No discount may be given to any buyer of citrus fruit boxes or crates, or parts thereof, other than 2% discount for cash within ten days.

Vegetable crates in carlot minimum quantities, only when sold to established dealers, are subject to a maximum trade discount of 5% on gross of invoice.

For discounts on baskets and hampers see current listing.

**Extra Charges:**

Two prints will be furnished without extra charge on citrus fruit crates. If not printed, deduct one-quarter ( $\frac{1}{4}\text{¢}$ ) cent for each impression not furnished. Boxes shipped without printing shall be so specifically designated on invoice.

Extra prints on citrus fruit crates and all prints on other packages will be charged for at the rate of one-quarter ( $\frac{1}{4}\text{¢}$ ) cent each impression.

One-half ( $\frac{1}{2}\text{¢}$ ) cent per package will be charged for dyed or printed cleats, except basket and hamper prices may include one or more colored hoops without extra charge. Printing is extra.

(The above statement is followed by a detailed listing of the prices of various types of wooden containers and the parts thereof.)

Changes were made in these lists in accordance with instructions secured from respondent Adkins and other representatives of the member respondents, and respondent Russell W. Bennett issued and distributed from time to time among member respondents lists showing these changes. Respondent association caused, through understandings and agreements of member respondents, production to be curtailed by its members in the manufacture of wooden fruit and vegetable containers and parts thereof and directed that no citrus fruit crates were to be fabricated, sold or shipped for use in the State of Florida between June 15 and August 15, 1936, except for current use and that

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none were to be sold or offered for sale at less than the then present prevailing prices. Respondent association provided a means whereby compliance with the understandings and agreements to fix prices and curtail production by its members could be investigated, ascertained and corrective measures administered in enforcing and securing adherence to the understandings and agreements.

When there were violations or alleged violations of the provisions of the understandings and agreements entered into by and between the respondent members of the said association, member respondents and respondent James B. Adkins caused the alleged violations to be investigated and threatened, intimidated and coerced the violator, thereby induced said violator to cancel orders and conform to said understandings and agreements when but for such threats, intimidations and coercion such member would not have conformed to such understandings and agreements.

Respondent, James B. Adkins, was designated and appointed and duly authorized as their representative by said respondent association and said respondent members, to determine, after consultation with member respondents and others, the prices at which said wooden fruit and vegetable containers and parts thereof were to be sold. Acting as such duly authorized agent, respondent Adkins from time to time met with the other duly authorized representatives of said member respondents and determined the current prices at which said products were to be sold and caused to be transmitted by telegram, mail and by other means to all member respondents, and to others in the industry who were not members of respondent association, the fixed and established current prices, terms and conditions at which said wooden fruit and vegetable containers and parts thereof were to be sold. Typical of the communications from respondent Adkins to the member respondents and others in the industry is a telegram dated December 6, 1936, which is as follows:

Gainesville, Florida,  
December 6, 1936.

Nocatee Crate Company,  
Nocatee, Florida.

Effective last night Sunday December 6th Fair Market Value Prices on all packages both square and round except bushel tubs and half bushel tubs advanced one cent per package discount and extras remain the same Stop Add 5% to current parts prices Stop All manufacturers will mail me copies of all invoices Gainesville until further notice Stop Confirm by Western Union.

J. B. Adkins

and a telegram dated January 31, 1937, which is as follows:

Jacksonville, Fla.  
January 31, 1937.

Nocatee-Manatee Crate Company,  
Nocatee, Fla.

Effective today noon Fair Market Prices on all citrus packages one cent advance  
Stop All vegetable packages one-half cent advance except lugs hampers bushel  
and one-half bushel tubs which remain as is Stop Discount and extras remain  
same Stop Add five percent to current parts prices Stop This price spot and  
subject to change dependent further increase labor and raw material.

J. B. Adkins

Many other telegrams relating to prices, terms and conditions of sale and curtailment of production were sent to member respondents by respondent Adkins. Respondent Adkins was further authorized and delegated as the agent of respondents to investigate the activities of respondent members regarding compliance with said understandings and agreements and to enforce and secure, and respondent Adkins did investigate, enforce and secure, the adherence of the member respondents and nonmember respondent to the prices, terms and conditions of sale so fixed and established by respondents.

As compensation for performing the duties herein described, respondent Adkins was voted by respondent association the sum of \$500 per month beginning January 1, 1936, and an additional sum of \$250 per month to cover a portion of his expense account during the period of time he so acted. Some of the member respondents who did not retain their membership in the respondent association during all of the time respondent Adkins was president of the respondent association made regular contributions to assist in defraying expenses in connection with the work of respondent Adkins.

Respondent association, through respondents Russell W. Bennett and James B. Adkins, as officers and agents of said respondent association, and in accordance with the understandings and agreements entered into by and between said respondent members, and for the purpose of carryig out said understandings and agreements, collected from and disseminated among the member respondents statistical information used and useful in enforcing compliance with said understandings and agreemets. The aforesaid understandings and agreements by and between the member respondents were made and entered into at meetings held from time to time during the period from about July 15, 1935 to the date of the issuance of the complaint herein, at general meetings of the member respondents and at meetings by various of the member respondents interested in a particular

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container or type of container, such as peach baskets, tomato lugs or celery crates, where prices and terms and conditions of sale were discussed and agreed upon. Information as to the prices and terms and conditions of sale determined at these meetings was transmitted to respondent Bennett, either directly or through respondent Adkins, for dissemination among the member respondents generally.

PAR. 9. Each of said respondents acted in concert and in cooperation with one or more of the other respondents in doing and performing the acts and things hereinabove set forth in furtherance of said understandings, agreements, combinations and conspiracies.

PAR. 10. Said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinabove set forth, have had, and do have, the effect of unduly and unlawfully restricting and restraining the sale of said wooden fruit and vegetable containers, and the parts thereof, in trade and commerce between, among, in and with the several States of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said wooden fruit and vegetable containers, and the parts thereof, in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said wooden fruit and vegetable containers, and the parts thereof, in said commerce.

#### CONCLUSION

Said understandings, agreements, combinations and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as above set forth, 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 issued herein on January 3, 1938, and the answers filed by the respondents, testimony and other evidence taken by E. J. Hornibrook and John L. Hornor, examiners for the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein and oral argument by Edw. W. Thomerson, counsel for the Commission, and by F. C. Hillyer, counsel for all of the respondents except

Keysville Lumber Co. and Roux Crate & Lumber Co., Inc., and the Commisison 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 Adkins Manufacturing Co., Consumers Lumber and Veneer Co., Elberta Crate & Box Co., Hector Supply Co., Georgia Veneer & Package Co., R. C. Balfour, Jr., and J. V. Hawthorne, doing business as the Georgia Crate & Basket Co., The Greenville Veneer & Crate Co., Keysville Lumber Co., Walton E. Nants and R. A. Nants, trading and doing business as Nants Manufacturing Co., Nocatee-Manatee Crate Co., Ocala Manufacturing, Ice & Packing Co., Inc., The Pierpont Manufacturing Co., Roux Crate & Lumber Co., Inc., Shollar Crate and Box Co., Inc., Southern Crate & Veneer Co., Southern Veneer Co., L. B. Walling, Hugh Walling and Frieda Walling, doing business as Walling Crate Co., Frank R. Pounds Crate Co., Lake Crate and Lumber Co., Zachary Veneer Co., Osceola Crate Mills, Inc., Montbrook Crate Co., Southern Container Co., Cummer Sons Cypress Co., Zach Russ, trading as Russ Crate Co., and Stephen O. Shinholzer, their officers, agents, representatives, and employees, cease and desist from entering into, or carrying out, any understanding, agreement, combination or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and any other member or members of the industry, for the purpose or with the effect of restricting, restraining or monopolizing, or eliminating competition in, the sale in interstate commerce of wooden containers used in packaging fruits and vegetables, variously described and referred to as crates, baskets, boxes, hampers, lugs, cups, and trays, and the parts thereof, and as a part of such understanding, agreement, combination and conspiracy from doing any of the following acts or things:

1. Agreeing to fix and maintain, or fixing and maintaining, uniform or minimum prices.

2. Agreeing to fix and maintain, or fixing and maintaining, uniform terms and conditions of sale, such as maximum discounts, brokerage fees, freight and other allowances and time limitations in contracts.

3. Agreeing to curtail, or curtailing, production of such containers or the parts thereof or agreeing to check, or checking, the production of the mills of other parties to such an agreement to determine if such other mills have curtailed production as agreed upon.

4. Threatening, coercing or in any wise intimidating members of the industry in an effort to induce such members to become parties to said understanding, agreement, combination or conspiracy, or to in-

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duce such members to maintain the prices fixed by, or to curtail production in furtherance of, said understanding, agreement, combination or conspiracy.

5. Filing with the respondent association, Standard Container Manufacturers' Association, Inc., its officers, agents or employees, any report as to the manner and form in which any member of the industry is carrying out any agreement or understanding with reference to prices or production.

6. Reporting to or conferring with respondent James B. Adkins, or any officer, agent or employee of said respondent association, as to the prices at which said products are to be sold or as to the curtailing of the production of any of such products, or as to the failure of any member of the industry to carry out any agreement or understanding on the part of such member of the industry to maintain prices, terms and conditions of sale or to curtail production.

*It is further ordered,* That the respondent Standard Container Manufacturers' Association, Inc., its officers, agents, and employees, and the respondents James B. Adkins, Charles P. Chazal, and Russell W. Bennett, forthwith cease and desist aiding, abetting, or encouraging, or cooperating with, the respondents hereinabove named in doing any of the acts and things prohibited by this order, and more particularly collecting from or disseminating among said above-named respondents, or any other member of the respondent Standard Container Manufacturers' Association, Inc., or the wooden container industry, any information as to prices, terms, and conditions of sale, or curtailment of production.

*It is further ordered,* That the respondent James B. Adkins cease and desist threatening, coercing or, in any wise, intimidating members of the industry in an attempt to induce such members to become a party to such an understanding, agreement, combination, or conspiracy, or to maintain prices, terms and conditions of sale or to curtail production in furtherance of any such understanding, agreement, combination or conspiracy.

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

## Syllabus

## IN THE MATTER OF

MAURICE SEIDEL AND CHARLES SEIDEL, TRADING AS  
M. SEIDEL & SON

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

*Docket 3961. Complaint, Dec. 2, 1939—Decision, Mar. 7, 1940*

Where two partners engaged in sale and distribution of furs, fur coats and other fur products to purchasers in various other States and in the District of Columbia; in soliciting the sale of and in selling and distributing their said merchandise—

(a) Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which merchandise in question was sold and distributed to ultimate consumer thereof wholly by lot or chance, and involved distribution to purchasing public of certain literature and instructions, including push cards, order blanks, illustrations of goods and articles concerned, and circulars explaining their said plan of selling such merchandise and of allotting it as premiums or prizes to operators of such push cards under plan in accordance with which and card's explanatory legend, person securing by chance selection from list of feminine names displayed name corresponding with that concealed under card's master seal secured "a beautiful new fur cape," or other article being thus disposed of, and amount paid for chance was dependent upon number secured by chance as concealed under card's various discs, and under other sales plans or methods in connection with which they furnished various devices accompanied by order blanks, instructions and other printed matter for use in sale and distribution of their merchandise by means of game of chance, gift enterprise, or lottery scheme similar to plan or method above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with plan above described, under which facts as to whether purchaser received article or nothing for amount of money paid and amount to be paid were 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 criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plan or method involving game of chance or sale of 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 their said sales plan or method employed in sale and distribution of their merchandise and element of chance involved therein, and were thereby induced to buy and sell their said merchandise in preference to that offered and sold by their said competitors who do not use such or equivalent sales plan or method, and with result, through use of such plan or method and because of such game of chance, of unfairly diverting trade in commerce from their competitors aforesaid who do not use such or equivalent sales plan or method, to the substantial injury of competition in commerce.

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- (b) Represented, through advertisements in magazines, circulars, and other printed or written matter, that the possible and average earnings of their salesmen and representatives in the ordinary course of business was \$1,300.00 a week or more, and that an investment of \$12.00 would bring such amount, facts being possible average earnings of salesmen and representatives were not such amount, which was not a true representation of average net earnings or profits consistently made by their active, full-time salesmen or representatives in the ordinary course of business and under normal conditions and circumstances, their said salesmen or representatives earn only a small fraction of amount represented and none of them earned or had ever earned said amount, which had never been consistently earned by any representative in ordinary course of business under normal conditions and circumstances, and investment of \$12.00 would not bring \$1,300.00, and no representative by such investment had earned such profits or any sum other than a very small fraction thereof; and
- (c) Made use in various advertising in periodicals, circulars, and other printed and written matter, and on labels and tags, of such false and misleading references and designations to describe certain women's fur garments dealt in by them and made from rabbit peltries so dressed and dyed as to resemble fur products from peltries of seal, beaver, leopard, ermine, mink, squirrel, sable or caracul sheep, and true zoological names of which they failed to disclose, as "Seal," "Black Seal," "Full Skin Seal," "Pieced Seal," "Pieced Sealine," "Mendoza Beaver," "Pieced Beaver," "Leopardine," "Erminette," "Ermine Coney," "Pieced Marmink," "Striped Minkolette," "Squirrelette," "Cocoa Squirrel," "Dark Sable Coney," "Golden Sable Coney," and "Broad-tail";

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that large earnings and profits could be made by salesmen and representatives selling their products, and that the fur garments designated and described as above set forth were composed in fact of the peltries of seal, beaver, leopard, ermine, mink, squirrel, sable or caracul sheep, preferred on part of purchasing public to peltries made of rabbit because of their superior qualities such as pliability, durability, and luster, and, by reason of such mistaken and erroneous beliefs induced as above set forth, into purchase of substantial quantities 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 in commerce and unfair and deceptive acts and practices therein.

*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 Maurice Seidel and Charles Seidel, individuals and copartners, trading under the name of M. Seidel & Son, 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, Maurice Seidel and Charles Seidel, are individuals doing business as copartners under the name of M. Seidel & Son, with their principal office and place of business located at 243 West 30th Street, in the city of New York, in the State of New York. Respondents are now, and for some time last past have been, engaged in the sale and distribution of furs, fur coats, and other fur products 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 afore-said place of business in the State of New York to purchasers thereof at their respective points of location 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 for some time last past a course of trade by respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. Respondents are and have been in competition with other partnerships, and with individuals, firms, and corporations 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 their business as hereinabove described, respondents, in soliciting the sale of and in selling and distributing their said 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 and has been sold and distributed to the ultimate consumer 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' said plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears 63 small partially perforated discs, on the face of which is printed the word "push" and immediately below each of said discs is printed a feminine name. Concealed within each disc is a number which is disclosed when the disc 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 below said discs. On the reverse side of said push

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card is a place for the recording of the name of each purchaser opposite the name selected. The push card bears legends or instructions as follows:

Name Under Seal Receives

A BEAUTIFUL NEW FUR CAPE

LATEST STYLE  
as illustrated

SIZES: 12-40

(Picture of lady  
wearing fur cape)

No. 1-25

Pay what you draw—  
over 25 pays only 25¢

Do not  
remove seal  
until entire  
card is sold

Choice of Cape in Light or Dark Brown

Sales of respondents' merchandise by means of said push cards are made in accordance with the above-described legends or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legends or instructions. The facts as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid and the amount to be paid therefor, are thus determined wholly by lot or chance.

Respondents furnish and have furnished various devices 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 devices 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 described. 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 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 sales plan or method or any sales plan or 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 the 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 sales plan or method. The use of said sales plan or 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 sales plan or method. 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. In the course and conduct of their business, and for the purpose of inducing salesmen or representatives to sell their products by means of the said push cards, respondents represent that the possible and average earnings of salesmen and representatives in the ordinary course of business is \$1,300.00 a week or more, and that an investment of \$12.00 would bring \$1,300.00. Such representations are made by means of advertisements placed in magazines, circulars, and other printed or written matter. Among and typical of the statements and representations so made by the respondents are the following:

You can make for yourself \$1300 a week or more.  
\$12 can bring you \$1300.

In truth and in fact, the possible average earnings of salesmen and representatives are not \$1,300.00 a week or more, and said sum is not a true representation of the average net earnings or profits consistently made by respondents' active full-time salesmen or representatives in the ordinary course of business and under normal conditions and circumstances. In fact, such salesmen and representatives earn

only a small fraction of the amount represented. Furthermore, none of the respondents' representatives have earned or now earn \$1,300.00 a week, and said sum so represented has never been consistently earned by any representative in the ordinary course of business and under normal conditions and circumstances. Furthermore, the investment of \$12.00 will not bring \$1,300.00, nor has any representative of the respondents by such an investment earned profits of \$1,300.00 or any sum other than a very small fraction of said amount.

PAR. 6. In the course and conduct of their business as aforesaid, the respondents are engaged in the sale and distribution of women's fur garments made from rabbit peltries which peltries are so dressed and dyed as to resemble fur products made from the peltries of seal, beaver, leopard, ermine, mink, squirrel, sable, or karakul sheep. The respondents fail to disclose the true zoological names of such furs and fur products so sold and distributed by them but instead misrepresent such products by means of misleading and deceptive designations designed to influence purchasers and prospective purchasers of such products. Typical of the false and misleading representations made by the respondents in their various advertising material appearing in magazines, circulars and other printed and written matter, and on labels and tags, is the use of the following terms to designate or describe the furs or fur products sold and distributed by respondents: "Seal," "Black Seal," "Full Skin Seal," "Pieced Seal," "Pieced Sealine," "Mendoza Beaver," "Pieced Beaver," "Leopardine," "Erminette," "Ermine Coney," "Pieced Marmink," "Striped Minkolette," "Squirrelette," "Cocoa Squirrel," "Dark Sable Coney," "Golden Sable Coney," and "Broadtail."

PAR. 7. There is a preference on the part of the purchasing public for fur products made from the peltries of Seal, Beaver, Leopard, Ermine, Mink, Squirrel, Sable, and Karakul Sheep over peltries made from rabbit because of their superior qualities, such as pliability, durability and luster.

PAR. 8. The use by the respondents of the foregoing false and misleading statements and representations 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 large earnings and profits can be made by salesmen and representatives selling respondents' products and that the fur garments designated and described by respondents, as set out in paragraph 6 hereof, are composed in fact of the peltries of Seal, Beaver, Leopard, Ermine, Mink, Squirrel, Sable, or Karakul Sheep, and into the purchase of substantial quantities of respondents' products in

and on account of such mistaken and erroneous beliefs induced as aforesaid.

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 December 2, 1939, issued and thereafter served its complaint in this proceeding upon respondents Maurice Seidel and Charles Seidel, individuals and copartners trading as M. Seidel & Son, 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. Respondents, Maurice Seidel and Charles Seidel, are individuals doing business as copartners under the name of M. Seidel & Son, with their principal office and place of business located at 243 West 30th Street, in the city of New York, in the State of New York. Respondents are now, and for some time last past have been, engaged in the sale and distribution of furs, fur coats, and other fur products 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 the State of New York to purchasers thereof at their respective points of location in the various States of the United States other than the State of New York, and in the District of Colum-

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bia. There is now and has been for sometime last past a course of trade by respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. Respondents are and have been in competition with other partnerships, and with individuals, firms and corporations 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 their business as hereinabove described, respondents, in soliciting the sale of and in selling and distributing their said 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 and has been sold and distributed to the ultimate consumer 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' said plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears sixty-three small partially perforated discs, on the face of which is printed the word "push" and immediately below each of said discs is printed a feminine name. Concealed within each disc is a number which is disclosed when the disc 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 below said discs. On the reverse side of said push card is a place for the recording of the name of each purchaser opposite the name selected. The push card bears legends or instructions as follows:

Name Under Seal Receives

A BEAUTIFUL NEW FUR CAPE

LATEST STYLE

as illustrated

SIZES: 12-40

(Picture of lady  
wearing fur cape)

No. 1-25

Pay what you draw—  
over 25 pays only 25c

Do not  
remove seal  
until entire  
card is sold.

Choice of Cape in Light or Dark Brown

Sales of respondents' merchandise by means of said push cards are made in accordance with the above described legends or instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legends or instructions. The facts as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid and the amount to be paid therefor, are thus determined wholly by lot or chance.

Respondents furnish and have furnished various devices 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 devices is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom the 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 described. The use by respondent 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 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 normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondents, as above described, are unwilling to adopt and use said sales plan or method or any sales plan or 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 the 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 sales plan or method. The use of said sales plan or 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 the Dis-

trict of Columbia to respondents from their said competitors who do not use the same or an equivalent sales plan or method. 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. In the course and conduct of their business, and for the purpose of inducing salesmen or representatives to sell their products by means of the said push cards, respondents represent that the possible and average earnings of salesmen and representatives in the ordinary course of business is \$1,300.00 a week or more, and that an investment of \$12.00 would bring \$1,300.00. Such representations are made by means of advertisements placed in magazines, circulars, and other printed or written matter. Among and typical of the statements and representations so made by the respondents are the following:

You can make for yourself \$1,300 a week or more.

\$12 can bring you \$1,300.

In truth and in fact, the possible average earnings of salesmen and representatives are not \$1,300 a week or more, and said sum is not a true representation of the average net earnings or profits consistently made by respondents' active full-time salesmen or representatives in the ordinary course of business and under normal conditions and circumstances. In fact, such salesmen and representatives earn only a small fraction of the amount represented. Furthermore, none of the respondents' representatives have earned or now earn \$1,300.00 a week, and said sum so represented has never been consistently earned by any representative in the ordinary course of business and under normal conditions and circumstances. Furthermore, the investment of \$12.00 will not bring \$1,300.00, nor has any representative of the respondents by such an investment earned profits of \$1,300.00, or any sum other than a very small fraction of said amount.

PAR. 6. In the course and conduct of their business as aforesaid, the respondents are engaged in the sale and distribution of women's fur garments made from rabbit peltries which peltries are so dressed and dyed as to resemble fur products made from the peltries of seal, beaver, leopard, ermine, mink, squirrel, sable, or karakul sheep. The respondents fail to disclose the true zoological names of such furs and fur products so sold and distributed by them but instead misrepresent such products by means of misleading and deceptive designations designed to influence purchasers and prospective purchasers of such products. Typical of the false and misleading representations made by the respondents in their various advertising material appearing in magazines, circulars and other printed and written mat-

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ter, and on labels and tags, is the use of the following terms to designate or describe the furs or fur products sold and distributed by respondents: "Seal," "Black Seal," "Full Skin Seal," "Pieced Seal," "Pieced Sealine," "Mendoza Beaver," "Pieced Beaver," "Leopardine," "Erminette," "Ermine Coney," "Pieced Marmink," "Striped Minkollette," "Squirrelette," "Cocoa Squirrel," "Dark Sable Coney," "Golden Sable Coney," and "Broadtail."

PAR. 7. There is a preference on the part of the purchasing public for fur products made from the peltries of Seal, Beaver, Leopard, Ermine, Mink, Squirrel, Sable, and Karakul Sheep over peltries made from rabbit because of their superior qualities, such as pliability, durability, and lustre.

PAR. 8. The use by the respondents of the foregoing false and misleading statements and representations 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 large earnings and profits can be made by salesmen and representatives selling respondents' products and that the fur garments designated and described by respondents, as set out in paragraph 6 hereof, are composed in fact of the peltries of Seal, Beaver, Leopard, Ermine, Mink, Squirrel, Sable, or Karakul Sheep, and into the purchase of substantial quantities of respondents' products in and on account of such mistaken and erroneous beliefs induced as aforesaid.

## 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, Maurice Seidel and Charles Seidel, individually and as copartners, trading under the name of M.

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Seidel & Son, their representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of furs, fur garments or 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, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling and distributing any merchandise by the use thereof.

2. Mailing, shipping, or transporting to agents or distributors, or to members of the public, push or pull cards, punchboards, or other lottery devices, which said push or pull cards, punchboards, or other lottery devices are so prepared and printed that said devices are to be used, or may be used, in selling and distributing 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 their 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. Describing furs or fur garments in any other way than by the use of the true name of the fur as a last word of the description or designation thereof.

7. Describing furs or fur garments wherein the fur has been dyed or processed to simulate another fur without using the true name of the fur as a last word of the description or designation thereof immediately preceded by the word "dyed" or "processed," as the case may be, compounded with the name of the simulated fur.

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

Order

IN THE MATTER OF  
MORTON SALT COMPANY  
MODIFIED CEASE AND DESIST ORDER

*Docket 2150. Order, Mar. 8, 1940*

Order clarifying and modifying prior cease and desist order, issued on October 17, 1939, 29 F. T. C. 1128, 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 cease and desist order below set forth; but subject to permitted use of terms "wood smoke" and "refined condensed smoke" in enumerating or stating ingredients, when salt has been directly subjected to action and effect of smoke of burning wood during process of combustion, etc., as in added proviso below specified.

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

*Mr. Jay L. Jackson* for the Commission.

*Mr. H. H. Shelton* and *Sanders, Gravelle, Whitlock & Howry*, of Washington, D. C., and *Stearns & Jones*, of Chicago, Ill., for respondent.

MODIFIED ORDER TO CEASE AND DESIST

*Whereas*, The Commission, on October 17, 1939, issued in this proceeding its order to cease and desist, and

*Whereas*, It now appears to the Commission desirable to clarify said order to cease and desist in certain respects,

*It is therefore ordered*, That the order to cease and desist issued in this proceeding on the 17th day of October, A. D., 1939, be modified so that as modified it will read as follows:

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,"

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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 Company, et al., Docket 2783, and Pennsylvania Salt Manufacturing Company, 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;

*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.

Nothing in this order shall prohibit the respondent from using the terms "wood smoke" and "refined condensed smoke" in enumerating or stating the ingredients of such salt when such salt has been directly subjected to the action and effect of the smoke of burning wood during its process of combustion and there has been added thereto a refined concentrate resulting from the destructive distillation of wood, and where the application of each of such products is in sufficient quantity to impart to such salt the flavor of smoke.

*It is further ordered,* That the respondent shall, within 60 days after service upon it of this modified 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  
MONROE CHEMICAL COMPANY AND MARY T. GOLDMAN  
COMPANY

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

*Docket 3274. Complaint, Nov. 26, 1937—Decision, Mar. 8, 1940*

Where a corporation, and a second concern, which acquired controlling interest therein and controlled business policies thereof, engaged, as aforesaid, directly and indirectly, in manufacture and sale of various preparations, including said corporation's "Mary T. Goldman's Gray Hair Color Restorer," to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in distribution and sale, in commerce as aforesaid, of hair tonics, hair dyes, or other products for treating various conditions of hair and scalp, and for coloring or dyeing gray hair, and including many who distribute and sell such hair tonics and other preparations and who do not in any way misrepresent quality or character or effectiveness thereof; in advertising their said "Color Restorer" in newspapers and periodicals of general circulation and in advertising folders distributed to members of the purchasing public in various States—

- (a) Represented, directly or by implication, that use of product in question would restore original or youthful color to gray, streaked or faded hair and would erase or remove all trace of gray hair, through use of word "restorer" in designation of product in question, and through such statements as "Just comb colorless liquid through hair—youthful color comes—nothing to wash or rub off on clothing," and "Gray Hair Gone," and "We will show you how to bring youthful color in every hair in your head", facts being product in question does not restore original color to gray, faded or streaked hair of user, but acts as dye or stain, color produced by use thereof is artificial and it will not color or restore color to hair as aforesaid, except in the sense that it may dye the same, all trace of such hair is not removed or erased, as repeated applications are required in order to prevent new growth showing gray, faded or streaked above scalp line, and preparation acts, as above set forth, as dye or stain on that portion exposed above such line; and
- (b) Represented that originator of preparation in question was a living person, personally recommending use of such product and personally corresponding with users and prospective users thereof with respect thereto and effectiveness thereof, through displaying, in advertisements and other literature disseminated by them, purported facsimile signature of one Mary T. Goldman, notwithstanding fact individual in question, and originator of formula for producing so-called "restorer," and their predecessor in sale of preparation in question, had long since deceased and was not living at times letter and advertisements concerned were published and used by corporation and concern aforesaid;

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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 substantial quantity of their said preparations, and with result, as direct consequence of such belief induced by such false statements and representations, that trade was unfairly diverted to them from those likewise engaged in sale and offer of hair preparations and cosmetics and who truthfully advertise and represent 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 and injury of the public and competitors, and constituted unfair methods of competition.

*Mr. Robert Mathis, Jr.* for the Commission.

*Lancaster & Nichols*, of Quincy, Ill., for respondents.

## COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that the Monroe Chemical Co. and the Mary T. Goldman 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. The respondent, Mary T. Goldman Co., is a corporation, incorporated under the laws of Minnesota on or about February 7, 1927, and having a principal place of business at St. Paul, Minn., at all times since its incorporation.

The respondent, Monroe Chemical Co., is a corporation, incorporated prior to the year 1927, under the laws of Illinois and having its principal place of business at Quincy, Ill., at all times since its incorporation.

PAR. 2. At all times since its incorporation, the respondent, Mary T. Goldman Co., has been engaged in the business of the manufacture and sale of various toilet preparations, including a preparation designated Mary T. Goldman's Gray Hair Color Restorer. In or about August 1929, the respondent, Monroe Chemical Co., bought the capital stock, or a controlling interest therein, of the respondent, Mary T. Goldman Co., and at all times since the said date, has controlled the business policies of the Mary T. Goldman Co. and has operated that company for the manufacture and sale of various preparations, including the

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preparation called Mary T. Goldman's Gray Hair Color Restorer. The respondents sell and cause others to sell said preparation for the purpose of giving color to the gray or faded hair of the user thereof.

PAR. 3. Said respondents, being engaged in business as aforesaid, cause said Gray Hair Color Restorer, when sold, to be transported from their places of business in the States of Illinois and Minnesota to purchasers thereof located at various points in States other than Illinois and Minnesota and in the District of Columbia. There is now, and has been during all of the time referred to herein, a constant current of trade and commerce in said Gray Hair Color Restorer so manufactured, distributed and sold by the respondents, 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 now, and have been, in substantial competition with other corporations and with firms and individuals likewise engaged in the business of manufacturing, distributing and selling hair tonics, hair dyes, and various gray hair color restorers, or other products, designed, intended and sold for the purpose of treating various conditions of the hair or scalp and for the purpose of coloring or dyeing gray hair, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. In the course of the operation of said business, and for the purpose of inducing the purchase of said Gray Hair Color Restorer, respondents have caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States and have printed and circulated throughout the several States, to customers and prospective customers, through the United States mails and otherwise, advertising folders and literature in which the following statements and representations, among others, are made:

\* \* \* they restore original color in a scientific way which gives perfect results quickly.

Just begin complete restoration of your hair and soon you will be delighted by the beauty of the perfectly restored natural shade.

Besides restoring your hair to its natural color, Mary T. Goldman's makes your hair soft and fluffy.

There is but one scientific hair color restorer and that is Mary T. Goldman's. Watch the gray disappear—the youthful shade return.

Just comb colorless liquid through hair—youthful color comes—nothing to wash or rub off on clothing.

Erase away all trace of gray. \* \* \* Brings warm, youthful color.

Goodbye gray hairs—free test shows way to end them.

We will show you how to bring youthful color to every hair in your head.

Have ever-youthful looking hair.

Faded—streaked—dull strands—all vanish at the touch of this famous clear water-like liquid.

The respondents also cause the name of the product, Mary T. Goldman's Gray Hair Color Restorer, to be conspicuously placed on labels on the bottles in which said product is contained, and on the outside of the cartons, and in all of their pamphlets and other advertising literature above referred to.

All of said statements, together with similar statements appearing in respondents' advertising literature, including the use of the word "Restorer" in the name by which the preparation is designated, purport to be descriptive of respondents' product and its effectiveness in use. In all of their advertising literature, and through other means, respondents represent, through the statements and representations herein set out, and through other statements of similar import and effect, that said preparation designated as Mary T. Goldman's Gray Hair Restorer will (1) restore gray, streaked or faded hair of the user to its original or youthful color; (2) erase or remove all trace of gray hair; and (3) bring warm, youthful color or original color of the user's gray, streaked or faded hair as a result of the use thereof.

Said preparation does not restore the original color or the youthful color to the gray, faded or streaked hair of the user thereof. The preparation acts as a dye or stain and the color produced by its use is artificial. Said preparation will not color or restore color to gray or faded hair except in the sense that it may dye the hair. All trace of gray, faded or streaked hair is not removed or erased in the sense that repeated applications of said preparation will not be required in order to prevent the new growth of hair from showing gray above the scalp line. Youthful color or original color of the user's hair is not restored and does not come as a result of the use thereof, except insofar as the preparation acts as a dye on that portion of the hair already exposed above the scalp line.

PAR. 6. During all of the time referred to herein, the advertisements and other literature referred to have been signed with the name Mary T. Goldman. Such use of the name Mary T. Goldman serves as a representation that Mary T. Goldman was the originator of said preparation and is a living person personally recommending the use of said preparation and personally corresponding with users and prospective users of said preparation with respect to the product and its effectiveness in use.

PAR. 7. Mary T. Goldman was the originator of the formula for producing the preparation referred to above and was the predecessor

of the respondents in the business of the sale of the preparation. The said Mary T. Goldman has long since deceased. She was not living at the times the letters and advertisements above mentioned were published and used by the respondents.

PAR. 8. There are among respondents' competitors many who manufacture, distribute, and sell hair tonics, hair dyes, and various gray hair color restorers, or other products, designed, intended and sold for the purpose of treating various conditions of the hair or scalp and for the purpose of coloring or dyeing gray hair, who do not, in any way, misrepresent the quality or character of their respective products or the effectiveness of such products in use.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondents in designating and describing said preparation and the effectiveness thereof for restoring original and natural color to gray, faded or streaked hair, in their advertising literature as hereinabove set out, in offering for sale and selling said preparation, were, and are, calculated to, and 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 of said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs induced by the representations of the respondents as aforesaid, a number of the consuming public have purchased a substantial volume of respondents' preparation with the result that trade has been unfairly diverted to respondents from competitors likewise engaged in the business of manufacturing, distributing and selling similar preparations, or hair dyes, or other products, designed, intended and sold for the purpose of treating gray, faded or streaked hair and who truthfully advertise their respective products and effectiveness thereof in use. As a result thereof, substantial injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 10. The aforesaid acts, practices, and representations of the respondents are all to the prejudice of the public and respondents' 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 November 26, 1937, issued and subsequently served its complaint in this proceeding upon said respondents, Monroe Chemical Co., a corporation, and Mary T. Goldman Co., a corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 11, 1937, the respondent Monroe Chemical Co. filed its answer in this proceeding, there being no answer filed on behalf of Mary T. Goldman Co. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, and 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 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. The respondent, Mary T. Goldman Co., is a corporation, incorporated under the laws of Minnesota on or about February 7, 1927, and having its principal place of business at St. Paul, Minn.

The respondent, Monroe Chemical Co., is a corporation, incorporated prior to the year 1927, under the laws of Illinois and having its principal place of business at Quincy, Ill.

PAR. 2. At all times since its incorporation, the respondent, Mary T. Goldman Co., has been engaged in the business of the manufacture and sale of various toilet preparations, including a preparation designated "Mary T. Goldman's Gray Hair Color Restorer." In August 1929, the respondent Monroe Chemical Co., bought the capital

stock, or a controlling interest therein, of the respondent, Mary T. Goldman Co., and at all times since that date, has controlled the business policies of the Mary T. Goldman Co. and has operated that company for the manufacture and sale of various preparations, including the preparation called "Mary T. Goldman's Gray Hair Color Restorer." Subsequent to the issuance and service of the complaint herein the respondents changed the designation of said preparation to "Mary T. Goldman's Gray Hair Coloring Preparation."

PAR. 3. Respondents cause said preparation, when sold, to be transported from their places of business in the States of Illinois and Minnesota to purchasers thereof located at various points in States other than Illinois and Minnesota and in the District of Columbia. There is now, and has been during all of the time referred to herein, a course of trade and commerce in said preparation by respondents 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 now, and have been, in substantial competition with other corporations and with firms and individuals also engaged in the business of distributing and selling in commerce among and between the various States of the United States and in the District of Columbia, hair tonics, hair dyes, or other products, designed, intended and sold for the purpose of treating various conditions of the hair or scalp and for the purpose of coloring or dyeing gray hair.

PAR. 5. In the course and conduct of their aforesaid business, the respondents have caused various statements and representations relative to said preparation and its effectiveness in use to be inserted in advertisements in newspapers and magazines having a general circulation throughout the United States and in advertising folders distributed to members of the purchasing public situated in various States of the United States. Among and typical of said statements and representations are the following:

Just comb colorless liquid through hair—youthful color comes—nothing to wash or rub off on clothing.

Erase away all trace of gray. \* \* \* Brings warm, youthful color.

Goodbye gray hairs—free test shows way to end them.

We will show you how to bring youthful color to every hair in your head.

Have ever-youthful looking hair.

Gray Hair Gone.

In addition to the statements and representations set out above, the respondents caused many other statements and representations of similar import or meaning to be published and circulated as described above. Respondents also caused the name of the product, "Mary T. Goldman's

Gray Hair Color Restorer" to be conspicuously placed on the labels on bottles in which said product is contained and on the outside of the cartons and in the other pamphlets and advertising literature above referred to.

Prior to the acquisition by the Monroe Chemical Co. of the Mary T. Goldman Co. as hereinabove described, the respondent Mary T. Goldman Co. caused statements to be made in advertisements disseminated as above described containing representations that the use of Mary T. Goldman's Hair Color Restorer restored the natural color to gray hair.

PAR. 6. Through the use of the aforesaid statements and representations, including the use of the word "restorer" in the designation of said preparation, the respondents have represented directly or by implication that the use of said preparation will restore the original or youthful color to gray streaked or faded hair, and will erase or remove all trace of gray hair.

PAR. 7. Said preparation does not restore the original color to the gray, faded or streaked hair of the user thereof. The preparation acts as a dye or stain and the color produced by its use is artificial. Said preparation will not color or restore color to gray or faded or streaked hair except in the sense that it may dye the hair. All trace of gray, faded, or streaked hair is not removed or erased as repeated applications of said preparation are required in order to prevent the new growth of hair from showing gray, faded or streaked above the scalp line. The natural, youthful, original color of the user's hair is not restored and does not come as a result of the use thereof. The preparation acts as a dye or stain on that portion of the hair already exposed above the scalp line.

PAR. 8. The respondents have caused advertisements and other literature referred to above to be disseminated as above described bearing what purports to be the facsimile signature of Mary T. Goldman. Mary T. Goldman was the originator of the formula for producing the Mary T. Goldman Hair Color Restorer and was the predecessor of the respondents in the business and the sale of the preparation. Said Mary T. Goldman has long since deceased. She was not living at the times the letters and advertisements above mentioned were published and used by the respondents. The use by the respondents of what purports to be the facsimile signature of Mary T. Goldman in the manner described above serves as a representation by the respondents that Mary T. Goldman (the originator of said preparation) is a living person personally recommending the use of said preparation and personally corresponding with the users and prospective users of said preparation with respect to the preparation and its effectiveness in use.

PAR. 9. There are among respondents' competitors many who distribute and sell hair tonics, hair dyes, or other products, designed, intended and sold for the purpose of treating various conditions of the hair or scalp and for the purpose of coloring or dyeing gray hair, who do not, in any way, misrepresent the quality or character of their respective products or the effectiveness of such products in use.

PAR. 10. The use by the respondents 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 a substantial quantity of respondents' preparation. Further, as a direct consequence of the mistaken and erroneous belief induced by the false statements and representations of respondents, as hereinabove enumerated, trade has been unfairly diverted to respondents from corporations, firms and partnerships likewise engaged in the selling and offering for sale of hair preparations and cosmetics, who truthfully advertise and represent their products. As a consequence thereof, substantial injury has been done and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

#### 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 Monroe Chemical Co., a corporation, and the 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 respondents Monroe Chemical Co., a corporation and Mary T. Goldman Co., a corporation, their respective

officers, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of their cosmetic preparation designated "Mary T. Goldman's Gray Hair Color Restorer" 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, 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 preparation is not a dye, or is other than a dye, or will cause gray or faded or streaked hair to change color without dyeing the hair; or that said preparation will restore the natural, original or youthful color to gray hair; or that said preparation will remove all trace of gray hair in any other manner than as a dye.

2. Representing by any means that Mary T. Goldman is a living person personally recommending said preparation or personally corresponding with the users or prospective users of said preparation.

3. Representing that anything less than repeated applications of said product will change the color of the user's hair; or representing that in the use of said product anything less than repeated applications of said product will cause the user's hair to maintain the color imparted to the hair by said product.

4. Using the word "restorer" or any other word or term of similar import or meaning as part of the brand name for its products.

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

## IN THE MATTER OF

C. C. JOHNSON, TRADING AS SUPREME MANUFACTURING COMPANY, CARLYLE SERVICE, MARVO MANUFACTURING COMPANY, AND PEERLESS MANUFACTURING COMPANY.<sup>1</sup>

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, Mar. 8, 1940*

Where an individual engaged in sale and distribution of his Supreme, Marvel, Marvo, or Peerless product, represented as preservative of silk hosiery and lingerie, through direct selling methods and sales persons and representatives who traveled from State to State canvassing cities and towns therein and in District of Columbia, and using in their general house-to-house solicitation of orders stereotyped sales talk furnished by said individual, and, as thus engaged, in substantial competition with others selling and distributing, in commerce among the States and in said District, preparations for treating said products to increase their durability and resistance to snags and runs, and including many who do not misrepresent that they are manufacturers of the products sold and do not misrepresent quality or effectiveness thereof or make other similar false statements in connection with their sale and distribution—

- (a) Represented, through statements on labels affixed to containers of his said product, and through agents' sales talks to prospective customers, that said product would prevent runs and snags in hosiery and lingerie, and rotting or fading thereof, and strengthen heels and toes of silk hosiery substantially, and that through use thereof purchaser could save 50 percent of cost of said various products, facts being use thereof would not save approximately such amount, and product was not permanent and would not strengthen heels and toes of silk hosiery or in other respects accomplish results claimed therefor as aforesaid; and
- (b) Included word "manufacturing" in various trade names made use of by him, notwithstanding fact he was not manufacturer of said product, which was actually made by independent manufacturer, with capacity and tendency thereby to cause purchasing public to believe that he was manufacturer of products sold, and that by purchasing from him direct, as manufacturer, without intervention of middleman, they would, as believed by many members of such public, secure advantages in price, service, and in other particulars not to be had in purchasing from competitors who do not represent themselves as manufacturers of products sold by them;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that said representations as to efficacy of said product were true, and that he was manufacturer thereof, and of causing substantial portion of said public to purchase his said product in preference to those of his competitors, and of thereby diverting unfairly to him from them trade in commerce as aforesaid:

<sup>1</sup> Original findings and order, 29 F. T. C. 1270, were vacated and set aside Dec. 29, 1939 (see *infra* page 1386).

## Complaint

*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. John J. Keenan*, trial examiner.

*Mr. John R. Phillips, Jr.* for the Commission.

*Morris, Kix Miller & 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 is 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

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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 salespersons 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 salespersons 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 of its effectiveness when used. In said statements and through other means respondent, directly and by inference, represents that his product prevents runs and snags in 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 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 product he sells.

PAR. 6. The aforesaid representations are false and misleading. In truth and in fact, the use of respondent's said product will not prevent or stop runs or snags in silk hosiery or lingerie. Said preparation will not prevent silk from rotting and fading. The use of said product will not save approximately 50 percent of hosiery and lingerie expense. Said product is not permanent and the use of said product does not strengthen the heels and toes of silk hosiery. The respondent is not the manufacturer of said product which is actually manufactured by an independent manufacturer.

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 has the capacity and tendency to cause the purchasing public to believe that respondent is the manufacturer of the product he sells and to believe that by purchasing from respondent they will secure advantages in price, service, and in other particulars not to be had in purchasing from the said competitors of respondent who do not represent that they are manufacturers of the products they sell.

PAR. 8. Each and all of said statements and representations by the respondent 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 beliefs 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 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 considered 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, his agents, servants, representatives and employees acting directly or through any corporate or other device, in connection with the offering for sale, sale or distribution in commerce, as defined in the Federal Trade

Commission Act, of the product for the treatment of hosiery and lingerie now sold and distributed by him under the trade names Supreme, Marvel, Marvo, and Peerless, or any other product composed of substantially the same ingredients or possessing substantially similar properties, 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 50 percent of the cost of silk hosiery and lingerie, or any percent approximating 50 percent.

3. Representing, directly or by implication, that the use of said product strengthens the heels and toes of silk hosiery substantially.

4. Using the term "manufacturing" or any other word or term of similar import or meaning as part of any trade or corporate name or otherwise representing that the respondent is the manufacturer of said product, unless and until the respondent actually owns and operates, or directly and absolutely controls, a manufacturing plant wherein said product is actually manufactured by the respondent.

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

Complaint

30 F. T. C.

IN THE MATTER OF  
W. H. MAZE COMPANY

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

*Docket 3953. Complaint, Nov. 18, 1939—Decision, Mar. 8, 1940*

Where a corporation engaged in manufacture, sale, and distribution of its Lead Head Anchor Shank (roofing) Nails, to purchasers in various other States and in the District of Columbia; in advertising its said product in periodicals and other publications of general circulation among the various States and in catalogs, circulars, price lists, and other printed and written matter distributed among prospective purchasers—

Represented that its said nails had two times the holding power under normal conditions of all other nails ordinarily used for roofing, and four times such power under certain conditions as some other nails used for said purpose, facts being they did not have any holding power approximating such amount, and such statements and representations were grossly exaggerated, misleading, and untrue;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of substantial quantities of its said product:

*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. Donovan R. Divet* 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 W. H. Maze 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, W. H. Maze Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its office and principal place of business at Peru, in the State of Illinois.

Respondent is now and has been for several years last past engaged in the business of manufacturing, selling, and distributing roofing nails known as Maze Lead Head Anchor Shank Nails. Respondent causes said nails, when sold, to be transported from its aforesaid place of

business in the State of Illinois 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 nails 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 aforesaid business and in furtherance of the sale of its said product, respondent has caused various statements and representations relative to said product to be inserted in periodicals and other publications having a general circulation among and between the various States of the United States and in catalogs, circulars, price lists, and other printed and written matter distributed among prospective purchasers. Among and typical of said representations are the following:

Maze Anchor Lead Heads hold two to four times better—conclusive tests prove it.

Sell Maze—the nails that stay put! Anchor Lead Heads hold two to four times better than ordinary lead head nails—tests prove it!

Through the use of the aforesaid statements and representations, and others of similar import or meaning, not herein set out, the respondent represents that its said Maze Lead Head Anchor Shank Nails have two times the holding power under normal conditions of all other nails ordinarily used for roofing, and four times the holding power under normal conditions of some other nails used for roofing.

PAR. 3. The aforesaid statements and representations by the respondent are grossly exaggerated, misleading, and untrue. In truth and in fact, respondent's said lead head anchor shank nails do not have two times the holding power under normal conditions of all other nails ordinarily used for roofing, nor do they have four times the holding power under normal conditions of any other nails used for roofing, or any holding power approximating such amount.

PAR. 4. The use by the respondent of the aforesaid false and misleading 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 such statements and representations are true and into the purchase of substantial quantities of respondent's said nails.

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 November 18, 1939, issued, and on November 22, 1939, served its complaint in this proceeding upon respondent W. H. Maze 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. 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. The respondent, W. H. Maze Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois and having its office and principal place of business at Peru, in the State of Illinois.

Respondent is now and has been for several years last past engaged in the business of manufacturing, selling, and distributing roofing nails known as Maze Lead Head Anchor Shank Nails. Respondent causes said nails, when sold, to be transported from its aforesaid place of business in the State of Illinois 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 nails 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 aforesaid business and in furtherance of the sale of its said product, respondent has caused various statements and representations relative to said product to be inserted in periodicals and other publications having a general circulation among and between the various States of the United States and in catalogs, circulars, price lists, and other printed and written matter

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## Order

distributed among prospective purchasers. Among and typical of said representations are the following:

Maze Anchor Lead Heads hold two to four times better—conclusive tests prove it.

Sell Maze—the nails that stay put! Anchor Lead Heads hold two to four times better than ordinary lead head nails—tests prove it!

Through the use of the aforesaid statements and representations, and others of similar import or meaning, not herein set out, the respondent represents that its said Maze Lead Head Anchor Shank Nails have two times the holding power under normal conditions of all other nails ordinarily used for roofing, and four times the holding power under normal conditions of some other nails used for roofing.

PAR. 3. The aforesaid statements and representations by the respondent are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's said lead head anchor shank nails do not have two times the holding power under normal conditions of all other nails ordinarily used for roofing, nor do they have four times the holding power under normal conditions of any other nails used for roofing, or any holding power approximating such amount.

PAR. 4. The use by the respondent of the aforesaid false and misleading 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 such statements and representations are true and into the purchase of substantial quantities of respondent's said nails.

## 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.

## Order

30 F. T. C.

*It is ordered,* That respondent, W. H. Maze 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 roofing nails in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that its said roofing nails have two to four times the holding power of other roofing nails.

2. Representing that its said roofing nails have any designated holding power in excess of that possessed by other roofing nails, when such is not the fact.

*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.

## Syllabus

## IN THE MATTER OF

## JESSIE F. SPRINGER, TRADING AS HARMONY CENTRE

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

*Docket 3933. Complaint, Oct. 19, 1939—Decision, Mar. 9, 1940*

Where an individual engaged in sale and distribution of "The Grape Cure" or, as formerly titled, "The Grape Cure (How I Cured Myself of Cancer)," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of books pertaining to matters of health in commerce among the various States and in said District; in advertisements which she disseminated respecting said book and method or system of treatment outlined therein among prospective purchasers through the mails and through newspapers and periodicals of general circulation—

Represented, directly and by implication, that system or method of treatment outlined in such book constituted cure or remedy for, or competent or effective treatment for, constipation, cancer, heart and kidney trouble, rheumatism and other ailments and conditions therein set forth, and that grapes dissolved and were solvent of mucous, through statements to foregoing effect and such statements as that most diseases originated in intestines and were caused by poisons due to uneliminated waste, and that those who developed malignant growths in most cases had been suffering from constipation which system or method of treatment in question prevented, and that salt, inorganic drugs and patent medicines caused cancer, and that poisons resulted from using aluminum vessels, and that system or method in question would restore one's health;

Facts being most of diseases, ailments and conditions mentioned do not originate in intestines and are not caused by poisons, as above set forth, grapes do not have above effect or qualities, only in rare instances is there any connection between constipation and development of malignant growths, and other representations and statements as above made were false, and system or method of treatment in question did not constitute cure or remedy or competent or effective treatment for said various ailments and conditions set forth, and would not restore one's health;

With effect of misleading and deceiving substantial number of purchasing public into erroneous and mistaken belief that such false and misleading statements, representations and implications were true, and into purchase of substantial number of said books by reason of such belief, and with result that trade in commerce was thereby diverted unfairly to her from her competitors who do not falsely represent their books; 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.

Before *Mr. Lewis C. Russell*, trial examiner.

*Mr. Karl Stecher* for the Commission.

*Mr. Harold Johnson*, of New York City, for respondent.

Complaint

30 F. T. C.

## 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 Jessie F. Springer, an individual trading under the name of Harmony Centre, 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, Jessie F. Springer, is an individual, doing business under the name and style of Harmony Centre, with her office and principal place of business at 604 West 112th Street in the city of New York, State of New York. Respondent is now and has been for several years last past engaged in the business of selling and distributing a book written by one Johanna Brandt, now entitled "The Grape Crue," but which was formerly entitled "The Grape Cure (How I Cured Myself of Cancer)." Respondent causes said books, which contain a method or system of treatment, when sold, to be transported from her aforesaid place of business in the State of New York 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 books 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 corporations, firms, partnerships, and individuals also engaged in the business of selling and distributing books pertaining to matters of health in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The book, "The Grape Cure," which was formerly advertised and distributed under the title "The Grape Cure (How I Cured Myself of Cancer)," purportedly tells how its author, Johanna Brandt, cured herself of cancer through the use of the method or system of treatment narrated in said book which is based on the use of grapes as a foundation therefor. Such method or system of treatment, it is claimed by the respondent, will cure or rid one of cancer and practically all other diseases, ailments, and conditions which may be present in or afflict the human body.

PAR. 4. In the course and conduct of her business as aforesaid, the respondent has disseminated, and is now disseminating, and has caused

and is now causing the dissemination of false, misleading, and deceptive statements and representations concerning said book, "The Grape Cure," or "The Grape Cure (How I Cured Myself of Cancer)," and the method or system of treatment outlined therein, through advertisements distributed among prospective purchasers through the United States mails and by inserting such advertisements in newspapers and periodicals having a general circulation.

Among and typical of the false statements, representations, and implications contained in said advertising, disseminated and caused to be disseminated as aforesaid, are the following:

(a) That "most diseases originate in the intestines and are caused by poisons due to uneliminated waste";

(b) That the system or method of treatment outlined in said book is a competent treatment or an effective remedy for constipation, cancer, heart trouble, kidney trouble, bladder trouble, angina pectoris, sinus trouble, goiter, stomach ulcers, rheumatism, asthma, gall stones, tuberculosis;

(c) That said system or method of treatment will "cure", or "rid" one of, or enable one to "overcome," constipation, cancer, heart trouble, kidney trouble, bladder trouble, angina pectoris, sinus trouble, goiter, stomach ulcers, rheumatism, asthma, gall stones, tuberculosis;

(d) That grapes dissolve or are a solvent of mucus;

(e) That "those who develop malignant growths in most cases have been suffering from constipation," and that said system or method of treatment prevents constipation;

(f) That salt, inorganic drugs, and patent medicines cause cancer;

(g) That poisons result from using aluminum vessels;

(h) That the system or method of treatment outlined in said book will "restore" one's health.

Through the use of the aforesaid statements, advertisements, and representations, and others of similar import and meaning not herein set out, respondent has represented, and now represents, directly and by implication, that by purchasing said book and following the system or method of treatment narrated or outlined therein the purchaser can secure an effective and efficient treatment, remedy, or cure for the diseases, ailments, afflictions and conditions mentioned in said advertising matter as hereinabove set forth.

PAR. 5. The aforesaid representations and implications by respondent are false, misleading, and deceptive, for the use of grapes in the manner prescribed in said book, "The Grape Cure," or the following of the system or method of treatment outlined therein, is not an efficient or effective treatment, remedy, or cure for the diseases, ailments, and conditions above named, or any of them. In truth and in fact,

## Findings

30 F. T. C.

most of the diseases, ailments, and conditions mentioned by the respondent in said false advertisements do not originate in the intestines and are not caused by poisons due to uneliminated waste. Grapes do not dissolve, and are not a solvent of, mucus. Except in rare instances there is no connection between constipation and the development of malignant growths. Salt, inorganic drugs, and patent medicines do not cause cancer, and poisons do not result from the use of aluminum vessels. Said system or method of treatment outlined in said book is not a competent treatment or an effective remedy for and will not "cure," "rid" one of, or enable one to "overcome" constipation, cancer, heart trouble, kidney trouble, bladder trouble, angina pectoris, sinus trouble, goiter, stomach ulcers, rheumatism, asthma, gall stones, or tuberculosis, and it will not "restore" one's health.

PAR. 6. The acts, practices, and methods of the respondent as above alleged have the capacity and tendency to, and do, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements, representations, and implications are true, and into the purchase of a substantial number of respondent's said books 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 her competitors who do not falsely represent their books. 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, the Federal Trade Commission on October 19, 1939, issued and on October 20, 1939, served its complaint in this proceeding upon respondent, Jessie F. Springer, an individual trading under the name of Harmony Centre, charging her 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

## Findings

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, Jessie F. Springer, is an individual, doing business under the name and style of Harmony Centre, with her office and principal place of business at 604 West 112th Street in the city of New York, State of New York. Respondent is now, and has been for several years last past, engaged in the business of selling and distributing a book written by one Johanna Brandt, now entitled "The Grape Cure," but which was formerly entitled "The Grape Cure (How I Cured Myself of Cancer)." Respondent causes said books, which contain a method or system of treatment, when sold, to be transported from her aforesaid place of business in the State of New York 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 books 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 corporations, firms, partnerships, and individuals also engaged in the business of selling and distributing books pertaining to matters of health in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The book, "The Grape Cure," which was formerly advertised and distributed under the title "The Grape Cure (How I Cured Myself of Cancer)," purportedly tells how its author, Johanna Brandt, cured herself of cancer through the use of the method or system of treatment narrated in said book which is based on the use of grapes as a foundation therefor. Such method or system of treatment, it is claimed by the respondent, will cure or rid one of cancer and practically all other diseases, ailments, and conditions which may be present in or afflict the human body.

PAR. 4. In the course and conduct of her business as aforesaid, the respondent has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false, misleading, and deceptive statements and representations concerning said book, "The Grape Cure," or "The Grape Cure (How I Cured Myself of Cancer)," and the method or system of treatment outlined therein, through advertisements distributed among prospective purchasers through the United States mails and by inserting such advertisements in newspapers and periodicals having a general circulation.

Among and typical of the false statements, representations, and implications contained in said advertising, disseminated and caused to be disseminated as aforesaid, are the following:

(a) That "most diseases originate in the intestines and are caused by poisons due to uneliminated waste.

(b) That the system or method of treatment outlined in said book is a competent treatment or an effective remedy for constipation, cancer, heart trouble, kidney trouble, bladder trouble, angina pectoris, sinus trouble, goiter, stomach ulcers, rheumatism, asthma, gall stones, tuberculosis.

(c) That said system or method of treatment will "cure," or "rid" one of, or enable one to "overcome," constipation, cancer, heart trouble, kidney trouble, bladder trouble, angina pectoris, sinus trouble, goiter, stomach ulcers, rheumatism, asthma, gall stones, tuberculosis.

(d) That grapes dissolve or are a solvent of mucus.

(e) That "those who develop malignant growths in most cases have been suffering from constipation," and that said system or method of treatment prevents constipation.

(f) That salt, inorganic drugs, and patent medicines cause cancer.

(g) That poisons result from using aluminum vessels.

(h) That the system or method of treatment outlined in said book will "restore" one's health.

Through the use of the aforesaid statements, advertisements, and representations, and others of similar import and meaning not herein set out, respondent has represented, and now represents, directly and by implication, that by purchasing said book and following the system or method of treatment narrated or outlined therein the purchaser can secure an effective and efficient treatment, remedy or cure for the diseases, ailments, afflictions and conditions mentioned in said advertising matter as hereinabove set forth.

PAR. 5. The aforesaid representations and implications by respondent are false, misleading, and deceptive, for the use of grapes in the manner prescribed in said book, "The Grape Cure," or the following of the system or method of treatment outlined therein, is not an efficient

## Order

or effective treatment, remedy, or cure for the diseases, ailments, and conditions above named, or any of them. In truth and in fact, most of the diseases, ailments, and conditions mentioned by the respondent in said false advertisements do not originate in the intestines and are not caused by poisons due to uneliminated waste. Grapes do not dissolve, and are not a solvent of, mucus. Except in rare instances there is no connection between constipation and the development of malignant growths. Salts, inorganic drugs, and patent medicines do not cause cancer, and poisons do not result from the use of aluminum vessels. Said system or method of treatment outlined in said book is not a competent treatment or an effective remedy for and will not "cure," "rid" one of, or enable one to "overcome" constipation, cancer, heart trouble, kidney trouble, bladder trouble, angina pectoris, sinus trouble, goiter, stomach ulcers, rheumatism, asthma, gall stones, or tuberculosis, and it will not "restore" one's health.

PAR. 6. The acts, practices, and methods of the respondent as herein found have the capacity and tendency to, and do, mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements, representations, and implications are true, and into the purchase of a substantial number of respondent's said books 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 her competitors who do not falsely represent their books. 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.

## 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 the complaint, and states that she waives all intervening procedure and further hearing as to the said facts, and the

Order

30 F. T. C.

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, Jessie F. Springer, an individual trading under the name of Harmony Centre, or trading 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 book written by one Johanna Brandt, now entitled "The Grape Cure," but which was formerly entitled "The Grape Cure (How I Cured Myself of Cancer)," in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the system or method of treatment outlined in respondent's book constitutes a cure or remedy for, or a competent or effective treatment for, constipation, cancer, heart trouble, kidney trouble, bladder trouble, angina pectoris, sinus trouble, goitre, stomach ulcers, rheumatism, asthma, gall-stones or tuberculosis;

2. Representing that grapes dissolve, or are a solvent of, mucus.

*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.

## Syllabus

. IN THE MATTER OF  
JEAN FERRELL, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 3950. Complaint, Nov. 14, 1939—Decision, Mar. 9, 1940*

Where a corporation engaged in sale and distribution of its "Concentra" preparation as concentrated food product for obesity and as tonic, to purchasers in various other States and in the District of Columbia; in advertisements thereof which it disseminated through the mails, circulars and other printed or written matter distributed in commerce, and otherwise, and which were intended and likely to induce purchase of its said product—

- (a) Represented, directly or indirectly, that said "Concentra" food or preparation was a highly concentrated food, safe for use, and of which child at one time could take "several dozen capsules" with "no ill effects," and that said product, with addition of liquids, would constitute balanced diet and replace ordinary diet, facts being preparation in question was not a food but, by virtue of high content of rhubarb present therein, in fact a drug, from continued use of which, as recommended, serious injury to health might result, and did not constitute a balanced diet or have sufficient nutritive value to replace ordinary diet, and was not safe for use by either adults or children;
- (b) Represented that said product would supply deficiencies to the body and correct organic elements and cause natural elimination, and that use thereof would correct both underweight and overweight and restore and develop healthy normal figure and remove or eliminate poisons from body, by reason of action of rhubarb, and poisons from kidneys by reason of action of gravel root, facts being it would not supply deficiencies as aforesaid, nor correct organic elements nor accomplish other results above claimed therefor; and
- (c) Failed to reveal, in advertisements disseminated by it as aforesaid, to purchasers and prospective purchasers, that, under conditions prescribed in said advertisements or such conditions as are customary or usual, serious injury to health might be caused by use of said "Concentra," continued use of which over long period of time, as recommended by it, would, by reason of high percentage of rhubarb therein contained, cause excessive purgation and resulting serious injury, as aforesaid;

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 of inducing purchase by public of its preparation aforesaid:

*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. Charles L. Schwartz*, of Chicago, Ill., for respondent.

Complaint

30 F. T. C.

## 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 Ferrell, 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, Jean Ferrell, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 112-114 East Walton Street, Chicago, Ill. Respondent, during the year last past, has been and still is engaged in the sale and distribution of a preparation known as "Concentra" which is offered for sale and sold as a concentrated food product for use as a treatment for obesity and as a tonic. In the course and conduct of its business, respondent causes said preparation, "Concentra," when sold to be transported from its place of business in the State of Illinois 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 herein mentioned, has maintained, a course of trade in commerce in said product 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 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 preparation "Concentra" by United States mails, 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 preparation, 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 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:

The normalizing period, from one to three months, according to the condition of the body, will compel the user of CONCENTRA FOOD to frequent eliminations from bowels and kidneys with resultant cramps and curious symptoms of the body. BE NOT DISTURBED during the normalizing period. CONCENTRA FOOD is a PURE FOOD. Several dozen capsules taken by a child at one time causes no ill effects. The greater the disturbance in the body the more CONCENTRA FOOD one should take. Never cut down on CONCENTRA FOOD because of disturbance during the normalizing period.

Take nothing for bodily ailments while on CONCENTRA FOOD.

4 capsules are found to be equal to the solids of one meal.

The RHUBARB corrects the elimination of poisons from the body. If there is poison in our body, then the rhubarb may act as a physic, but after the elimination of this poison it brings about a normal daily action. It is not what we eat that causes incorrect balance of our body, but what we do not eliminate properly.

The GRAVEL ROOT is a cleanser for the kidneys, thereby eliminating poisons accumulated in the kidneys, just as the rhubarb does for the alimentary tract.

CONCENTRA FOOD. Concentra Food is as the name implies, a highly concentrated, dehydrated food. This food is in capsule form and contains rhubarb, soya bean meal, Irish sea moss, gravel root and dehydrated cranberries.

There are 16 elements in the body: oxygen, carbon, hydrogen, calcium, nitrogen, phosphorous, chlorin, sulphur, fluorin, potassium, iodine, iron, magnesia, silicon manganese and sodium. These 16 elements must be furnished to the body in organic form through foods, for it is only through foods that the body is built and rebuilt. If there is an over-supply or a deficiency of these elements in the body, then that body is either too fat or too thin and needs correcting.

Concentra Food answers these requirements perfectly as a highly concentrated balanced dietetic aid for the furnishing of the corrective organic elements.

CONCENTRA FOOD aids the correcting of body elements. It will in time balance the diet by adding the deficient organic elements and vitamins, starting the elimination of gases, poisons, toxins and water deposits. Through the perfect balanced nutrition and proper elimination a natural, normal figure is developed and health is expressed in the hair, eyes, skin and voice.

As the system begins absorbing CONCENTRA the need for larger amounts of solid food at the evening meal will gradually decrease.

It is very important that plenty of liquids be consumed each day as the body is made up of more than 80% liquids.

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 Concentra Food is a highly concentrated food, safe for use, which, with the addition of liquids, will constitute a balanced diet and replace the ordinary diet; that this preparation will supply deficiencies to the human body and correct organic elements and cause natural elimination; that the use of this preparation will correct both underweight and overweight and restore and develop a healthy, normal figure; that it will remove or eliminate poisons from the body by reason of the action of rhubarb and will

eliminate poisons from the kidneys by reason of the action of gravel root.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. Concentra Food is not a food but by reason of the high content of rhubarb present in this preparation it is in fact a drug. It is not safe for use by either adults or children but instead serious injury to health may result from its continued use, as recommended by respondent. This preparation will not constitute a balanced diet and does not have sufficient nutritive value to replace the ordinary diet. This preparation will not supply deficiencies to the human body, correct organic elements, or cause natural elimination. The use of this preparation will not correct either overweight or underweight and will not restore or develop a healthy, normal figure. Respondent's preparation will not remove or eliminate poisons from the body or kidneys.

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 Concentra Food under the conditions prescribed in said advertisements or such conditions as are customary or usual may in some cases cause serious injury to health.

By reason of the presence of a high percentage of rhubarb in respondent's preparation, the continued use of this preparation over a long period of time, as recommended by the respondent would cause excessive purgation and result in serious injury to health.

PAR. 6. 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 induces the purchase by the public of respondent's preparation "Concentra."

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 November 14, 1939, issued and

subsequently served its complaint in this proceeding upon respondent Jean Ferrell, Inc., 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 December 5, 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 interests 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 Ferrell, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 112-114 East Walton Street, Chicago, Ill. Respondent, during the year last past, has been and still is engaged in the sale and distribution of a preparation known as "Concentra" which is offered for sale and sold as a concentrated food product for use as a treatment for obesity and as a tonic. In the course and conduct of its business, respondent causes said preparation, "Concentra," when sold to be transported from its place of business in the State of Illinois 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 herein mentioned, has maintained, a course of trade in commerce in said product 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 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 preparation "Concentra" by United States mails, 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 preparation, 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 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:

The normalizing period, from one to three months, according to the condition of the body, will compel the user of CONCENTRA FOOD to frequent eliminations from bowels and kidneys with resultant cramps and curious symptoms of the body. BE NOT DISTURBED during the normalizing period. CONCENTRA FOOD is a PURE FOOD. Several dozen capsules taken by a child at one time causes no ill effect. The greater the disturbance in the body the more CONCENTRA FOOD one should take. Never cut down on CONCENTRA FOOD because of disturbance during the normalizing period.

Take nothing for bodily ailments while on CONCENTRA FOOD.

4 capsules are found to be equal to the solids of one meal.

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The GRAVEL ROOT is a cleanser for the kidneys, thereby eliminating poisons accumulated in the kidneys, just as the rhubarb does for the alimentary tract.

CONCENTRA FOOD. Concentra Food is as the name implies, a highly concentrated, dehydrated food. This food is in capsule form and contains rhubarb, soya bean meal, Irish sea moss, gravel root, and dehydrated cranberries.

There are 16 elements in the body: oxygen, carbon, hydrogen, calcium, nitrogen, phosphorous, chlorine, sulphur, fluorin, potassium, iodine, iron, magnesia, silican manganese and sodium. These 16 elements must be furnished to the body in organic form through foods, for it is only through foods that the body is built and rebuilt. If there is an over-supply or a deficiency of these elements in the body, then that body is either too fat or too thin and needs correcting.

Concentra Food answers these requirements perfectly as a highly concentrated balanced dietetic aid for the furnishing of the corrective organic elements.

CONCENTRA FOOD aids the correcting of body elements. It will in time balance the diet by adding the deficit organic elements and vitamins, starting the elimination of gases, poisons, toxins and water deposits. Through the perfect balanced nutrition and proper elimination a natural, normal figure is developed and health is expressed in the hair, eyes, skin and voice.

As the system begins absorbing CONCENTRA the need for larger amounts of solid food at the evening meal will gradually decrease.

It is very important that plenty of liquids be consumed each day as the body is made up of more than 80% liquids.

PAR. 3. Through the use of the statements hereinabove set forth and other 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 or indirectly, that Concentra Food is a highly concentrated food, safe for use, which, with the addition of

liquids, will constitute a balanced diet and replace the ordinary diet; that this preparation will supply deficiencies to the human body and correct organic elements and cause natural elimination; that the use of this preparation will correct both underweight and overweight and restore and develop a healthy, normal figure; that it will remove or eliminate poisons from the body by reason of the action of rhubarb and will eliminate poisons from the kidneys by reason of the action of gravel root.

PAR. 4. The aforesaid representations and claims used and disseminated by the respondent as hereinabove described are grossly exaggerated, misleading, and untrue. Concentra Food is not a food but by reason of the high content of rhubarb present in this preparation it is in fact a drug. It is not safe for use by either adults or children but instead serious injury to health may result from its continued use, as recommended by respondent. This preparation will not constitute a balanced diet and does not have sufficient nutritive value to replace the ordinary diet. This preparation will not supply deficiencies to the human body, correct organic elements or cause natural elimination. The use of this preparation will not correct either overweight or underweight and will not restore or develop a healthy, normal figure. Respondent's preparation will not remove or eliminate poisons from the body or kidneys.

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 Concentra Food under the condition prescribed in said advertisements or such conditions as are customary or usual may in some cases cause serious injury to health.

By reason of the presence of a high percentage of rhubarb in respondent's preparation, the continued use of this preparation over a long period of time, as recommended by the respondent would cause excessive purgation and result in serious injury to health.

PAR. 6. 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 induce the purchase by the public of respondent's preparation "Concentra."

Order

30 F. T. C.

## 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 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, Jean Ferrell, Inc., a corporation, 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 a preparation containing drugs now designated by the name of "Concentra," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or any other name, 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 preparation, which advertisements represent, directly or through implication, that said preparation "Concentra" is a food or a concentrated food; that with or without the addition of liquids it will constitute a balanced diet, or replace the ordinary diet; that it will supply deficiencies to the human body; that it will correct organic elements; that it will cause "natural" elimination; that its use will correct underweight and overweight; that it will restore or develop a healthy or normal figure; that it will remove or eliminate poisons from the body and kidneys or that its use is safe; or which advertisements fail to reveal that the continued use of said preparation over a long period of time would cause excessive purgation and result in serious injury to health of the user.

## Order

*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, setting forth in detail 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.

Complaint

30 F. T. C.

IN THE MATTER OF  
CLAYTON L. WARDELL, TRADING AS WARDELL PIANO  
COMPANY

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

*Docket 3967. Complaint, Dec. 9, 1939—Decision, Mar. 9, 1940*

Where an individual engaged in sale and distribution of musical instruments, including pianos, to purchasers 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 statements concerning character and price of his pianos disseminated among prospective purchasers through newspaper advertisements, postcards sent through the mails, and other printed and written matter, and through his agents or representatives—

Represented, directly and indirectly, that his said products were pianos which, having been previously sold on deferred payment plan and repossessed from original purchasers because of failure to meet payments due thereon, were offered for resale at prices representing only unpaid payments due, and prices substantially less than those at which said pianos would ordinarily be sold by him in customary and normal course of business, through such typical statements as “\* \* \* Rather than reship to the factory, we would like to sell these to responsible parties for the balance due \* \* \*,” and to do so would “accept terms of \$6 and \$8 per month”;

Facts being many pianos thus offered for sale by him were not products previously sold and repossessed as aforesaid, but were taken from his regular stock, and prices thereof were not in any sense sacrifice prices and did not represent any balance due thereon by former purchasers, but were usual prices at which such products were customarily offered for sale and sold by him in regular and normal course of business;

With effect of misleading and deceiving purchasing public into erroneous and mistaken belief that such statements and representations were true, and of causing substantial portion thereof, because of such beliefs, to purchase his said pianos in preference to products of those competitors aforesaid, who do not falsely represent that prices quoted by them are lower than their usual or customary prices:

*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. Jesse D. Kash* for the Commission.

*Gill & Gill*, of Sioux City, Ia., 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 Clayton L. Wardell,

an individual trading as Wardell Piano 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.** Clayton L. Wardell is an individual trading and doing business under the name of Wardell Piano Co., with his principal place of business located at 909 Pierce Street, Sioux City, Iowa.

**PAR. 2.** In the course and conduct of his aforesaid business, respondent has been engaged for more than 1 year last past in the sale and distribution of musical instruments, including pianos. Respondent causes his products, when sold by him to be transported from his aforesaid place of business in the State of Iowa to the purchasers thereof located in various other States of the United States and in the District of Columbia.

Respondent maintains, and has at all times mentioned herein, maintained a course of trade in said musical 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 his said business, respondent is now and has been for some time last past engaged in substantial competition with other individuals and with firms and corporations also engaged 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, musical instruments, including pianos.

**PAR. 4.** In the course and conduct of his said business and for the purpose of inducing the purchase of his pianos the respondent makes representations concerning the character and price of his said pianos, which representations are disseminated among prospective purchasers by means of newspaper advertisements, by post cards sent through the United States mails, by other printed and written material and orally through respondent's agents and representatives. Among and typical of such representations are the following:

We have in your vicinity two small sized Baldwin-made pianos—one a small apartment Baby Grand and the other a handsome small Bungalow Upright—Rather than reship to the factory, we would like to sell these to responsible parties for the balance due. In order to do this we will accept terms of \$6 and \$8 per month.

Would you be interested in one of these instruments? If not, have you a friend or relative who would be?

Just drop a line to the address below. We will advise you where these pianos can be seen and the amount of balance due.

Wardell Piano Company,

Baldwin Factory Distributors,

## Complaint

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Through the use of the representations and statements hereinabove set forth, and others similar thereto not specifically herein set out, all of which purport to be descriptive of the make, kind, character, and prices of his said pianos, the respondent has represented and does now represent, directly or indirectly, that said pianos are instruments which, having been previously sold on a deferred payment plan, have been repossessed by respondent from the original purchaser because of the failure of such purchaser to meet the payments due thereon; that said pianos are being offered by respondent for resale at prices which represent only the unpaid balances due thereon; and that such prices are sacrifice prices and are substantially less than the prices at which such pianos would ordinarily be sold by respondent in the customary and normal course of business.

PAR. 5. The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact many of the pianos offered for sale by respondent as aforesaid are not pianos which have been previously sold by respondent and repossessed from such original purchasers, but are pianos taken from respondent's regular stock. The prices at which respondent offers said pianos for sale are in no sense sacrifice prices and do not represent any balance due thereon by former purchasers but are in fact the usual prices at which such pianos are customarily offered for sale by respondent in the regular and normal course of business.

PAR. 6. The use by the respondent of the aforesaid false, deceptive, and misleading statements and representations, with respect to his said pianos, 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 statements and representations are true, and causes and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said pianos.

PAR. 7. Among the competitors of respondent as referred to in paragraph 3 herein are many who do not falsely represent the make, kind, character, and prices of their pianos.

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 December 9, 1939, issued and subsequently served its complaint in this proceeding upon respondent Clayton L. Wardell, an individual trading as Wardell Piano 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 January 5, 1940, the respondent filed his answer in which answer he admits all the material allegations of fact set forth in said complaint and waives 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, Clayton L. Wardell, is an individual, trading and doing business under the name of Wardell Piano Co., with his principal place of business located at 909 Pierce Street, Sioux City, Iowa.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of musical instruments, including pianos. Respondent causes his products when sold by him to be transported from his aforesaid place of business in the State of Iowa 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 musical instruments 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 his said business, respondent is now, and has been for some time last past, engaged in substantial competition with other individuals and with firms and corporations also engaged in the business of selling and distributing musical instruments, including pianos, in commerce between and among the various States of the United States and in the District of Columbia.

## Findings

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PAR. 4. In the course and conduct of his said business and for the purpose of inducing the purchase of his pianos the respondent has made and makes representations concerning the character and price of his said pianos which representations are disseminated among prospective purchasers by means of newspaper advertisements, by postcards sent through the United States mails, by other printed and written matter and orally through respondent's agents and representatives.

Among and typical of such representations are the following:

We have in your vicinity two small sized Baldwin Made Pianos—one a Small Apartment Baby Grand and the other a Handsome Small Bungalow Upright—Rather than reship to the factory, we would like to sell these to responsible parties for the balance due. In order to do this we will accept terms of \$6 and \$8 per month.

Would you be interested in one of these instruments? If not, have you a friend or relative who would be?

Just drop a line to the address below. We will advise you where these pianos can be seen and the amount of balance due.

Wardell Piano Co.

Baldwin Factory Distributors \* \* \*

The Commission finds that through the use of the representations and statements hereinabove set forth, and others similar thereto not herein set out the respondent has represented and does now represent, directly or indirectly that his said pianos are instruments which having been previously sold on a deferred payment plan have been repossessed by the respondent from the original purchasers thereof because of the failure of such purchasers to meet the payments due thereon; that said pianos are being offered by respondent for resale at prices which represent only the unpaid payments due thereon and which are substantially less than the prices at which such pianos would ordinarily be sold by respondent in the customary and normal course of business.

PAR. 5. The Commission finds that the aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact many of the pianos offered for sale by respondent as aforesaid are not pianos which have been previously sold by respondent and repossessed from such original purchasers but are pianos taken from respondent's regular stock. The prices at which respondent offers said pianos for sale are not in any sense sacrifice prices and do not represent any balance due thereon by former purchasers but are in fact the usual prices at which such pianos are customarily offered for sale and sold by respondent in the regular and normal course of business.

PAR. 6. The use by respondent of the aforesaid false, deceptive, and

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## Order

misleading statements and representations with regard to the said pianos 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 such statements and representations are true, and cause and have caused a substantial portion of the purchasing public because of such erroneous and mistaken beliefs to purchase respondent's said pianos in preference to the pianos of those competitors of respondent referred to in paragraph 3 hereof, who do not falsely represent that prices quoted by them are lower than their usual or customary prices.

## CONCLUSION

The aforesaid acts and practices of the respondent as herein set forth 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.

## 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 the respondent admits all of the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Clayton L. Wardell, trading as Wardell Piano 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 pianos in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the prices at which respondent offers for sale and sells his products constitute a discount to the purchaser, or that such prices are special or reduced prices, or that such prices represent only an unpaid balance due on such products by the original purchaser, when, in fact, such prices are the usual and customary prices at which respondent sells such products in the normal and usual course of business.

Order

30 F. T. C.

2. Representing as the customary or regular prices or values of respondent's products prices and values which are in excess of the prices at which such products are regularly and customarily sold by respondent in the normal and usual course of business.

3. Representing that pianos have been repossessed from the purchasers thereof when such pianos have not in fact been so repossessed.

*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.

## Order

IN THE MATTER OF  
ARMY AND NAVY TRADING COMPANY

## MODIFIED CEASE AND DESIST ORDER

*Docket 2285. Order, Mar. 13, 1940*

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on November 26, 1935, 21 F. T. C. 541, and in which (2) Court of Appeals for District of Columbia, on January 4, 1937, in *Federal Trade Commission v. Army and Navy Trading Co.*, 88 F. (2d) 776, 24 F. T. C. 1601, rendered its opinion and issued its order modifying Commission's order in certain particulars and affirming same in certain particulars—

Requiring, in view of said facts and further fact that more than two years have elapsed since original order with proviso permitting, for said period, certain use of words "Formerly Army and Navy Trading Company," that respondent corporation cease and desist from using, in connection with its corporate name, words "Army and Navy" or either of them, and from advertising, as below in detail set forth, and subject to provisions therein stated, words "Army or Navy" as descriptive of or in connection with their merchandise.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on November 26, 1935, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on January 4, 1937, the United States Court of Appeals for the District of Columbia rendered its opinion and issued its order modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars; and it still further appearing that the aforesaid order to cease and desist issued by the Commission contained a proviso that for a period of 2 years from the date of the service thereof, the respondent was permitted to use in connection with such corporate or trade name as it might assume the words "Formerly Army and Navy Trading Company," and that more than 2 years have elapsed since the date of the service of the Commission's order to cease and desist.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court order:

*It is now ordered,* That the respondent Army and Navy Trading Company, in connection with the conduct of its mercantile establishment within the District of Columbia, cease and desist from:

1. Using in connection with its corporate name the words "Army and Navy" or either of them.

2. Advertising or causing to be advertised by means of radio broadcasts or in any circulars, trade journals, daily newspapers, or other periodicals the words "Army or Navy," or either of them, as descriptive of, or in connection with, any merchandise offered for sale or sold to the public, unless in fact such merchandise was actually procured, directly or indirectly, from the War or Navy departments of the United States; provided, however, that the words "Army and Navy," or either of them, may be used as descriptive of particular lots of merchandise made for the War or Navy departments, or according to Army and Navy specifications, if the origin and character of the particular lot of merchandise and its exact relationship to the Army or Navy is accurately specified and stated in type equally as conspicuous as the words "Army and Navy" and in immediate conjunction therewith.

*It is further ordered,* That the respondent shall, within 30 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

## Syllabus

## IN THE MATTER OF

## AMERICAN VENEER PACKAGE ASSOCIATION, INC., EASTERN PACKAGE ASSOCIATION, SOUTHERN PACKAGE ASSOCIATION, INC., THE STEVENSON CORPORATION, AND CHARLES R. STEVENSON 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 3556. Complaint, Aug. 25, 1938—Decision, Mar. 15, 1940*

Where three local trade groups and members, manufacturers of veneer containers, in the formation of which, in the latter part of 1935 and the early part of 1936, American Veneer Package Association, with membership comprising many of the larger or more important members of the industry, cooperated and assisted for the more effective self-regulation of the industry, and which three local trade groups included (1) Georgia Association, composed of larger and principal manufacturers of veneer containers in said and southern States, (2) Eastern Package Association, made up of manufacturers of veneer containers in New Jersey, Pennsylvania, Delaware, and contiguous territory, and (3) North and South Carolina Veneer Association, made up of principal manufacturers making and selling veneer containers in said States; by and with the active assistance and cooperation of said American Association and its officers, and acting within and for their respective territories—

- (a) Discussed, at open meetings, and agreed upon, prices, conditions, terms of sale and discounts, and entered into and executed contracts and agreements which resulted in the fixing of such prices, etc., relative to the sale and distribution of veneer containers used in packaging fruits and vegetables, and, in certain cases, made f. o. b. prices and delivered prices same, and revised prices of one group, so as to be in harmony with those of another, and in certain situations to meet condition brought about by shipments from State of Texas into territory involved of products in question at substantially lower prices as result of high price level fixed, and following effort to induce Texas manufacturers to protect prices filed and agreed upon by particular trade group here involved, and in such general connection and among other things, took measures designed to meet price-disrupting factor involved in sale of No. 2 baskets;
- (b) Executed written membership contracts between the various members and their respective associations which set forth terms and conditions of sale and charges for various items and dealer discounts, and which defined as dealer one who sold product and guaranteed and collected account but did not haul or warehouse and for whom manufacturer made delivery, and distributor or jobber as one who sold product and guaranteed and collected account and in addition thereto warehoused and delivered product, and which limited discount of former to 5 percent, and provided for latter additional 5 percent; and
- (c) Voted on lists submitted by various manufacturing members of persons or firms submitted to manufacturer's respective association as entitled,

in his opinion, to dealer or distributor discounts, and placed on dealer-distributor list for each association only such names as thus approved, and agreed that only those appearing on such lists were entitled to such discounts, and, after vote, compiled and distributed, through respective secretaries, master lists of such approved dealers and distributors, with many originally submitted for such lists by respective members rejected by vote of members' competitors; and

- (d) Employed, in case of some, representatives to investigate complaints of sales made below agreed prices and granting of discounts to persons and firms not on dealer lists, and to determine compliance with agreed prices and the allowing of proper discounts to dealers and distributors, and, at meetings, made complaints of sales below prices agreed on subject of discussion; and

Where said American Veneer Package Association and its officers—

- (e) Took an active part in promoting said membership contracts in various localities and acted as medium for exchange of information between members of such various groups and as a general bureau for such exchange;
- (f) Sought to ascertain Texas manufacturer responsible for supplying or shipping baskets at lower prices into trade territory involved, as above set forth, setting forth that "we cannot let one or two manufacturers dictate the situation in other territories," and that any information addressee could supply with respect to the matter would be appreciated; and
- (g) Took an active part, through secretary common to both organizations, in the matter of submission of lists of those entitled to various discounts, and aided, in such and other trade territory, the revision, making and dissemination of agreed schedules and prices and price schedules, not distributed generally either to customers or members of trade, but for member use exclusively; and

Where a corporation, together with numerous individuals doing business as partners, and engaged under firm name in business management and business engineering, following the explanation of their "live and let live" plan by representative before convention of aforesaid American Veneer Package Association and before meeting of aforesaid North and South Carolina Veneer Package Association, and their resulting employment to conduct survey of entire veneer package industry, and the making of such surveys in Eastern Package Association, North and South Carolina Association and Georgia Association territories, and in New York, the East, Midwest, West, and Texas, as below set forth, and division of territories into zones, secretaries of which said various zones were employees of such business management and engineering firm—

- (h) Persuaded manufacturers, acting through such secretaries and representatives, to hold their production within their normal position as indicated by above surveys, which covered, for particular zones, production and sale of bushel and half-bushel baskets and other containers and dollar value thereof for period involved, and incident to which they furnished each member, in respective territory where survey was conducted, statistical report showing his normal volume relationship over two-year period involved as compared to total volume of sales in territory, and further incident to which monthly reports were furnished showing volume of sales of each member as compared to total volume, and attempted to impress

on manufacturers in various zones necessity for not exceeding their so-called normal positions, telling members that they, the members, could increase their volume relationship only by taking some of another manufacturer's volume;

- (i) Obtained assurances from many members, as aforesaid, that they, the members, would curtail their production so that it would remain somewhat within its so-called normal volume, and contacted manufacturer found at any time to be exceeding to any great extent his normal production through zone secretary or representative, and requested such manufacturer to curtail production, and obtained promises wherever possible from manufacturers who, in the various zones, expected said firm's operation to stabilize and increase prices, that they would reduce production so that their normal volume would not greatly exceed that shown in original survey; and

Where said various manufacturers concerned, engaged in manufacture and sale of aforesaid containers for fruit and vegetables, and members, as case might be, of different associations and groups concerned, and located within different geographical zones created by said business management firm, i. e.—

(1) Zone C, or territory of Southern Package Association, result of consolidation of aforesaid Georgia and North and South Carolina Associations;

(2) Zone B, or territory of Eastern Package Association, covering Virginia, Maryland, Delaware, New Jersey, and certain specified counties in Pennsylvania, West Virginia, and North Carolina;

(3) Zone A, or territory of Northeastern Package Association, embracing all of New England, New York State, various counties in Pennsylvania and West Virginia, formed early in 1937 by said business management firm and followed its survey in territory as above indicated;

(4) Zone E, or territory of Midwest Package Association, including veneer package manufacturers in Michigan, Indiana, Kentucky, Tennessee, Illinois, Iowa, Minnesota, Wisconsin, Missouri, Ohio, and western part of West Virginia (with Ohio and western part of West Virginia considered jointly as part of Zone A), and in which there had been no organization or association until formation of such Midwest group under supervision of said management firm and survey in territory in question; and

(5) Zone D, or territory of Texas group in which similar survey was conducted, and which included all States west of Mississippi and east of Rocky Mountains in which were located veneer package manufacturers and customers, and activities of which were similar to those of other groups and zone organizations, as above described, and involved intent and effect of establishing non-competitive prices and stabilizing relative volumes of business done by various members—

- (j) Divided the territory in which their producing plants were located, and into which their products were shipped, into geographical zones or areas composed as above indicated, and with definite exact boundary lines, and filed, after conference and discussion among the producers in the respective zones and effective therein, zone prices for delivery at all points throughout a particular zone and for all producers therein, without regard to fact that cost of delivery varied substantially between respective producing points and any given place of delivery, and including

in such prices, filed with their respective zone secretaries, both current and future prices which, as applicable within each zone, were identical, but which, as to prices of different zones, differed, and which prices or price lists, distributed to members of zone in which they were filed by zone secretary, were also filed by various zone secretaries with American Veneer Package Association, and by latter, through its secretary, distributed to member manufacturers in all zones who were interested in making sales to zones in which filed prices were effective, and which price lists and statistical information were, as general practice, neither published nor furnished to customers of trade, but were for confidential use of members only;

- (k) Continued, generally, practices hereinbefore set forth and indicated, preceding employment of said business management firm and surveys thereof, and including the making of membership agreements setting forth prices, terms, etc., and price discussions and understandings at meetings, and the submission of those thought eligible for dealer or distributor discounts, and the making therefrom of master lists for distribution among members and guidance thereof in granting of discounts, and also filed with various secretaries and employees of said business management firm their invoices, or submitted to inspection thereof by such secretaries and employees, and took measures directed against disruption of price levels, such as deferring, controlling, or withholding production in anticipation of small demand and crop shortages, or through purchase of containers to prevent their offer in organization territory by cut-price manufacturer, and through steps directed at controlling sale of No. 2 baskets as price-disrupting factor, and, in certain territory, agreed, as price maintenance measure, to follow, in lieu of general filing of price lists, lists filed by certain company or concern; and

Where said business engineering firm, through its representatives—

- (l) Checked invoices of members of various zones and contacted any member thus found to have made sales below filed prices, either in his zone or in another, or to have quoted discount to others than those appearing on dealer-distributor lists, and sought to persuade such member or members to discontinue making such below-price sales in his own or in outside zones, and to discontinue money discounts to others than those who appeared on such distributor lists, or in excess of those provided for, and emphasized control or curtailment of production as essential step in direction of price maintenance or increase, and sought to and did bring about such production control or curtailment; and

Where members of the aforesaid various group or zone associations—

- (m) Agreed that they would not ship into adjoining zone without conforming to prices prevalent in zone of vendee, and protected in accordance with understanding of members of the various associations, the prices filed in the different zones and cooperated in the maintenance thereof; and

Where said various zones and their representatives, following said business management concern's becoming business manager thereof—

- (n) Cooperated more closely between and among themselves, with their secretaries, who were employees of said business management firm and the managing directors of each zone and under general supervision of an official of said firm, receiving from members filed prices and distributing same to other secretaries and to secretary of aforesaid American Veneer

Package Association, and with and through invited attendance of representatives of the different zones at meetings of other zone associations, the holding of joint association meetings, and attendance at different zone meetings of aforesaid official of said business management firm, who was general zone supervisor, and report by him of progress of other zones, and discussion of price and dealer lists of other zones at different zone meetings; and

Where secretary of said American Veneer Package Association—

(o) Collaborated with the various secretaries in general distribution of prices to all members of all zones, with members instructed, when selling in other zones, to obtain information from their zone secretary as to whether proposed vendee was dealer or distributor, with intent of protecting prices and discounts prevalent in various zones;

With result that said understandings, agreements, combinations and conspiracies, and things done thereunder and pursuant thereto and in furtherance thereof, had a dangerous tendency to, and actually did, hinder and prevent price competition between and among member concerns of said various associations in sale of veneer fruit and vegetable containers and parts thereof in commerce, and placed in said various concerns, associations, etc., as hereinabove set forth, power to control and enhance prices and unreasonably restrain commerce in said products and parts thereof:

*Held*, That said understandings, agreements, combinations and conspiracies, and things done thereunder and pursuant thereto and in furtherance thereof, as above set forth, were all to the prejudice of the public and constituted unfair methods of competition.

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

*Mr. Daniel J. Murphy* for the Commission.

*Morelock & Lamb*, of Washington, D. C., for American Veneer Package Association, Eastern Package Association, Southern Package Association, Inc., Northeastern Veneer Package Association, Midwest Package Association, and various officers and members of said associations, and together with *Mr. Ross R. Guthrie*, of Washington, D. C., for various members of said associations.

*Wise, Corlett & Canfield*, of New York City, for The Stevenson Corporation, Stevenson, Jordan & Harrison, Frederick W. Masie, Norman G. Asbury, George A. Cooper and J. L. Giacomino.

*Brown & Watts*, of Barnwell, S. Car., for Greene Lumber & Crate Co.

*Mr. F. C. Hillyer*, of Jacksonville, Fla., for Adkins Manufacturing Co., Georgia Veneer & Package Co., Pierpont Manufacturing Co. and Southern Crate & Veneer Co.

*Clark, Pryor, Hale & Plock*, of Burlington, Ia., for Burlington Basket Co.

*Dewey & Cummins*, of Cairo, Ill., for Swisshelm Veneer Co.

*Foulston, Siefkin, Foulston & Morris*, of Wichita, Kans., for Roberts-Liggett Co.

*Mr. Frederick C. Cogshall*, of South Haven, Mich., for Pierce-Williams Co.

*Murrey & Murrey*, of Gallatin, Tenn., for Strawberry Crate 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 described and named 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 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 Veneer Package Association, Inc., is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office at 804 Seventeenth Street, NW., Washington, D. C. It was organized, and, for the past several years, has acted, as a trade association for the promotion and protection of the interests of its members who are engaged in the manufacture and sale of one or more of various types of veneer containers used in packaging fruits and vegetables for transportation from the producers of said fruits and vegetables to ultimate consumers. These containers are described and designated as baskets, tubs, crates, hampers, lugs, boxes, cartons, and by various and sundry other names commonly used in the industry in referring to veneer containers, and the parts thereof, for the packaging of fruits and vegetables.

The respondent officers of said respondent corporation are as follows:

President, Frank M. Harrison, % F. W. Harrison & Company, Painesville, Ohio;

Vice-president, George Talbot, Jr., % Evansville Container Company, Evansville, Indiana;

Vice-president, R. O. Fletcher, % Acme Veneer Package Company, Orchard Park, New York;

Treasurer, Willis W. Hargroves, % Planters Manufacturing Company, Portsmouth, Virginia;

Secretary-manager, Robert W. Davis, 804 17th Street, N. W., Washington, D. C.

PAR. 2. Respondent Eastern Package Association is an unincorporated trade association having its headquarters or executive offices

at 133 South 36th Street, Philadelphia, Pa. Its membership consists of certain persons, partnerships, and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the States of New Jersey, Maryland, Delaware, Virginia, eastern Pennsylvania, and eastern West Virginia. In 1936, Edwin P. Brown and Robert W. Davis served as chairman and secretary, respectively, of said respondent association, and said officers were succeeded, in 1937, by Frederick W. Masie and Ross R. Guthrie. The respondent members of said respondent association are as follows:

Berryville Basket Co., Berryville, Va.

M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., Dividing Creek, N. J.

William W. Dilks & Son, Inc., Swedesboro, N. J.

Farmco Package Co., Norfolk, Va.

Louis P. Finger, trading as Finger Bros., Franklinville, N. J.

Goldman Package Manufacturing Co., Glassboro, N. J.

Jersey Package Co., Bridgeton, N. J.

Marvil Package Co., Laurel, Del.

Planters Manufacturing Co., Portsmouth, Va.

Ramsey Package Corporation, Driver, Va.

Riverside Manufacturing Co., Murfreesboro, N. C.

Virginia Cooperage Co., Inc., Cloverdale, Va.

PAR. 3. Respondent Southern Package Association, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, and having its offices and principal place of business at 1617 First National Bank Building, Charlotte, N. C. The said respondent corporation was formerly known as Georgia Basket Association; on or about June 1937, after the said Georgia Basket Association included in its membership the members of the North and South Carolina Veneer Package Association, an unincorporated group of veneer package manufacturers, the name of Georgia Basket Association was changed to Southern Package Association, Inc. The respondent officers of said respondent corporation are as follows:

Chairman, Herbert J. Linder, Adams Run, S. C.

Vice president, Walter E. Morgan, Americus, Ga.

Secretary, Norman G. Asbury, Charlotte, N. C.

Treasurer, D. E. Shuman, Allendale, S. C.

The respondent members of said respondent corporation are certain persons, partnerships, and corporations engaged in the manu-

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facture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the States of North Carolina, South Carolina, Georgia, and Alabama; said respondent members are as follows:

W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Co., Williston, S. C.  
Leigh Banana Case Co., 1421 South Aberdeen Street, Chicago, Ill.  
B. E. Martin, Mount Olive, N. C.  
Patten Package Co., Inc., Calypso, N. C.  
Farmco Package Corporation, Norfolk, Va.  
Planters Manufacturing Co., Portsmouth, Va.  
Atkins Manufacturing Co., Gainesville, Fla.  
Georgia Veneer & Package Co., Brunswick, Ga.  
Pierpont Manufacturing Co., Savannah, Ga.  
Marvil Package Co., Laurel, Del.  
Evansville Container Co., Evansville, Ind.  
Hollywood-Beaufort Package Corporation, Norfolk, Va.  
Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Wilmington, N. C.  
Mount Olive Manufacturing Co., Mount Olive, N. C.  
Riverside Manufacturing Co., Murfreesboro, N. C.  
Alabama Basket Co., Inc., Eufaula, Ala.  
Dayton Veneer & Lumber Mills, Dayton, Tenn.  
John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.  
Southern Crate & Veneer Co., Macon, Ga.  
Edgerton Manufacturing Co., Plymouth, Ind.

PAR. 4. Respondents, The Stevenson Corporation, organized, existing and doing business under the laws of the State of New York, and Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. P. Platt, Howard Marvin, and D. M. Metzger, are partners doing business under the firm name of Stevenson, Jordan & Harrison, with a principal place of business at 19 West 44th Street, New York, N. Y. The said respondents are engaged in business management and business engineering.

PAR. 5. Respondent Northeastern Veneer Package Association is an unincorporated trade association having its offices and principal place of business at 517 Terminal Building, 65 Broad Street, Rochester, N. Y. The respondent officers of said respondent association are:

President, B. H. Droman; vice-president, T. W. Windnagel; secretary-treasurer, George A. Cooper.

The respondent members of said respondent association are certain persons, partnerships, and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the New England States, New York and western Pennsylvania. The said respondent members of said respondent association are as follows:

Acme Veneer Package Co., Inc., Orchard Park, N.Y.

John Bacon, Inc., Gasport, N. Y.

Guile & Windnagle, Inc., Penn Yan, N. Y.

Webster Basket Co., Webster, N. Y.

Ellicottville Basket Co., Ellicottville, N. Y.

Attica Package Co., Attica, N. Y.

Barden & Robeson Co., Penn Yan, N. Y.

Sodus Basket Co., Sodus, N. Y.

Bellaire & Schroeder, Inc., Hamburg, N. Y.

Madison County Basket Co., Hamilton, N. Y.

PAR. 6. Respondent Midwest Package Association is an unincorporated trade association having its offices and principal place of business at 130 East Washington Street, Indianapolis, Ind. The respondent officers of said respondent association are:

President, George H. Talbot, Sr.; vice-president, S. C. Bulliet; secretary-treasurer, J. L. Giacomino.

The respondent members of said respondent association are certain persons, partnerships and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the States of Kentucky, Tennessee, Indiana, Illinois, and various other States in the Midwest. Said respondent members of said respondent association are as follows:

Berrien County Package Co., Benton Harbor, Mich.

Burlington Basket Co., Burlington, Iowa.

Edgerton Manufacturing Co., Plymouth, Ind.

B. C. Jarrel & Co., Humboldt, Tenn.

Swisshelm Veneer Co., Mound City, Ill.

Frank L. Deaner & Sons, Sodus, Mich.

New Albany Box & Basket Co., New Albany, Ind.

Ottawa Basket Co., Oak Harbor, Ohio.

Roberts-Liggett Co., Metropolis, Ill.

Bloomington Basket Co., Bloomington, Ind.

H. A. DuBois and Sons Co., Cobden, Ill.

Evansville Container Co., Evansville, Ind.

Newton Box & Basket Co., Newton, Ill.

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Schwarz Basket & Box Co., Topeka, Kans.  
Paducah Box & Basket Co., Paducah, Ky.  
Harrison Manufacturing Co., Shelby, Mich.  
Pierce-Williams Co., Jonesboro, Ark.  
Strawberry Crate Co., Portland, Tenn.

PAR. 7. The members of the respondent associations and organizations, as described in paragraphs 2, 3, 5, and 6, and hereinafter referred to as member respondents, in the course and conduct of their business, manufacture, sell, and distribute a large percentage (probably 90 percent) of all the veneer containers, described in paragraph 1 hereof, used in the packaging of fruit and vegetables in the various States of the United States east of the Rocky Mountains. The said member respondents sell their said products to wholesalers, dealers, and consumers located at various points throughout the United States, and, when sales are made and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States, other than in the States of the origin of such shipments. Said member respondents maintain a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

Prior to the adoption of the practices hereinafter described, said member respondents were in active and substantial competition with each other, and with other members of the industry, in making and seeking to make sales of their products in trade and commerce between and among the several States of the United States and in the District of Columbia; but for the practices hereinafter described such active and substantial competition would have continued until the present and said member respondents would now be in active and substantial competition with each other and with other members of the industry.

PAR. 8. Beginning about July 1935, and continuing until about the early part of the year 1937, the member respondents, as set forth in paragraphs 2 and 3 hereof, as members of the respondent Eastern Package Association, North and South Carolina Veneer Package Association, and Georgia Basket Association and in cooperation with the respondent American Veneer Package Association, Inc., entered into understandings, agreements, combinations, and conspiracies; and in the early part of the year 1937, at which time the respondents Northeastern Veneer Package Association and Midwest Package Association were organized, all the respondents entered into understandings, agreements, combinations, and conspiracies; said understandings, agreements, combinations, and conspiracies were entered

into, and thereafter carried out, for the purpose and with the effect of restricting, restraining and monopolizing, and suppressing and eliminating competition in, the sale of veneer fruit and vegetable containers in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 9. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance thereof, said member respondents, with the active cooperation of the other respondents named herein, have done and performed, and still do and perform, the following acts and things:

1. Said member respondents agreed to exchange and have exchanged, through the medium of said respondent organizations, price lists in order to establish the prices at which veneer fruit and vegetable containers, and the parts thereof, were to be sold.

2. Said member respondents agreed to fix and maintain, and have fixed and maintained, uniform prices, terms, and conditions in the sale of veneer fruit and vegetable containers and the parts thereof.

3. Said member respondents have agreed to exchange, and have exchanged, information to be used in connection with the fixing of prices, discounts, terms, and conditions of sale of veneer fruit and vegetable containers and the parts thereof.

4. Said member respondents have agreed to establish, and have established, a system of zones throughout the United States to aid in the establishment and the fixing of prices of veneer fruit and vegetable containers, and parts thereof.

5. Said member respondents have agreed to cooperate, and have cooperated, in the maintenance of the various prices determined for particular zones.

6. Said member respondents have agreed to curtail, and have curtailed, the production of veneer fruit and vegetable containers and the parts thereof, and for the purpose of securing the enforcement of the agreements to curtail production, member respondents have filed, and do file, with their respective respondent organizations invoices and other reports.

7. Said member respondents have agreed to compile and distribute, and have compiled and distributed, lists of recognized dealers and distributors for the purpose and with the effect of exclusively confining, to or through the medium of such recognized dealers and jobbers, the sale and distribution of veneer fruit and vegetable containers and the parts thereof.

8. Said respondent organizations, through the respondent officers, collect from, and distribute among, member respondents and other

participants in said undertaking, statistical information used and useful in carrying out said undertaking, and they distribute from time to time among said member respondents and nonmembers participating in said undertaking, lists showing the current prices, terms, and conditions of sale, dealers and distributors to be allowed special discounts, and other information used and useful in carrying out said undertaking.

9. Said member respondents have used, and are now using, other methods and means designed to suppress and prevent competition and restrict and restrain the sale of veneer fruit and vegetable containers, and the parts thereof, in said commerce.

PAR. 10. Each of the said respondents at the times herein mentioned acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 11. Said understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinbefore alleged, have had, and do have, the effect of unduly and unlawfully restricting and restraining the sale of said veneer fruit and vegetable containers, and the parts thereof, in trade and commerce between and among the several States of the United States and in the District of Columbia; of unduly and unlawfully restricting and restraining trade and commerce in said veneer fruit and vegetable containers, and the parts thereof, in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; and of eliminating competition, with the tendency and capacity of creating a monopoly in the sale of said veneer fruit and vegetable containers, and the parts thereof, in said commerce. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as above alleged, constitute unfair methods of competition in commerce within the intent and meaning of 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 25, 1938, issued its complaint against the respondents named in the above caption and caused such complaint to be served as required by law, charging the respondents

with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 24, 1939, the Commission accepted, approved, and entered of record a stipulation in behalf of all the respondent associations, their officers (excepting 5 respondent secretaries), and their members, excepting 14 respondent members, whereby it was stipulated and agreed that a statement of facts, signed and executed in behalf of the aforesaid respondents by their counsel, George P. Lamb, and W. T. Kelley, Chief Counsel for the Federal Trade 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 such statement of facts, in reference to said respondents, 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. On July 13, 1939, the Commission entered of record "Statement of Admitted Facts" signed by counsel William W. Corlett for the respondents named in paragraph four of the said complaint, said respondents being members of a firm doing business under the name of Stevenson, Jordan & Harrison, engaged in business management and business engineering. On August 16, 1939, the respondent Evansville Container Co., not a party to said stipulation, 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. On September 20, 1939, the Commission, by orders entered herein, granted the motions of respondents Swisshelm Veneer Co. and Newton Box & Basket Co., Inc., not parties to said stipulation, for permission to withdraw their original answers and to substitute therefor answers admitting all material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answers were duly filed in the office of the Commission. On October 16, 1939, copies of said stipulation as to the facts and statement of admitted facts were introduced in support of the allegations of said complaint and four affidavits were introduced in opposition to the allegations of the complaint in behalf of respondents Pierpont Manufacturing Co., Adkins Manufacturing Co., Georgia Veneer & Package Co., and Southern Crate & Veneer Co. before John L. Hornor, an examiner of the Commission theretofore duly designated by it, the said evidence was duly recorded and filed in the office of the Commission. Testimony or other evidence was not introduced at said hearing on behalf of the other respondents. On October 25, 1939, the Commission granted the motion of counsel for respondents Georgia Veneer & Package Co. and the Southern Crate & Veneer Co., to expunge the names of these

respondents from the said stipulation because the said names had been inserted therein through misunderstanding. Further hearings were held on November 20, 1939, and December 1, 1939, at which hearings respondents, Ross R. Guthrie and Robert W. Davis testified that the statements contained in the said stipulation as to the facts were true statements of fact to the best of their knowledge. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answers thereto and the entire record, including stipulation as to the facts, statement of admitted facts, affidavits, oral testimony, and briefs in support of the respondents named paragraph 4 of the complaint, to wit, Stevenson, Jordan & Harrison, and in opposition thereto, other respondents not having filed briefs and oral arguments not having been requested by any of the respondents; 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 makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent American Veneer Package Association, Inc., is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office at 804 Seventeenth Street, NW., Washington, D. C. It was organized, and, for the past several years, has acted, as a trade association for the promotion and protection of the interests of its members who are engaged in the manufacture and sale of one or more of various types of veneer containers used in packaging fruits and vegetables for transportation from the producers of said fruits and vegetables to ultimate consumers. These containers are described and designated as baskets, tubs, crates, hampers, lugs, and by various and sundry other names commonly used in the industry in referring to veneer containers, and the parts thereof, for the packaging of fruits and vegetables.

(b) The respondent officers of said respondent corporation for the year 1937 were as follows:

President, Frank M. Harrison, c/o F. W. Harrison & Company, Painesville, Ohio.

Vice-president, George Talbot, Jr., c/o Evansville Container Company, Evansville, Indiana.

Vice-president, R. O. Fletcher, c/o Acme Veneer Package Company, Orchard Park, New York.

Treasurer, Willis W. Hargroves, c/o Planters Manufacturing Company, Inc., Portsmouth, Va.

Secretary-Manager, Robert W. Davis, 804 17th Street, NW., Washington, D. C.

PAR. 2. Respondent Eastern Package Association is an unincorporated trade association having its headquarters or executive offices at 133 South 36th Street, Philadelphia, Pa. Its membership consists of certain persons, partnerships and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph one hereof, and having places of business in the States of New Jersey, Maryland, Delaware, Virginia, eastern Pennsylvania, and eastern West Virginia. In 1936, Edwin P. Brown and Robert W. Davis served as chairman and secretary, respectively, of said respondent association; in 1937 respondent Frederick W. Masie began to serve as chairman of said association. The respondent members of said respondent association are as follows:

Berryville Basket Co., Inc., Berryville, Va.

M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., Dividing Creek, N. J.

William W. Dilks & Son, Inc., Swedesboro, N. J.

Farmco Package Corporation, Norfolk, Va.

Louis P. Finger, trading as Finger Bros., Franklinville, N. J.

Goldman, Package Manufacturing Co., a corporation, Glassboro, N. J.

Jersey Package Co., a corporation, Bridgeton, N. J.

Marvil Package Co., a corporation, Laurel, Del.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Ramsey Package Corporation, Driver, Va.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

Virginia Cooperage Co., Inc., Cloverdale, Va.

PAR. 3. (a) Respondent Southern Package Association, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Georgia, and having its offices and principal place of business at 1617 First National Bank Building, Charlotte, N. C. The said respondent corporation was formerly known as Georgia Basket Association; on or about June 1937, after the said Georgia Basket Association included in its membership the members of the North and South Carolina Veneer Package Association, an unincorporated group of veneer package manufacturers, the name of Georgia Basket Association was changed to Southern Package Association, Inc. The respondent officers of said respondent corporation, for the year 1937, were as follows:

Chairman, Herbert J. Linder, Adams Run, S. C.

Vice-president, Walter E. Morgan, Americus, Ga.

Secretary, Norman G. Asbury, Charlotte, N. C.

Treasurer, D. E. Shuman, Allendale, S. C.

(b) The respondent members of said respondent corporation are certain persons, partnerships, and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph one hereof, and having places of business in the States of North Carolina, South Carolina, Georgia, Alabama, and various other States; said respondent members are as follows:

W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Company, Williston, S. C.

Leigh Banana Case Co., a corporation, 1421 South Aberdeen Street, Chicago, Ill.

B. E. Martin, Mount Olive, N. C.

Patten Package Co., Inc., Calypaso, N. C.

Farmco Package Corporation, Norfolk, Va.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Adkins Manufacturing Co., a corporation, Gainesville, Fla.

Georgia Veneer & Package Company, a corporation, Brunswick, Ga.

Pierpont Manufacturing Co., a corporation, Savannah, Ga.

Marvil Package Co., a corporation, Laurel, Del.

Evansville Container Co., a corporation, Evansville, Ind.

Hollywood-Beaufort Package Corporation, Norfolk, Va.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Company, Wilmington, N. C.

Mount Olive Manufacturing Co., a corporation, Mount Olive, N. C.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

Alabama Basket Co., Inc., Eufaula, Ala.

Dayton Veneer & Lumber Mills, a corporation, Dayton, Tenn.

John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.

Southern Crate & Veneer Co., a corporation, Macon, Ga.

Edgerton Manufacturing Co., a corporation, Plymouth, Ind.

PAR. 4. Respondents, The Stevenson Corporation, organized, existing, and doing business under the laws of the State of New York, and Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. P. Platt, Howard Marvin, and D. M. Metzger, are partners doing business under the firm name of Stevenson, Jordan & Harrison, with a prin-

principal place of business at 19 West 44th Street, New York, N. Y. The said respondents are engaged in business management and business engineering.

PAR. 5. (a) Respondent Northeastern Veneer Package Association is an unincorporated trade association having its offices and principal place of business at 517 Terminal Building, 65 Broad Street, Rochester, N. Y. The respondent officers of said respondent association, for the year 1937, were:

President, B. H. Droman; vice-president, T. W. Windnagle; secretary-treasurer, George A. Cooper.

(b) The respondent members of said respondent association are certain persons, partnerships and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the New England States, New York and western Pennsylvania. The said respondent members of said respondent association are as follows:

Acme Veneer Package Co., Inc., Orchard Park, N. Y.

John Bacon, Inc., Gasport, N. Y.

Guile & Windnagle, Inc., Penn Yan, N. Y.

Webster Basket Co., Inc., Webster, N. Y.

Ellicottville Basket Co., Inc., Ellicottville, N. Y.

Attica Package Co., Inc., Attica, N. Y.

Barden & Robeson Co., a corporation, Penn Yan, N. Y.

Sodus Basket Co., Sodus, N. Y.

Bellaire & Schroeder, Inc., Hamburg, N. Y.

Madison County Basket Co., a corporation, Hamilton, N. Y.

PAR. 6. (a) Respondent Midwest Package Association is an unincorporated trade association having its offices and principal place of business at 130 East Washington Street, Indianapolis, Ind. The respondent officers of said respondent association, for the year 1937, were:

President, George H. Talbot, Sr.; vice-president, S. C. Bulliet; secretary-treasurer, J. L. Giacomino.

(b) The respondent members of said respondent association are certain persons, partnerships and corporations engaged in the manufacture and sale of one or more of the various types of veneer containers described in paragraph 1 hereof, and having places of business in the States of Kentucky, Tennessee, Indiana, Illinois, and various other States in the Midwest. Said respondent members of said respondent associations are as follows:

Berrien County Package Co., a corporation, Benton Harbor, Mich.

Burlington Basket Co., a corporation, Burlington, Iowa.

## Findings

30 F. T. C.

Edgerton Manufacturing Co., a corporation, Plymouth, Ind.  
B. C. Jarrell & Co., a corporation, Humboldt, Tenn.  
Swisshelm Veneer Co., a corporation, Mound City, Ill.  
H. A. Schwarz, an individual, doing business under the firm name  
of Schwarz Basket & Box Co., Topeka, Kans.  
New Albany Box & Basket Co., a corporation, New Albany, Ind.  
Ottawa Basket Co., a corporation, Oak Harbor, Ohio.  
Roberts-Liggett Co., Metropolis, Ill.  
Bloomington Basket Co., a corporation, Bloomington, Ind.  
H. A. DuBois & Sons Co., Inc., Cobden, Ill.  
Evansville Container Co., a corporation, Evansville, Ind.  
Newton Box & Basket Co., Inc., Newton, Ill.  
Frank L. Deaner & Sons, Sodus, Mich.  
Paducah Box & Basket Co., a corporation, Paducah, Ky.  
Harrison Manufacturing Co., a corporation, Shelby, Mich.  
Pierce-Williams Co., a corporation, Jonesboro, Ark.  
Strawberry Crate Co., a corporation, Portland, Tenn.

PAR. 7. (a) The members of the respondent associations and organizations, as described in paragraphs 2, 3, 5, and 6, and hereinafter referred to as member respondents, in the course and conduct of their business, manufacture, sell, and distribute approximately 75% of all the veneer containers, described in paragraph 1 hereof, with the possible exception of wire-bound and sawed crates, used in the packaging of fruit and vegetables in the various territories covered by the said respondent associations, respectively. The said member respondents sell their said products to wholesalers, dealers, and consumers located at various points throughout the United States, and, when sales are made and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States, other than in the States of the origin of such shipments. Said member respondents maintain a constant current of trade and commerce in said products between and among the several States of the United States and in the District of Columbia.

(b) Prior to the adoption of the practices hereinafter described, said member respondents were in active and substantial competition with each other, and with other members of the industry, in making and seeking to make sales of their products in trade and commerce between and among the several States of the United States and in the District of Columbia; but for the practices hereinafter described such active and substantial competition would have continued until the present and said member respondents would now be in active and

substantial competition with each other and with other members of the industry.

PAR. 8. The respondent American Veneer Package Association, Inc., which was incorporated in 1934, included in its membership many of the larger or more important members of the industry. In 1937, the membership consisted of 81 manufacturers of veneer packages located throughout the eastern United States and 10 associate members, who were suppliers of raw material to the veneer package manufacturing industry. Thirty-five of the veneer manufacturing members are listed as members of one of the groups designated by respondents Stevenson, Jordan & Harrison, which will be further set out later in these findings.

PAR. 9. In the latter part of 1935 and the early part of 1936, respondent American Veneer Package Association, Inc., for the more effective self-regulation of the industry, cooperated and assisted in the formation of several local grade groups. Principal among such groups were:

(a) The Georgia Basket Association, composed of the larger and principal manufacturers of the veneer containers in Georgia and southern States; the said Association was chartered a corporation under the laws of the State of Georgia on April 29, 1936. It operated under the name of the Georgia Basket Association until June 28, 1937, at which time its name was changed to the Southern Package Association, Inc.

(b) Eastern Package Association, made up of manufacturers of veneer containers located in New Jersey, Pennsylvania, Delaware, and contiguous territory; said Association was organized as an unincorporated association during January 1936.

(c) North and South Carolina Veneer Package Association was made up of the principal manufacturers making and selling veneer containers in North and South Carolina. The said Association was an unincorporated group of package manufacturers organized in 1936. This Association operated under the name North and South Carolina Package Association until the early part of 1937, when its membership became a part of the membership of the Georgia Basket Association.

PAR. 10. The Georgia Basket Association, Eastern Package Association, and North and South Carolina Veneer Package Association, by and with the active assistance and cooperation of the respondent American Veneer Package Association, Inc., and its officers, entered into and executed contracts and agreements which resulted in the fixing of prices, conditions and terms of sale and discounts relative to the

sale and distribution of veneer containers used in packaging fruits and vegetables. At open meetings of these Associations, prices, conditions and terms of sale and discounts were discussed and agreed upon. Written membership contracts, between the members and their respective Associations, were executed. The respondent American Veneer Package Association, Inc., and its officers were active in promoting said membership contracts in these various localities. The said American Veneer Package Association, Inc., acted as a medium for the exchange of information between members of its said various groups, and continued to act in the capacity of a general bureau for the said exchange of information throughout 1936.

PAR. 11. The membership contracts contained definitions of a dealer and a distributor. A dealer was defined as one who sold the product, guaranteed and collected the account, but did not haul or warehouse, and for whom the manufacturer made the delivery. It was provided that dealer's discounts should not exceed 5 percent, and where carload shipments were made, an additional unloading allowance was granted in the amount of 1 cent per dozen on half bushel containers or 2 cents per dozen on bushels. A distributor or jobber was defined as one who sold the product, guaranteed and collected the account, and, in addition thereto, warehoused and delivered the product. A distributor or jobber received 5 percent in addition to the 5 percent discount allowed to dealers.

PAR. 12. Each manufacturing member of the various groups submitted a list of the persons or firms, to his respective Association, which he thought were entitled to the dealer or distributor discounts. The list submitted by each member was voted on by the membership of his respective Association at meetings thereof. Only such names as were approved were placed on the dealer and distributor list for each Association, and it was agreed among all members that only those names appearing on the dealer and distributor list were entitled to the dealer and distributor discounts. A master list of dealers and distributors was compiled after a vote had been taken on each name to appear thereon. These master lists for the respective groups were distributed to the members of the respondent Associations by the respective secretaries. Many of the persons and firms proposed for the dealer and distributor lists by the members were rejected by vote of the competitors of such members. Complaints were made by some respondent manufacturers as to the method of determining these lists. One such complaint referred to the "rather arbitrary and high-handed manner" of the Georgia Basket Association in making up its list.

*Georgia Basket Association*

PAR. 13. (a) Early in 1936, before membership contracts were executed, veneer manufacturers in Georgia and the southern States held meetings for the purpose of forming an association. Prices for veneer containers were discussed at these meetings.

(b) The membership contracts, executed on April 13, 1936, set forth in full the terms and conditions of sale, the charges for extras such as printing and coloring, and discounts to be allowed. The signatories to said membership contracts included:

Adkins Manufacturing Co., a corporation, Gainesville, Fla.

Evansville Container Co., a corporation, Evansville, Ind.

Dayton Veneer & Lumber Mills, a corporation, Dayton, Tenn.

Southern Crate & Veneer Co., a corporation, Macon, Ga.

Farmco Package Corporation, Norfolk, Va.

John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Alabama Basket Co., Inc., Eufaula, Ala.

Leigh Banana Case Co., a corporation, Chicago, Ill.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Wilmington, N. C.

Georgia Veneer & Package Co., a corporation, Brunswick, Ga.

(c) At a meeting of the members of the Georgia Basket Association held in Atlanta, Ga., on April 13, 1936, prices were discussed and adopted subject to a dealer's discount of 5 percent and a distributor's discount of 5 percent, with an additional discount of 5 percent on all baskets unloaded and handled through the distributor's warehouse; and discounts to apply only to those on the approved Georgia and Florida dealer and distributor list, the said prices to remain in effect until June 4, 1936. These prices were sufficiently high that basket manufacturers in Texas began shipping into the Georgia territory and made sales at \$1.65 per dozen delivered for the same type of baskets on which the Georgia Basket Association had established a price of \$1.85 per dozen. This action on the part of the Texas manufacturers forced the members of the Georgia Basket Association to file new prices. A committee representing the Georgia Basket Association went to Texas to persuade Texas manufacturers to protect the prices filed and agreed upon by members of the Georgia Basket Association. The Texas manufacturers refused to protect these prices. The American Veneer

Package Association, Inc., was interested in determining what Texas manufacturers caused the price break in Georgia. Robert W. Davis, Secretary of the American Veneer Package Association, Inc., in a communication dated July 14, 1936, addressed to the respondent Dayton Veneer & Lumber Mills, stated in part as follows:

\* \* \* I would be interested to know what company in Texas furnished these baskets. \* \* \*

We cannot let one or two manufacturers in Texas dictate the situation in other territories. Any information you can give me on the above would be appreciated.

(d) At a meeting of the Georgia Basket Association held in Atlanta, Ga., on June 4 and 5, 1936, and participated in by W. A. Corbett, president of the American Veneer Package Association, Inc., prices were again adopted and agreed upon; for example, \$1.65 per dozen on Bushel Tubs with Crown Covers, \$1.50 per dozen on Bent Bottoms, \$1.30 per dozen on Round Half Bushels, \$1.35 per dozen on Board Bottom Half Bushels. These prices were delivered prices and said prices prevailed until the end of the 1936 season.

(e) On May 19, 1936, the Georgia Basket Association approved a list of distributors and jobbers. The first paragraph of said list read:

*Distributors or Jobbers* (Those entitled to maximum discount of 5% with an additional discount of 5% on all baskets unloaded into their warehouse and delivered by them to growers or shippers).

Then followed a list of the names entitled to the discounts stated.

*North and South Carolina Veneer Package Association*

PAR. 14. (a) The membership agreements of the North and South Carolina Veneer Package Association were executed on April 2, 1936. Said agreements contained a complete statement covering the terms and conditions of sale of fruit and vegetable veneer containers. The functions of a dealer and distributor were set forth and the discounts allowed each. Among the signatories to the North and South Carolina agreement were the following:

W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Co., Williston, S. C.

B. E. Martin, Mount Olive, N. C.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Marvil Package Co., a corporation, Laurel, Del.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Wilmington, N. C.

Alabama Basket Co., Inc., Eufaula, Ala.

Dayton Veneer & Lumber Mills, a corporation, Dayton, Tenn.

Southern Crate & Veneer Co., a corporation, Macon, Ga.

Leigh Banana Case Co., a corporation, 1421 South Aberdeen Street, Chicago, Ill.

Patten Package Co., Inc., Calypaso, N. C.

Farmco Package Corporation, Norfolk, Va.

Adkins Manufacturing Co., a corporation, Gainesville, Fla.

Hollywood-Beaufort Package Corporation, Norfolk, Va.

Mount Olive Manufacturing Company, a corporation, Mount Olive, N. C.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.

(b) At a meeting of said Association held in March 1936, prices for hampers, lettuce and pepper crates, and tomato lugs were agreed upon. Effective April 1, 1936, through July, the fixed price on Export Tubs with Crown Covers was \$1.65 per dozen in the territory designated in the membership agreement; that is, North and South Carolina, excepting Surry and Wilkes Counties. At a meeting held on May 12, 1936, the price on cantaloupe crates was agreed upon.

(c) The North and South Carolina Veneer Package Association, at a meeting held at Florence, S. C., on June 23, 1936, discussed, and agreed upon, prices for hampers, round bushels, improved three hoop, and bent bottoms and tubs for both flat and Crown covers. The details of this meeting were mailed to all members of said Association by Robert W. Davis, Secretary of American Veneer Package Association, Inc. It was agreed at this meeting that the f. o. b. factory price was to be the same as the delivered prices throughout the zone.

(d) At another meeting of said Association held in January 1937, attended by practically 100 percent of the membership, prices for hampers were revised in line with prices prevailing in Georgia and Florida as fixed by the Georgia Basket Association. At a meeting held in February 1937, prices for bushel and half bushel tubs were fixed to correspond with prices established by the Eastern Package Association but without the additional charge for the side loops which are recognized as standard in this territory.

(e) The membership agreements of said Association defined the functions of dealer and distributor and designated the discounts to be allowed to each of them. The discounts to dealers was 5 percent and that to jobbers or distributors was 5 percent and 5 percent. Each member of the Association submitted a list of persons or firms which he thought were entitled to the dealer or distributor discount. Before being placed on the master list, each of these persons or firms was

voted on by the members of the Association. All members agreed to allow only those firms appearing on the master dealer and distributor list the respective discounts designated for that classification of buyers.

(f) On April 10, 1936, a list of dealers and distributors which had been approved by the North and South Carolina Veneer Package Association was distributed to its members.

(g) The following resolution was adopted at a meeting of the Association held on September 10, 1936:

A resolution was offered and adopted requiring proposed names for consideration as to classification on the Distributor-Dealer list to be in the Secretary's office at least one week before the meeting, so that the Secretary may be allowed time to send the bulletins to each signatory member of the Association, listing proposed names, and requesting that each manufacturer be prepared to vote on the names.

(h) All members agreed that they would stamp all off-grade or No. 2 baskets so that they could be easily identified. It was further agreed that the total amount of No. 2 baskets sold during any season should not under any circumstances exceed 5 percent of the total production of the factory selling same.

(i) The said Association employed representatives to investigate complaints of sales made below the agreed prices and the granting of discounts to persons and firms who were not on the dealer lists.

*Eastern Package Association, 1936*

PAR. 15. (a) At a meeting of the Eastern Package Association held on January 27, 28 and 29, 1936, prices, terms and conditions of sale of bushel and half bushel baskets were discussed and agreed upon. It was agreed that the f. o. b. factory price was to be the same as the delivered price throughout the territory. The charges for extras such as the various types of covers, loops, printings, etc., were agreed upon. Dealers and distributors were defined at this meeting.

(b) On January 29, 1936, the following bulletin was addressed to the members of the Eastern Package Association by Robert W. Davis, secretary (also secretary of American Veneer Package Association, Inc.):

At the meeting held in Washington, D. C. January 27, 28 and 29, it was agreed that each manufacturer should furnish without delay the following lists:

1. List of dealers including large consumers who are entitled to the 5 percent discount.
2. List of Distributors and Jobbers who are entitled to the 5 percent and 5 percent discount.
3. List of cooperative associations which should go on the dealers list and be entitled to the 5 percent discount.

4. List of cooperative associations which should go on the Distributor-Jobber list and who are entitled to the 5 percent and 5 percent discount.

These lists are to include for the present all of the above for the following states: Entire states of Pennsylvania, New Jersey, Maryland, Delaware and Virginia, the eastern part of West Virginia and the apple growing section of North Carolina, which is Surry and Wilkes counties.

It was agreed that these lists should be in the hands of the Washington office not later than February 6, 1936. It is *extremely important* that *each and every* manufacturer cooperate in this important task. If lists are not received in time, it may be necessary to change the date of the next meeting, which has been called for February 13, 1936, at the Raleigh Hotel, Washington, D. C.

Lists will be kept absolutely confidential by the Secretary's office until the time of the next meeting, when there will be a discussion of a master list from all manufacturers.

(c) The membership agreement of said Association, executed on February 24, 1936, fixed all the terms and conditions of sale covering bushel and half bushel tubs. Among the signatories to the Eastern Package Association Agreement were the following:

Berryville Basket Co., Inc., Berryville, Va.

William W. Dilks & Son, Inc., Swedesboro, N. J.

Farmco Package Corporation, Norfolk, Va.

Goldman Package Manufacturing Company, a corporation, Glassboro, N. J.

Marvil Package Co., a corporation, Laurel, Del.

Ramsey Package Corporation, Driver, Va.

Riverside Manufacturing Co., Murfreesboro, N. C.

M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., Dividing Creek, N. J.

Louis P. Finger, trading as Finger Bros., Franklinville, N. J.

Jersey Package Co., a corporation, Bridgeton, N. J.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Virginia Cooperage Co., Inc., Cloverdale, Va.

(d) All the above members on March 1, 1936, issued price schedules showing identical prices of \$1.50 per dozen for Export Bushel Tub with Crown covers. It was understood among them that manufacturers in the North and South Carolina Veneer Package Association would cooperate with the members of the Eastern Package Association in maintaining these prices.

(e) On June 3 and 4, 1936, at a meeting of the Eastern Package Association, the price on Export Bushel Tub with Crown covers was increased to \$1.60 per dozen.

(f) The price schedules were not distributed generally, either to customers or to the members of the trade, but were for the exclusive use of the members of the Association.

(g) The Association employed representatives to check on the sales, by the members, to determine compliance with the agreed prices and also to determine that the proper discounts were made to dealers and distributors. Complaints of sales made below the agreed prices were discussed at Association meetings.

(h) The sale of No. 2 baskets presented a method by which manufacturers could make sales below their agreed prices. This was a subject of discussion at some of the meetings of the Association and certain steps were taken to eliminate the sale of such baskets.

(i) At a meeting of August 21, 1936, it was decided that the manufacturers should pay 10¢ a dozen to the Association on the sale of all off-grade or No. 2 baskets.

*Stevenson, Jordan & Harrison*

PAR. 16. (a) Frederick W. Masie, a representative of Stevenson, Jordan & Harrison, at the meeting of the Eastern Package Association on November 19, 1936, explained the "live and let live" plan of Stevenson, Jordan & Harrison. F. W. Masie further outlined the plan before the 1936 convention of the American Veneer Package Association, Inc., and before a meeting of the North and South Carolina Veneer Package Association. On F. W. Masie's proposal, Stevenson, Jordan & Harrison was employed to conduct a survey of the entire veneer package industry. The first survey was conducted in the territory covered by the Eastern Package Association, and shortly thereafter a similar survey was conducted in the territory covered by the North and South Carolina Veneer Package Association and the Georgia Basket Association. Shortly thereafter, a further survey was conducted in western New York, the Midwest and Texas. Stevenson, Jordan & Harrison divided the territory into zones known as A, B, C, D, and E (these zones will be described later).

(b) These surveys conducted by Stevenson, Jordan & Harrison in the various territories covered the production and sales of bushel and half bushel baskets and the dollar value thereof, of members in the respective territories for the years 1935 and 1936. The survey for Zones A and C also covered shipments on certain additional types of containers such as hampers, tomato lugs, crates, etc. When the original survey was completed, a statistical report was furnished to each member in the respective territory where the survey was conducted, showing the manufacturers' normal volume relationship over the two-years' period as compared to the total volume of sales in the territory. After this, monthly reports were furnished showing the volume of sales of each member as compared to the total volume. The compensation paid Stevenson, Jordan & Harrison for the service performed amounted to \$1,000 monthly from each association.

(c) It was the practice of the various zone secretaries, who were employees of Stevenson, Jordan & Harrison, to persuade manufacturers to hold their production within their normal position as in-

licated by the survey above described. F. W. Masie and the zone secretaries have attempted to impress on manufacturers in various zones the necessity for not exceeding their so-called normal positions. The members were told that they could increase their volume relationship only by taking some of another manufacturer's volume. In many instances the zone secretaries and F. W. Masie obtained assurances from members that they would curtail their production so that it would remain somewhat within its so-called normal volume. At any time it was found that a manufacturer was exceeding to any great extent his normal production, he was contacted by the zone secretary or by F. W. Masie and requested to curtail his production, and wherever possible, promises were obtained from such manufacturers that they would reduce their production so that their normal volume would not greatly exceed that shown in the original survey. Manufacturers in the various zones expected the operations of Stevenson, Jordan & Harrison to stabilize and increase prices.

(d) The principal method employed by the several manufacturing respondents, under the guidance of respondents Stevenson, Jordan & Harrison, for the purpose and with the effect of restricting price competition, was to divide the territory in which their producing plants were located and into which their products were shipped, into zones. These zones were geographic areas, each composed of more than one State and/or parts of States and with definite, exact boundary lines. Effective within each of these zones prices were filed by the producers with the zone secretary after conference and discussion among the producers in the respective zones. The filed prices were the same for delivery at all points throughout a particular zone and for all producers therein, without regard to the fact that costs of delivery varied substantially between the respective producing points and any given place of delivery. Transportation rates and costs, from respondents' shipping points in a particular zone to given destinations within the same zone, varied substantially.

(e) The members of the various zones filed both current and future prices with their respective zone secretaries. These prices were distributed to the members of the zone in which they were filed by the zone secretary thereof. The prices were also filed by the various zone secretaries with American Veneer Package Association, Inc., the secretary of which Association distributed the prices to member manufacturers in all the zones who were interested in making sales to the zone in which the filed prices were effective. The prices filed as applicable within each zone were identical, but the prices of various zones differed. In some instances there were deviations from filed prices. As a general practice, neither the filed price lists nor the

statistical information were published or furnished to customers of the trade. Such information and price lists were filed for the confidential use of members only.

(f) Representatives of Stevenson, Jordan & Harrison checked the invoices of the members of various zones and if, as a result of said checking, a member was found to have made sales below filed prices either in his own zone or in another or if he was found to have quoted a discount to others than those appearing on the dealer and distributor list, such member or members were contacted by representatives of Stevenson, Jordan & Harrison. An attempt was made to persuade such member or members to discontinue making sales at prices below those filed for his own zone and to discontinue making sales outside his or their zone at prices below those filed by members operating in outside zones and also to discontinue money discounts to others than those who appeared on distributors' lists.

*Southern Package Association, Inc.*

PAR. 17. (a) Stevenson, Jordan & Harrison conducted a survey of the business of the members of the North and South Carolina Veneer Package Association and Georgia Basket Association in the early part of 1937. The survey covered the sales of the members for 1935 and 1936. After the survey was completed, a statistical report was furnished to each member disclosing his volume relationship as against the total volume sold in the territory where he operated. The purpose and intent of determining the normal volume relationship of each member was to stabilize prices.

(b) After the survey had been completed by Stevenson, Jordan & Harrison, the members of the Georgia Basket Association voted to include the members of the North and South Carolina Veneer Package Association in its membership. The name of Georgia Basket Association was formally changed to the Southern Package Association, Inc., on June 28, 1937. The 1936 membership contracts of both Associations were continued and extended through 1937. The prices established by agreement and in force in the early part of 1937 were left undisturbed and continued in force until subsequently changed. The established dealer and distributor list also continued in effect until the mechanics of its composition were subsequently changed. The territory covered by the Southern Package Association, Inc., was known as Zone C, and included South Carolina, Georgia, Alabama, and North Carolina, excepting the counties of Surry and Wilkes. The secretary of said Association was Norman G. Asbury, an employee of Stevenson, Jordan & Harrison.

(c) Prior to the formal adoption of the name Southern Package Association, Inc., meetings were held at which prices to be filed were discussed. On May 3, May 8 and June 15, 1937, several members of said Association filed identical prices, to wit, 15½¢ each, on Export Bushel Tubs with Crown Covers.

(d) On May 13, 1937, H. J. Linder, president of Southern Package Association, Inc., addressed a communication to a member, which is in part as follows:

I am sorry that I have failed to advise you sooner the results of our May 3 meeting in Augusta. However, the matter of most importance was covered in the price filing sent out from Atlanta, copy of which we feel sure you must have.

\* \* \* \* \*

The levels proposed at this meeting were the best that could be worked out of several conflicting conditions. You will note the reduction of 1¢ on tomato lugs. This was heartbreaking to me but it was absolutely necessary. \* \* \*

(e) The secretary of the Association was able at all times to determine the exact amount sold by each member and the prices, terms and conditions of sale prevailing with each, as all members filed their invoices with the secretary of the Association or allowed him to check the invoice records at their respective offices.

(f) On June 8, 1937, Secretary Norman G. Asbury addressed a bulletin to all members of the Association, the last paragraph of which is as follows:

When filing lists outside of your normal membership zone, be sure that list does in no way run counter to the accepted practice as followed in the territory in question.

(g) At meetings of said Association held on August 20, and October 4 and 5, 1937, identical price lists were filed by several of the members of said Association. None of the price lists filed was distributed either to the customers or the trade. They were for the use of, and distributed to, members only.

(h) The 1937 Georgia peach crop was approximately 30 percent of normal. Secretary Norman G. Asbury advised members of this condition and further warned them to refrain from producing more than 30 percent of their normal volume. As a result of the efforts of Secretary Asbury, the factories of the members did not start operating during the 1937 season until April of that year. Generally, factory operations begin in February. Secretary Asbury further attempted to persuade the members to sell only to their regular customers.

(i) Each member submitted a list of those persons or firms which he felt were entitled to the dealer or distributor discount. The lists submitted by the various members were compiled into a master list,

which was distributed to all members. It was understood that all members would allow discounts only to those persons or firms appearing on the dealer and distributor list. On June 8, 1937, Secretary Asbury addressed a bulletin to all members, in part as follows:

You have been supplied with a complete list of customers in your zone who are to be allowed a dealer's discount.

If in quoting in any of the other zones you are in doubt as to whether or not a customer is a listed dealer, please contact your secretary for information.

We are having the cooperation of other zones in this regard, and it is to be desired that we reciprocate in kind.

(j) The statistical information and the dealer and distributor list were discussed in Association meetings. Such information was filed for the use of members only. It was not distributed to the trade or to competing nonmembers.

(k) The membership of the Southern Package Association, Inc., on November 5, 1937, consisted of the following:

W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Co., Williston, S. C.

Leigh Banana Case Co., 1421 South Aberdeen Street, Chicago, Ill., a corporation.

B. E. Martin, Mount Olive, N. C.

Patten Package Co., Inc., Calypaso, N. C.

Farmco Package Corporation, Norfolk, Va.

Planters Manufacturing Company, Inc., Portsmouth, Va.

Adkins Manufacturing Co., Gainesville, Fla., a corporation.

Georgia Veneer & Package Co., a corporation, Brunswick, Ga.

Pierpont Manufacturing Co., a corporation, Savannah, Ga.

Marvil Package Co., Laurel, Del., a corporation.

Hollywood-Beaufort Package Corporation, Norfolk, Va.

Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Wilmington, N. C.

Mount Olive Manufacturing Co., a corporation, Mount Olive, N. C.

Riverside Manufacturing Co., Murfreesboro, N. C., a corporation.

Alabama Basket Co., Inc., Eufaula, Ala.

Dayton Veneer & Lumber Mills, Dayton, Tenn., a corporation.

John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co., Cuthbert, Ga.

Southern Crate & Veneer Co., Macon, Ga., a corporation.

Edgerton Manufacturing Co., Plymouth, Ind., a corporation.

Evansville Container Co., Evansville, Ind., a corporation.

*Eastern Package Association, 1937*

PAR. 18. (a) During the latter part of 1936 and in January 1937, Stevenson, Jordan & Harrison conducted a survey of the membership

of the Eastern Package Association. The survey was conducted for the purpose of determining the volume relationship of each member as compared to the total volume sold during the years 1935 and 1936 and covered only the sale of bushel and half bushel baskets. When the original survey was completed, Stevenson, Jordan & Harrison furnished statistical information to members of the Association which indicated their normal position in the industry in the territory in which they operated, and which territory was designated as Zone B, which included Virginia, Maryland, Delaware, New Jersey, the counties of the State of Pennsylvania east of and including the counties of Tioga, Lycoming, Union, Mifflin, Cambria, Somerset; the counties of the State of West Virginia east of and including the counties of Monongalia, Taylor, Preston, Tucker, Randolph, Webster, Braxton, Clay, Nicholas, Fayette, Boone, Logan, Wyoming, and McDowell; and the counties of Wilkes and Surry in the State of North Carolina.

(b) After the original survey was completed, monthly reports were compiled by N. G. Cameron of the firm of Stevenson, Jordan & Harrison, showing the percentage to the total volume produced by each member in a particular month. All members submitted copies of the invoices to N. G. Cameron, from which he prepared these statistics. Neither the result of the original survey nor any of the monthly statistical reports were published or distributed to the trade. These were for the individual use of each participating company. This information was discussed at meetings of the Association.

(c) The membership agreements of Eastern Package Association continued in effect until amendments and revisions were adopted on July 1, 1937. The first filing of prices in this territory occurred on January 15, 1937, at which time a price of \$1.75 per dozen for Export Bushel Tubs with Crown Covers was filed by 14 members of the Association. Practically all of these lists were effective from January 15 to May 1, 1937.

(d) At a meeting held on January 14, 1937, it was agreed that all companies would file their unfilled orders with the Secretary of the Association, or N. G. Cameron, who was preparing statistics; said Cameron, in a letter to the secretary dated March 24, 1937, stated in part:

In this way we shall be able to recognize prior commitments on future invoices which may appear to be out of line.

The secretary of the Association, in his response on March 25, 1937, enclosed "a list of the unfilled orders which the members of the Eastern Package Association reported \* \* \* as of January 15".

(e) At practically all of the meetings held, prices were discussed and each member knew the prices which the others were expected to file.

All members filed the same prices, and these prices were generally maintained.

(f) In August, 1937, Willis E. Hargroves, president of the respondent member Planters Manufacturing Co., Inc., purchased 12,000 dozen baskets from an Alabama manufacturer to prevent these baskets from being shipped and sold in Zone B at prices below those prevailing in said zone.

(g) Stevenson, Jordan & Harrison continually checked on the sales of members. N. G. Cameron of said firm, who compiled the statistics of this Association, at all times had access to the invoices which disclosed the prices and discounts at which sales were made. F. W. Masie and N. G. Cameron, both respectively of the firm of Stevenson, Jordan & Harrison, investigated complaints that other than the regular prices and discounts were allowed. Houston-White Co. and George A. Bounds & Co., two nonmember manufacturers in this territory, at times allowed larger discounts than the agreed discounts of the Association members. This caused some Association members, on occasion, to lower the agreed prices. Considerable effort was made to have both of these companies become members. On November 1, 1937, F. W. Masie wrote a letter to Houston-White Co., which is in part as follows:

It is practically impossible to accomplish the desired result unless we have all important members of the industry, striving toward a common goal.

Volume has been satisfactory this year and all members have enjoyed a reasonable share; however, we must look forward to the likely possibility of short crops next season, in some areas, and guard against the natural desire for volume at the expense of a demoralized level which is inevitable unless some restraint is practiced. How best to arrive at a solution to this problem may only be reached in formulating a definite program.

We need every industry member to assist in this respect to lend his support and enter into the discussions now under way.

(h) Each member submitted a list of the names which he thought should be entitled to the trade discounts usually allowed to dealers and distributors. Such names were compiled into a master list and were submitted to the members of the Association. They were not distributed to the trade or published. Stevenson, Jordan & Harrison checked all sales to determine whether or not dealer or distributor discounts were allowed to any firm whose name did not appear on the list. For example, N. G. Cameron, on June 9, 1937, addressed a letter to a member of the Association, which is in part as follows:

In summarizing your invoices for the May report, I observed several sales were made to Gerson & McCormick, Bridgeton, New Jersey, at a 5 percent discount.

Inasmuch as this customer does not appear on the list of dealers entitled to this discount, I should appreciate knowing the facts surrounding this case.

(i) The members of the Eastern Package Association, as of February 28, 1938, were as follows:

Berryville Basket Co., Inc., Berryville, Va.

M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., Dividing Creek, N. J.

William W. Dilks & Son, Inc., Swedesboro, N. J., a corporation.

Farmco Package Corporation, Norfolk, Va.

Louis P. Finger, trading as Finger Bros., Franklinville, N. J.

Goldman Package Manufacturing Co., a corporation, Glassboro, N. J.

Jersey Package Co., Bridgeton, N. J., a corporation.

Marvil Package Co., Laurel, Del., a corporation.

Planters Manufacturing Co., Inc., Portsmouth, Va.

Ramsey Package Corporation, Driver, Va.

Riverside Manufacturing Co., a corporation, Murfreesboro, N. C.

Virginia Cooperaage Co., Inc., Cloverdale, Va.

(H. R. Linsbury & Sons resigned in December, 1937.)

#### *Northeastern Veneer Package Association*

PAR. 19. (a) Early in 1937 Stevenson, Jordan & Harrison conducted a survey of veneer package manufacturers in the territory known as Zone A, which included all of the New England States, the State of New York, the following counties in the State of Pennsylvania west of and including Potter, Clinton, Centre, Indiana, Clearfield, Westmoreland, and Fayette; the counties in the State of West Virginia west of, but not including, the counties of Monogalia, Taylor, Preston, Tucker, Randolph, Webster, Braxton, Clay, Nicholas, Fayette, Boone, Logan, Wyoming, and McDowell; and the State of Ohio. The State of Ohio and the western part of West Virginia were also considered jointly as a part of Zone E. There was no association or organization of the veneer package manufacturers in this territory until the formation of the Northeastern Veneer Package Association early in 1937 by Stevenson, Jordan & Harrison. The Secretary and Treasurer of said Association was George A. Cooper, an employee of Stevenson, Jordan & Harrison. The first meeting of said Association was held on February 3, 1937.

(b) The survey conducted by Stevenson, Jordan & Harrison covered the sale of bushel and half bushel tubs, hampers, tomato lugs, and other additional types of containers, during the years 1934, 1935 and 1936. Upon completion of the survey, each member was furnished with a statistical report showing his relative percentage of

volume as against the total volume sold in the territory. These percentages were accepted by the members as normal and treated as such. Following this a monthly report was submitted to the membership disclosing to each his relative position. Statistical information furnished to the membership of the Association by Stevenson, Jordan & Harrison was compiled from invoices submitted by members to the secretary. Such statistics as were received by members were for their confidential use only, and were not published or distributed to the trade. Secretary Cooper and F. W. Masie attempted to persuade members of said Association to maintain their so-called normal volume of production, or at least to refrain from exceeding it.

(c) Both current and future prices were filed by different members of the Association. Price lists filed covered the same territory and contained identical terms and conditions of sale. Not all members filed prices with the Association, and such price lists as were filed were not distributed to the trade or published, but were used for distribution to members only, except where the American Veneer Package Association, Inc., distributed such lists to members of other associations in the other zones. It was understood among the members that they would follow the filed prices of the firm doing the filing. F. W. Masie in a letter to Secretary Cooper dated April 20, 1937, in part stated as follows:

With regard to Trade Practice Rules, I have inquired into this, and the suggestion is that if your Group wishes to use the rules as outlined under date of February fifteenth, that some Company in connection with the publication and announcement of their price schedule cover as a part of their present set-up, all of these details. Then if the rest of the members feel disposed to follow leadership for the purpose of a stabilized market, they can observe the terms as set forth in the published list.

This part of the original agreement used by Zone "B" has been divorced from their Constitution and By-Laws, and will, undoubtedly, be set up in the near future in the form of a handbook on Trade Practice or usages in the industry.

(d) On April 26, 1937, F. W. Masie addressed another letter to Secretary G. A. Cooper, which reads in part as follows:

With regard to filed schedule of prices Zone A members it is important that the territory covered by Zone A members be shown on his schedule. In the future, will you kindly see that this matter is covered?

(e) The members of said Association submitted a list of the names of the persons or firms which were considered a dealer or distributor. From all lists submitted, a master list was compiled. It was understood that all members were to allow discounts only to those names appearing on the dealer and distributor list.

(f) The members of the Association agreed to refrain from producing, or at least to curtail the production of, No. 2 baskets.

(g) The membership in this Association as of March 2, 1938, consisted of the following firms:

- Acme Veneer Package Co., Inc., Orchard Park, N. Y.
- John Bacon, Inc., Gasport, N. Y.
- Guile & Windnagle, Inc., Penn Yan, N. Y.
- Webster Basket Co., Inc., Webster, N. Y.
- Ellicottville Basket Co., Inc., Ellicottville, N. Y.
- Attica Package Co., Inc., Attica, N. Y.
- Barden & Robeson Co., Penn Yan, N. Y., a corporation.
- Sodus Basket Co., Sodus, N. Y.
- Bellaire & Schroeder, Inc., Hamburg, N. Y.
- Madison County Basket Co., Hamilton, N. Y., a corporation.

*Midwest Package Association*

PAR. 20. (a) Stevenson, Jordan & Harrison conducted a similar survey of veneer package manufacturers in what was designated as Zone E, which included the States of Michigan, Indiana, Kentucky, Tennessee, Illinois, Iowa, Minnesota, Wisconsin, Missouri, Ohio, and the western part of West Virginia. The State of Ohio and the western part of West Virginia were also considered jointly as a part of Zone A. There was no organization or association of veneer package manufacturers in this territory until the formation of the Midwest Package Association under the supervision of Stevenson, Jordan & Harrison.

(b) The members of said Association on March 2, 1938, consisted of the following:

- Berrien County Package Co., a corporation, Benton Harbor, Mich.
- Burlington Basket Co., a corporation, Burlington, Iowa.
- Edgerton Manufacturing Company, a corporation, Plymouth, Ind.
- B. C. Jarrell & Co., Inc., Humboldt, Tenn.
- Swisshelm Veneer Co., a corporation, Mound City, Ill.
- Frank L. Deaner & Sons, Sodus, Mich.
- New Albany Box & Basket Co., a corporation, New Albany, Ind.
- Ottawa Basket Co., a corporation, Oak Harbor, Ohio.
- Roberts-Liggett Co., a corporation, Metropolis, Ill.
- Bloomington Basket Co., Inc., Bloomington, Ind.
- H. A. DuBois & Sons Co., Inc., Cobden, Ill.
- Evansville Container Co., a corporation, Evansville, Ind.
- Newton Box & Basket Co., Inc., Newton, Ill.
- H. A. Schwarz, an individual doing business under the firm name of Schwarz Basket & Box Co., Topeka, Kans.
- Paducah Box & Basket Co., a corporation, Paducah, Ky.

Harrison Manufacturing Co., a corporation, Shelby, Mich.  
Pierce-Williams Co., a corporation, Jonesboro, Ark.  
Strawberry Crate Co., Inc., Portland, Tenn.

The secretary of said Association was J. L. Giacomino, an employee of Stevenson, Jordan & Harrison.

(c) Members of said Association filed current and future prices with the Secretary. There were three divisions of the territory known as Zone E for price filing purposes, as price lists were filed for these respective territories. For example, on July 31, 1937, a price of 12½¢ each was filed on three-hoop round bottom baskets with Star covers in one territory, while a price of 13¼¢ was filed for another territory. The prices filed for use within each territory were identical and the terms and conditions of sale were the same.

(d) Prices were discussed in Association meetings and each member knew the prices which others expected to file. It was understood that members would abide by the filed price until a new price was filed. The prices filed were for the exclusive use of members only and were not published or distributed to the trade except that copies of said filed prices were forwarded by the secretary to the secretaries of the other zone associations, who in turn distributed the said prices to members of their respective associations.

(e) The members of this group, when they employed Stevenson, Jordan & Harrison, intended that prices should be stabilized and increased. A member manufacturer on February 1, 1937, wrote to F. W. Masie of Stevenson, Jordan & Harrison in part as follows:

We are not interested in the bushel basket business until the price can be increased to say 50% over the present market.

F. W. Masie's reply dated February 5, 1937, is in part as follows:

I do not know whether you are familiar with the progress we are making in organizing the bushel basket manufacturers and so, assuming that you are not, I am pleased to give you a brief resume of our activities since the first of the year.

Early in January we were authorized to make a survey of the Eastern Package Association and also employed as Business Managers to guide and direct the activities of this group. A short time later similar authorization was secured from the manufacturers located in New York state and a group was set up, covering the western part of the state of Pennsylvania and the New England states.

Last week it was my pleasure to meet with the manufacturers in Texas and they were favorably inclined toward our plan.

At the present time, we are endeavoring to have a meeting with the Kentucky-Tennessee manufacturers and also a meeting with the so-called Midwest group.

Next Thursday, I shall attend a meeting of the North and South Carolina manufacturers, who have extended me an invitation to outline our plan.

It is realized we have quite a job on our hands in organizing this industry, which for the past several years has been in rather chaotic condition. We are, nevertheless, hopeful of the ultimate outcome which will result in stabilization and a reasonable price for bushel baskets.

(f) F. W. Masie and Secretary Giacomino contacted members to persuade them the only way to stabilize prices was to control volume. The success of the efforts of Stevenson, Jordan & Harrison is noted in a letter of F. W. Masie to Secretary Giacomino, dated June 30, 1937, which is in part as follows:

\* \* \* There has already developed a degree of stability and the prices which manufacturers on the whole are receiving should represent a reasonable profit at these volumes.

\* \* \* If we can finally convince the industry that *volume alone* is not the answer, we will then have solved their problem, but until we accomplish this there will be many headaches.

(g) Dealers and distributors were classified by the members of the Association and the names of such were placed on a master list. On April 14, 1937, F. W. Masie, in a communication to Secretary Giacomino, stated in part as follows:

The best manner in which to handle the dealer question, after the "kinks" have been ironed out, is to have each member file a full list of the dealers they sell and have it attached to their filed prices. In this manner they state, in effect, these, and only these dealers, are the ones we allow a discount of 7% and before a name is allowed by this manufacturer he must advise of the additional name. Your Group should have a distinct classification for dealers—a classification that covers the services a dealer will render to entitle him to a discount. The fewer names on the list the better. Dealers present quite a problem in the Eastern Zones.

(h) Secretary J. L. Giacomino checked the invoices of the members to determine compliance with the filed prices and to see that the proper discounts were made only to those on the dealer and distributor lists.

(i) Reports of the sales of No. 2 baskets were made by the members to the secretary. A bulletin of the secretary, dated May 19, 1937, stated in part as follows:

Any member whose sales of (2) baskets \* \* \* exceeds 1% of his total monthly volume shall have his name brought before the meeting and his percentage announced.

#### *Zone "D"—Texas Group*

PAR. 21. Stevenson, Jordan & Harrison conducted a similar survey of veneer package manufacturers in what was designated as Zone D, which included all the States west of the Mississippi and east of the Rocky Mountains, in which veneer package manufacturers and customers were located. The headquarters of this group were located

in Texarkana, Texas. Its activities were similar to those of the other groups and zone organizations as heretofore described and involved the purpose and effect of establishing non-competitive prices and stabilizing the relative volumes of business done by the various members.

*Inter-Zone Group Cooperation*

PAR. 22. (a) It was understood that members of the various zone associations would protect the prices filed in the different zones. Members of the various zone associations did cooperate in the maintenance of these prices. Members agreed that they would not ship into an adjoining zone without conforming to the prices prevalent in the zone of the vendee.

(b) After Stevenson, Jordan & Harrison became the business managers of the various zones, a closer cooperation existed between and among the respective zones. The zone secretaries, who were employees of Stevenson, Jordan & Harrison, and the managing directors of each respective zone, under the general supervision of F. W. Masie, an official of Stevenson, Jordan & Harrison, received the filed prices from the members and distributed them to the other secretaries, respectively, and to the secretary of the American Veneer Package Association, Inc. The secretary of the American Veneer Package Association, Inc., collaborated with the various secretaries in a general distribution of prices to all members of all zones. Members were instructed when selling in other zones to obtain information from their zone secretary as to whether the proposed vendee was a dealer or distributor. The purpose was to protect the prices and discounts prevalent in the various zones. In the interest of furthering inter-zone relations, representatives of the different zones were invited to attend and did attend the meetings of other zone Associations; joint meetings of some of the zone Associations were held; F. W. Masie, the general supervisor of all the various zones, attended the different zone meetings and reported the progress of the other zones; price lists and dealer lists of other zones were discussed at the different zone meetings.

PAR. 23. The record contains affidavits from each of the following respondents: Pierpont Manufacturing Co., Adkins Manufacturing Co., Georgia Veneer and Package Co. and Southern Crate and Veneer Co. Said affidavits deny that said four respondents were parties to the alleged combination and conspiracy. The record contains evidence that the said four respondents in 1936 and 1937 were members of respondent associations and engaged in the practices complained of. The said four respondents are respondents in Docket No. 3289, Standard Container Manufacturers' Association, Inc., et al., which involves

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## Order

similar charges as in the instant matter and in which the Commission issued its cease and desist order on March 5, 1940.<sup>1</sup> Although the record in the instant case supports the allegations of the complaint with respect to said respondents, it does not appear necessary to subject the said respondents to the order issued in the instant matter as they are bound by a similar order issued in said Docket No. 3289.

PAR. 24. It appears that respondent Ross R. Guthrie was not associated with the respondents herein except when in 1937 he was acting in a clerical capacity as secretary of respondent Eastern Package Association, which association was then operating under the control of respondent Chairman Frederick W. Masie, who was a representative of respondents Stevenson, Jordan & Harrison.

## CONCLUSION

Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as above set forth, are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among the member respondents of the respondent associations in the sale of veneer fruit and vegetable containers and the parts thereof in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in the respondents the power to control and enhance prices; have unreasonably restrained such commerce in veneer fruit and vegetable containers and the parts thereof 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; a stipulation as to the facts entered into between counsel representing the respondent associations, their respondent officers (excepting 5 respondent secretaries) and their respondent members (excepting 14 respondent members) 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 aforementioned respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding (the Commission, on October 25, 1939, granted the motion of counsel for respondents Georgia Veneer & Package Co. and the Southern Crate & Veneer Co. to expunge their names from the said stipulation for the reason that the said names were included therein

<sup>1</sup> 30 F. T. C. 577.

through misunderstanding); statement of admitted facts signed by counsel for the respondents designated under the firm name of Stevenson, Jordan & Harrison; the answers of respondents Evansville Container Co., Swisshelm Veneer Co. and Newton Box & Basket Co., Inc., in which answers the said three 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 the said facts; other evidence taken before John L. Hornor, an examiner of the Commission theretofore duly designaed by it, in support of the allegations of said complaint and affidavits in opposition thereto with respect to respondents Pierpont Manufacturing Co., Adkins Manufacturing Co., Georgia Veneer & Package Co. and Southern Crate & Veneer Co.; and briefs filed herein in support of, and in answer to, said respondents Stevenson, Jordan & Harrison; other respondents not having filed briefs and oral arguments not having been requested by any of 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:

1. American Veneer Package Association, Inc., and its officers as follows: president, Frank M. Harrison; vice-president, George Talbot, Jr.; vice-president, R. O. Fletcher; treasurer, Willis W. Hargroves; secretary-manager, Robert W. Davis; (2) Eastern Package Association, its chairman, Frederick W. Masie; and its members as follows: Berryville Basket Co., Inc., M. J. Dilks, W. B. Pepper and Leslie K. Chance, partners, doing business under the firm name of M. J. Dilks & Co., William W. Dilks & Son, Inc., Farmco Package Corporation, Louis P. Finger, trading as Finger Bros., Goldman Package Manufacturing Co., a corporation, Jersey Package Co., a corporation, Marvil Package Co., a corporation, Planters Manufacturing Co., Inc., Ramsey Package Corporation, Riverside Manufacturing Co., a corporation; Virginia Cooperage Co., Inc.; (3) Southern Package Association, Inc., its officers as follows: Chairman, Herbert J. Linder; vice-president, Walter E. Morgan; secretary, Norman G. Asbury; treasurer, D. E. Shuman; and its members as follows: W. E. Anderson and T. H. Whisanant, partners, doing business under the firm name of Greene Lumber & Crate Co.; Leigh Banana Case Co., a corporation, B. E. Martin, Patten Package Co., Inc., Farmco Package Corporation, Planters Manufacturing Co., Inc., Marvil Package Co., a corporation, Evansville Container Co., a corporation, Hollywood-Beaufort Package Corporation; Walter A. Corbett and Mary Doe Corbett, partners, doing business under the firm name of Corbett Package Co., Mount Olive Manufacturing Co., a corporation; River-

side Manufacturing Co., a corporation, Alabama Basket Co., Inc.; Dayton Veneer & Lumber Mills, a corporation; John D. Gunn and John M. Gunn, partners, doing business under the firm name of The Peerless Basket Co.; Edgerton Manufacturing Co.; (4) The Stevenson Corporation, Charles R. Stevenson; T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. P. Platt, Howard Marvin and D. M. Metzger, partners, doing business under the firm name of Stevenson, Jordan & Harrison; (5) Northeastern Veneer Package Association, its officers as follows: President, B. H. Droman; vice-president, T. W. Windnagle; secretary-treasurer, George A. Cooper, and its members as follows: Acme Veneer Package Co., Inc.; John Bacon, Inc.; Guile & Windnagle, Inc.; Webster Basket Co., Inc.; Ellicottville Basket Co., Inc.; Attica Package Co., Inc.; Barden & Robeson Corporation; Sodus Basket Co.; Bellaire & Schroeder, Inc.; Madison County Basket Co., a corporation; (6) Midwest Package Association, its officers as follows: President, George H. Talbot, Sr.; vice-president, S. C. Bulliet; secretary-treasurer, J. L. Giacomino; and its members as follows: Berrien County Package Co., a corporation; Burlington Basket Co.; Edgerton Manufacturing Co., a corporation; B. C. Jarrell & Co., a corporation; Swisshelm Veneer Co., a corporation; Frank L. Deaner & Sons; New Albany Box & Basket Co., a corporation; Ottawa Basket Co., a corporation; Roberts-Liggett Co.; Bloomington Basket Co., Inc.; H. A. DuBois & Sons Co., Inc.; Evansville Container Company; Newton Box & Basket Company, Inc.; H. A. Schwarz, an individual doing business under the firm name of Schwarz Basket & Box Co.; Paducah Box & Basket Co., a corporation; Harrison Manufacturing Co., a corporation; Pierce-Williams Co.; Strawberry Crate Co., Inc.; and their agents, representatives, and employees, in connection with the offering for sale, sale and distribution of veneer containers, used in the packaging of fruit and vegetables, in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, carrying out, or aiding or abetting the carrying out of, any agreement, understanding, combination or conspiracy between and among any two or more of said respondents, 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. Fixing and maintaining uniform prices.
2. Fixing and maintaining uniform discounts or other terms and conditions of sale.

3. Compiling, publishing and distributing any uniform compilation of prices or other information to be used in connection with the fixing of prices, discounts, terms and conditions of sale.

4. Determining or establishing any system of zones throughout the United States in connection with the fixing of prices, discounts, terms and conditions of sale.

5. Adopting any joint or uniform price list or other device which fixes prices.

6. Agreeing to curtail the production of veneer fruit and vegetable containers, and the parts thereof, in connection with the fixing of prices.

7. Preparing, publishing and circulating lists of recognized jobbers and dealers for the purpose or with the effect of indicating that specified persons or concerns as jobbers are recognized as entitled to receive special jobber discounts, that specified persons or concerns as dealers are entitled to receive special dealer discounts, and that other persons or concerns are not so entitled.

8. Adopting and taking any other concerted or cooperative action to carry out or make effective the acts and things as set forth in the said findings of fact herein, in furtherance of said understandings, agreements, combinations, or conspiracies.

*It is further ordered,* That this proceeding be, and the same hereby is, dismissed as to respondents Ross R. Guthrie, Pierpont Manufacturing Co., Adkins Manufacturing Co., Georgia Veneer and Package Co., and Southern Crate and Veneer Co.

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

## Syllabus

## IN THE MATTER OF

## AMERICAN DISTRIBUTORS, INC., UNITED ADVERTISING COMPANIES, INC., AND JOHN H. MORGAN, DOING BUSINESS AS CHAMPION 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 3918. Complaint, Oct. 7, 1939—Decision, Mar. 15, 1940*

- Where an individual engaged in sale and distribution of medicinal preparation which he designated as "Vita-Perles" and which was claimed by him to contain Vitamins A, B-1, D, G, and E, and corporation which he caused to be organized and of which he was president, and which, following such organization, continued to carry on, as theretofore conducted by him, sale and distribution of said product, in commerce among the various States, to purchasers in other States and in the District of Columbia; and a concern which acted as their advertising agent and participated in preparation and dissemination of advertising matter as below set forth; in advertisements which they disseminated concerning said "Vita-Perles" through the mails, through newspapers and periodicals of general circulation and through circulars and other printed matter distributed in commerce among the various States and in other ways, and which were intended and likely to induce purchase of such medicinal preparation—
- (a) Represented that said product might be obtained and tested "without risking a single penny," facts being it could not be obtained and tested in fashion proposed by them without any risk of money;
  - (b) Represented that backache, headache, loss of appetite and energy, faulty vision, reduced resistance to infection, premature evidence of advancing age, and various other ailments and conditions, were caused by vitamin deficiency, and that such conditions would be relieved or corrected by use of preparation in question, and that those who were thin, pale and sickly would, by the use thereof, acquire additional weight, improved complexion, increased resistance to colds and infection, and improved appetite, and become less nervous, facts being ailments, conditions and symptoms specified and indicated were not positive or usual indications of deficiency in Vitamins A, B-1, D, G, or E, usual adult diet in United States furnishes supply of such vitamins adequate for ordinary health, energy, development and resistance to disease, and product in question, except in cases of actual deficiency in one or more of the vitamins contained by it, and existence of which can be determined only by physicians after consideration of many factors, including objective symptoms as one only, is of no therapeutic, preventive or tonic value;
  - (c) Represented that impairment or premature loss of sexual desire, vigor or potency in the male was due to a vitamin deficiency, and would be restored or improved by use of said preparation, and that its use would increase the general strength and energy, facts being such impairment, whether premature or otherwise, is not due to deficiency of Vitamin E or any other vitamin, and will not be restored, improved or remedied by use of said "Vita-Perles" or vitamin referred to; and

- (d) Represented that said preparation would affect women's ability successfully to conceive or bear children, facts being such inability to conceive is not due to deficiency of vitamins as aforesaid set forth, and will not be restored, improved or remedied by use of "Vita-Perles" or of Vitamin E, and women's inability to bear children successfully after conception is usually due to pathological conditions and anatomical abnormalities and not to deficiency in vitamins generally or specific deficiency in vitamin E and will not be remedied or corrected by "Vita-Perles," except in cases of rare occurrence where such inability is due to deficiency of vitamin E of degree no greater than is susceptible of replacement by the vitamin E content of "Vita-Perles";

With effect of misleading and deceiving substantial portion of purchasing public, through use of such false, deceptive, and misleading statements, representations and claims disseminated as aforesaid with respect to product in question and causes of ailments and conditions of the body for which said preparation was recommended by them, 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 substantial portion of such public, because of such belief, to purchase substantial quantities of preparation aforesaid:

*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. Henry Junge*, of Chicago, Ill., for United Advertising Cos., Inc.

#### 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 Distributors, Inc., a corporation, United Advertising Cos., Inc., a corporation, and John H. Morgan, an individual, doing business as Champion 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. Respondent, American Distributors, Inc., is a corporation organized under the laws of the State of Indiana and having an office and principal place of business at A Street, Linton, Ind.

Respondent, John H. Morgan, is an individual, who, prior to August 1938, traded and did business under the name of Champion Products Co. and maintained an office and place of business at A Street, Linton, Ind.; he caused the organization of and is the president of American Distributors, Inc.

Respondent, United Advertising Cos., Inc., is a corporation organized under the laws of the State of Illinois and having an office and principal place of business at 207 North Michigan Avenue, Chicago, Ill.

PAR. 2. Prior to August 1938, respondent, John H. Morgan, under the name of Champion Products Co., was engaged in the business of selling and distributing a certain medicinal preparation known as "Vita-Perles" and claimed by respondent to contain Vitamins A, B-1, D, G, and E. Respondent sold said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia and caused said preparation when sold to be transported from his aforesaid place of business in the State of Indiana to purchasers thereof located in various other States of the United States and in the District of Columbia.

On August 28, 1938, the respondent, John H. Morgan, caused the American Distributors, Inc., an Indiana corporation, to be organized. Since that time said corporate respondent has been engaged in the sale and distribution of said medicinal preparation, "Vita-Perles," in commerce among and between the various States of the United States and has caused said preparation when sold to be transported from its aforesaid place of business in the State of Indiana 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 medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

Respondent, United Advertising Cos., Inc., is and has been the advertising agent for the respondents American Distributors, Inc., and John H. Morgan, trading as Champion Products Co., 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 respondent Morgan and respondent American Distributors, Inc., the said respondents and respondent United Advertising Cos., Inc., have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal preparation, "Vita-Perles," by 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 said medicinal preparation; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said "Vita-Perles" 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:

Test Vita-Perles Without Risking a Single Penny!

Vita-Perles are based on a scientific formula containing Vitamins A, B-1, D, G and E \* \* \*.

Many medical men contend that the average diet is distressingly lacking in the proper proportion of vitamins.

*A Special Message to Those Who Suffer From Such Symptoms As:* Backache, Headache, Leg Pains, Loss of Appetite, Loss of Pep, Faulty Vision, Sluggishness, Feeling of Confusion, Lost Nature, Loss of Weight, Early Tooth Decay, Reduced Resistance to Infection, "Old" Before Your Time—*Act Now.*

\* \* \* *Do everything* in your power to correct them.

Do you eat enough, yet stay *Skinny, Pale, Sickly* \* \* \* The new formula, Vita-Perles, contains the vitamins which, when properly assimilated, help put on pounds of firm, healthy flesh, round out those alluring curves, clear complexion, build resistance to colds and infection, etc.

The vitamins contained in Vita-Perles make the difference between high and low resistance to colds, infections, etc., help to increase the appetite, clear skin, reduce nervousness, etc.

The two statements quoted immediately above are accompanied by depictions of well-rounded but lissom female figures.

Want to Gain Weight? 7 Pounds in 7 Days? \* \* \* If you are skinny, weak, pale, run-down because of a lack of replaceable vitamins, we invite you to test the new *Vita-Perles* at Our Risk.

The statement last quoted is accompanied by a depiction of two female figures, one excessively emaciated, the other full and shapely.

*To Men Only*

We bring a message of hope to men who suffer from such symptoms as \* \* \* Tired, Worn-Out Feeling, and that Growing "Old" Before Your Time. Many men when they reach middle age begin to feel and look "Old." This is a very distressing condition \* \* \* Accept our liberal offer to test the Amazing Vita-Perles \* \* \*

The statement last quoted is accompanied by a depiction of a male apparently in bad health, spirits, and reduced circumstances, observing with envy a well-dressed young man of abounding vitality accompanying a personable young woman, with the legend: "Don't be 'Worn out,' Take steps to Gain that 'He-Man' Feeling."

## TO WOMEN ONLY

It is common knowledge that many happy homes are destroyed, many husbands and wives become restless and discontented because they have been denied the blessings of children \* \* \* Unfortunately, some women find they are of a very nervous nature, in a run-down condition, and in many ways abnormal. These conditions may often be the reason they are not blessed with children. Many physicians contend that Vitamins can be of definite assistance in building up the system to the extent that normal childbirth may result \* \* \*. Every woman was intended for Motherhood, but often some women suffer from functional female disorders which rob her of this normal desire. It is possible that Vitamins can assist you in solving your problems.

The statement last quoted is accompanied by a depiction of a woman holding an infant.

Vitamin "E" (wheat germ oil) is also believed to be of definite aid in correcting certain cases of sterile conditions in women.

Deprived of the joys of a Baby To Love Due To Lack of Replaceable Vitamins, At Last—science has found a reason why many men and women—apparently normal in every respect—have been unable to know the joy and happiness of parenthood. This great discovery brings a thrilling message of hope to many a childless woman \* \* \* This recent scientific discovery \* \* \* is now available to all. Ask Today for a 3 weeks treatment of Vita-Perles.

The statement last quoted is accompanied by a depiction of an infant.

A Message to Married Couples Who Want Children \* \* \* The discovery of Vitamin E, the anti-sterility vitamin, is of great importance to men and women whose premature deterioration of the reproductive system is due to a lack of sufficient Vitamin E. Unless complete atrophy has already set in there is yet hope for many couples to find full expression of parental instincts \* \* \* Get a three weeks supply of Vita-Perles Today! See what they will do for you!

PAR. 4. Through the 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 the manner in which the said preparation may be tested, the causes of the ailments and conditions of the human body for which respondents recommend and have recommended the said "Vita-Perles," 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 one may test "Vita-Perles" without risking any money; that vitamin deficiency is, in both sexes, the cause of back-ache, headache, leg pains, loss of appetite and pep, faulty vision, sluggishness, loss of weight, early tooth decay, reduced resistance to infection, being prematurely "old," constipation, poor digestion, bad breath, and skin irritations; that these conditions will be relieved or corrected by "Vita-Perles"; that by the use of "Vita-Perles" one who is thin, pale, and sickly will gain in firm, healthy flesh, acquire a

clear complexion, increased resistance to colds and infections and a better appetite, will become less nervous and will gain in weight as much as 7 pounds in 7 days; that in men premature loss or impairment of sexual desire, vigor or potency is due to a vitamin deficiency and that they will be restored or improved and the general strength and energy increased by the use of "Vita-Perles"; that the inability of women to conceive or bear children is frequently due to vitamin deficiency, and that this deficiency or disability may be removed and normal childbirth accomplished by the use of "Vita-Perles."

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 "Vita-Perles" cannot be obtained and tested in the fashion proposed by the respondents without any risk on the tester's money. The ailments, conditions or symptoms, other than those relating to the sex function, represented by respondents to be due to deficiency in vitamins A, B-1, D, G, or E, are not positive or usual indications of such deficiency. The usual adult diet in the United States furnishes a supply of these vitamins adequate for ordinary health, energy, development, and resistance to disease. Vita-Perles, except in cases of actual deficiency in one or more of the vitamins which they contain, are of no therapeutic, preventative, or tonic value. The existence of a deficiency of vitamins A, B-1, D, G, or 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. Loss or impairment of sexual desire, vigor, or potency in the male, whether premature or otherwise, and inability of the female to conceive, are not due to a deficiency of vitamin E or any other vitamin and will not be restored, improved, or remedied by the use of Vita-Perles or of vitamin E. Women's inability to bear children successfully after conception is usually due to pathological conditions and anatomical abnormalities and not to a deficiency in vitamins generally or a specific deficiency in vitamin E and will not be remedied or corrected by Vita-Perles, except in cases of rare occurrence where such inability is due to a deficiency of vitamin E of a degree no greater than is susceptible of replacement by the vitamin E content of Vita-Perles.

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, the manner in which it may be tested, and the causes of ailments and conditions of the human body for which respondents have recommended "Vita-Perles" 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 October 7, 1939, issued, and on October 9, 1939, served its complaint in this proceeding upon respondents American Distributors, Inc., a corporation, United Advertising Cos., Inc., a corporation, and John H. Morgan, an individual trading and doing business under the name of Champion Products Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 21, 1939, respondent, United Advertising Cos., Inc., 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. After the filing of the answer of respondents American Distributors, Inc., and John H. Morgan, 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 the answers 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, American Distributors, Inc., is a corporation organized under the laws of the State of Indiana and having an office and principal place of business at Linton, Ind.

Respondent, John H. Morgan, is an individual, who, prior to August 1938, traded and did business under the name of Champion Products Co. and maintained an office and place of business at Linton, Ind.; he caused the organization of and is the president of respondent, American Distributors, Inc.

Respondent United Advertising Cos., Inc., is a corporation organized under the laws of the State of Illinois and having an office and principal place of business at 207 North Michigan Avenue, Chicago, Ill.

PAR. 2. Prior to August 1938, respondent, John H. Morgan, trading under the name of Champion Products Co., was engaged in the business of selling and distributing a certain medicinal preparation known as "Vita-Perles" and claimed by respondent to contain Vitamins A, B-1, D, G, and E. Respondent sold said preparation to members of the purchasing public situated in the various States of the United States and in the District of Columbia and caused said preparation when sold to be transported from his aforesaid place of business in the State of Indiana to purchasers thereof located in various States of the United States and in the District of Columbia.

On August 28, 1938, the respondent, John H. Morgan, caused the American Distributors, Inc., an Indiana corporation, to be organized. Since that time said corporate respondent has been engaged in the sale and distribution of said medicinal preparation, "Vita-Perles," in commerce among and between the various States of the United States and has caused said preparation when sold to be transported from its aforesaid place of business in the State of Indiana 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 medicinal preparation in commerce among and between the various States of the United States and in the District of Columbia.

Respondent, United Advertising Cos., Inc., is and has been the advertising agent for the respondents American Distributors, Inc., and John H. Morgan, trading as Champion Products Co., and has participated in the preparation and dissemination of the advertising matter to which reference is herein after made.

PAR. 3. In the course and conduct of the business of respondent Morgan and respondent American Distributors, Inc., the said respondents and respondent United Advertising Companies, Inc., have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said medicinal preparation, "Vita-Perles," by United States Mails, by insertion in newspapers and periodicals having a general circula-

tion 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 medicinal preparation; and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning said "Vita-Perles" 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:

Test Vita-Perles Without Risking a Single Penny!

Vita-Perles are based on a scientific formula containing Vitamins A, B-1, D, G, and E \* \* \*.

Many medical men contend that the average diet is distressingly lacking in the proper proportion of vitamins.

*A Special Message to Those Who Suffer From Such Symptoms As:* Backache, Headache, Leg Pains, Loss of Appetite, Loss of Pep, Faulty Vision, Sluggishness, Feeling of Confusion, Lost Nature, Loss of Weight, Early Tooth Decay, Reduced Resistance to Infection, "Old" Before Your Time—*Act Now.*

\* \* \* *DO EVERYTHING* in your power to correct them.

Do you eat enough, yet stay Skinny, Pale, Sickly \* \* \* The new formula, Vita-Perles, contains the vitamins which, when properly assimilated, help put on pounds of firm, healthy flesh, round out those alluring curves, clear complexion, build resistance to colds and infection, etc.

The vitamins contained in Vita-Perles make the difference between high and low resistance to colds, infections, etc., help to increase the appetite, clear skin, reduce nervousness, etc.

The two statements quoted immediately above are accompanied by depictions of well-rounded but lissom female figures.

Want to Gain Weight? 7 Pounds in 7 Days? \* \* \* If you are skinny, weak, pale, run-down because of a lack of replaceable vitamins, we invite you to test the new *Vita-Perles* at Our Risk.

The statement last quoted is accompanied by a depiction of two female figures, one excessively emaciated, the other full and shapely.

To Men Only—We bring a message of hope to men who suffer from such symptoms as \* \* \* Tired, Worn-Out Feeling, and that Growing "Old" Before Your Time. Many men when they reach middle age begin to feel and look "Old." This is a very distressing condition \* \* \* Accept our liberal offer to test the Amazing Vita-Perles. \* \* \*

## Findings

30 F. T. C.

The statement last quoted is accompanied by a depiction of a male apparently in bad health, spirits, and reduced circumstances, observing with envy a well-dressed young man of abounding vitality accompanying a personable young woman, with the legend: "Don't be 'Worn Out,' Take steps to Gain that 'He-Man' Feeling."

## TO WOMEN ONLY

It is common knowledge that many happy homes are destroyed, many husbands and wives become restless and discontented because they have been denied the blessings of children \* \* \* Unfortunately, some women find they are of a very nervous nature, in a run-down condition, and in many ways abnormal. These conditions may often be the reason they are not blessed with children. Many physicians contend that Vitamins can be of definite assistance in building up the system to the extent that normal childbirth may result \* \* \*. Every woman was intended for Motherhood, but often some women suffer from functional female disorders, which rob her of this normal desire. It is possible that Vitamins can assist you in solving your problems.

The statement last quoted is accompanied by a depiction of a woman holding an infant.

Vitamin "E" (wheat germ oil) is also believed to be of definite aid in correcting certain cases of sterile conditions in women.

Deprived of the joys of a Baby to Love Due To Lack of Replacable Vitamins, AT LAST—science has found a reason why many men and women—apparently normal in every respect—have been unable to know the joy and happiness of parenthood. This great discovery brings a thrilling message of hope to many a childless woman \* \* \*. This recent scientific discovery \* \* \* is now available to all. Ask Today for a 3 weeks treatment of Vita-Perles.

The statement last quoted is accompanied by a depiction of an infant.

A Message to Married Couples Who Want Children \* \* \*. The discovery of Vitamin E, the anti-sterility vitamin, is of great importance to men and women whose premature deterioration of the reproductive system is due to a lack of sufficient Vitamin E. Unless complete atrophy has already set in there is yet hope for many couples to find full expression of parental instincts \* \* \*. Get a three weeks supply of Vita-Perles Today! See what they will do for you!

PAR. 4. Through the 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 the causes of the ailments and conditions of the human body for which respondents recommend and have recommended the said "Vita-Perles," 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 one may test "Vita-Perles" without risking any money; that vitamin deficiency is, in both sexes, the cause of back-

ache, headache, leg pains, loss of appetite and pep, faulty vision, sluggishness, loss of weight, early tooth decay, reduced resistance to infection, being prematurely "old," constipation, poor digestion, bad breath, and skin irritations and that these conditions will be relieved or corrected by "Vita-Perles"; that by the use of "Vita-Perles" one who is thin, pale, and sickly will gain firm and healthy flesh, will acquire a clear complexion and increased resistance to colds and infections and a better appetite, will become less nervous and will gain in weight as much as 7 pounds in 7 days; that in men premature loss or impairment of sexual desire, vigor, or potency is due to a vitamin deficiency and that they will be restored or improved and the general strength and energy increased by the use of "Vita-Perles"; that the inability of women to conceive or bear children is frequently due to vitamin deficiency, and that this deficiency or disability may be removed and normal childbirth accomplished by the use of "Vita-Perles."

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 "Vita-Perles" cannot be obtained and tested in the fashion proposed by the respondents without any risk of money. The ailments, conditions or symptoms, other than those relating to the sex functions, represented by respondents to be due to deficiency in Vitamins A, B-1, D, G, or E, are not positive or usual indications of such deficiency. The usual adult diet in the United States furnishes a supply of these vitamins adequate for ordinary health, energy, development and resistance to disease. Vita-Perles, except in cases of actual deficiency in one or more of the vitamins which they contain, are of no therapeutic, preventative or tonic value. The existence of a deficiency of Vitamins A, B-1, D, G, or 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. Loss or impairment of sexual desire, vigor, or potency in the male, whether premature or otherwise, and inability of the female to conceive, are not due to a deficiency of vitamin E or any other vitamin and will not be restored, improved or remedied by the use of Vita-Perles or of vitamin E. Women's inability to bear children successfully after conceptions is usually due to pathological conditions and anatomical abnormalities and not to a deficiency in vitamins generally or a specific deficiency in vitamin E and will not be remedied or corrected by Vita-Perles, except in cases of rare occurrence where such inability is due to a deficiency

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of vitamin E of a degree no greater than is susceptible of replacement by the vitamin E content of Vita-Perles.

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 "Vita-Perles" 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 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 answers of respondents, in which answers respondents admit all the material allegations of fact set forth in said complaint to be true, and state that they waive 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 respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondents, American Distributors, Inc., a corporation, United Advertising Cos., Inc., a corporation, and John H. Morgan, an individual, trading and doing business under the name of Champion Products Co. or under any other name or names, their respective agents, officers, 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 Vitamins

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## Order

A, B-1, D, G, and E, and now designated by the name of "Vita-Perles," 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:

1. Said preparation may be obtained and tested without risking the loss of any money.

2. Backache, headache, leg pains, loss of appetite and energy, faulty vision, sluggishness, loss of weight, early tooth decay, reduced resistance to infection, premature evidence of advancing age, constipation, poor digestion, bad breath, or skin irritations, are caused by a vitamin deficiency or that such conditions will be relieved or corrected by the use of the said preparation.

3. Those who are thin, pale, and sickly will by the use of said preparation acquire additional weight, an improved complexion, an increased resistance to colds and infections, an improved appetite or will become less nervous.

4. The impairment or premature loss of sexual desire, vigor, or potency in the male, is due to a vitamin deficiency, or will be restored or improved by the use of said preparation, or that its use will increase the general strength and energy.

5. Said preparation will affect 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 deficiency of Vitamin E of a degree susceptible of replacement by the Vitamin E content of said preparation.

*It is further ordered,* That each of the said 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  
ANN W. CARTER, TRADING AS PROCESS 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 3637. Complaint, Oct. 27, 1938—Decision, Mar. 19, 1940*

Where an individual engaged in printing stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products, and in sale of such various stationery to purchasers in State of California and in other States and in the District of Columbia, in substantial competition with others likewise engaged in printing and selling stationery for such purposes in commerce as aforesaid, and in competition particularly with those engaged in business of engraving and selling engraved stationery in commerce for purposes aforesaid, and including many who produce engraved stationery products designed and intended for such purposes and sell said products into and through other States as above set forth, and truthfully represent the same as produced by the engraving process, as known to trade and public generally, and others who sell stationery products for such purposes but do not sell engraved stationery products and do not in any means or manner represent themselves as manufacturers of or dealers in engraved stationery products, and among whom are many who produce stationery by same process as employed by individual aforesaid—

Featured trade name, including words "Process Engraving," in circulars, business cards, letterheads, blotters, stickers, memoranda pads, and other advertising literature circulated among purchasers and prospective purchasers, and in statements of account sent to purchasers in various States displayed trade name aforesaid and featured same in advertisements in newspapers and periodicals circulated among prospective purchasers, and referred in all her various circulars, pamphlets, etc., to process employed by her in producing her products as "engraving," and held herself and company out to public as "engraver" and "process engraver," and her product as "engraving" or "process engraving";

Facts being she did not own or operate an engraving company and was not engaged in business of engraving or producing engraved stationery, and letters, words or designs appearing upon her said products made and sold by her were not the result of engraving process and were not engraved stationery, as preferred by substantial portion of purchasing public over that produced by process such as employed by her, and were not, as aforesaid, result of such much more costly engraving process, as long understood by trade and consuming public as meaning, as applied to business or social stationery, products in which words, letters or designs have been raised from general plane of stationery surface and are in relief, through result of application to stationery, under pressure, of inked metal plates theretofore specially engraved, cut, or incised for and used in production of such stationery by process involving, among other things, the cutting or incising of the plates in various ways so that letters, etc., are below surface of

## Complaint

plate, but constituted raised printing accomplished through use of certain ink on printing press and application to resulting printing of certain powder and baking process, with result which so closely resembled, in appearance and feel, genuine engraving as to make two so difficult of ascertainment that in many cases those in trade and familiar with both must use great care to avoid mistake in identifying two;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that said individual owned or operated engraving company and was engaged in business of producing and selling engraved stationery, and that letters, words or designs contained upon her said stationery were engraved and result of genuine engraving process, as above indicated, and as known to trade and public generally, and to induce number of consuming public, because of such belief, to purchase her said products and thereby unfairly divert trade to her from her competitors in commerce as aforesaid:

*Held*, That such acts and practices were each and all to the prejudice 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. DeWitt T. Puckett* and *Mr. Merle P. Lyon* for the Commission.

*Mr. Walter J. Walsh*, of San Francisco, Calif., for respondent.

## COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority invested in it by said act, the Federal Trade Commission, having reason to believe that Ann W. Carter, an individual, trading under the firm name and style of Process Engraving Co., hereinafter referred to as the 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, Ann W. Carter, is an individual, trading under the firm name and style of Process Engraving Co., and having her office and place of business at 694 Market Street, San Francisco, Calif. Respondent is now, and has been for more than 2 years last past, engaged in the business of printing stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and names on Christmas cards, and in selling said products in commerce as herein set out.

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said stationery so printed, when sold, to be transported from her office and 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. There is now and has been at all times mentioned herein, a course of trade in said stationery sold by respond-

ent 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 her said business, respondent is now, and has been in substantial competition with other individuals, and with firms, partnerships, and corporations, likewise engaged in printing stationery for social and business purposes and in selling such stationery in commerce among and between the various States of the United States and in the District of Columbia, and also with individuals, partnerships, firms, and corporations engaged in producing engraved stationery for social and business purposes and in selling such stationery in commerce between the various States of the United States and in the District of Columbia.

PAR. 4. In the course of the operation of said business and for the purpose of inducing individuals, firms and corporations to purchase said stationery products, respondent has printed and circulated throughout the several States to customers and prospective customers, circulars, business cards, letterheads, blotters, stickers, memorandum pads, and other advertising literature, emphasizing the name "Process Engraving Company" and referring to the products manufactured by her as "process engraving." Respondent has also published or has caused to be published in newspapers, magazines, periodicals, and pamphlets circulated between and among the various States of the United States and the District of Columbia advertisements containing, among others, the following statements:

Process Engraving Co. Correct business and social stationery.

Christmas Cards—Outstandingly Different—Process Engraving Company. The oldest and original.

Christmas Cards in the modern motif. Make your selection from the largest assortment in San Francisco, and have them process-engraved with your name. Process Engraving Co.

All of said statements, together with similar statements, purport to be descriptive of respondent's business and the products manufactured and sold by her. In all of her circulars, pamphlets, and other advertising literature, respondent holds herself and her company out to the public as an "engraver" or "process engraver" and her product as "engraving" or "process engraving."

PAR. 5. The process used by the respondent in the printing of social and business stationery in commerce as hereinbefore set out is not the process used in producing genuinely engraved stationery. Respondent does not own or operate an "engraving" company, and respondent is not engaged in the business of "engraving." The letters, words, or designs upon stationery products manufactured, offered for sale, and sold by respondent, in the manner aforesaid, are not the re-

sult of "engraving" according to the trade and public understanding of the term.

PAR. 6. The word "engraving" as it is used in the graphic arts may be applied either to an engraved intaglio plate upon which letters, words, or designs have been incised or cut, or to impressions made from such a plate. Such plates are cut or incised by hand, by machine, by etching with acid, by a transfer from other engravings, and by other means, but in all cases the letters, words, or designs so to be produced upon stationery are cut below the surface of the plate. To make impressions from such a plate, the ink is applied to the plate, then the plate is wiped so that the ink remains only in the lines cut below the surface. The inked plate is then put upon a piece of stationery or article to be engraved, and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper on which the impression is to be made.

PAR. 7. The words "engraving" and "engraved" when used in connection with, or descriptive of, business or social stationery, mean, and the trade and consuming public understand, and for many years have understood, them to mean that the stationery products so being referred to or described contain letters, words, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application thereto, under pressure, of inked metal plates which have been specially engraved, cut, or carved for, and are used in, the production of such stationery by the process more particularly described herein in paragraph 6.

PAR. 8. The process used by the respondent in the manufacture of her stationery products is not the genuine engraving process from inked plates as hereinabove described, but is a thermographic process resulting from the use of a chemical in powdered form applied to type printing while the ink is wet and passed through a baking process whereby the chemical fuses with the wet ink so as to produce a raised-letter effect resembling in appearance or simulating genuine engraving.

PAR. 9. The cost of genuine engraved stationery greatly exceeds the cost of stationery of like stock, grade, or character produced by the process employed by the respondent, as set out in paragraph 8 hereof, or produced by any other printing process, and a substantial portion of the purchasing public has a decided preference for engraved stationery over stationery produced by respondent's process or any similar process.

PAR. 10. The use by the respondent of the words "engraving," "process engraving," "engraved" or "process engraved" and the use

by the respondent of the trade name "Process Engraving Company" either in describing her product or designating her business, in offering for sale or selling her stationery products, was and is calculated to, and had, and now has, the tendency and capacity to, and did, and now does, mislead and deceive a substantial portion of the purchasing public into the erroneous beliefs that respondent owns or operates an engraving company, that respondent is in the business of producing and selling engraved stationery, and that the letters, words, or designs contained upon the said stationery offered for sale and sold by respondent were and are engraved and are the result of the genuine engraving process described in paragraph 6 hereof.

PAR. 11. There are among respondent's competitors many who produce engraved stationery products for business and social purposes and who sell such engraved stationery products in commerce as herein described, properly represented and described as engraved stationery. There are others among respondent's competitors who produce stationery products for business and social purposes, and who sell such stationery products in commerce as herein described, but who do not manufacture or sell engraved stationery products, and who do not, by any means or in any manner, hold themselves out, or represent themselves to be, manufacturers of, or dealers in, engraved stationery products.

PAR. 12. As a direct consequence of the aforesaid mistaken and erroneous beliefs, induced by the acts, advertisements and representations of respondent as hereinabove detailed, a number of the consuming public has purchased a volume of respondent's stationery products, with the result that trade has been unfairly diverted to respondent from her aforesaid competitors who do not misrepresent their business status, the character and nature of their respective products or the processes by which they are produced. In 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. 13. The aforesaid acts, practices and representations of the respondent as herein alleged, have been and are, all to the prejudice of the public and of respondent's competitors as aforesaid, and constitute unfair methods of competition in commerce and unfair 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 October 1938,

issued and served its complaint in this proceeding upon Ann W. Carter, an individual, trading as Process Engraving Co., charging her 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 the said complaint, and the filing of respondent's answer thereto, testimony and evidence in support of the allegations of this complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Walter J. Walsh, Esq., attorney for the respondent; and said testimony and evidence was duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and evidence, briefs in support of the complaint and in opposition thereto; and the Commission having duly considered the same and being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion to be drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Ann W. Carter, is an individual who is now, and has been since June 11, 1936, doing business at 694 Market Street, San Francisco, Calif., under the trade name and style Process Engraving Co., and during that period of time has been engaged in the business of printing stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products.

PAR. 2. Since the date of her commencement in business, the respondent has caused the stationery products printed by her, when sold, to be transported from her principal office and place of business in the State of California to the purchasers thereof located in California and in other States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of her business, respondent now is, and has been, in substantial competition with other individuals and with firms and corporations likewise engaged in the business of printing and selling stationery for social and business purposes in commerce among and between the various States of the United States and in the District of Columbia, and is particularly in competition with individuals, firms, and corporations engaged in the business of engraving and selling engraved stationery for social and business purposes in said commerce.

PAR. 4. In the operation of said business and for the purpose of inducing the purchase of said stationery products, respondent has printed and circulated among purchasers and prospective purchasers circulars, business cards, letterheads, blotters, stickers, memoranda pads, and other advertising literature, bearing the trade name "Process Engraving Company" printed thereon in a conspicuous place. Statements of account sent to purchasers located in various States of the United States and in the District of Columbia also bear the trade name "Process Engraving Company." The respondent places advertisements in which the trade name "Process Engraving Company" is conspicuous in newspapers, magazines and periodicals circulated among the prospective purchasers. In all of said advertising matter, the products manufactured and sold by the respondent are referred to as "process engraving." Typical of the statements made and used by the respondent in the advertising media above described are the following:

Process Engraving Company

Correct Business and Social  
Stationery

\* \* \* \* \*

Christmas Cards—Outstandingly Different—Process Engraving Company. The  
Oldest and Original.

\* \* \* \* \*

Christmas Cards in the Modern Motif. Make your selection from the largest  
assortment in San Francisco, and have them process engraved with  
your name.

Process Engraving Company.

\* \* \* \* \*

The Oldest and Original

Process

Engraving Co.

Established 1918

694 Market Street

Telephone Garfield 2913 or 2914

Correct Business and Social Stationery

All of the said statements, together with similar statements not herein set out used by respondent, purport to be descriptive of respondent's business and the products manufactured and sold by her. In all of her various circulars, pamphlets, and other advertising literature, respondent refers to the process by which she produces her products as "engraving." Respondent holds herself and her company out to the public as an "engraver" or "process engraver" and her product as "engraving" or "process engraving."

PAR. 5. The respondent prints invitations, announcements, calling cards, business cards, letterheads, envelopes, Christmas cards, and other social and business stationery by a process in which the letters, words, or designs are type printed on to the stationery by a process whereby after the printing a chemical preparation composed principally of resin is used for the purpose of raising the letters or impressions by what is termed a thermographic process. The printing on the various cards, letterheads, circulars, pamphlets, and other printed matter produced by respondent is first printed with what is known as a special or soft ink on a printing press and while this ink is wet it is dusted with the resin powder and passed through a baking process whereby the chemical fuses with the wet ink in such manner as to produce a raised-letter effect resembling in appearance or simulating genuine engraving. The respondent does not own or operate an "engraving" company and is not engaged in the business of engraving or producing engraved stationery. The letters, words, or designs appearing upon the stationery products manufactured and sold by the respondent are not the result of an engraving process according to the trade and public understanding of the term.

Par. 6. The word "engraving" as it is used in the graphic arts may be applied either to an engraved intaglio plate upon which letters, words, or designs have been incised or cut, or to the impressions made from such a plate. Such plates are cut or incised by hand, by machine, by etching with acid, by a transfer from other engravings, and by other means, but in all cases the letters, words, or designs so to be produced upon stationery are cut below the surface of the plate. To make impressions from such a plate the ink is applied to the plate, then the plate is wiped so that the ink remains only in the lines cut below the surface. The inked plate is then put upon a piece of stationery or article to be engraved, and pressure is applied sufficient to force the surface of the stationery into the lines cut in the plate, causing the ink in such lines to adhere to the paper on which the impression is to be made.

PAR. 7. The words "engraving" and "engraved" when used in connection with, or descriptive of, business or social stationery, mean, and the trade and consuming public understand, and for many years have so understood, them to mean that the stationery products so being referred to or described contain words, letters, or designs which are raised from the general plane of the stationery surface, and are in relief, and are the result of the application thereto, under pressure, of inked metal plates which have been specially engraved, cut or incised for, and are used in, the production of such stationery by the process more particularly described herein in paragraph 6

hereof. Respondent's product is known in the trade as "raised printing" and not as "process engraving" or "engraving." Many members of the purchasing public cannot distinguish the difference between a product made by the process used by the respondent and a product made by the genuine engraving method as described in paragraph 6 hereof. Respondent's said product looks and feels like genuine engraving, and the difference between the two products is so difficult to ascertain that those in the trade, familiar with both products, must, in many instances, use great care to avoid mistakes in identifying the two products.

PAR. 8. The cost of genuine engraved stationery greatly exceeds the cost of stationery of like stock, grade, or character produced by the process employed by the respondent, as set out in paragraph 5 hereof, or produced by any other printing process, and substantial portion of the purchasing public has a decided preference for engraved stationery over stationery produced by respondent's process or any similar process.

PAR. 9. The use by the respondent of the words "engraving," "process engraving," "engraved," or "process engraved," and the use by the respondent of the trade name "Process Engraving Company" either in describing her product or designating her business in offering for sale or selling her stationery products, had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that respondent owns or operates an engraving company, and that respondent is engaged in the business of producing and selling engraved stationery, and that the letters, words, or designs contained upon the said stationery offered for sale and sold by the respondent were, and are, engraved and are the result of the genuine engraving process described in paragraph 6 hereof.

PAR. 10. There are among respondent's competitors many who produce engraved stationery products which are designed and intended for business and social purposes, and who sell such engraved stationery products, when so produced, and transport them, or cause them to be transported to, into and through other States of the United States, to the purchasers thereof at their respective points of location and who truthfully represent such products to be produced by the engraving process as known to the trade and the public generally. There are among respondent's competitors others who sell in commerce as aforesaid stationery products designed and intended for business and social purposes, but who do not sell engraved stationery products and who do not, by any means or in any manner, represent themselves to be manufacturers of, or dealers in, engraved stationery products,

and among these latter there are many who produce stationery by the same process as respondent. The use of the word "engraved" to designate and describe stationery products manufactured by the process used by the respondent as herein described, or the use of the word "engraving" to designate and describe said process, has diverted business from genuine engravers and from producers of stationery by processes similar to that used by the respondent, to the respondent and others who use such words in connection with their business and the distribution of their products.

PAR. 11. The acts and practices of the respondent in using the words "engraving," "engraved," and "engravers," in describing her products and in designating her business in advertisements, catalogs, and other advertising literature, and in her general business correspondence, and in using the word "engraving" in her trade name, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that the respondent owns or operates an engraving company and that respondent is in the business of producing and selling engraved stationery and that the letters, works, or designs contained upon said stationery produced and sold by the respondent were, and are, engraved and are the result of the engraving process as known to the trade and public generally, and to induce a number of the consuming public, because of said erroneous belief, to purchase respondent's said products and thereby unfairly to divert trade to the respondent from her competitors in commerce among and between the various States of the United States and in the District of Columbia.

#### CONCLUSION

The acts and practices of the respondent are each and all to the prejudice of the public and to 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 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 John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and the briefs of counsel for the Commission and for the respondent, and the Commission having made its findings as to the facts, and its

conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Ann W. Carter, her salesmen, employees, and agents, 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 stationery products, do forthwith cease and desist from:

Using the words "engraving," "process engraving," or any derivative of the word "engrave," alone or in conjunction or combination with any other word or words in her trade name, advertising literature, circulars, catalogs, business signs, letterheads, or correspondence, to designate or describe the stationery products sold and distributed by respondent, or the nature or character of respondent's business, unless and until the respondent produces the stationery products so designated or described by a process which consists essentially in the application of blank stationery to an inked intaglio plate under pressure sufficient to force the surface of the stationery into the letters or designs, which are cut or incised in the plate, so that the ink in such plate adheres to the stationery to form letters, words, characters or designs which are in relief and raised from the general plane of the surface of the stationery.

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

## Syllabus

IN THE MATTER OF  
COMMONWEALTH PUBLISHING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3668. Complaint, Dec. 17, 1938—Decision, Mar. 19, 1940*

Where a corporation engaged in selling "Liberty Income Tax Record" and other bookkeeping systems to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar products in commerce as aforesaid; in advertisements in newspapers and periodicals, and through statements and depictions in pamphlets, circulars, and letters circulated between and among the various States and in said District—

- (a) Represented to public that it printed, bound and published its books in building depicted by it in such advertisements, with machinery and skilled binders and printers under its control, through setting forth, in some of its said advertising, series of pictures of exterior and interior views of a large building with purported display sign on one wall thereof reading "publishers, printers, binders of blank books and bookkeeping systems," and with pictures of large printing presses with numerous workmen and showing various operations in the printing and binding of its said book, facts being its said products were printed and bound by independent contractors not under its control, its business was transacted by correspondence entirely and was carried on in office and storeroom of building resembling that pictured and described as above set forth, but few persons were employed by it to fill orders for books sold by it, and it was not a printer or binder of record books and bookkeeping systems, from whom, as such, there are purchasers of such products with preference for dealing directly with printer or binder as securing them, in their belief, better prices, superior merchandise, and other advantages not secured in purchasing such products after having gone through hands of middleman; and
- (b) Represented that Federal and State laws required that books of account be kept on its record books, and that its said books had been approved by State and Federal officials and tax authorities, facts being no such law requires keeping of books of account on its said record books or any particular form or book, and while certain State and Federal officials had written it stating that its said book was useful for keeping records for purpose of income taxation, no such official was permitted to approve any tax record book or bookkeeping system, nor had official approved its said product;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all said representations were true, and with result, as consequence thereof, that number of consuming public purchased substantial volume of its said books and trade was thereby diverted unfairly to it from its competitors engaged in sale in commerce of products intended, designed and used for purposes for which it recommended its said book, and who truthfully represent the same:

Complaint

30 F. T. C.

*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. Arthur F. Thomas*, trial examiner.

*Mr. R. A. McQuat* for the Commission.

*Rogers, Woodson & Rogers*, 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 Commonwealth Publishing Company, 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 respondent, Commonwealth Publishing Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business at 508 South Dearborn Street, Chicago, Ill. For more than two years last past, respondent has been, and still is, engaged in the business of selling a certain record book entitled "Liberty Weekly Income Record." Respondent causes said book, when sold, to be transported from its aforesaid place of business in the city of Chicago and State of Illinois to the purchasers thereof at their respective places of location in States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said record books so sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. There has been and is a preference on the part of a substantial portion of the purchasing public for dealing direct with the publisher and printer of the books which it buys. Such preference is brought about by the belief on the part of said members of the purchasing public that in dealing direct with the publisher or

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

PAR. 4. In the course of its business as hereinabove described and for the purpose of inducing the purchase of its books, respondent has made many statements concerning its status, business methods and record books. Said statements are made by means of advertisements inserted in newspapers and magazines and by means of statements and picturizations in pamphlets, testimonials, letters and in the "Liberty Weekly Income Record," all of which are circulated between and among the various states of the United States and in the District of Columbia. Among many the following are typical examples of said advertisements:

#### SALESMEN AND AGENTS WANTED

##### A HELPING HAND FROM UNCLE SAM!

Federal and State Tax Laws now command every business keep Tax Records. None dares risk heavy fines and penalties. Tremendous forced demand. Make year's income next 3 months selling Liberty Tax Records. Officially approved. Satisfies legal requirements. Endorsed by business leaders. New and countless thousands established users eagerly order now to comply with law. Up to \$4.10 profit per sale. Repeat commissions without call-backs. Salesmen coining money on leads furnished. One sold 22 first 2 days. Another filled 500 repeat mail orders in 2 months.

You can average from 10 to 20 Liberty Record sales a day, \$3.50 or more profit on each sale.

LIBERTY INCOME TAX RECORD \$3.50. YEAR'S INCOME IN 3 MONTHS. "GOLD MINE" now to January 1st, because all retailers start records forced by New Federal and State Tax Laws under severe penalties. Tremendous forced demand. Leads furnished. Your success assured with Officially Approved Tax Record. Sight seller. Buyers everywhere. 5-25 sales daily easy. \$4.10 profit each sale.

Publishers, printers, binders of blank books and bookkeeping systems.

Hundreds of thousands of repeat customers \* \* \* sales of Libertys have increased by leaps and bounds \* \* \* thousands of Libertys have been sold everywhere—everywhere in the United States and Canada Liberty Records are in use by thousands—and since this service must be renewed every year this is an immense established demand now ready and waiting.

Now, in addition to heavy penalties for Federal Income Tax Law violations, New State Sales Tax and Income Tax Laws Provide severe fines and even prison sentences. The Liberty Tax Record is the only REAL protection.

Officially O.K'd by Tax Authorities EVERYWHERE. Positive proofs—By the Hundred—Placed Into Your Hands.

All of said statements, together with similar statements and with picturizations appearing in the respondent's advertising literature, represent that salesmen of respondent's record book can earn from

\$3.50 to \$4.10 profit on each sale and that \$50 per day is not unusual even for salesmen beginning work; that hundreds of thousands of persons have purchased "Liberty Weekly Income Tax Records" and that there is an immense established demand for renewals by said purchasers; that State and Federal laws compel every person to keep books of account on respondent's record book; that State and Government officials have officially approved the "Liberty Weekly Income Record" and that respondent is a publisher, printer, and binder of blank books and bookkeeping systems.

PAR. 5. The said representations made by the respondent are grossly exaggerated, misleading, deceptive, and false. Salesmen do not earn the amount set forth in respondent's advertising literature nor any amount comparable therewith. Respondent's record books have not been purchased by hundreds of thousands of people and there is no established demand for renewals. State and Federal laws do not require any person to keep records on the respondent's book. No Government official has ever endorsed the "Liberty Weekly Income Record." Respondent is not a publisher, printer, or binder of record books and bookkeeping systems.

The true facts are that State and Federal laws merely require the payment of a tax on income and leave the method of accounting for income to the taxpayer. Some State and Federal officials have suggested that respondent's book is useful in keeping records for the purpose of income taxation and respondent has caused these comments to appear in its advertising literature in such a manner as to indicate official approval. Respondent causes its books to be printed and bound in plants other than its own.

PAR. 6. There are now and have been competitors of respondent selling and distributing record books in commerce among and between the various States of the United States and in the District of Columbia who do not in any manner misrepresent their status, their business methods or their record books sold or offered for sale by them.

PAR. 7. The false and misleading representations used by the respondent as set forth herein in connection with the sale of its record books have the capacity and tendency to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true. As a direct consequence of the false, deceptive and misleading representations of the respondent and the erroneous and mistaken belief induced thereby, the purchasing public has purchased a substantial number of record books from the respondent with the result that trade in said commerce has been diverted unfairly to respondent from competitors engaged in the business of selling record books who truthfully advertise and represent the

nature of their record books and their status and business methods. As a result thereof, injury has been done and is now being done by the 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 of the public and 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 December 17, 1938, issued, and thereafter served, its complaint in the above entitled proceeding upon respondent, Commonwealth Publishing Co., a corporation, charging it with violation of section 5 of the provisions of said act. Respondent entered an appearance and filed an answer to the complaint and thereafter testimony and other evidence in support of the allegations of said complaint were introduced by R. A. McQuat, attorney for the Commission, and in opposition to the allegations of the complaint by James H. Rogers, of Rogers, Woodson & Rogers, attorneys for respondent, before A. F. Thomas, a trial examiner of the Commission, theretofore duly designated by it. 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 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, Commonwealth Publishing 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 Chicago, State of Illinois. For several years last past respondent has been and still is engaged in the business of selling a certain record book entitled "Liberty Income Tax Record" and other bookkeeping systems. Respondent causes said products, when sold, to be transported from its principal place of business in the city of Chicago, State of Illinois, to the purchasers thereof at their respective places of location in States of the United States other

than the State of Illinois and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said record books sold by it in commerce between and among the various 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 selling and distributing products 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 its business as herein described and for the purpose of inducing the purchase of its books, respondent has made many statements concerning its business status and its record books. Said statements are made by means of advertisements inserted in newspapers and magazines and by means of statements and picturizations in pamphlets, circulars, and letters, all of which were circulated between and among the various States of the United States and in the District of Columbia. In some of its advertising the respondent represents by a series of pictures and appropriate printed matter adjoining thereto, exterior and interior views of a large building with a purported display sign appearing on one wall of said building reading as follows:

Publishers, printers, binders of blank books and bookkeeping systems.

On the same page there are pictures of large printing presses with numerous workmen showing various operations in printing and binding of respondent's book.

Following are typical examples of other advertisements of the respondent:

**A Helping Hand from Uncle Sam!**

Federal and State Tax Laws now command every business to keep Tax Records. None dares risk heavy fines and penalties. Tremendous forced demands. \* \* \* Officially approved. Satisfies legal requirements. \* \* \* New and countless thousands established users eagerly order now to comply with law.

"Gold Mine" now to January 1st, because all retailers start records forced by New Federal and State Tax Laws under severe penalties.

Federal and State Deputy Checking Agents are checking up the records of firms and individuals demanding figures and the use of proper book of records—The Officially Approved Liberty Tax Record Is the Answer!

Now, in addition to heavy penalties for Federal Income Tax Law violations, New State Sales Tax and Income Tax Laws Provide severe fines and even prison sentences. The Liberty Tax Record is the only REAL protection. Officially O. K'D By Tax Authorities Everywhere. Positive proofs—By the Hundred—Placed Into Your Hands.

These picturizations, together with the printed matter adjoining, and also the additional advertising statements herein set out, represent to the public that the respondent prints, binds, and publishes its book in this building with machinery and skilled binders and printers under its control; that Federal and State laws require that books of account be kept on respondent's record books; and that respondent's record books have been approved by Federal and State officials and tax authorities.

PAR. 3. There are purchasers of record books who prefer to deal direct with the printer or binder of such books, because of the belief that they can secure better prices, superior merchandise, and other advantages which cannot be secured when said books are purchased after having gone through the hands of middlemen.

PAR. 4. The Commission finds that respondent's book is printed and bound by printers and binders not under the control of the respondent. Respondent is not a printer or a binder of record books and bookkeeping systems. Respondent employs a few persons to fill orders for books which it sells. These books are printed and bound by independent contractors not under the control of the respondent. All of the business of the respondent is transacted by correspondence. This correspondence and the filling of orders are carried on in an office and storeroom on the ninth floor of a building resembling the building pictured and described as herein set forth.

PAR. 5. The Commission further finds that while certain State and Federal officials have written respondent stating that respondent's book is useful in keeping records for the purpose of income taxation, no State or Federal Government official is permitted to approve any tax record book or bookkeeping system. No State or Federal official has officially approved respondent's book. While State and Federal laws require that certain persons pay an income tax, no Federal or State law required that books of account be kept on respondent's record books or on any particular form or book.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in describing the status of its business and product, the tax record book, as hereinabove set out, were, and are, calculated to, and have had the tendency and capacity to 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 respondent's books with the result that trade has been diverted unfairly to respondent from its competitors engaged in the business of selling and distributing in commerce among and between the various States of

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the United States products intended, designed, and used for the purposes for which respondent recommends its said product, and who truthfully represent 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 the respondent, testimony and other evidence taken before A. F. Thomas, 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 the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, Commonwealth Publishing 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 record books in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from representing that:

1. Federal and State laws require that books of account be kept on respondent's record books.
2. Respondent's record books have been approved by Federal or State officials or taxing authorities.
3. Respondent is a printer or binder of record books and book-keeping systems.

*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  
DARLING & COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3766. Complaint, Dec. 14, 1939<sup>1</sup>—Decision, Mar. 19, 1940*

Where a corporation which was engaged for more than ten years, directly and through subsidiaries, in purchase of raw materials consisting chiefly of shop fats, bones, suet, and calfskins and hides, and in processing such raw materials and selling and offering for sale finished products therefrom to purchasers in other States, and which, operating chiefly in the eastern and midwestern portions of the United States, was in substantial competition with others similarly engaged in purchase of raw materials in commerce among the various States and in sale of processed calfskins, hides, fertilizer, and products manufactured or rendered from fats, bones, and suet, in commerce as aforesaid, and, by reason of its financial strength, was predominating organization in business in question in territory in which it and its subsidiaries operated; with intent to injure and eliminate competition in purchase of unprocessed hides, calfskins, fats, bones, and suet in said territories—

- (a) Paid, in localities in which it met competition in purchase of raw materials, prices higher than justified by trade conditions, and quoted, in such localities, without intending to pay, prices higher than justified, as aforesaid set forth;
- (b) Enticed, through higher wages and otherwise, drivers covering routes of sources of supply of raw materials of competitors to leave employ of latter and enter into its own employ, with intent of obtaining for itself supply previously obtained by drivers aforesaid for such competitors;
- (c) Held out as independent certain of its subsidiaries; and
- (d) Solicited making of, and did make, loans to butchers in various cities upon agreement that all fats, bones, suet, and other offal from said butchers' shops should be sold exclusively to respondent by such butchers, by whom, pursuant to agreements aforesaid, sales were thereafter refused to its competitors;

With result that said acts and practices actually injured, hindered, and prevented competition in purchase of unprocessed hides, calfskins, fats, bones, and suet in commerce, and had dangerous tendency so to do and to create in it, in territories in question, monopoly in purchase of products aforesaid, and with result of unreasonably restraining commerce in question therein:

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

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<sup>1</sup> Amended.

Complaint

30 F. T. C.

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

*Mr. Floyd O. Collins* and *Mr. DeWitt T. Puckett* for the Commission.

*Mr. Harold S. Walters* and *Mr. John M. Lee*, of Chicago, Ill., *Thompson, Hine & Flory*, of Cleveland, Ohio and *Hayes & Hayes*, of Washington, D. C., 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 *Darling & 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business in Chicago in said State. It is now and for more than 10 years last past has been engaged directly and through subsidiary corporations in the purchase of raw materials consisting chiefly of shop fat, bones and suet, calf skins, and hides, in commerce between and among various States of the United States and in the District of Columbia and in the sale of processed hides and calf skins, fertilizer, and other products rendered from raw materials, in commerce between and among the various states of the United States and in the District of Columbia. Respondent's places of business are chiefly in the Eastern and Mid-western portions of the United States although it sells directly and through subsidiaries generally throughout the United States.

PAR. 2. In the course and conduct of its business said respondent has caused and still causes such raw materials, when purchased by it, to be transported to its various places of business and to the places of business of its subsidiary corporations from the places of purchase in various States of the United States other than the States in which the manufacturing plants of respondent and of its subsidiaries are located, and in the course and conduct of its business said respondent has caused and still causes such processed hides and skins, fertilizer, and products rendered from fat, bones and suet, when sold by it, to be transported from its place of business in Chicago and from the places of business of its various subsidiary corporations, into and through various States of the United States other than the state in which the respondent and its subsidiary corporations have their places of business, to the purchasers in such other States and in the District

of Columbia to whom such processed hides and skins, fertilizer, and products rendered from fat, bones, and suet, are sold. Respondent, in the territory in which it manufactures directly and through subsidiaries the products sold by it, is the largest single organization in the industry in which it is engaged, and by reason also of its financial strength is the predominating corporation in such business. In the course and conduct of its business respondent is now and for more than 10 years last past has been in substantial competition with other corporations and with firms, persons, and partnerships engaged in the purchase of raw materials in commerce between and among the various States of the United States and in the District of Columbia, and in the sale of processed hides and calf skins, fertilizer, and products rendered from fat, bones and suet, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. For the purpose and with the intent to eliminate competition in the purchase of unprocessed hides, calf skins, fat, bones, and suet for the purpose and with the intent to restrain and control the supply of processed hides and calf skins, fertilizer, and products rendered from fat, bones, and suet entering into and moving in commerce between and among the various States of the United States and in the District of Columbia, and to control the price of processed hides and calf skins, fertilizer, and products rendered from fat, bones, and suet, and for the purpose of injuring and eliminating competition in such commerce the respondent, since 1930, directly and through its subsidiaries has done and is still doing, among other things, the following:

1. It is paying and has paid, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions and so high as to be prohibitive to its competitors.

2. It is quoting and has quoted, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions and so high as to be prohibitive to its competitors, without intending to pay such prices, but by the quoting thereof making it difficult, if not impossible, for its competitors to buy at prices lower than the prices so quoted.

3. It has enticed and still is enticing by the payment of higher wages and by other means, drivers covering routes of sources of supply of raw materials of its competitors to leave the employ of its competitors, and to enter into the employ of the respondent for the purpose of obtaining for respondent the supply of raw materials previously obtained by such drivers for such competitors.

4. It has held out and is still holding out certain of its subsidiary corporations as being independent of and from the respondent and refraining from notifying the trade and the public that certain of its subsidiaries are controlled and affiliated with respondent.

5. It has agreed and still agrees with certain of its large competitors upon divisions of territory for the purchase of raw materials.

6. For the purpose of forcing certain of its competitors to sell their business to respondent or to go out of business altogether, it has paid and is paying prices for raw materials not justified by trade conditions and so high as to be prohibitive to such competitors.

7. In connection with purchases and intended purchases of raw materials by certain of its competitors, it has disparaged and still disparages the financial standing, financial ability and integrity of such competitors.

8. It has solicited the making of loans by it to butchers in Detroit, Cleveland, and in other cities, upon the agreement of such butchers that they sell all of the fat, bones, suet and other offal from their shops exclusively to respondent, and pursuant to such solicitation has made loans to butchers located in Detroit, Cleveland, and in other cities on such agreements, pursuant to which butchers to whom such loans have been made have refused to sell to competitors of respondent.

PAR. 4. The acts and practices of the respondent as herein alleged are all to the prejudice of competitors of respondent and of the public; have a dangerous tendency to and have actually hindered and prevented competition in the purchase of unprocessed hides, calf skins, fat, bones, and suet; have a dangerous tendency to create in respondent a monopoly in the purchase of hides, calf skins, fat, bones, and suet in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in unprocessed hides, calf skins, fat, bones, and suet; have a dangerous tendency to and have actually hindered and prevented competition in the sale of processed hides and calf skins, fertilizer and products rendered from fat, bones, and suet, in commerce within the intent and meaning of the Federal Trade Commission Act; have a dangerous tendency to create in respondent a monopoly in processed hides and calf skins, fertilizer, and products rendered from fat, bones, and suet, in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in processed hides and calf skins, fertilizer and products rendered from fat, bones, and suet, 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 17, 1939, issued, and on April 18, 1939, served its complaint in this proceeding upon respondent, Darling & Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act; and the Commission, on December 14, 1939, issued, and on December 15, 1939, served, its amended complaint in this proceeding upon respondent, Darling & 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 amended complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said amended complaint except the allegations of fact set forth in subparagraphs 5 and 7 of paragraph 3 thereof, and waiving all intervening procedure and further hearing as to said facts so admitted, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint and 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, Darling & Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and has its home office and principal place of business in the city of Chicago in the State of Illinois. Respondent is now, and for more than 10 years last past has been, engaged directly and through subsidiary corporations, in the purchase of raw materials consisting chiefly of shop fats, bones, suet and calfskins and hides, and in processing said raw materials and in selling and offering for sale the finished products from said raw materials. Respondent operates chiefly in the eastern and midwestern portions of the United States.

PAR. 2. In the course and conduct of its business said respondent has caused, and still causes, such raw materials, when purchased by it, to be transported to its various places of business and to the places of business of its subsidiary corporations from the places of purchase

in various States of the United States other than the States in which the manufacturing plants of respondent and of its subsidiary corporations are located; and in the course and conduct of its business the respondent has caused, and still causes such processed hides and calfskins and the finished products manufactured or rendered from said raw materials to be transported from its place of business in Chicago, Ill., and from the places of business, of its various subsidiary corporations, into and through various States of the United States other than the States in which the respondent and its various subsidiary corporations have plants and places of business, to the purchasers in such other States to whom such finished products are sold.

PAR. 3. In the course and conduct of its business the respondent is now, and for more than 10 years last past has been, in substantial competition with other corporations and with partnerships, firms, and persons engaged in the purchase of raw materials in commerce among and between the various States of the United States and in the sale of processed calfskins, hides, fertilizer and products manufactured or rendered from fats, bones, and suet in commerce among and between the various States of the United States.

PAR. 4. The respondent, by reason of its financial strength, is the predominating organization in such business in the territories in which it and its subsidiary corporations operate, and for the purpose and with the intent to injure and eliminate competition in the purchase of unprocessed hides, calfskins, fats, bones, and suet in the territories in which it and its subsidiaries operate, has done, and is now doing, among other things, the following:

1. It has paid, and is paying, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions.

2. It has quoted, and is quoting, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions without intending to pay such prices.

3. It has enticed, and is enticing, by the payment of higher wages and by other means, drivers covering routes of sources of supply of raw materials of its competitors to leave the employ of its competitors and to enter into the employ of the respondent for the purpose of obtaining for respondent the supply of raw materials previously obtained by such drivers for such competitors.

4. It has held out, and is still holding out, certain of its subsidiary corporations as being independent of and from respondent.

5. It has solicited the making of loans by it to butchers in Detroit, Mich., Cleveland, Ohio, and in other cities upon the agreement of

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## Order

such butchers that they sell all of the fats, bones, suet and other offal from their shops exclusively to respondent, and pursuant to such solicitation has made loans to butchers located in Detroit, Mich., Cleveland, Ohio, and in other cities on such agreements pursuant to which butchers to whom such loans have been made have refused to sell to competitors of respondent.

## CONCLUSION

The acts and practices of the respondent as hereinabove set forth are all to the prejudice of competitors of respondent and of the public; have a dangerous tendency to and have actually injured, hindered and prevented competition in the purchase of unprocessed hides, calfskins, fats, bones, and suet in commerce as commerce is defined in the Federal Trade Commission Act; have a dangerous tendency to create in respondent in the territories in which it operates a monopoly in the purchase of hides, calfskins, fats, bones, and suet in such commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in unprocessed hides, calfskins, fats, bones, and suet and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the substitute answer of respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said amended complaint, with the exceptions of the facts alleged in subparagraphs numbered 5 and 7 of paragraph 3, and states that it waives all intervening procedure and further hearing as to said facts admitted in said substitute answer, 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 as alleged in said amended complaint, except as alleged in subparagraphs numbered 5 and 7 of paragraph 3 thereof;

*It is ordered,* That the respondent, Darling & Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporation or otherwise, in connection with the purchase of raw materials such as unprocessed hides, calf skins, fat, bones, and suet in commerce, as commerce is defined in the Federal Trade Commission Act, with the purpose or effect of eliminating competition in the purchase of said products, do forthwith cease and desist from:

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1. Paying, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions.

2. Quoting, without intending to pay, in localities in which it meets competition in the purchase of raw materials, prices higher than justified by trade conditions.

3. Enticing, by the payment of higher wages or by any other means, drivers covering routes of sources of supply of raw materials of its competitors, to leave the employ of its competitors and to enter into the employ of the respondent.

4. Holding out any of its subsidiary corporations as being independent of and from the respondent.

5. Soliciting the making of loans by it to butchers in any locality where it purchases raw materials upon an agreement of such butchers that they sell all of the fat, bones, suet and other offals from their shops exclusively to 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.

## Syllabus

IN THE MATTER OF  
WILLIAM A. FREW TRADING AS PARADISE PRODUCTS  
COMPANY, ETC.

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

*Docket 3603. Complaint, Sept. 23, 1938—Decision, Mar. 20, 1940*

Where an individual engaged in sale and distribution, under various trade names, of candy, garden seed, watches, blankets, and various and numerous other articles of merchandise to purchasers in various other States and in the District of Columbia; in selling and distributing his products as aforesaid—  
Made use of various sales plans or methods involving sale and distribution of his said merchandise by means of game of chance, gift enterprise, or lottery scheme, and distribution to general public of certain advertising literature, catalogs and sales circulars for use in such sale and distribution under various plans and methods involving same principle and including (a) assortment of number of packages or boxes of candy and various other articles of merchandise to be given as prizes to purchasers of candy under scheme by which particular recipient of particular article was determined by number concealed under tab on pull card on back cover of his catalogs or circulars as disclosed by customer's chance selection, and operator of card was compensated by cash commission or premium; and (b) assortment of number of items of merchandise for sale and distribution through circular and pull card listing items in question and prices thereof and under scheme in accordance with which number disclosed under tab or card selected by customer by chance determined article received and amount paid, and whether customer received, as set forth on card, one of articles of apparent higher value and price than that therefor designated on card aforesaid, and card's operator was compensated as above set forth; and  
Supplied thereby to and placed in the hand of others means of conducting lotteries, gift enterprises, or games of chance, in sale of his merchandise in accordance with sales plans above set forth, under which prizes or other articles of merchandise received in connection with purchase of candy were determined wholly by lot or chance, and facts as to whether purchaser received article of apparent greater value and higher regular price than that designated therefor, and which of said articles purchaser received and amount which he was required to pay were likewise thus determined, and involving in sale of merchandise to purchasing public, as above set forth, game of chance, gift enterprise, or lottery scheme, 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 such or any methods involving game of chance, gift enterprise, or lottery scheme, or sale of a chance to win something by chance or any other methods contrary to public policy and refrain therefrom;  
With the result that many persons were attracted by his said methods and by element of chance involved in sale of such merchandise as above described and were thereby induced to buy or sell his products in preference to merchandise offered and sold by said competitors who do not use such or

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equivalent methods, and with result, through use of such methods and because of said game of chance, gift enterprise, or lottery, of unfairly diverting trade and custom to him from his said competitors 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 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 William A. Frew, 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, William A. Frew, is an individual with his principal office and place of business located in the city of Paradise, State of Pennsylvania. Respondent is now, and for some time last past has been, engaged in the sale and distribution of candy, garden seed, watches, blankets, towels, musical instruments, housekeeping sets, bedspreads, flashlights, cameras, tableware, toilet sets, and numerous other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. In carrying on said business, respondent has adopted and used various trade names, among which are Paradise Products Co., Paradise Seed Co., Paradise Candy Co., Paradise Chocolate Co., Square Deal Co., Lancaster County Seed Co., Lancaster Seed Co., Garden Spot Seed Co., Garden Seed Co. of America, and Good Luck Gardens. Respondent causes and has caused said products, when sold, to be shipped or transported from his aforesaid place of business in Pennsylvania, to purchasers thereof in various other States of the United States and in the District of Columbia at the respective points of location of said customers. 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 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 distributes, and has sold and distributed, said products by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to the general public certain advertising literature, catalogs, and sales circulars. In selling and distributing his merchandise, respondent has made use of various sales plans or methods differing in detail in accordance with the particular merchandise offered for sale, but all involving the same principle.

One of said plans involves the sale of a number of packages or boxes of candy, together with various other articles of merchandise, which other articles of merchandise are to be given as prizes to purchasers of said packages or boxes of candy in the following manner:

The catalog or circular of respondent has on the back cover thereof a number of partially perforated tabs or pulls, each of which has a legend or design. Sales are 20 cents each, and each purchaser of a package or box of candy is entitled to separate one of the said tabs from the catalog or circular, and on the reverse side thereof appears a legend stating the particular prize or the number of the particular prize to which such purchaser is entitled without additional charge. The inside of the back cover of said circular has a legend that a piece of blank paper is to be pasted over, the legend showing the particular prize which is to be distributed, and purchasers and prospective purchasers are thus unable to ascertain which prize they will receive until a purchase has been made and the particular tab separated from the circular or catalog. The person operating the pull card receives his choice of a cash commission or a premium for selling said boxes of candy, together with the prizes offered by respondent in connection therewith. The prizes or other articles of merchandise which ultimate purchasers receive in connection with the purchase of a package or box of candy are thus determined wholly by lot or chance.

Another assortment sold and distributed by respondent consists of a number of articles of merchandise, and such assortment is sold and distributed to the consuming public in the following manner:

A portion of one of said sales circulars consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to said 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 one of the articles of merchandise appearing in said list and the price thereof. The name of the article of merchandise and the price thereof are so con-

cealed 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 above referred to 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 facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent 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 operating the pull card has succeeded in selling all the articles of merchandise, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said operator the merchandise designated on said card, together with a premium or cash award as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers in accordance with the list filled out when the tabs were detached from the pull card.

PAR. 3. The persons to whom respondent furnishes and has furnished the said circulars and pull cards use the said pull cards in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plans. Respondent thus supplies to, and places in the hands of others, the means of conducting lotteries, gift enterprises, or games of chance in the sale of his merchandise in accordance with the said sales plans hereinabove set forth. The use by respondent of said methods in the sale of his merchandise, and the sale of his merchandise 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 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, gift enterprise, or a lottery scheme. 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 methods or any methods involving a game of chance, gift enterprise, or a lottery scheme or the sale of a chance to win something by chance, or any other methods which are contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods 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 equivalent methods. The use by respondent of said methods because of said game of chance, gift enterprise, or lottery scheme 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 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 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 23, 1938, issued, and thereafter served its complaint in this proceeding upon respondent William A. Frew, 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 substitute answer, and the Commission, having duly considered the matter and being now fully advised

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in the premises, finds that this proceeding is in the interest 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 A. Frew, is an individual with his principal office and place of business located in the city of Paradise, State of Pennsylvania. Respondent is now, and for some time last past has been, engaged in the sale and distribution of candy, garden seed, watches, blankets, towels, musical instruments, housekeeping sets, bedspreads, flashlights, cameras, tableware, toilet sets, and numerous other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. In carrying on said business, respondent has adopted and used various trade names, among which are Paradise Products Co., Paradise Seed Co., Paradise Candy Co., Paradise Chocolate Co., Square Deal Co., Lancaster County Seed Co., Lancaster Seed Co., Garden Spot Seed Co., Garden Seed Co. of America, and Good Luck Gardens. Respondent causes and has caused said products, when sold, to be shipped or transported from his aforesaid place of business in Pennsylvania, to purchasers thereof in various other States of the United States and in the District of Columbia at the respective points of location of said customers. 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 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 distributes, and has sold and distributed, said products by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to the general public certain advertising literature, catalogs, and sales circulars. In selling and distributing his merchandise, respondent has made use of various sales plans or methods differing in detail in accordance with the particular merchandise offered for sale, but all involving the same principle.

One of said plans involves the sale of a number of packages or boxes of candy, together with various other articles of merchandise, which other articles of merchandise are to be given as prizes to

purchasers of said packages or boxes of candy in the following manner:

The catalog or circular of respondent has on the back cover thereof a number of partially perforated tabs or pulls, each of which has a legend or design. Sales are 20 cents each, and each purchaser of a package or box of candy is entitled to separate one of the said tabs from the catalog or circular, and on the reverse side thereof appears a legend stating the particular prize or the number of the particular prize to which such purchaser is entitled without additional charge. The inside of the back cover of said circular has a legend that a piece of blank paper is to be pasted over, the legend showing the particular prize which is to be distributed, and purchasers and prospective purchasers are thus unable to ascertain which prize they will receive until a purchase has been made and the particular tab separated from the circular or catalog. The person operating the pull card receives his choice of a cash commission or a premium for selling said boxes of candy, together with the prizes offered by respondent in connection therewith. The prizes or other articles of merchandise which ultimate purchasers receive in connection with the purchase of a package or box of candy are thus determined wholly by lot or chance.

Another assortment sold and distributed by respondent consists of a number of articles of merchandise, and such assortment is sold and distributed to the consuming public in the following manner:

A portion of one of said sales circulars consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to said 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 one of the articles of merchandise appearing in said list 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 above referred to 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 com-

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pared 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 facts as to whether a purchaser of one of said pull card tabs receives an article which has apparent 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 operating the pull card has succeeded in selling all the articles of merchandise, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said operator the merchandise designated on said card, together with a premium or cash award as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers in accordance with the list filled out when the tabs were detached from the pull card.

PAR. 3. The persons to whom respondent furnishes and has furnished the said circulars and pull cards use the said pull cards in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plans. Respondent thus supplies to, and places in the hands of others, the means of conducting lotteries, gift enterprises, or games of chance in the sale of his merchandise in accordance with the said sales plans hereinabove set forth. The use by respondent of said methods in the sale of his merchandise, and the sale of his merchandise 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 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, gift enterprise, or a lottery scheme. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent as above described are unwilling to adopt and use said methods or any method involving a game of chance, gift enterprise, or a lottery scheme or the sale of a chance to win something by chance, or any other methods which are contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods 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 prefer-

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ence to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use by respondent of said methods because of said game of chance, gift enterprise, or lottery scheme 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 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 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 of 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 William A. Frew, individually and trading under the names of Paradise Products Co., Paradise Seed Co., Paradise Candy Co., Paradise Chocolate Co., Square Deal Co., Lancaster County Seed Co., Lancaster Seed Co., Garden Spot Seed Co., Garden Seed Co. of America, and Good Luck Gardens, 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, garden seed, watches, blankets, towels, musical instruments, housekeeping sets, bedspreads, flashlights, cameras, tableware, toilet 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 and 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 game of chance, gift enterprise, or lottery scheme.

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2. Supplying to or placing in the hands of others assortments of any 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 said merchandise to the public.

3. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with assortments of merchandise or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling and distributing such merchandise to the 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 him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

## Syllabus

## IN THE MATTER OF

WALTER KIDDE & COMPANY, INC., AMERICAN LA FRANCE  
& FOAMITE INDUSTRIES, INC., C-O-TWO FIRE EQUIP-  
MENT COMPANY, NATIONAL FOAM SYSTEM, INC., AND  
FYROUT COMPANY, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3  
OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AND AMENDMENTS  
THERE TO

*Docket 3929. Complaint, Oct. 18, 1939—Decision, Mar. 20, 1940*

Where five corporations engaged in the manufacture or assembly of fire fighting equipment, including carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, and in sale and distribution thereof to purchasers in the several States and in the District of Columbia, in competition among themselves, except insofar as such competition might have been hindered, lessened, restricted or restrained as below set forth; acting in concert with one another—

- (a) Fixed and agreed upon minimum prices and terms at which they were to and did sell parts, accessories, apparatus, and equipment used in manufacture or assembly of such systems and extinguishers, and including hose assemblies, cylinders, carrying straps, etc., and compiled and published such prices and terms thus agreed on and observed as "Schedule of Minimum Prices and Terms," as part of license agreements issued by one of their number to others under expired patent and unexpired patent governing successful manufacture, assembly and operation of aforesaid portable fire extinguishers, and to which license agreements schedule in question was affixed; and
- (b) Submitted, in response to invitation of Governmental agencies for competitive bids, bids which, pursuant to agreement and minimum price schedules aforesaid, were identical on such parts, accessories, apparatus, and equipment, and included, as listed in minimum schedule aforesaid, patented coupling, not controlled by or licensed to aforesaid maker of such license agreements, but sold by manufacturer thereof to anyone desiring to purchase same;

With result that such acts and practices of said manufacturers and assemblers in fixing and maintaining uniform prices of parts, accessories, and apparatus, as above set forth, actually hindered and prevented competition between and among them in sale of such parts, etc., in commerce, and had dangerous tendency so to do, and placed in them power to control and enhance prices and unreasonably restrained commerce in parts, accessories and apparatus aforesaid:

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and constituted unfair methods of competition in violation of Section 5 of act of Congress approved Sept. 26, 1914, as amended; and

Where said license agreement maker—

Licensed one of other four concerns above set forth to make, sell, install and use invention set forth in such license agreement, under provision by which said licensee was required to purchase from it all of its requirements

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of parts, accessories and apparatus, whether for use by licensee in assembling completed units of aforesaid extinguishing systems or aforesaid portable fire extinguishers, or whether such parts, accessories and apparatus were to be resold by it separately from such completed units, and by which licensee parts, accessories and apparatus thus sold were charged for in accordance with agreed uniform price schedules, and practice of which licensee was to place with such licensing concern orders for fire fighting equipment received by it for manufacture and assembly in factory thereof, while purchasing from it all necessary parts, accessories and apparatus for Government orders received by licensee for assembly at licensee's place of business, and sale as manufactured by it:

*Held*, That such acts and practices of said licensing concern, in requiring licensee aforesaid to purchase from it all of its requirements of said parts, accessories, apparatus and equipment, as above set out, constituted violation of Section 3 of act of Congress approved Oct. 15, 1914, and amendments thereto.

*Mr. Daniel J. Murphy* for the Commission.

*Darby & Darby*, of New York City, for respondents, with whom also appeared *Jeffery, Kimball & Eggleston*, of New York City, for American La France & Foamite Industries, Inc., and *Mr. Frederick S. Duncan*, of New York City, for C-O-Two Fire Equipment 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 respondent herein named 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 in count 1 hereof.

Also pursuant to the provisions of section 3 of an Act of Congress approved October 15, 1914 entitled "An Act to supplement existing laws against unlawful restraint and monopolies and for other purposes," commonly known as the Clayton Act, the Commission having reason to believe that the respondent, Walter Kidde & Co., Inc., has violated and now is violating the provisions of section 3 of said Act of Congress, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission issues this its complaint stating its charges in respect thereto in count 2 hereof.

*Count 1*

## THE CHARGE UNDER FEDERAL TRADE COMMISSION ACT

PARAGRAPH 1. (a) Respondent Walter Kidde & Co., Inc., is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Delaware and having its principal place of business at 140 Cedar Street, New York, N. Y.

(b) Respondent American La France & Foamite Industries, 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 principal place of business at Elmira, N. Y.

(c) Respondent C-O-Two Fire Equipment Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware and having its principal place of business at 560 Belmont Avenue, Newark, N. J.

(d) Respondent National Foam System, Inc. is a corporation, the place of whose incorporation is not known to the Commission, having its principal place of business at 1632 Sansom Street, Philadelphia, Pa.

(e) Respondent Fryout Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California and having its principal place of business at 90 West Street, New York, N. Y. It is a wholly owned subsidiary of respondent Walter Kidde & Co., Inc.

PAR. 2. The above-named corporate respondents are engaged in the manufacture and assembly of fire fighting equipment including carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers, and in the sale and distribution thereof to purchasers located in the several States of the United States and in the District of Columbia.

The respondents in the regular course of their business in the sale and distribution of fire fighting equipment, parts, accessories and apparatus thereof cause the same to be shipped and transported from the various points at which their manufacturing and assembling plants are located into and through the several States of the United States, other than the State of the origin of such shipments, and in the District of Columbia. They are in competition among themselves except insofar as such competition has been hindered, lessened, restricted, or restrained as hereinafter alleged.

PAR. 3. In the year 1933 and for several years prior thereto, there were two basic patents which govern the successful manufacture, assembly and operation of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers, to wit, the Rustige and Minor patents. The Rustige invention consists of a system of uniform piping which permits the continuous flow of carbon dioxide fluid and gas from a cylinder. The patent on this invention was issued by the United States Patent Office on March 30, 1920. The Minor invention consists of a discharge horn or nozzle which insures the successful application of carbon dioxide liquid and gas to a fire. The patent

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on this invention was issued by the United States Patent Office on May 27, 1930. Both of said basic patents were owned by respondent, Walter Kidde & Co., Inc.

PAR. 4. The respondent Walter Kidde & Co., Inc., under the Rustige and Minor patents, has, prior to 1933, entered into a licensing agreement with each of the other named respondents herein; said licensing agreements have been continued in effect to the present time:

(a) The agreements entered into between respondent Walter Kidde & Co., Inc. and respondents American La France & Foamite Industries, Inc. and C-O-Two Fire Equipment Co. grant licenses to said respondents to manufacture and sell the inventions set forth in the respective patents.

(b) The agreement entered into between respondent Walter Kidde & Co., Inc., and respondent National Foam System, Inc. grants a license to said respondent, to make, sell, install, and use the inventions set forth in the respective patents, but under the provisions of said agreement the respondent National Foam System, Inc., as licensee, is required to purchase from the respondent, Walter Kidde & Co., Inc., as licensor, all the parts, apparatus, and equipment pertinent thereto, necessary for the manufacture, sale and installation, and use of the said inventions.

(c) Attached to each of the licensing agreements, entered into by the respondent Walter Kidde & Co., Inc. with each of the other named respondents herein, is a schedule of minimum prices at which the respondents agree to sell carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers and all the parts, apparatus and equipment used in the manufacture or assembly of the said carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers. Said price schedules further provide and fix the prices on used parts, apparatus and equipment when traded in as part of the purchase price on new parts, apparatus and equipment.

PAR. 5. Supplementing said license agreements and in support thereof but without authority under the patents and license agreements described in paragraphs 3 and 4, the said respondents have done and performed, and still do and perform, the following:

(a) Said respondents agreed to fix and maintain and have fixed and maintained a uniform price in the sale of unpatented parts, accessories, apparatus, and equipment used in the manufacture, assembly, or operation of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers.

(b) Said respondents agreed to fix and maintain and have fixed and maintained uniform prices in the sale of certain couplings, used as accessories on hose assemblies of carbon dioxide fire extinguishers, without the requirement of a license or other authority from the owner of a lawfully issued patent on said couplings.

(c) Said respondents agreed to submit and have submitted identical bids on said parts, accessories, apparatus, and equipment, where competitive bids were called for by Governmental agencies.

(d) Said respondents have used and are now using other methods and means designed to suppress and prevent competition and restrict and restrain the sale of parts, accessories, apparatus, and equipment used in the manufacture, assembly and operation of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers.

PAR. 6. The acts and practices of the respondents as alleged in paragraph 5 hereof are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of parts, accessories, apparatus and equipment used in the manufacture, assembly, and operation of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices on all such commodities; have created in the respondents a monopoly in the sale of said parts, accessories, apparatus and equipment in such commerce; have unreasonably restrained such commerce in the said parts, accessories, apparatus and equipment and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

### *Count 2*

#### THE CHARGE UNDER THE CLAYTON ACT

PARAGRAPH 1. Paragraphs 1a and 3 of count 1 hereof are hereby incorporated and made a part of this charge to precisely the same extent and if each and all of them were set forth in full and repeated verbatim in this count. Paragraphs 2 and 4b of count 1 hereof are hereby incorporated and made a part of this charge, but only to the extent that the same refer and apply to the respondent Walter Kidde & Co., Inc.

PAR. 2. Under the provisions of the license agreement granted by respondent Walter Kidde & Co., Inc., to National Foam System, Inc., the said respondent as licensor agrees to sell to National Foam System, Inc., as licensee, and said licensee agrees to purchase from said licensor, all the parts, apparatus and equipment necessary for the manufacture, sale, installation, and use of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers.

The effect of the aid provisions in said license agreement may be, is, and has been, to substantially lessen competition or tend to

create a monopoly in respondent in commerce between and among the various States of the United States and in the District of Columbia in parts, apparatus and equipment necessary for the manufacture, sale, installation and use of carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers.

PAR. 3. The aforesaid acts of respondent constitute a violation of the provisions of section 3 of the hereinabove 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).

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act and the Act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, and amendments thereto, the Federal Trade Commission on October 18, 1939, issued and served its complaint in this proceeding upon the respondents above named, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said acts. On December 13 and 14, 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 the respondents and their counsel and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, 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. (a) Respondent Walter Kidde & 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 principal place of business at 140 Cedar Street, New York, N. Y.

(b) Respondent American La France & Foamite Industries, 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 principal place of business at Elmira, N. Y.

(c) Respondent C-O-Two Fire Equipment Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal place of business at 560 Belmont Avenue, Newark, N. J.

(d) Respondent National Foam System, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal place of business at 1632 Sansom Street, Philadelphia, Pa.

(e) Respondent Fryout (referred to in the complaint as Fryout) Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California and having its principal place of business at 90 West Street, New York, N. Y. It is a wholly owned subsidiary of respondent Walter Kidde & Co., Inc.

PAR. 2. The above-named corporate respondents are engaged in the manufacture and/or assembly of fire fighting equipment including carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers, and in the sale and distribution thereof to purchasers located in the several States of the United States and in the District of Columbia.

The respondents, in the regular course of their business in the sale and distribution of fire fighting equipment, parts, accessories, and apparatus thereof, cause the same to be shipped and transported from the various points at which their manufacturing and/or assembling plants are located into and through the several States of the United States, other than the State of the origin of such shipments, and in the District of Columbia. They are in competition among themselves excepting insofar as such competition may have been hindered, lessened, restricted, or restrained as hereinafter set forth.

PAR. 3. Respondent Walter Kidde & Co., Inc., was the assignee of two patents, known as the Rustige and Minor patents, which governed the successful manufacture, assembly, and operation of carbon dioxide portable fire extinguishers. The Rustige patent expired on or about March 30, 1937. The Minor patent was issued by the United States Patent Office on May 27, 1930, and covered a fire-extinguishing method which supplies carbon dioxide liquid from a container to one or more discharge nozzles so constructed or supplemented as to prevent the entrainment of air, together with the necessary appurtenances for carrying out the method. Prior to the expiration of the Rustige patent, respondent Walter Kidde & Co.,

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Inc., issued license agreements, based on both of said patents, to the respondents, which license agreements have continued in force to the present time.

PAR. 4. Affixed to, and forming a part of, each of the license agreements, entered into by respondent Walter Kidde & Co., Inc., with each of the other respondents, is a "Schedule of Minimum Prices and Terms."

The said schedule of minimum prices and terms included uniform prices at which respondents agreed to sell, and did sell, parts, accessories, apparatus and equipment used in the manufacture or assembly of the said carbon dioxide fire extinguishing systems and carbon dioxide portable fire extinguishers. Included among said parts listed in the price schedules were: hose assemblies, cylinders, carrying straps, etc.

PAR. 5. All of the respondents, pursuant to the agreement to maintain the uniform prices as listed in the said minimum price schedules, have submitted identical bids on said parts, accessories, apparatus, and equipment, in response to invitations of governmental agencies for competitive bids.

The Bureau of Supplies and Accounts of the United States Navy Department, on June 3, 1937, issued an invitation for competitive bids for hose assemblies, in "Schedule 919," to be opened June 25, 1937. There were three lots involved in Schedule 919: Lot 936 covered the delivery to the Supply Officers, Navy Yard, Brooklyn, N. Y., of 800 hose assemblies described in said invitation as "Assemblies, hose, discharge, flexible, inside diameter  $\frac{5}{16}$  inch," for use with portable 15-pound carbon dioxide fire extinguisher; Lot 937 covered the delivery of 400 similar hose connections to the Supply Officer, Navy Yard, Mare Island, Calif.; Lot 937-A covered the delivery of 300 similar units to the Supply Officer, San Diego, Calif. All the respondents named herein, in response to said invitation, filed bids on each of the 3 lots and the bids of each respondent were identical and were the same as the figures then appearing in the agreed minimum price schedule.

PAR. 6. The particular type of coupling used and included in the hose assemblies, which hose assemblies were the subject matter of the bid invitations referred to in the preceding paragraph is not manufactured by respondent Walter Kidde & Co., Inc., or by any of the respondent licensees. Said coupling is itself a patented item manufactured by Flex-O-Tube Co., of Detroit, Mich., under Patent No. 1752976 which is owned by the said Flex-O-Tube Co. Flex-O-Tube Co. has never licensed respondent Walter Kidde & Co., Inc., or any of the respondents named herein to manufacture said couplings.

The minimum price schedules attached to the license agreements referred to herein included a minimum price allotted to the said patented coupling. No license agreement or other authorization exists between Flex-O-Tube Co. and respondent Walter Kidde & Co., Inc., authorizing or requiring the latter to include the said patented coupling as one of the items in minimum price schedules. Flex-O-Tube Co. has sold the said patented couplings to the respondents named herein and will sell the said patented couplings to any one who desires to buy them.

PAR. 7. The license agreement issued on December 2, 1935, by respondent Walter Kidde & Co., Inc., to respondent National Foam System, Inc., licensed National Foam System, Inc., to make, sell, install, and use the inventions set forth in the license agreement. Respondent National Foam System, Inc., does not manufacture carbon dioxide fire-extinguishing systems, or carbon dioxide portable fire extinguishers, or any of the parts, accessories or appurtenances thereto. The license issued by respondent Walter Kidde & Co., Inc., is in reality not a license to manufacture but one to assemble the parts, accessories and apparatus purchased from the licensor.

Under said agreement respondent National Foam System, Inc., is required to purchase from respondent Walter Kidde & Co., Inc., all of its requirements of the said parts, accessories and apparatus, whether the said parts, accessories and apparatus were to be used by respondent National Foam System, Inc., in assembling completed units of carbon dioxide fire extinguishing systems or carbon dioxide portable fire extinguishers, or whether said parts, accessories and apparatus were to be resold, by respondent National Foam System, Inc., separately from said completed units. When said parts, accessories, and apparatus were sold, by National Foam System, Inc., separately from complete units the prices charged for same were in accordance with the agreed uniform price schedules.

PAR. 8. In most instances when the respondent National Foam System, Inc., obtains orders for carbon dioxide fire-fighting equipment, such orders are placed by respondent National Foam System, Inc., and the equipment so ordered is manufactured and assembled at the factory of respondent Walter Kidde & Co., Inc. However, on Government orders for carbon dioxide fire-fighting equipment received by the respondent National Foam System, Inc., the said respondent National Foam System, Inc., purchases all the necessary parts, accessories and apparatus from the respondent Walter Kidde & Co., Inc., and assembles the parts at its place of business in Philadelphia, Pa., and sells the said equipment as being manufactured by it.

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## CONCLUSION

The acts and practices of the respondents in fixing and maintaining uniform prices of parts, accessories and apparatus as herein set out in paragraphs 4, 5, and 6, are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented competition between and among respondents in the sale of said parts, accessories, and apparatus in commerce; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in said parts, accessories and apparatus and constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act; and the acts and practices of the respondent Walter Kidde & Co., Inc., in requiring the respondent National Foam System, Inc., to purchase from it all of its requirements of said parts, apparatus, and equipment as herein set out in paragraphs 7 and 8 constitute a violation of section 3 of the act entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" approved October 15, 1914, and amendments thereto.

## 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 counsel representing the respondents and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusions based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act and that the respondent Walter Kidde & Co., Inc., has violated the provisions of section 3 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";

*It is ordered*, That the respondents, Walter Kidde & Co., Inc., American La France & Foamite Industries, Inc., C-O-Two Fire Equipment Co., National Foam System, Inc., and Fyrout Co., Inc., their officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution, in commerce as defined in the Federal Trade Commission Act, of parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire extinguishing systems and carbon dioxide port-

able fire extinguishers, do forthwith cease and desist from doing and performing by understanding, agreement, or combination, between or among any two or more of said respondents, or with others, the following acts and things:

1. Fixing, or fixing and maintaining the sale or purchase price for parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers.

2. Compiling, publishing, and distributing any list of prices for the parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers.

3. Filing bids where competitive bids are called for by Governmental agencies or other buyers for parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers.

*It is further ordered*, That the respondent Walter Kidde & 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 in commerce as defined in the Clayton Act of parts, accessories and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

Making any sale or contract for the sale of parts, accessories, and apparatus for use or in connection with the manufacture or assembly of carbon dioxide fire-extinguishing systems and carbon dioxide portable fire extinguishers, for use or resale, or fix a price charged therefor on the condition, agreement, or understanding that the purchaser thereof shall not use or deal in the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of the said respondent.

*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

## M. LINKMAN &amp; COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 4018. Complaint, Feb. 5, 1940—Decision, Mar. 20, 1940*

Where a corporation engaged in manufacture of pipes and in sale and distribution thereof, including certain assortments which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when sold and distributed to consumers thereof, and which consisted of (1) number of Dr. Grabow pipes, together with punchboard, for use in sale and distribution of such products, and cigarettes supplied by dealer-operator of board, under plan and in accordance with board's explanatory legend, by which customers securing by chance certain numbers or legends paid for their chances amounts ranging from 1¢ to 5¢ and received nothing and those securing certain other legends or punching last slip in each of four sections into which board was divided received, as case might be, one of said pipes or package of cigarettes supplied as above set forth; and (2) various assortments of merchandise with various other lottery devices for use in distribution thereof to purchasing public by means of game of chance, gift enterprise, or lottery scheme involving substantially same sales plans or methods employed as that above described and varying therefrom in detail only—

Sold such assortments, together with said lottery devices, to dealer purchasers by whom devices in question were used in sale and distribution of its said merchandise in accordance with such sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lottery in sale of its said products in accordance with such plans or methods as above set forth, involving in sale of merchandise to purchasing public game of chance or sale of chance to procure article without cost, 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 methods involving use of a 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 its said methods and by element of chance involved in sale of such merchandise in manner above described, and were thereby induced to buy and sell its products in preference to merchandise offered and sold by said competitors who do not use same or equivalent methods, and with result, through use of said methods and because of said game of chance, of unfairly diverting trade in commerce to it from its competitors aforesaid who do not use such or equivalent sales plans or methods, 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.

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## Complaint

*Mr. D. C. Daniel* for the Commission.

*Mr. Charles L. 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 M. Linkman & 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, M. Linkman & 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 at 1150 West Fullerton Avenue, Chicago, Ill. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of pipes and in the sale and distribution thereof, to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said pipes when sold to be shipped or transported from its aforesaid place of business in the State of Illinois 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 for more than 1 year 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said merchandise is sold and distributed to the consumers thereof. One of said assortments is sold and distributed to the purchasing public in substantially the following manner: This assortment consists of a number of "Dr. Grabow" pipes, together with a device commonly known as a punchboard. Said punchboard contains a number of small sealed tubes, each of which tubes contains a small slip of paper. Each of said slips of paper has printed thereon

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either "Put 1¢," "Put 2¢," "Put 3¢," "Put 4¢," "Put 5¢," "Take Dr. Grabow Pipe" or "Take 1 pkg. (20) cigarettes". Said tubes are divided into four sections. Purchasers who punch the slips with "Put 1¢," "Put 2¢," "Put 3¢," "Put 4¢," or "Put 5¢," pay the amounts specified on said slips and receive nothing therefor unless such slip is the last slip in that particular section. The person punching the last slip in either section is entitled to and receives one of said pipes. Purchasers who punch said slips of paper with "Take Dr. Grabow pipe" or "Take 1 pkg. (20) cigarettes" appearing thereon are entitled to and receive without cost the articles of merchandise so designated. The cigarettes are supplied by the dealer operating said punchboard. The facts as to whether a person pays 1¢, 2¢, 3¢, 4¢ or 5¢ and receives nothing in return therefor, unless such slip is the last slip in one of said sections, and whether a person receives a pipe or a package of cigarettes without cost are thus determined wholly by lot or chance.

Respondent sells and distributes various assortments of its merchandise and sells and distributes various other lottery devices for use in the distribution of such merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. The dealers to whom respondent sells or furnishes said lottery devices use the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plans or methods. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said methods, is a practice of the sort which 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 without cost. 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 methods or any methods 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 competitors refrain therefrom. Many persons are attracted

by respondent's said methods 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 the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, has the 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 equivalent sales plans or methods. 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 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 February 5, 1940, issued and thereafter served its complaint in this proceeding upon respondent, M. Linkman & 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 February 24, 1940, 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 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, M. Linkman & 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 at 1150 West Fullerton Avenue, Chicago, Ill. Respondent is now, and for more

than 1 year last past has been engaged in the manufacture of pipes and in the sale and distribution thereof, to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said pipes when sold to be shipped or transported from its aforesaid place of business in the State of Illinois 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 for more than 1 year 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of like or similar merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent has sold to dealers certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme when said merchandise is sold and distributed to the consumers thereof. One of said assortments was sold and distributed to the purchasing public in substantially the following manner: This assortment consisted of a number of "Dr. Grabow" pipes, together with a device commonly known as a punchboard. Said punchboard contains a number of small sealed tubes, each of which tubes contains a small slip of paper. Each of said slips of paper has printed thereon either "Put 1¢," "Put 2¢," "Put 3¢," "Put 4¢," and "Put 5¢," "Take Dr. Grabow pipe" or "Take 1 pkg. (20) cigarettes." Said tubes are divided into four sections. Purchasers who punch the slips with "Put 1¢," "Put 2¢," "Put 3¢," "Put 4¢," or "Put 5¢" pay the amounts specified on said slips and receive nothing therefor unless such slip is the last slip in that particular section. The person punching the last slip in either section is entitled to and receives one of said pipes. Purchasers who punch said slips of paper with "Take Dr. Grabow pipe" or "Take 1 pkg. (20) cigarettes" appearing thereon are entitled to and receive without cost the articles of merchandise so designated. The cigarettes are supplied by the dealer operating said punchboard. The facts as to whether a person pays 1¢, 2¢, 3¢, 4¢, or 5¢ and receives nothing in return therefor, unless such slip is the last slip in one of said sections, and whether a person receives

a pipe or a package of cigarettes without cost are thus determined wholly by lot or chance.

Respondent has sold and distributed various assortments of its merchandise and has sold and distributed various other lottery devices for use in the distribution of such merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in connection with each of said assortments were substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. The dealers to whom respondent has sold or furnished said lottery devices used the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plans or methods. Respondent thus supplied to and placed in the hands of others a means of conducting lotteries in the sale of its merchandise in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its merchandise, and the sale of such merchandise by and through the use thereof and by the aid of said methods, is a practice of the sort which 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 without cost. 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 methods or any methods 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 competitors refrain therefrom. Many persons were attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above described and were thereby induced to buy and sell respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, had the tendency and capacity to, and did, 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 equivalent sales plans or methods. As a result thereof, substantial injury 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.

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## 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, M. Linkman & 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 pipes 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 pipes or other merchandise so packed and assembled that sales of such pipes 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 other assortments of pipes or other merchandise, together with punchboards, push or pull cards, or other lottery devices, which said punchboards, push or pull cards, or other lottery devices are to be used or may be used in selling and distributing such pipes or other merchandise to the public.

3. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices, either with assortments of pipes 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 and distributing such pipes or other merchandise to the public.

4. Selling or otherwise disposing of pipes 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.

## Syllabus

IN THE MATTER OF  
BAYUK CIGARS, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 1391. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which (1) original order issued on February 8, 1928, 12 F. T. C. 19, and in which (2) Circuit Court of Appeals for Third Circuit, on June 14, 1930, 14 F. T. C., 708, rendered decree modifying said order, (3) on November 21, 1930, 14 F. T. C. 708, amended said decree, and (4) on June 26, 1939, 29 F. T. C. 1574, rendered its substitute decree, (vacating prior modifying decree of May 8, 1939, 28 F. T. C. 1958), modifying said amended decree and also modifying order in question of Commission in certain particulars and affirming the same in other particulars—

- (a) Requiring respondent, its officers, directors, agents, representatives, servants and employees, on and after two years from June 26, 1939, and in connection with sale or distribution of cigars from any of its factories in interstate commerce, to cease and desist from using, as in said order in detail below specified, trade-mark or trade name "Havana Ribbon," as descriptive of such cigars as sold by it under such trade or brand name, and from using the word "Havana," or word or words of similar import, for cigars not composed entirely or in substantial part of tobacco grown in Cuba, and that the various provisos be adhered to, as set forth, in event of such use for cigars composed only in part of such tobacco—
- (b) Authorizing and permitting said corporation, pending expiration of period in question, and in event of adoption by it of new brand name containing the word "Ribbon", but without the word "Havana," to accept such name with words "Formerly Havana Ribbon," as below set forth—
- (c) Requiring and directing such corporation within two years and thirty days from June 26, 1939, to file with the Commission report in writing setting forth with particularity the manner in which it has complied with the terms aforesaid of the instant modified order; and
- (d) Requiring said respondent, its officers, directors, agents, representatives, servants, and employees, in connection with sale or distribution of cigars as above set forth, to cease and desist from using (1) "MAPACUBA," or other word, or words, of similar import for cigars not composed in whole or in part of tobacco grown in Cuba, and subject to provisions below set forth in event of such use for cigars composed in part only of such tobacco, and (2) depiction, simulating the flag, emblem, insignia or coat-of-arms of Cuba, map of Cuba, Cuban tobacco fields, city or Harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding, or labeling of any such cigars which are not composed in whole or in part of tobacco grown in Cuba, and subject to provisions set forth in event of such use in connection with cigars composed in part only thereof, and to cease and desist from (3) representing in any manner that any of its cigars contain or are composed in whole or in part of tobacco grown in Cuba, when such is not the fact.

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## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on February 8, 1928, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on June 14, 1930, the United States Circuit Court of Appeals for the Third Circuit rendered its decree modifying the aforesaid order of the Commission and on November 21, 1930 amended the aforesaid decree, and on June 26, 1939 rendered its substitute decree modifying its aforesaid amended decree and also modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

*Now, therefore,* Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court decree:

*It is ordered,* That the respondent Bayuk Cigars, Incorporated, its officers, directors, agents, representatives, servants, and employees, on and after 2 years from June 26, 1939, 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 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

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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*, That pending the expiration of said period of 2 years from June 26, 1939, the respondent Bayuk Cigars, Incorporated, 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 other qualifying language; *Provided, however*, That such accompanying words be in letters substantially smaller than the new brand name.

*It is further ordered*, That within the period of 2 years and 30 days from June 26, 1939, Bayuk Cigars, Incorporated, be, and it is hereby directed and ordered to file with Commission a report in writing setting forth with particularity the manner in which it has complied with the aforesaid terms of this modified order.

*It is further ordered*, That the respondent Bayuk Cigars, Incorporated, its officers, directors, agents, representatives, servants, and employees, 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 word "Mapacuba" or other word or words of similar import, as or in a brand name for or as descriptive of any such cigars which are not composed in whole or in part of tobacco grown on the Island of Cuba.

2. From using the word "Mapacuba," or other word or words of similar import, as or in a brand name for or as descriptive of any such cigars which are composed in part only of tobacco grown on the Island of Cuba, unless said word be immediately followed and accompanied by a word or words in letters of substantial size, visibility, and conspicuousness, clearly and unequivocally indicating or stating that such cigars are not composed wholly, but in part only, of tobacco grown on the Island of Cuba;

3. From using a depiction simulating the flag, emblem, insignia, or coat-of-arms of the Republic of Cuba, map of Cuba, Cuban tobacco fields, city or harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding, or labeling of any such cigars which are not composed in whole or in part of tobacco grown on the Island of Cuba;

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4. From using a depiction simulating the flag, emblem, insignia or coat-of-arms of the Republic of Cuba, map of Cuba, Cuban tobacco fields, city or harbor of Havana, Cuba, or depiction of similar import, in the advertising, branding or labeling of any such cigars which are composed in part only of tobacco grown in the Island of Cuba, unless such depiction be accompanied by a word or words in letters of substantial size, visibility and conspicuousness, clearly and unequivocally indicating or stating that such cigars are not composed wholly, but in part only, of tobacco grown on the Island of Cuba;

5. From representing in any other manner whatsoever that any of said cigars contain or are composed in whole or in part of tobacco grown on the Island of Cuba when such is not true in fact

*It is further ordered,* That the respondent, within 30 days after the service upon it of this order, shall file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the five prohibitions of this modified order immediately hereinabove set forth.

## Syllabus

IN THE MATTER OF  
H. N. HEUSNER & SON

## MODIFIED CEASE AND DESIST ORDER

*Docket 2355. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which original order issued on May 29, 1937, 24 F. T. C. 1370, and in which Court of Appeals for Third Circuit, on Aug. 10, 1939, in *H. N. Heusner & Son v. Federal Trade Commission*, 106 F. (2d) 596, 29 F. T. C. 1580, rendered its decree modifying order of the Commission in question so as to allow respondent two years from date thereof within which to eliminate word "Havana" from brand name and labels of its cigars not made of Havana tobacco, sold by it as "Heusner's Original Havana Smokers" and "Martinez Havana Smokers"—

Requiring respondent, its officers, representatives, employees, or agents, on and after two years from Aug. 10, 1939, and in connection with offer for sale and distribution of cigars in interstate commerce and in the District of Columbia, to cease and desist from representing, through use of words "Havana" or "Habana," or otherwise as below set forth, that cigars not manufactured entirely from tobacco grown in Cuba are Havana cigars.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on May 29, 1937, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on August 10, 1939, the United States Circuit Court of Appeals for the Third Circuit rendered its decree modifying the aforesaid order of the Commission so as to allow the respondent 2 years from the date thereof within which to eliminate the word "Havana" from the brand name and labels of cigars not made of Havana tobacco and sold by it as "Heusner's Original Havana Smokers" and "Martinez Havana Smokers."

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court decree;

*It is ordered,* That the respondent, H. N. Heusner & Son, a corporation, its officers, representatives, employees, or agents, individually or corporate, on and after 2 years from August 10, 1939, shall cease and desist, in connection with the offering for sale, sale, and distribution of cigars in interstate commerce and in the District of Columbia;

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From representing, through the use of words "Havana" or "Habana," alone or in conjunction with any other word or words, or through the use of any other words of similar import and effect, or in any other manner, that cigars not manufactured entirely from tobacco grown on the Island of Cuba are Havana cigars.

*It is hereby further ordered,* That within the period of 2 years and 30 days from August 10, 1939, the respondent, H. N. Heusner & Son, a corporation, be, and it hereby is, directed and ordered to file with the Commission a report in writing setting forth with particularity the manner in which it has complied with the terms of the modified order herein.

## Order

IN THE MATTER OF  
BEAR MILL MANUFACTURING COMPANY, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 2578. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which original order issued on April 5, 1937, 24 F. T. C. 912, and in which Circuit Court of Appeals for the Second Circuit, on July 5, 1938, in *Bear Mill Manufacturing Company, Inc. v. Federal Trade Commission*, 98 F. (2d) 67, 27 F. T. C. 1685, rendered its opinion and on July 26, 1938, issued its order modifying Commission order aforesaid in certain particulars and affirming same in certain other particulars—

Requiring respondent, its officers, representatives, agents and employees, in connection with sale and distribution of cotton and rayon fabrics in interstate commerce, or in the District of Columbia, to forthwith cease and desist from representing through use of words "mills" or "manufacturing," as part of its corporate or trade name, or in any other way that it manufactures the product sold by it, until and unless it owns and operates, etc., as below provided, mill or factory in which such products are made and subject to permitted use of its corporate name, as below set forth, when words "Converters, Not Manufacturers of Textiles" are appended thereto and used in connection therewith.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on April 5, 1937 the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on July 5, 1938, the United States Circuit Court of Appeals for the Second Circuit rendered its opinion and on July 26, 1938 issued its order modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said Court order:

*It is ordered*, That the respondent, Bear Mill Manufacturing Co., Inc., its officers, representatives, agents, and employees, in connection with the sale and distribution of cotton and rayon fabrics, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

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Representing, directly or by implication, through the use of the words "mills" or "manufacturing," along or in conjunction with other words, as part of its corporate or trade name, or in any other manner, or through any other means or device, that it manufactures the product which it sells until and unless it actually owns and operates or directly and absolutely controls the mill or factory wherein such products are made; *provided, however*, Respondent may continue to use its corporate name, Bear Mill Manufacturing Company, Inc., on its stationery, folders, labels, cartons and advertising when the words "Converters, Not Manufacturers of Textiles," are appended thereto and used in connection therewith.

*It is further ordered*, That the respondent shall, within 30 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

## Order

IN THE MATTER OF  
HELEN ARDELLE, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 2775. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which original order issued on June 30, 1937, 25 F. T. C. 361, and in which Circuit Court of Appeals for the Ninth Circuit, on Feb. 14, 1939, in *Helen Ardelles, Inc., et al. v. Federal Trade Commission*, 101 F. (2d) 718, 28 F. T. C. 1804, rendered its opinion and issued its decree modifying order in question in certain particulars and affirming same in other particulars—

Requiring respondent, its officers, representatives, agents, and employees, in connection with the offer for sale and distribution in interstate commerce of candy, to forthwith cease and desist from selling and distributing to jobbers and wholesalers for resale to retailers, or to retailers direct, candy so packed and assembled that sales thereof to the general public are to be made by means of a lottery, gaming device, or gift enterprise, or supplying to, or placing in the hands of wholesalers, jobbers or retailers, assortments of candy, contents of which are arranged to constitute a lottery, gaming device, or gift enterprise in the sale or distribution of such candy to the public, or packing or assembling in the same assortment for sale to the public at retail, boxes of candy, together with a device commonly called a "punchboard," which is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail, or furnishing to retail and wholesale dealers and jobbers punchboards, with assortments of candy or separately, bearing statements 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 as below set forth.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on June 30, 1937, the Commission made its findings as to the facts herein and concluded therefrom that respondent has violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on February 14, 1939, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion and issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

*Now, therefore,* Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission

## Order

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issues this its modified order to cease and desist in conformity with the said decree:

*It is ordered*, That the respondent, Helen Ardelle, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy whose contents are arranged to conduct a lottery, gaming device, or gift enterprise in the sale or distributon of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard" which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

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

## Order

IN THE MATTER OF  
BROWN & HALEY

## MODIFIED CEASE AND DESIST ORDER

*Docket 2782. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which original order issued on June 30, 1937, 25 F. T. C. 370, and in which Circuit Court of Appeals for the Ninth Circuit, on Feb. 14, 1939, in *Helen Ardelle, Inc., et al. v. Federal Trade Commission*, 101 F. (2d) 718, 28 F. T. C. 1894, rendered its opinion and issued its decree modifying order in question in certain particulars and affirming same in other particulars—

Requiring respondent, its officers, representatives, agents, and employees, in connection with the offer for sale and distribution in interstate commerce of candy to forthwith cease and desist from selling and distributing to jobbers and wholesalers for resale to retailers, or to retailers direct, candy so packed and assembled that sales thereof to the general public are to be made by means of a lottery, gaming device, or gift enterprise, or supplying to, or placing in the hands of wholesalers, jobbers, or retailers, assortments of candy, contents of which are arranged to constitute a lottery, gaming device, or gift enterprise in the sale or distribution of such candy to the public, or packing or assembling in the same assortment for sale to the public at retail, boxes of candy, together with a device commonly called a "punchboard," which is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail, or furnishing to retail and wholesale dealers and jobbers punchboards, with assortments of candy or separately, bearing statements 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, as below set forth.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on June 30, 1937, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of Section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on February 14, 1939, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion and issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of Section 5 of the Federal Trade Commission Act, the Commission

issues this its modified order to cease and desist in conformity with the said decree.

*It is ordered*, That the respondent, Brown & Haley, a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy whose contents are arranged to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy together with a device commonly called a "punchboard," which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

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

## Order

IN THE MATTER OF  
CANTERBURY CANDY MAKERS, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 2800. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which original order issued on July 6, 1937, 25 F. T. C. 434, and in which Circuit Court of Appeals for the Ninth Circuit, on Feb. 14, 1939, in *Helen Ardelle, Inc., et al., v. Federal Trade Commission*, 101 F. (2d) 718, 28 F. T. C. 1894, rendered its opinion and issued its decree modifying order in question in certain particulars and affirming same in other particulars—

Requiring respondent, its officers, representatives, agents, and employees, in connection with the offer for sale and distribution in interstate commerce of candy, to forthwith cease and desist from selling and distributing to jobbers and wholesalers for resale to retailers, or to retailers direct, candy so packed and assembled that sales thereof to the general public are to be made by means of a lottery, gaming device, or gift enterprise, or supplying to, or placing in the hands of wholesalers, jobbers or retailers, assortments of candy, contents of which are arranged to constitute a lottery, gaming device, or gift enterprise in the sale or distribution of such candy to the public, or packing or assembling in the same assortment for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail, or furnishing to retail and wholesale dealers and jobbers punchboards, with assortments of candy or separately, bearing statements 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, as below set forth.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on July 6, 1937 the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on February 14, 1939, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion and issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission

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issues this its modified order to cease and desist in conformity with the said decree:

*It is ordered,* That the respondent, Canterbury Candy Makers, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy whose contents are arranged to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends of statements informing the purchasing public that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

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

## Order

IN THE MATTER OF  
IMPERIAL CANDY COMPANY

## MODIFIED CEASE AND DESIST ORDER

*Docket 2333. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which original order issued on July 9, 1937, 25 F. T. C. 481, and in which Court of Appeals for the Ninth Circuit, on Feb. 14, 1939, in *Helen Ardelle, Inc. et al., v. Federal Trade Commission*, 101 F. (2d) 718, 28 F. T. C. 1894, rendered its opinion and issued its decree modifying order in question in certain particulars and affirming same in other particulars—

Requiring respondent, its officers, representatives, agents, and employees, in connection with the offer for sale and distribution in interstate commerce of candy to forthwith cease and desist from selling and distributing to jobbers and wholesalers for resale to retailers, or to retailers direct, candy so packed and assembled that sales thereof to the general public are to be made by means of a lottery, gaming device, or gift enterprise, or supplying to, or placing in the hands of wholesalers, jobbers or retailers, assortments of candy, contents of which are arranged to constitute a lottery, gaming device, or gift enterprise in the sale or distribution of such candy to the public, or packing or assembling in the same assortment for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard" which is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail, or furnishing to retail and wholesale dealers and jobbers punchboards, with assortments of candy or separately, bearing statements 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, as below set forth.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on July 9, 1937 the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act, and issued and subsequently served its order to cease and desist; and it further appearing that on February 14, 1939, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion and issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

*Now, therefore,* Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues

this its modified order to cease and desist in conformity with the said decree;

*It is ordered*, That the respondent, Imperial Candy Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy whose contents are arranged to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard" which punchboard is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

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

## Order

IN THE MATTER OF  
ROGERS CANDY COMPANY  
MODIFIED CEASE AND DESIST ORDER

*Docket 2834. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which original order issued on July 14, 1937, 25 F. T. C. 527, and in which Court of Appeals for the Ninth Circuit, on Feb. 14, 1939, in *Helen Ardelle, Inc., et al., v. Federal Trade Commission*, 101 F. (2d) 718, 28 F. T. C. 1894, rendered its opinion and issued its decree modifying order in question in certain particulars and affirming same in other particulars—

Requiring respondent, its officers, representatives, agents, and employees, in connection with the offer for sale and distribution in interstate commerce of candy, to forthwith cease and desist from selling and distributing to jobbers and wholesalers for resale to retailers, or to retailers direct, candy so packed and assembled that sales thereof to the general public are to be made by means of a lottery, gaming device, or gift enterprise, or supplying to, or placing in the hands of wholesalers, jobbers, or retailers, assortments of candy, contents of which are arranged to constitute a lottery, gaming device, or gift enterprise in the sale or distribution of such candy to the public, or packing or assembling in the same assortment for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which is for use, or which may be or is designed to be used, in distributing or selling said candy to the public at retail, or furnishing to retail and wholesale dealers and jobbers punchboards, with assortments of candy or separately, bearing statements 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, as below set forth.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on July 14, 1937, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on February 14, 1939, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion and issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of Section 5 of the Federal Trade Commission Act, the Commission

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issues this its modified order to cease and desist in conformity with the said decree:

*It is ordered*, That the respondent, Rogers Candy Co., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in interstate commerce of candy, do forthwith cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers or retail dealers assortments of candy whose contents are arranged to conduct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy contained in said assortments to the public.

3. Packing or assembling in the same assortment of candy for sale to the public at retail boxes of candy, together with a device commonly called a "punchboard," which punchboard is for use, or which may be, or is designed to be used, in distributing or selling said candy to the public at retail.

4. Furnishing to retail and wholesale dealers and jobbers a device commonly called a "punchboard," either with assortments of candy or separately, bearing a legend or legends or statements informing the purchasing public that the candy is being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

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

## Order

IN THE MATTER OF  
BELMONT LABORATORIES, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 2869. Order, Mar. 25, 1940.*

Modified order, pursuant to provisions of Sections 5 (i) of Federal Trade Commission Act, in proceeding in question, in which original order issued on January 6, 1938, 26 F. T. C. 244, and in which Circuit Court of Appeals for Third Circuit on March 29, 1939, in *Belmont Laboratories, Inc. v. Federal Trade Commission*, 103 F. (2d) 538, 28 F. T. C. 1941, rendered its opinion and issued its mandate modifying said order in certain particulars and affirming same in other particulars—

Requiring respondents, its officers, etc., in connection with the offer for sale and distribution in interstate commerce, or in the District of Columbia, of its Mazon or other similar medicinal products, to cease and desist from representing directly or through use of testimonials or indorsements, or in any other manner that such Mazon is a competent remedy or cure for eczema, acne, dandruff, alopecia and other disorders and ailments manifested by diseased conditions of the skin, unless such representations are limited to those types of said diseases and disorders which are not caused by, or associated with, systemic or metabolic disorder, or are not caused by syphilis, or that it has been clinically proved permanently to eliminate eczema, etc., as above described, unless qualified as aforesaid, or that it is used exclusively by well known specialists in treatment of various skin disorders, or that physicians throughout the country have successfully prescribed it to permanently eliminate or cure skin ailments, etc., irrespective of type thereof, or representing that the product is original or only treatment of its character for skin disorders.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on January 6, 1938 the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on March 29, 1939, the United States Circuit Court of Appeals for the Third Circuit rendered its opinion and issued its mandate modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars.

*Now, therefore,* Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said mandate;

*It is ordered*, That the respondent, Belmont Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of a medicinal product now designated as Mazon, or of any other medicinal product containing substantially the same ingredients, or possessing the same properties, sold under that name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. Directly or through the use of testimonials or indorsements or in any other manner

(a) That Mazon is a competent remedy or cure for eczema, acne, dandruff, alopecia, and other disorders and ailments manifested by diseased conditions of the skin unless such representations are limited to those types of said diseases and disorders which are not caused by, or associated with, a systemic or metabolic disorder, or are not caused by syphilis;

(b) That Mazon has been clinically proved to permanently eliminate eczema, acne, dandruff, alopecia and other disorders and ailments manifested by diseased conditions of the skin unless such representations are limited to those types of said diseases and disorders which are not caused by, or associated with, a systemic or metabolic disorder, or are not caused by syphilis;

(c) That the product is used exclusively by well-known specialists in the treatment of various skin disorders;

(d) That physicians, throughout the country, have successfully prescribed Mazon to permanently eliminate or cure ailments, disorders and diseased conditions of the skin, irrespective of the type of the particular disorder or the cause or condition thereof;

2. That the product is the original or only treatment of its character for skin disorders.

*It is further ordered*, That the respondent shall, within 30 days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

## Order

## IN THE MATTER OF

FIORET SALES COMPANY, INC., AND MURRAY W. MORIN  
AND IRVING UNTERMAN, INDIVIDUALLY, AND AS  
OFFICERS OF FIORET SALES COMPANY, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 3164. Order, Mar. 25, 1940*

Modified order, pursuant to provisions of Sections 5 (1) of Federal Trade Commission Act, in proceeding in question, in which original order issued on February 19, 1938, 26 F. T. C. 806, and in which Circuit Court of Appeals for Second Circuit on December 5, 1938, in *Fioret Sales Co., Inc., et al. v. Federal Trade Commission* 100 F. (2d) 358, 27 F. T. C. 1702, rendered its opinion and on April 28, 1939, issued its final decree affirming order in question by modification thereof in certain particulars—

Requiring respondent, its officers, etc., in connection with offer for sale and distribution of perfumes in interstate commerce or in the District of Columbia, to forthwith cease and desist from representing through use of such words as "Les Parfums des Jardines de Fioret," or through the use of any foreign words or phrases, or otherwise, that perfumes made or compounded in the United States are made or compounded in France or any other foreign country or are imported, subject to provision that so long as respondents obey terms of aforesaid prohibition, they may imprint upon or affix to packages, etc., or other containers of their perfumes, words "The concentrates of which these perfumes are made were produced in France and, as such, were imported into the United States where they were combined or diluted with domestic alcohol and the resulting perfume was bottled in United States of America."

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on February 19, 1938, the Commission made its findings as to the facts herein and concluded therefrom that respondents had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on December 5, 1938, the United States Circuit Court of Appeals for the Second Circuit rendered its opinion and on April 28, 1939 issued its final decree affirming the aforesaid order of the Commission by modifying said order in certain particulars.

Now, therefore, Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree:

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*It is ordered,* That the respondents, Fioret Sales Co., Inc., a corporation, its officers, representatives, agents, and employees, and Murray W. Morin and Irving Unterman, individually, and as officers of respondent Fioret Sales Co., Inc., in connection with the offering for sale, sale and distribution of perfumes in interstate commerce or in the District of Columbia, do forthwith cease and desist from, directly or through implication:

Representing, through the use of such words as "Les Parfums des Jardine de Fioret," or through the use of any foreign words or phrases, or through any other means or device, or in any manner, that perfumes manufactured or compounded in the United States are made or compounded in France or in any other foreign country, or are imported.

*It is hereby further ordered,* That, so long as respondents shall obey the terms of prohibition 1 hereof, that they be, and hereby are, permitted and authorized to imprint upon, or affix to, packages, cartons, bottles, or other containers of their said perfumes the following words, to wit: "The concentrates of which these perfumes are made were produced in France and, as such, were imported into the United States where they were combined or diluted with domestic alcohol and the resulting perfume was bottled in United States of America."

*It is further ordered,* That the respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Syllabus

IN THE MATTER OF  
FAIRBANKS TAILORING COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3525. Complaint, Aug. 4, 1938—Decision, Mar. 27, 1940*

Where a corporation engaged in tailoring, on individual orders, suits, overcoats and other clothing for men and suits and coats for women, and in selling and distributing its said wearing apparel through salesmen or agents, who solicited and accepted orders from members of purchasing public, to purchasers in various other States, in substantial competition with others also engaged in sale and distribution of such wearing apparel in commerce among the various States and in the District of Columbia, and including among its said competitors many who do not misrepresent wool content of fabrics from which said garments are made and do not in any manner misrepresent or exaggerate earnings of their salesmen or agents, and do not designate or describe as "free" suits and overcoats not given as gift or gratuity, but as additional compensation for sale of garments—

- (a) Represented, in advertisements in periodicals of general circulation throughout the United States, in which it stated that it had openings for ambitious men to wear suits and overcoats tailored to measure by it and to act as its agents in selling said products, that such agents could make up to \$10 per day by selling its clothing without canvassing, and that experience was not necessary, facts being inexperienced salesman could not earn such amount without canvassing, and it would be necessary for salesman, in order to earn such sum or any amount approximating it, to be consistently employed in, and necessarily in canvassing, sale of its garments;
- (b) Referred, in its said advertisements for agents, to so-called free suit offer, facts being such suits were not free and were not delivered to those replying to such advertisements without cost and unconditionally, but were delivered only to those who sold, within stated period of time, 12 or specified number of its garments, and so-called free suits were earned by those securing same through their services in selling its said products and not as a gift or gratuity; and
- (c) Described, in literature sent to those replying to aforesaid advertisements, material from which wearing apparel was produced by it as "The finest of wool fabrics," "all worsted" and "all wool," and in sample fabric books supplied to its salesmen and agents for display in promoting sale of its said products, respectively described as "all wool Herringbone," etc., and "all worsted twist with rayon design," the two fabrics concerned, and further labeled and described by sample as "all worsted" other fabrics, and in advertising matter referring generally to aforesaid samples, referred thereto as "all wool," "wool," "woolen" and "100% all wool," facts being fabric first referred to was not composed of wool in its entirety or within such tolerances as might have been recognized in industry at time in question, but contained, in substantial part, silk and rayon, "all worsted" fabric aforesaid, designation of which as such word "twist" in no wise modified, was not, as understood by trade and purchasing public from use

## Complaint

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of unqualified term aforesaid, of wool entirely, with small percentage of rayon for decorative purposes, or of wool entirely within such tolerances as above described, but was composed in substantial part of other material or materials, and, while many of fabrics generally referred to as above set forth were all wool, number were included therein which were not thus composed in their entirety;

With tendency and capacity, through acts and practices aforesaid in connection with securing of representatives and offer and sale of its said products in commerce, in making such false and misleading representations with regard to free garments, salesmen's earnings and composition of fabrics involved, to induce substantial number of members of purchasing public to become its representatives and agents, and to induce many members of said public to purchase its said products because of mistaken and erroneous beliefs engendered by representations aforesaid, and thereby unfairly to divert trade in such commerce to it from its competitors; to their injury and that of the public:

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

Before *Mr. William C. Reeves* and *Mr. Arthur F. Thomas*, trial examiners.

*Mr. John M. Russell*, *Mr. Merle P. Lyon* and *Mr. S. Brogdyné Teu, II* for the Commission.

*Mr. Henry Junge*, of Hickey, Hall & Junge, 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 Fairbanks Tailoring 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, Fairbanks Tailoring Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 2286 Wabansia Street in the city of Chicago in said State.

PAR. 2. Respondent, Fairbanks Tailoring Co., is and for many years last past has been, engaged in the business of selling and distributing, among other items of merchandise, suits, overcoats, and other clothing for men. The sales of its products are made directly and through salespersons or canvassers to the purchasing public throughout the several States of the United States and in the District of Columbia. Respondent causes its said products when sold to be

transported from its said place of business in Chicago, Ill., to the purchasers thereof located in States of the United States other than the State of Illinois and in the District of Columbia.

PAR. 3. Respondent, in the course and conduct of its business, has been and is in substantial competition with other corporations and with partnerships, firms, and persons 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. 4. In the course and conduct of its business, for the purpose of inducing the purchase of its suits, overcoats and other clothing for men by members of the purchasing public, and in endeavoring to secure salespersons to procure consumers' orders therefor, respondent has from time to time inserted advertisements in newspapers, magazines, periodicals, other publications and in descriptive circulars, pamphlets, and other advertising media, circulated into and through States of the United States other than the State of Illinois.

In said advertisements respondent has made or caused to be made various representations concerning the quality and designs of the cloth used in making its products, the financial success its salespersons can and usually do make without canvassing or experience, and its gifts of suits or topcoats to them free of cost, also concerning the nature and character of its business, among which are the following:

Order your new suit or topcoat tailored to your measure by Fairbanks, from the finest all wool fabrics.

Men's clothes tailored to measure of all wool—\$19.50 up.

"All worsted"—"all wool" on labels attached to its samples.

Start making money the day outfit arrives.

Openings for men. No Experience Necessary.

Make up to \$10.00 in one Day without canvassing.

There is Mr. Tyron of Michigan for example. He is now 68 years old and has been with us for 12 years. He is one of our successful salesmen often making as high as \$10 or more a day. These are just a few of the hundreds of men depending on the Fairbanks line.

Even if you sell only two suits per day, you will make up to \$60.00 in a week—Besides Getting Your New Suit Free of Cost.

A New Suit or Topcoat for You Free of cost. \* \* \* Free Suit Offer.

By far the most elaborate and fastest selling line in the country.

Tropical worsted—rayon design.

The statements made by respondent as aforesaid purport to be descriptive of its merchandise, and of the financial success salespersons can and do make by becoming its agents and serve as representations to the purchasing public that the material respondent uses in making its suits, overcoats and other clothing for men is composed wholly of "wool"; that respondent's salespersons can and

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usually do make \$10 per day without canvassing and without experience; that respondent gives its salespersons suits or topcoats free of cost; that the line of suits, topcoats and other clothing for men offered for sale and sold by respondent is the fastest selling line in the country; and that some of the materials it uses are of rayon design.

PAR. 5. In truth and in fact the representations made by respondent as hereinbefore set out and the impressions and inferences thereby created in the mind of the public are false and misleading, in that all of the suits, overcoats, and other clothing offered for sale and sold by respondent are not made from material composed wholly of wool, but many of said garments are composed in substantial part of cotton, rayon, and other fibers; that respondent's salespersons or agents cannot and do not usually and consistently make up to \$10 per day in normal times and under normal conditions without canvassing and without experience; such agents are expected to and do canvass to sell respondent's said products; respondent does not give its salespersons suits or topcoats free but such "free gifts" are in fact bought and paid for in the services performed by said salespersons or agents in the sale of said merchandise for respondent. The line of products respondent offers for sale and sells is not the most elaborate and the fastest selling line in the country. The so-called rayon design is only a distinctive stripe, and not a design, one strand of which is rayon and the other strand cotton.

PAR. 6. There are now and have been competitors of respondent selling and distributing suits, overcoats, and other clothing for men, in commerce between and among 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, or popularity of their products, or the method or manner of, or compensation paid for, the sale or distribution of said products, and who do not represent that men's suits or topcoats or other clothing or other articles are given away free of cost to their salespersons or others, 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, overcoats and other clothing for men, as hereinbefore set out, have 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, overcoats, and other clothing for men are made wholly of wool; that its said agents can and usually do make \$10 per day without canvassing and without experience; that respondent gives its salespersons suits or topcoats free of cost; that

the line of suits, overcoats, and other clothing for men offered for sale and sold by respondent is by far the most elaborate and the fastest selling line in the country; and that the design of some of the material respondent uses is of rayon.

On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been and is induced to purchase suits, overcoats, and other clothing for men from respondent, and thereby trade has been and is diverted unfairly to respondent from competitors named in paragraphs 3 and 6 hereof. As a result thereof, 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 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.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 4, 1938, issued its complaint in this proceeding and thereafter caused it to be duly served on the respondent Fairbanks Tailoring Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, at Chicago, Ill., on November 4, 1938, 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 said complaint by Henry Junge of the firm of Hickey, Hall & Junge, attorneys for the respondent, before William C. Reeves, an examiner of the Commission theretofore duly designated by it, and thereafter at Chicago, Ill., on May 12, 1939, additional testimony and other evidence in opposition to the allegations of said complaint were introduced by said Henry Junge on behalf of the respondent, and in support of the allegations of said complaint by S. Brogdyne Teu, II, attorney for the Commission, before Arthur F. Thomas, another examiner of the Commission theretofore duly designated by it, and all of the aforesaid testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, no

## Findings

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request for oral argument having been made; 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 Fairbanks Tailoring Co. is a corporation organized, existing and doing business under the laws of the State of Illinois, with its principal place of business located at 2286 Wabansia Street in the city of Chicago, in said State. Respondent is now, and for a number of years prior to the date of the issuance of the complaint in this proceeding has been, engaged in the business of tailoring suits, overcoats, and other clothing for men on individual orders, and of suits and coats for women on individual orders. It has caused and now causes the wearing apparel produced by it, when sold, to be transported from its place of business in Chicago, Ill., through and into various other States of the United States to the purchasers thereof. In the course and conduct of its said business, the respondent has been, and is now, in competition with various other corporations and with persons, firms and partnerships also engaged in the sale and distribution of tailored wearing apparel in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent distributes the wearing apparel produced by it through salesmen or agents who solicit and accept orders for garments from members of the purchasing public. Respondent supplies its agents with order blanks, samples of materials from which the wearing apparel is to be made, and instructs them as to the manner and method of taking measurements for such wearing apparel. When orders are secured by such salesmen or agents they are transmitted to the respondent at its place of business in Chicago, Ill., where the garments are tailored and in turn shipped to the purchasers at their respective points of location.

PAR. 3. Prior to January 11, 1937, respondent caused advertisements to be published in magazines and other periodicals having a general circulation throughout the United States in which the announcement was made that respondent had openings for ambitious men to wear suits and overcoats tailored to measure by respondent and to act as agents for respondent in selling suits and overcoats. In said advertisements it was represented that such agents could make up to \$10 per day by selling respondent's clothing without canvassing and that experience was not necessary. Respondent also referred in said advertisements to a so-called free suit offer. Literature sent to persons

responding to these advertisements described the material from which wearing apparel produced by the respondent was made as "The finest of wool fabrics," "all worsted," and "all wool."

PAR. 4. In the spring of 1938 respondent distributed to its salesmen or agents books containing samples of materials for use in soliciting orders for wearing apparel. These sample books contained a description of each of the samples therein, and many of the samples were described as "all wool," and "all worsted." These samples were displayed to the purchasing public by said salesmen and agents.

PAR. 5. The aforesaid acts, practices, and representations on the part of the respondent in connection with the sale and distribution of its said wearing apparel in said commerce had the tendency and capacity to lead prospective salesmen or agents to believe that they could secure from the respondent a suit "free" and without cost or condition; that inexperienced salesmen could earn as much as \$10 per day by selling respondent's wearing apparel without canvassing; and to lead purchasers and prospective purchasers of said wearing apparel to whom said sample books were displayed by said salesmen and agents to believe that the materials described in said sample books as "all worsted" and "all wool" were in fact composed entirely of wool.

PAR. 6. The suits referred to in respondent's said "free suit offer" were not free and were not delivered to persons responding to said advertisements without cost and unconditionally, but said suits were delivered only to such persons as sold a specified number of respondent's garments, usually 12, within a stated period of time. Said suits described as "free" were earned by the persons securing the same through their services in selling respondent's said garments and were not a gift or gratuity.

Inexperienced salesmen or agents could not earn \$10 per day selling respondent's garments without canvassing. In order to earn \$10 a day or any sum approximating that sum a salesman would have to be consistently employed in the sale of garments for the respondent which requires canvassing.

PAR. 7. Among the samples of fabrics contained in said sample book, prepared and distributed among its salesmen and agents for display among prospective purchasers in promoting the sale of its said garments in the spring of 1938 as above set out, was a sample labeled and described as follows:

Very stylish green all wool Herringbone with brown overlaid.

This sample and the above statement were displayed to prospective customers in soliciting and securing orders for garments made from

## Findings

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the fabric shown by this sample. The fabric from which garments were made, when orders were received for garments from this sample, was not all wool as represented by the respondent, but was in truth and in fact composed in substantial part of materials other than wool, namely, silk and rayon. The wool content of this fabric was approximately 80 percent in one direction and 50 percent in the other, according to a report of a microscopic methods test made by the National Bureau of Standards of the United States Department of Commerce. A report of a different test made by a private testing agency shows a wool content of 84.9 percent, silk 12.6 percent, rayon 2.5 percent. Both of these tests show, and the Commission finds that the fabric was not composed of wool in its entirety or within such tolerances as might have been recognized in the industry at the time the fabric was so labeled and described. Respondent's representation that this fabric was "all wool" was false and misleading.

Another sample fabric displayed in the spring of 1938 sample book and used and displayed by respondent's salesmen and agents in soliciting and securing orders made from the fabric shown by this sample, in promoting the sale of respondent's garments, was one labeled and described as follows:

Atlas long wearing all worsted twist with rayon design.

The term "all worsted," without qualification, is understood in the trade and by the purchasing public to mean a fabric made entirely of wool. The use of the word "twist" in no wise modifies the term "all worsted." The term "rayon design" does not indicate or mean to the purchasing public that the fabric contains any substantial percentage of materials other than wool, as this term indicates only a small percentage of rayon for decorative purposes, usually less than 2 percent. This fabric was not composed entirely of wool and a small percentage of rayon for decorative purposes, as indicated by the label on the sample, but was in truth and in fact composed in substantial part of a material or materials other than wool. The wool content of this fabric was 30 percent according to the report of a microscopic method test made by the National Bureau of Standards, United States Department of Commerce. This test shows, and the Commission finds, that this fabric was not composed of wool in its entirety, with a small percentage of rayon for decorative purposes, or within such tolerances as might have been recognized in the industry at the time the fabric was so labeled and described. Respondent's representation that this fabric was "all worsted" was false and misleading.

PAR. 8. Prior to the issuance of the spring of 1938 sample book, the respondent labeled and described a number of samples of fabrics

shown in sample books as "all worsted" which were not in truth and in fact composed entirely of wool, but which fabrics contained a substantial percentage of materials other than wool. The respondent in its advertising matter referred to such samples of fabrics generally, including the number branded "all worsted" and composed in substantial part of materials other than wool, as "all wool," "wool," "woolen," and "100 percent all wool." These representations, as well as the "all worsted" labels, were false and misleading when applied to the line of samples as a whole for, while many of the fabrics were all wool, a number, as above set forth, were included therein which were not composed in their entirety of wool.

PAR. 9. There are among competitors of respondent various persons, partnerships and corporations who offer for sale and sell tailored garments for men and women in commerce between and among the several States of the United States, many who do not misrepresent the wool content of the fabrics from which said garments are made and who do not in any manner misrepresent or exaggerate the earnings of their salesmen or agents and who do not designate or describe as "free" suits and overcoats not given as a gift or gratuity but as additional compensation for selling garments.

PAR. 10. The acts and practices of respondent, in connection with the securing of representatives and in connection with offering for sale and selling its said products in commerce between and among the several States of the United States and in the District of Columbia, in making and using the false and misleading representations hereinabove set out with regard to "free" suits and overcoats, the earnings of salesmen and the composition of the fabrics from which the garments offered for sale and sold are made, have the tendency and capacity to induce a substantial number of members of the purchasing public to become and act as representatives and agents for respondent, and to induce many members of the purchasing public to purchase respondent's said products because of the mistaken and erroneous beliefs engendered by said false and misleading representations, and thereby unfairly to divert trade in said commerce to respondent from its competitors, to their injury and to the injury of the public.

#### CONCLUSION

The aforesaid acts, practices, and representations of the respondent, Fairbanks Tailoring Co., are all 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 Federal Trade Commission Act.

Order

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## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before William C. Reeves and Arthur F. Thomas, examiners of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, briefs filed herein, no request for oral argument having been made, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent Fairbanks Tailoring 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 suits and overcoats for men, and suits and coats for women, in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "all wool," "all worsted," or any other words indicating a fabric composed of wool in its entirety, to designate, describe or refer to fabrics, the fiber content of which is not composed wholly of wool; *provided, however*, that such words may be used to describe a fabric composed essentially of wool but containing a small percentage of material or materials for decorative purposes only, such as silk or rayon, when there is used in connection or conjunction with the words indicating an all wool fabric in letters of equal size and conspicuousness, words, such as "rayon decoration" or "rayon stripe," truthfully designating and describing the decorative material or materials used.

2. Using the word "free" or any other word or words of similar import or meaning to designate, describe, or refer to garments delivered to representatives or agents of the respondent as compensation for services performed in connection with the sale and distribution of respondent's products.

3. Representing that inexperienced representatives or agents engaged in the solicitation of orders for respondent's garments can make up to \$10 a day without canvassing.

*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

V. PORTNOY & SONS, INC., TRADING AS ROOSEVELT  
MERCANTILE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 3576. Complaint, Sept. 3, 1938—Decisions, Mar. 27, 1940*

Where a corporation engaged in sale of new and second-hand clothing and other merchandise to purchasers in various other States, pursuant to orders, in practically all cases, received through the mails in response to advertisements and advertising literature circulated by it as below set forth, and by customers who had had no opportunity to examine merchandise until delivered and who relied entirely upon its descriptions and depictions thereof in its advertising, in competition with others engaged in sale and distribution of such products in commerce, and including many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their products and truthfully represent nature of their business and business methods; in advertisements in many newspapers and periodicals having general circulation throughout the various States, and in advertising booklets, folders, pamphlets, and other forms of advertising literature which it in part directly distributed to members of purchasing public in various States and in part furnished to its customers, by whom same was placed in hands of said public—

- (a) Invited reader to "Be Your Own Boss!" and "Make 200% to 300% profit," operating "Quality used and new clothing business from your own store, home, or auto," with "No selling experience required" and "Catalogue Free," and to "Sell men's, women's, and children's clothing and shoes at big profits. Select from the big values in this new fall and winter catalog," etc., facts being it was impossible for purchasers of its said merchandise, because of unsatisfactory condition thereof as below set forth, to resell same at such profit, and it was difficult, in most instances, to resell same at any profit whatever, and in many cases resale thereof at any price whatsoever was impossible;
- (b) Represented, as aforesaid, that it shipped kind of merchandise depicted in such advertisements, and that single garments might be obtained in all sizes, colors, and styles, and that its said goods were of latest styles and that slightly used merchandise was always cleaned, pressed, and repaired by its own expert craftsmen and that it guaranteed to replace any goods not satisfactory, through such statements as "Always Finest Quality," "\* \* \* All (coats) are good styled and slightly used. \* \* \* Assorted sizes and colors," "Dresses Smartly Styled \* \* \* Every one salable \* \* \* assorted sizes \* \* \*," etc., "Topcoats you can be proud to sell. \* \* \* cleaned, repaired, and pressed by our own expert craftsmen," "Suits Genuine Wool! Only Slightly Used! \* \* \* show their fine quality \* \* \* Finely tailored \* \* \* label of nationally known makers," etc., facts being pictures in advertising in question were not representative of merchandise sold by it, depicting frequently what appeared to be new, clean

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styles and modern clothing, goods shipped by it were, in most instances, used, dirty, and unfashionable, it did not ship on order merchandise in any requested size, color, or style, but usually filled orders by shipping customer whatever goods it then had on hand, whether or not in size, style or color requested, used merchandise sold by it was very rarely cleaned, pressed, and repaired before shipping, but ordinarily dirty, rumpled, worn, unpleasantly odorous, and in some cases torn and completely unsalable, its staff consisted of its president and principal stockholder, a packer and clerk, and work of cleaning or pressing, in rare instances in which done, was by independent commercial cleaner and not by its alleged expert craftsmen, and merchandise returned to it was ordinarily replaced with equally unsatisfactory goods; and

(c) Represented that "Buying connections throughout the Nation enable us to supply you with quality merchandise at the lowest possible prices" and "We make it possible for you to beat all price competition with better quality merchandise," thus assuring "substantial business at a profit," facts being it had no buying connections enabling it to purchase quality merchandise at extraordinarily low prices, but bought its goods from peddlers, junk dealers, and charitable organizations, and occasionally made purchases of new merchandise from wholesalers who came to its door, and price paid by it for its goods was approximately same as that paid by competitors for same type of goods.

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous belief that its said representations were true, and with result, as direct consequence of erroneous and mistaken beliefs induced by its said acts and representations, as above indicated, that number of purchasing public bought substantial volume of its products and trade was thereby unfairly diverted to it from its competitors; 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 and deceptive acts and practices in commerce and unfair methods of competition.

Before *Mr. Arthur F. Thomas* and *Mr. John P. Bramhall*, trial examiners.

*Mr. R. A. McQuat* for the Commission.

*Weinstein & Sohn*, 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 V. Portnoy & Sons, Inc., a corporation trading under the name of Roosevelt Mercantile 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:

PARAGRAPHS 1. The respondent, V. Portnoy & Sons, Inc., is a corporation organized and doing business under the laws of the State of Illinois, with its principal office and place of business at 566 Roosevelt Road, Chicago, Ill. For more than 2 years last past, respondent has been and still is engaged in the business of selling new and second-hand clothing and other merchandise. Respondent causes said merchandise, when sold, to be transported from its aforesaid place of business in the city of Chicago, State of Illinois, to the purchasers thereof at their respective places of location in States of the United States other than the State of Illinois, and in the District of Columbia. Respondent maintains, and during all the times mentioned herein has maintained, a course of trade in said merchandise so sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of similar merchandise in commerce between and among the various States of the United States and in the District of Columbia. Among the competitors of the respondent in said commerce are many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise, and who truthfully represent the nature of their business and their business methods.

PAR. 3. In the course of its said business, as hereinabove described, and for the purpose of inducing the purchase of its merchandise, respondent has made many statements concerning its business methods and concerning the value, quality, age, color, size, style, and cleanliness of its merchandise. Said statements and representations are made by means of advertisements inserted in newspapers and magazines, and by means of statements and picturizations in pamphlets, testimonials, letters, and catalogs, all circulated between and among the various States of the United States and in the District of Columbia. Among many, the following are typical examples of said advertisements:

Be Your Own Boss! Operate quality used and new clothing business from your own store, home or auto. Make 200% to 300% profit. No selling experience required. Everything furnished. Catalogue FREE. Write for it today.

#### MORE FOR YOUR MONEY

\* \* \* \* \*

This catalog represents your opportunity to secure high grade used and brand new merchandise at the lowest possible prices.

Sell men's, women's, and children's clothing and shoes at big profits. Select from the big values in this new fall and winter catalog.

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Buying connections throughout the nation enable us to supply you with quality merchandise at the lowest possible prices.

We make it possible for you to beat all price competition with better quality merchandise. In this way we assure you of substantial business at a profit.

Always finest quality.

Always lowest prices.

## COATS

Popular Fur Trimmed Models!

\$12 \$18 \$24 per dozen

Ladies' popular winter coats, mostly fur trimmed. \* \* \* All are good styled and slightly used. You will be amazed at their tremendous value and fine appearance. Assorted sizes and colors.

## DRESSES

Smartly Styled

Real Silk

Slightly Used

\$3.00 \$4.00 \$5.00 \$7.50 per dozen

You will easily double your money with these fine real silk dresses. Here we offer you color, style, and quality at prices that seem impossible. Every one salable. Come in assorted colors, long and short sleeves. Assorted sizes, 16 to 46. We highly recommend the \$7.50 dresses. All expertly repaired and first-class condition. The other groups are fine leaders and good buys.

Topcoats you can be proud to sell. \* \* \* These coats have been cleaned, repaired, and pressed by our own expert craftsmen.

## SUITS

Genuine Wool! Only Slightly Used!

\$29 \$35 \$47 \$59 \$70 per dozen

Suits that actually show their fine quality of fabric. \* \* \* Suits that have the earmarks of perfection. They are cleaned, repaired by our experts and pressed. Good wool material in latest patterns. Finely tailored, extra fine fabrics. Bears label of nationally known makers.

Men's Wool Pants, used but in good condition.

\$7.00 \$10.00 \$13.00 per dozen

Only slightly used and great values at these low prices.

Dear Friend: Here is another world beating selection of the best the market affords in slightly used and brand new clothing. \* \* \* We have scoured the markets to bring you these unusual clothing values. \* \* \*

Roosevelt Mercantile Company

## Complaint

## Our Guarantee

We guarantee to replace any merchandise that is not satisfactory if it is returned to us within five days. You pay all delivery charges."

All of said statements, together with similar statements and with picturizations appearing in the respondent's advertising literature, but not set out herein, purport to be descriptive of respondent's merchandise and its business methods. In all of its advertising literature and through other means, respondent represents that it ships the kind of merchandise described and pictured in its catalog; that single garments may be obtained from it in all sizes, colors, and styles; that its new merchandise is of the latest style; that its slightly used merchandise is always cleaned, pressed, and repaired by its own expert craftsmen before shipment; that it guarantees to replace any merchandise that is not satisfactory; that its buying connections throughout the United States enable it to purchase quality merchandise at the lowest possible prices to beat all competition; and that purchasers of its merchandise can make large profits by reselling its merchandise.

PAR. 4. The said representations made by respondent are grossly exaggerated, deceptive, misleading, and false. In truth and in fact, respondent does not ship the kind of merchandise described and pictured in its catalogs. Single garments cannot be obtained from it in all sizes, colors, and styles. Its new merchandise is not of the latest style. Its used merchandise is not always cleaned, pressed, and repaired before shipment to customers. Respondent does not replace merchandise which is returned as unsatisfactory. It has no buying connections which enable it to buy quality merchandise at the lowest prices to beat all competition. Salesmen cannot make large profits by reselling merchandise purchased from respondent.

The true facts are that respondent buys its stock of merchandise on the open market from wholesale clothing merchants, army posts, and junk dealers. Respondent employs a few persons to clean, repair and press some of its merchandise. When an order is shipped to a customer, the package frequently contains merchandise that is old, out of style, shopworn, dirty, worn out, valueless, and of a different color, age, quality, style, and condition from the merchandise ordered by respondent's customers.

PAR. 5. The false and misleading representations used by respondent, as set forth herein, in connection with the sale of its merchandise, have the capacity and tendency to and do mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true. As a direct consequence of the

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false, deceptive, and misleading representations of the respondent, and the erroneous and mistaken belief induced thereby, the purchasing public has purchased a substantial amount of merchandise from the respondent with the result that trade in said commerce has been diverted unfairly to respondent from competitors engaged in the business of selling clothing and other merchandise, who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise. As a result thereof, injury has been done and is now being done by the respondent to competition in commerce between and among 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 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 September 3, 1938, issued and thereafter served its complaint in this proceeding upon the respondent, V. Portnoy & Sons, Inc., a corporation, trading under the name of Roosevelt Mercantile Co., 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 and in opposition thereto were introduced before 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, brief in support of the complaint (respondent not having filed brief nor requested oral arguments), 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, V. Portnoy & Sons, 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 located at 566 Roosevelt Road in the city of Chicago in said State. Respondent trades under the name of Roosevelt Mercantile Co. Respondent is now and since the year 1935 has been engaged in the business of selling new and second-hand clothing and other merchandise.

PAR. 2. Respondent causes its merchandise, when sold, to be transported from its place of business in Chicago in the State of Illinois to purchasers thereof located in various other States of the United States. There is now and has been since the year 1935 a course of trade by the respondent in said merchandise in commerce between and among the various States of the United States.

PAR. 3. The respondent in the course of the operation of its business is in competition with other corporations and with individuals and firms also engaged in the business of selling and distributing clothing and other merchandise intended and sold for the same purposes for which respondent's merchandise is sold, in commerce between and among the various States of the United States. Among said competitors of the respondent in said commerce are many who truthfully advertise and represent the value, quality, age, color, size, style, and cleanliness of their merchandise and who truthfully represent the nature of their business and their business methods.

PAR. 4. In the course of the operation of its said business as hereinabove described and for the purpose of inducing individuals, firms, and corporations to purchase said clothing and other merchandise, the respondent has made use of advertisements inserted in many newspapers and magazines having a general circulation throughout the various States of the United States. Respondent has also made use of advertising booklets, folders and pamphlets, and other forms of advertising literature, some of which it directly 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 located throughout the United States who, in turn, place the literature in the hands of the purchasing public. In its said advertisements respondent has made many statements concerning its business methods and concerning the value, quality, age, color, style, and cleanliness of its merchandise. Among many, the following are typical examples of said advertisements:

**Be Your Own Boss!** Operate quality used and new clothing business from your own store, home or auto. Make 200% to 300% profit. No selling experience required. Everything furnished. Catalogue FREE. Write for it today.

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## MORE FOR YOUR MONEY

\* \* \* \* \*

This catalog represents your opportunity to secure high grade used and brand new merchandise at the lowest possible prices.

Sell men's, women's and children's clothing and shoes at big profits. Select from the big values in this new fall and winter catalog.

Buying connections throughout the nation enable us to supply you with quality merchandise at the lowest possible prices.

We make it possible for you to beat all price competition with better quality merchandise. In this way we assure you of substantial business at a profit.

Always Finest Quality.

Always Lowest Prices.

## COATS

Popular Fur Trimmed Models!

\$12 \$18 \$24 per dozen

Ladies' popular winter coats, mostly fur trimmed. \* \* \* All are good styled and slightly used. You will be amazed at their tremendous value and fine appearance. Assorted sizes and colors.

## DRESSES

Smartly Styled

Real Silk

Slightly Used

\$3.00 \$4.00 \$5.00 \$7.50 per dozen

You will easily double your money with these fine real silk dresses. Here we offer you color, style and quality at prices that seem impossible. Every one salable. Come in assorted colors, long and short sleeves. Assorted sizes, 16 to 46. We highly recommend the \$7.50 dresses. All expertly repaired and first-class condition. The other groups are fine leaders and good buys.

Topcoats you can be proud to sell. \* \* \* These coats have been cleaned, repaired and pressed by our own expert craftsmen.

## SUITS

Genuine Wool! Only Slightly Used! \$29 \$35 \$47 \$59 \$70 per dozen

Suits that actually show their fine quality of fabric. \* \* \* Suits that have the earmarks of perfection. They are cleaned, repaired by our experts and pressed. Good wool material in latest patterns. Finely tailored, extra fine fabrics. Bears label of nationally known makers.

Men's Wool Pants, used but in good condition.

\$7.00 \$10.00 \$13.00 per dozen

Only slightly used and great values at these low prices.

Dear Friend: Here is another world beating selection of the best the market affords in slightly used and brand new clothing. \* \* \* We have scoured the markets to bring you these unusual clothing values. \* \* \*

Roosevelt Mercantile Company

## Findings

## Our Guarantee

We guarantee to replace any merchandise that is not satisfactory if it is returned to us within five days. You pay all delivery charges.

All of such statements, together with similar statements and picturizations appearing in respondent's advertising literature, purport to be descriptive of respondent's business status and methods and of respondent's merchandise. In all of its advertising literature, and by other means, respondent represents that it ships the kind of merchandise pictured in connection with said literature, that single garments may be obtained in all sizes, colors and styles; that its new merchandise is of the latest style; that its slightly used merchandise is always cleaned, pressed and repaired by its own expert craftsmen; that it guarantees to replace any merchandise that is not satisfactory; that its buying connections throughout the United States enable it to purchase quality merchandise at prices lower than all of its competitors and that purchasers of its merchandise can make large profits by reselling the same.

PAR. 5. Respondent does an annual gross business of approximately \$100,000. Practically all of respondent's orders for merchandise are received through the mails in response to advertisements and advertising literature circulated as hereinabove described. The customer thus having no opportunity to examine the merchandise until delivered, must rely entirely upon the respondent's descriptions and picturizations in its advertising literature. The Commission finds that the representations thus made by respondent are grossly exaggerated, misleading, and untrue. The pictures of merchandise appearing in respondent's advertising literature are not representative of the merchandise sold by respondent. On many occasions the merchandise so pictured by respondent appears to be new, clean, stylish, and modern clothing, whereas the merchandise shipped by respondent in response to an order is in most instances used, dirty, and unfashionable.

Respondent does not ship on order merchandise in any requested size, color, or style but as a matter of usual practice fills its orders by shipping to the customer whatever merchandise it may then have on hand, whether or not it may be in the size, style, or color requested.

The used merchandise sold by respondent is very rarely cleaned, pressed, and repaired before shipping; usually the merchandise is dirty, rumpled, worn, unpleasantly odorous and, in some cases, torn and completely unsalable. In the rare instances when such merchandise is cleaned or pressed before shipment, it is sent to an independent commercial cleaner. This work is not done by respondent's

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"expert craftsmen," because respondent does not employ any expert craftsmen, its entire staff consisting of respondent's president and principal stockholder, V. Portnoy, and a packer and a clerk.

When merchandise is returned to respondent as unsatisfactory, respondent customarily replaces this merchandise with other merchandise equally unsatisfactory. The Commission further finds that respondent has no buying connections which enable it to purchase quality merchandise at extraordinarily low prices. As a matter of fact, respondent buys its merchandise from peddlers, junk dealers, charitable organizations, and occasionally purchases new merchandise from wholesalers who come to its door. The price that respondent pays for its merchandise is approximately the same as that paid by its competitors for the same type of goods.

Because of the above-described unsatisfactory condition of respondent's merchandise, it is impossible for the purchasers thereof to resell the same at a profit of 200 or 300 percent as represented by respondent. In fact, in most instances it is difficult to resell this merchandise at any profit whatsoever, and in many cases it is impossible to resell the merchandise at any price whatsoever.

PAR. 6. The use by the respondent of the false and misleading statements and representations in its catalogs, circulars, pamphlets, and other advertising media, in offering for sale and selling its merchandise in commerce, has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representations are true. As a direct result of these erroneous and mistaken beliefs, induced by the acts and representations of the respondent as hereinbefore enumerated, a number of the purchasing public have purchased a substantial volume of respondent's products, with the result that trade has been unfairly diverted to the respondent from its competitors, to the injury of competition in commerce among and between the various States of the United States.

## CONCLUSION

The aforesaid acts and practices of the respondent as herein found are all to the prejudice and injury of the public and of the respondent's competitors and constitute unfair and deceptive acts and practices in commerce and 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 A. F. Thomas and John P. Bramhall, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief on behalf of the Commission (counsel for the respondent not having filed any brief nor requested oral argument), and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, V. Portnoy & Sons, Inc., a corporation, trading as Roosevelt Mercantile Co., 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 its merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that its merchandise is new, clean, or only slightly used, when such is not the fact, or that its used merchandise is of high value or quality or of the latest style.
2. Representing that merchandise which is used, dirty, and unfashionable may be readily resold at a profit.
3. Representing that respondent can or will fill orders for garments in assorted sizes or specified colors, when such is not the fact.
4. Representing that used merchandise sold by respondent is repaired, cleaned, or pressed by expert craftsmen employed by respondent, when such is not the fact.
5. Representing that respondent has buying connections not available to its competitors, or that respondent is able to purchase wearing apparel or other merchandise at prices lower than the prices at which its competitors can purchase similar merchandise.
6. Representing as the profit to be derived from the resale of respondent's merchandise any amount or percentage in excess of the average, usual and customary amount or percentage of profit which has actually been derived from the resale of respondent's merchandise under normal conditions and in due course of 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

## J. W. MARROW MANUFACTURING COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914

*Docket 3626. Complaint, Oct. 8, 1938—Decision, Mar. 27, 1940*

Where a corporation engaged in manufacture, sale, and distribution of face powders, creams, lotions, hair shampoos, and kindred cosmetics to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution, in commerce as aforesaid, of similar products, and including those who do not in any way misrepresent the quality or character of the respective products made, sold, and distributed by them; in advertising its "massage," "tissue" and "acne" creams and its "muscle oil," "Mar-O-Oil Shampoo" and "Trimal for Cuticle," in advertisements in periodicals of national circulation and in radio broadcasts and through circulars—

- (a) Represented that its "massage" and "tissue" creams were nourishing and nutritive, and that latter prevented lines and corrected wrinkles, and that its said oil smoothed lines and wrinkles and was especially effective in removing fine lines around the eyes and mouth, facts being ingredients contained in products aforesaid do not supply nutrition to or nourish skin, and none of such products were nutrients when applied externally to skin, and would not smooth out lines and wrinkles from face and were not effective in removing, as aforesaid, lines around eyes and mouth;
- (b) Represented that its "acne" cream was antiseptic and aided in correcting blemishes, pimples and enlarged pores, facts being it was not an antiseptic, acne is due to disturbance of glands which feed pores of skin, commonly manifesting itself in form of pimples, and aforesaid cream did not correct blemishes, pimples, or enlarged pores;
- (c) Represented that its said shampoo revitalized starved dry hair and corrected cause of too oily hair, and that all beauty parlors and beauty shops gave "Mar-O-Oil" treatments, facts being not all beauty parlors and barber shops gave such treatments, cause of dry hair is failure of certain glands to secrete oil enough to keep hair in normal condition, it is impossible both to stimulate and, at same time, retard flow of oil from glands in question, and its said products had no value for causing such glands either to cease producing excessive amount of oil or start producing more, and its said shampoo did not accomplish results aforesaid with respect to either starved, or dry, or too oily hair;
- (d) Represented that its said "Trimal for Cuticle" would, among other things, leave live cuticle satin soft, while its "light nutrient oils" were "absorbed deeply by the nail roots to promote the healthy growth of flawless finger nails," facts being finger nails, are merely prolongations of skin, can be revitalized only through action of blood on tissues underlying nails, and its said preparation contained no oil or ingredient having effect on nails and did not revitalize same; and
- (e) Represented that scientists in motion picture studios who had devised definite rules for successful photographic beauty, invariably specified use

## Complaint

of said "Trimal" in studio make-up departments as indispensable speedy way to pictorially perfect finger tips, facts being representations aforesaid were false;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all such representations were true, and with result, as consequence thereof, that number of consuming public purchased substantial volume of its products and trade was diverted unfairly to it from its competitors engaged in sale and distribution, in commerce as aforesaid, of products and preparations intended and used for purposes for which it recommended its products aforesaid, and who truthfully represent the 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.

Before *Mr. Arthur F. Thomas*, trial examiner.

*Mr. R. A. McQuat* for the Commission.

*Mr. Carleton M. Tower*, 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 J. W. Marrow Manufacturing Co., a corporation, hereinafter referred to as the 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, J. W. Marrow Manufacturing Co., is a corporation organized under the laws of the State of Illinois with its principal office and place of business at 3037 North Clark Street, Chicago, Ill. For more than 2 years last past respondent has been and still is engaged in the business of manufacturing for sale and selling face powders, creams, lotions, tonics, hair oils, and shampoo preparations. Respondent causes its said products when sold to be transported from its aforesaid place of business in the State of Illinois to purchasers thereof at their respective places of location in States of the United States other than the State of Illinois and in the District of Columbia. Respondent maintains and during all the times herein mentioned has maintained a course of trade in said products so sold by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is and at all times herein mentioned has been in substantial competition with other corporations and with individuals, firms and partnerships 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. 3. In the course of its said business as hereinabove described, and for the purpose of inducing the purchase of its said products, respondent has made many statements concerning the efficacy and effect of its products. Said statements are made by means of advertisements inserted in magazines, by means of statements and picturizations in pamphlets, and by means of radio broadcasting, all circulated between and among the various States of the United States and in the District of Columbia. Among many, the following are typical examples of said advertisements:

Marrow's Massage Cream \* \* \* Cleansing, nourishing and slightly stimulating. \* \* \*

Marrow's Tissue Cream \* \* \* Supplies the exact nutrition the skin needs, prevents lines, corrects wrinkles. \* \* \*

Marrow's Acne Cream \* \* \*

A very effective antiseptic cream. Aids in correcting blemishes, pimples and enlarged pores.

Marrow's Muscle Oil \* \* \*

Smooths lines and wrinkles, especially effective in removing the fine lines around eyes and mouth. \* \* \*

Mar-O-Oil Shampoo \* \* \*

All beauty parlors and barber shops give Mar-O-Oil treatments. \* \* \* It revitalizes starved, dry hair and corrects the cause of hair that is too oily.

Trimal for Cuticle \* \* \*

You'll be amazed to see distended, dead cuticle melt away before your eyes, to leave the live cuticle satin soft; while at the same time, "Trimal's" light nutrient oils are absorbed deeply by the nail roots, to promote the healthy growth of flawless finger nails.

Scientists in motion picture studios who have devised definite rules for successful photographic beauty, today invariably specify the use of Trimal in studio make-up departments as the indispensable, speedy way to pictorially perfect finger tips.

All said statements, together with similar statements and picturizations appearing in respondent's advertising literature but not set out herein, purport to be descriptive of respondent's products. In all of its advertising literature and through other means, respondent represents, directly or by inference, through the statements and representations herein set out and other statements of similar import and effect that Marrow's Massage Cream is cleansing, nourishing and slightly stimulating; that Marrow's Tissue Cream supplies nutrition to the skin and thereby prevents lines and corrects wrinkles; that Marrow's Acne Cream contains astringent properties and is of aid in correcting blemishes, pimples, and enlarged pores; that Marrow's Muscle Oil smooths lines and wrinkles, and is especially effective in removing the fine lines around eyes and mouth; that

Mar-O-Oil Shampoo revitalizes starved, dry hair and corrects the cause of hair that is too oily; that all beauty parlors and barber shops give Mar-O-Oil treatments to their customers; that Trimal contains oils which are absorbed by the nail roots and aid in the healthy growth of finger nails; and that scientist in motion picture studios invariably specify the use of Trimal in order to take better pictures of finger tips.

PAR. 4. The representations made by the respondent with respect to the nature and effect of its products when used are grossly exaggerated, deceptive, misleading, and false. In truth and in fact Marrow's Massage Cream is not cleansing, nourishing, or stimulating. Respondent's "Creams" and "Oils" do not supply nutrition to the skin or correct lines, wrinkles, blemishes, pimples, and enlarged pores. No product is a nutrient when applied externally to the skin of a human being. Mar-O-Oil Shampoo does not revitalize starved, dry hair nor does it correct the cause of hair that is too oily. All beauty parlors and barber shops do not give Mar-O-Oil treatments. Trimal does not contain any oil whatever. It has no effect upon live cuticle nor any effect upon the growth of the finger nails. Scientists in motion pictures do not specify the use of Trimal as the indispensable way to pictorially perfect finger tips.

The true facts are that the ingredients of respondent's products are not absorbed by or through the skin. The skin is a protective organ and anything placed upon it and massaged into the pores is eventually discharged or removed. The primary function of the skin is to rid itself of foreign matter. Medication for any disease of the skin must come from the inside and all nutriments must be delivered through the blood stream. Wrinkles and lines upon the face are caused by nerve decay. Any benefit to the muscles or nerves is given because of the massage while applying the particular product and not because of the cream or lotion used. Acne is a disturbance of the glands which feed the pores of the skin and occurs in the form of pimples. The cure for acne is by internal medication. The hair is kept in a normal condition by the sebaceous glands. A dry scalp results from a failure of the glands to secrete normally while in the case of an oily scalp the glands secrete too freely. It is impossible for one substance to cause these glands to secrete more freely and at the same time restrict excessive secretions. The ingredients of Trimal are such that if any oil were added to it, it would be destroyed by the alkaline solution. Trimal has no effect upon the cuticle nor upon the finger nails except in so far as the glycerine therein contained tends to soften the skin.

PAR. 5. There are among respondent's competitors many who manufacture, distribute, and sell products similar to respondent's who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used.

PAR. 6. The exaggerated, deceptive, misleading, and false representations used by the respondent, as herein set forth, in connection with the sale of its products have the capacity to, and do mislead members of the purchasing public into the mistaken and erroneous belief that said representations are true. As a direct consequence of the exaggerated, deceptive, misleading, and false representations of the respondent and the mistaken and erroneous beliefs induced thereby, the purchasing public has purchased a substantial amount of respondent's products from it with the result that trade in said commerce has been diverted unfairly to the respondent from competitors engaged in the business of selling similar products who truthfully advertise and represent the efficacy and effect of their products. As a result thereof, injury has been, and is now being done by the respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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 October 8, 1938, issued and thereafter served its complaint in this proceeding upon respondent J. W. Marrow Manufacturing Co. charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Respondent entered an appearance and filed an answer to the complaint, and thereafter, beginning on January 23, 1939, testimony and other evidence in support of the allegations of said complaint were introduced by R. A. McOuat, attorney for the Commission, and in opposition to said complaint by Carleton M. Tower, attorney for the respondent, before A. F. Thomas, an examiner of the Commission, 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 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, J. W. Marrow Manufacturing Co., is a corporation organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business located in the city of Chicago, State of Illinois, and is engaged in the business of the manufacture, sale, and distribution of face powders, creams, lotions, hair shampoos, and kindred cosmetics. Respondent has caused and causes its products when sold, to be transported from its place of business in the city of Chicago, 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. It maintains a course of trade and commerce in said products among and between the various States of the United States and in the District of Columbia. Respondent is now, and for several years last past has been, in substantial competition with other corporations, firms, and individuals likewise engaged in the sale and distribution of similar products in commerce among and between various States of the United States. There are competitors of respondent who manufacture, sell, and distribute products similar to those of respondent, who do not in any way misrepresent the quality or character of their respective products.

PAR. 2. In the course and conduct of its business respondent caused to be circulated throughout various States of the United States, by the insertion of advertisements in magazines having a national circulation, by radio broadcasts, and in circulars, the following statements:

**Marrow's Massage Cream \* \* \***

Cleansing, nourishing and slightly stimulating. \* \* \*

**Marrow's Tissue Cream \* \* \***

Supplies the exact nutrition the skin needs, prevents lines, corrects wrinkles.

\* \* \*

**Marrow Acne Cream \* \* \***

A very effective antiseptic cream. Aids in correcting blemishes, pimples and enlarged pores.

**Marrow's Muscle Oil \* \* \***

Smooths lines and wrinkles, especially effective in removing the fine lines around the eyes and mouth. \* \* \*

**Mar-O-Oil Shampoo \* \* \***

All beauty parlors and beauty shops give Mar-O-Oil treatments. \* \* \* It revitalizes starved, dry hair and corrects the cause of hair that is too oily.

**Trimal for Cuticle \* \* \***

## Findings

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You'll be amazed to see distended, dead cuticle melt away before your eyes, to leave the live cuticle satin soft; while at the same time "Trimal's" light, nutrient oils are absorbed deeply by the nail roots to promote the healthy growth of flawless finger nails.

Scientists in motion picture studios who have devised definite rules for successful photographic beauty, today invariably specify the use of Trimal in the studio make-up departments as the indispensable, speedy way to pictorially perfect finger tips.

PAR. 3. The ingredients contained in respondent's cream and oils do not supply nutrition to the skin or nourish the skin. None of the products are nutrients when applied externally to the skin, and will not smooth out lines and wrinkles from the face, and are not effective in removing fine lines around the eyes and mouth. Acne cream is not an antiseptic and does not correct blemishes, pimples, or enlarged pores, because acne is due to a disturbance of the glands which feed the pores of the skin, and commonly manifests itself in the form of pimples.

Mar-O-Oil Shampoos do not revitalize starved, dry hair, nor correct the cause of hair that is too oily. The cause of dry hair is the failure of the sebaceous glands to secrete enough oil to keep the hair in its normal condition. Respondent's oil has no value for causing the glands in question to cease producing an excessive amount of oil or to start producing more oil. It is impossible to stimulate the flow of oil from the glands, and at the same time to retard it. Trimal contains no oil and none of the ingredients of Trimal have any effect on the nails, nor does it revitalize fingernails, because fingernails are merely a prolongation of the skin, and the only way that they can be revitalized is through action of the blood on the tissues underlying the nails. Not all beauty parlors and barber shops give Mar-O-Oil treatments. Scientists in motion pictures do not specify the use of Trimal as an indispensable way to pictorially perfect the fingertips.

PAR. 4. The aforesaid acts and practices and each and all of these false and misleading statements and representations made by the respondent in describing its said products, as hereinabove set out, were and are calculated to, and have had the tendency and capacity to, 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 has purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from its competitors engaged in the business of selling and distributing in commerce among and between various States of the United States, products and preparations intended and used for

the purposes for which respondent recommends its said products, and who truthfully represent the effectiveness 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 the respondent, testimony, and other evidence taken before A. F. Thomas, 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 R. A. McQuat, counsel for the Commission, and by Carleton M. Tower, attorney for respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, J. W. Marrow 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 various cosmetic preparations, known as "Marrow's Massage Cream," "Marrow's Tissue Cream," "Marrow Acne Cream," "Marrow's Muscle Oil," "Mar-O-Oil Shampoo," and "Trimal," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names, 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 respondent's preparations, or any of them, will nourish the skin, or prevent, remove, or correct lines or wrinkles.
2. Representing that respondent's preparation "Marrow Acne Cream," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar properties, will correct or remove blemishes, pimples, or enlarged pores, or that said preparation has antiseptic properties.
3. Representing that respondent's preparation "Mar-O-Oil," or any other cosmetic preparation composed of substantially similar ingredi-

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ents or possessing substantially similar properties, will revitalize dead hair or correct the cause of excessive oiliness of the hair.

4. Representing that respondent's preparation "Trimal," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, contains oil or has any effect upon live cuticle or upon the growth of finger nails.

5. Falsely representing the extent to which those who professionally treat the hair or skin have adopted and use respondent's preparations.

6. Falsely representing the extent to which scientists or other experts, who supervise and direct make-up in moving picture studios, recommend or specify the use of respondent's cosmetics.

*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.

## Syllabus

## IN THE MATTER OF

## STANDARD EDUCATION SOCIETY, STANDARD ENCYCLOPEDIA CORPORATION, AND H. M. STANFORD, W. H. WARD, AND A. J. GREENER, INDIVIDUALLY AND AS OFFICERS, ETC., OF SAID CORPORATIONS

## MODIFIED CEASE AND DESIST ORDER

Docket 1574. Order, Mar. 28, 1940

Modified order, pursuant to provisions of Subsections (h) to (k), inclusive, of section 5 of the Federal Trade Commission Act, in proceeding in question in which (1) original order issued on December 24, 1931, 16 F. T. C. 1, and in which (2) the Circuit Court of Appeals for the Second Circuit, on December 14, 1936, in *Federal Trade Commission v. Standard Education Society, et al.*, 86 F. (2d) 692, 24 F. T. C. 1591, handed down its opinion and decision, reversing, in part, and modifying and affirming in part, Commission's order, and on December 21, 1936 rendered its decree, modifying, as above indicated, Commission's order; (3) Supreme Court of the United States on November 8, 1937, in 302 U. S. 112, 25 F. T. C. 1715, reversed said decree of Circuit Court of Appeals, modifying in certain respects Commission's order to cease and desist, excepting modification of Clause 10 of such order (relating to offer and sale of course as a "Special Introductory Enrollment"), and issued its mandate remanding case to said Court of Appeals for further proceeding in conformity with opinion in question; and in which (4) court of appeals in question on December 10, 1937, ordered that such decision of Supreme Court be made its decision, and on May 20, 1938 in *Federal Trade Commission v. Standard Education Society, et al.*, 26 F. T. C. 1524<sup>1</sup> resettled its aforesaid order of December 10, 1937, and issued its final decree in conformity with aforesaid mandate of the Supreme Court—

- (a) Requiring respondent corporations and respondents Stanford, Ward and Greener, and each of them, their officers, etc., in connection with offer for sale of any books or set of books or publications in commerce among the several States or in the District of Columbia, to cease and desist from advertising or representing in any manner, when such is not the fact, (1) to purchasers or prospective purchasers, that any books or set of books offered or sold by them will be given free of cost to such purchasers or prospective purchasers; (2) that a certain number of sets or any set offered and sold as aforesaid has been reserved to be given away free of cost to selected persons as means of advertising, or for any other purpose; (3) that purchasers or prospective purchasers of their publications are only buying or paying for loose-leaf supplements to keep books up to date for a period of 10 years; and (4) that their publication is a recently completed, new and up to date encyclopedia; and from (5) selling or offering any set of books of same text and content material under more than one name or title; and from (6) advertising, etc., as above set forth, that usual price at which their publications are sold is higher than that at which they are offered

<sup>1</sup> Decree in question, which Court in decision on June 13, 1938, 97 F. (2d), 513, 27 F. T. C. 1680, declined to modify, is not reported in Federal Reporter.

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in such advertisements or representations; or advertising or representing (7) any person as contributor to or editor of any set of books or publications who has not performed services in connection therewith as below specified, and consented that he may be held out to public as contributor, editor, or assistant editor; or (8) that any person has given testimonials or recommendations for and concerning their said publications when such is not the fact; and from (9) publishing or causing to be published and circulated such testimonials or recommendations allegedly made by any person when they have not thus been made; and

- (b) Requiring respondent Standard Education Society and respondents Stanford, Ward, and Greener, and each of them, their officers, etc., in connection with the offer for sale of any home study course of instruction in commerce among the several States or in the District of Columbia, to cease and desist from advertising or representing in any manner to purchasers or prospective purchasers that the course of instruction is offered for sale and sold to the purchasers or prospective purchasers at a specially reduced price, when such is not the fact.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on December 24, 1931 the Commission made its findings as to the facts herein and concluded therefrom that respondents had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on November 8, 1937 the Supreme Court of the United States reversed the decree of the Circuit Court of Appeals for the Second Circuit rendered on December 21, 1936 modifying in certain respects the aforesaid order to cease and desist, except as to the modification of clause ten thereof, and issued its mandate remanding the case to said Circuit Court of Appeals for further proceedings in conformity with said opinion, and it still further appearing that on December 10, 1937 said Circuit Court of Appeals ordered that the aforesaid decision of the Supreme Court be made its decision and that said Circuit Court of Appeals on May 20, 1938 resettled its aforesaid order of December 10, 1937 and issued its final decree in conformity with the aforesaid mandate of the Supreme Court of the United States.

*Now, therefore,* Pursuant to the provisions of subsections (h) to (k), inclusive, of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the aforesaid Court orders.

*It is hereby ordered,* That the respondents, Standard Education Society, a corporation; Standard Encyclopedia Corporation; H. M. Stanford; W. H. Ward; and A. J. Greener, and each of them, their officers, agents, representatives, and employees, in connection with the

offering for sale of any books, set of books, or publications in commerce among the several States of the United States or in the District of Columbia, cease and desist from:

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

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

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

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

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

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

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

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

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

*It is further ordered,* That the respondents, Standard Education Society, a corporation, H. M. Stanford, W. H. Ward, and A. J. Greener, and each of them, their officers, agents, representatives, and employees, in connection with the offering for sale of any home study

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course of instruction in commerce among the several States of the United States or in the District of Columbia, do cease and desist from:

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

*It is further ordered,* That the respondents shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Order

IN THE MATTER OF  
CALIFORNIA RICE INDUSTRY ET AL.

## MODIFIED CEASE AND DESIST ORDER

*Docket 3090. Order, Mar. 28, 1940*

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which original order issued on March 26, 1938<sup>1</sup> and in which Circuit Court of Appeals for Ninth Circuit on March 17, 1939, in *California Rice Industry v. Federal Trade Commission*, 102 F. (2d) 716, 28 F. T. C. 1912, rendered its opinion and issued its decree modifying said order of Commission in certain particulars and affirming same in other particulars—

Requiring respondent, California Rice Industry, and other respondents as in said order below set forth, their successors, officers, etc., in connection with offer for sale, sale, and distribution of rice and rice products in commerce as defined in section 4 of the Federal Trade Commission Act, to cease and desist from doing and performing by agreement, combination or conspiracy between and among any two or more of them or with others the (1) fixing and maintaining uniform prices; or the (2) compiling, publishing and distributing any joint or uniform list or compilation of prices; or the (3) adopting any joint or uniform price list or other device which fixes prices; or the (4) discussing, through the medium of meetings of the California Rice Industry or its Marketing and Crop Boards, or in any similar manner, uniform prices, terms, discounts, agreements upon prices, by resolution or otherwise, or the employing any similar device which fixes or tends to fix prices, or which is designed to equalize or make uniform the selling prices, terms, discounts, or policies of respondent millers.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on March 26, 1938 the Commission made its findings as to the facts herein and concluded therefrom that respondents had violated the provisions of section 5 of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on March 17, 1939, the United States Circuit Court of Appeals for the Ninth Circuit rendered its opinion and issued its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars;

*Now, therefore,* Pursuant to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with the said decree:

<sup>1</sup> 26 F. T. C. 968.

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*It is ordered,* That the respondents, California Rice Industry; Harry M. Creech, George W. Brewer, Florence M. Douglas, J. S. Ritterband, W. T. Welisch, I. Yamakawa, O. F. Zebal, R. A. Renaud, Hugh Baber, Leon Brink, N. F. Dougherty, Ernest Grell, Lewis Manor, and A. E. Scarlett; Charles S. Morse, Allen A. Morse, Nelson B. Morse, Clarence G. Morse, and Gertrude Morse, trading as Capital Rice Mills; Ellen S. Grosjean and Eileen Callaghan, trading as C. E. Grosjean Rice Milling Co.; William Crawford, trading as Woodland Rice Milling Co.; Growers Rice Milling Co., Pacific Trading Co., Inc., Phillips Milling Co., Rice Growers Association of California, and Rosenberg Brothers & Co., their successors, officers, agents, and employees, do forthwith cease and desist, in connection with the offering for sale, sale, and distribution of rice and rice products in commerce as defined in section 4 of the Federal Trade Commission Act, from doing and performing by agreement, combination or conspiracy between or among any two or more of said respondents, or with others, the following acts and things:

1. Fixing and maintaining uniform prices.
2. Compiling, publishing, and distributing any joint or uniform list or compilation of prices.
3. Adopting any joint or uniform price list or other device which fixes prices.
4. Discussing through the medium of meetings of the California Rice Industry or its Marketing and Crop Boards, or in any similar manner, uniform prices, terms, discounts, agreements upon prices, by resolution or otherwise, or employing any similar device which fixes or tends to fix prices, or which is designed to equalize or make uniform the selling prices, terms, discounts or policies of respondent millers.

*It is further ordered,* That the respondents shall, within 30 days after the service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Syllabus

## IN THE MATTER OF

WESTERN REFINING COMPANY, INC., TRADING AS THE  
MOTEX COMPANY AND COTE PRODUCTS COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3355. Complaint, Mar. 11, 1938—Decision, Mar. 28, 1940*

Where a corporation engaged in sale and distribution of certain medicinal preparations for use in treatment of diseases, ailments, and conditions peculiar to women, in substantial competition, in commerce among the various States and in the District of Columbia, with others engaged in sale and distribution of products used and useful in treatment of such diseases, ailments and conditions; in advertising and describing its so-called "Motex" and "Motex Pills" in advertising literature such as booklets, pamphlets, and circulars, and through labels containing statements purporting to be descriptive of products therein named and efficacy thereof in treatment of such diseases, etc., for which they were recommended as effective, and of which more than 400,000 copies monthly were, during periods involved, distributed among prospective purchasers in the various States and in the District of Columbia—

- (a) Represented, directly and by necessary implication, that its said products were safe, competent, and reliable remedies for all delay in fluctuation of the menses, and brought on, in few hours, desired results;
- (b) Represented, as aforesaid, that said products were harmless and safe and generally preventive of ill health, and remedy for various ailments and troublesome conditions associated with or related to menstrual function when due to unnatural causes; and
- (c) Represented, as aforesaid, that they were effective to tone up generative organs and whole system, and acted directly on circulation of uterus, and were effective abortifacients;

Facts being they were not effective as competent and reliable treatments or remedies for aforesaid various ailments and conditions, and had no value in such connection, did not tone up aforesaid organs or whole system, nor act directly on circulation of uterus, and, as aforesaid, were without value in various conditions and ailments indicated and suggested, were not safe or harmless, taken according to directions, which involved dosage in large and dangerous amount of ergotin and aloin, constituents thereof, and were not effective as abortifacients, but might, thus used, cause serious injury;

With effect of misleading and deceiving members of purchasing public into erroneous belief that said representations were true, and into purchase of substantial quantities of its various products by reason of such belief, and of thereby diverting trade in commerce to it from its competitors who do not, in sale and distribution of their products, make use of same or similar misrepresentations:

*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.

## Complaint

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Before *Mr. Randolph Preston*, trial examiner.  
*Mr. William L. Taggart* for the Commission.  
*Nash & Donnelly*, of Washington, D. C., for respondent.

## COMPLAINT

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Western Refining Co., Inc., trading as The Motex Co., and Cote Products Co., and other names, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Western Refining Co., Inc. is a Massachusetts corporation. The Motex Co. and Cote Products Co. are trade names used by Western Refining Co., Inc. in the sale and distribution of its products. Respondent is engaged in the sale and distribution of certain medical preparations for use in the treatment of diseases, ailments, and conditions peculiar to women. Respondent's office and place of business is located at 16 Robeson St., Lowell, Mass.

The respondent causes its products, when sold, to be transported from the aforesaid place of business in the State of Massachusetts to purchasers thereof located in various States other than the State of Massachusetts and in the District of Columbia. It maintains a course of trade and commerce in said products so distributed and sold by it between the State of Massachusetts and various other States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of said business, as aforesaid, the respondent has been and is in substantial competition in said commerce among and between the various States of the United States and in the District of Columbia, with other corporations and with individuals and partnerships engaged in the sale and distribution of products used and useful in the treatment of the diseases, ailments, and conditions peculiar to women, for which the respondent represents and implies that its said preparations are competent and effective treatments.

PAR. 3. The products marketed by respondent are variously known and described as Motex and Motex Pills.

PAR. 4. In the operation of its business and for the purpose of inducing the purchase of said products by members of the purchasing public, the respondent has made use of certain advertising literature,

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## Complaint

such as booklets, pamphlets, circulars, and labels, containing statements purporting to be descriptive of the various products herein named, and statements as to the effectiveness of said products in the treatment of the diseases, ailments and conditions for which they are recommended. This advertising literature is distributed among prospective purchasers located in the various States of the United States and in the District of Columbia.

PAR. 5. With reference to the products known as Motex and Motex Pills, such statements as the following are made:

**DELAYED?      WOMEN!**

Use Genuine Motex Pills. (There's Only One called Motex.) Women continually report Quick Results, without pain, harm, or inconvenience, in many unusual, long overdue, difficult, discouraging, abnormal delays, after many ordinary compounds failed. Motex Pills, liquid center, tasteless, easy to take, are of a type doctors often prefer, as quickly absorbed by body. Costs us over 300% more than ordinary compounds, Yet Costs You No More. J. B., "Was 3 months delayed. Everything now O. K." J. F., "Motex Pills a blessing to women. Got results with no pain." A. P., "Took Motex Pills and came around. They did the work." Motex Pills Are Our Highest Strength yet costs you only \$2.00 per box. Orders rushed same day received in plain, sealed box. Copy of "A Secret Every Woman Should Know" free with order. The Motex Co., Dept. 10-E 16 Robeson St., Lowell, Mass."

**FREE TO  
WOMEN DELAYED  
BEFORE      ORDERING      ELSEWHERE**

Rush your request at once for FREE COPY of "A Secret Every Woman Should Know" telling how women bring back return of the flow at home, in long overdue, discouraging abnormal delays, even after various home methods and relief compounds had failed them. You May Bless The Day You Sent For This Free Copy. Sent prepaid, in plain wrapper. The Motex Co., Dept. 1-B, 16 Robeson St., Lowell, Mass.      Copr. 1936 M. Co.

**FREE TO  
WOMEN  
DELAYED!**

Before ordering elsewhere rush your request for Absolutely Free Copy of "A Secret Every Woman Should Know." Hundreds of women the nation over have reported safe, painless return of the flow in long overdue, discouraging, abnormal delays, after securing this knowledge free, and using it in their own homes themselves, even after various home methods and relief compounds had failed them! You May Bless The Day You Sent For This Free Copy, which will be rushed to you, postpaid, in plain wrapper. The Motex Co., Dept. 1-CW 16 Robeson St., Lowell, Mass., Copr. 1936, The M. Co.

Take one or two Motex Pills before each meal, and one at bedtime. If the pills seem to act too strongly in any way, reduce the dosage or discontinue until the nausea has passed away and there is no more distress. Only occasionally do we ever hear of Motex Pills acting too strongly, and then usually on very sensitive natures. There are 20 Motex Pills in a box. A box therefore lasts several days.

## Complaint

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Each night just before retiring take a hot mustard "Sitz" bath, sitting in the hot water up to the hips until you perspire freely, though not over 20 minutes. Into this hot bath water pour a half cupful of dry, yellow, ground mustard, which you can obtain very cheaply at any drug store. Cover up the upper part of your body with a blanket to keep out the cold air while sitting in the sitz or hip bath. Then get into bed after a quick drying off, being careful not to catch cold. These hot mustard sitz or hip baths just before retiring are said to greatly aid the results from Motex Pills.

In said statements, together with other similar statements not herein set out with respect to the products named, respondent, directly and by implication, represents that said products are safe, competent and reliable remedies for all delay in the function of the menses; that menstruation is brought on in a few hours by the use of said products; that said products are harmless and absolutely safe; that they are a general preventative of ill health and that they are recommended by famous doctors; that they are a remedy for unnatural, sluggish, suppressed, irregular and delayed periods including painful, fetid, scanty, absent monthly flow and other similar troublesome conditions of the menstrual function when due to unnatural causes, and that they are effective to tone up the generative organs and the whole system and act directly on the circulation of the uterus, are effective abortifacients, and will prevent conception.

In truth and in fact said products are not effective as competent and reliable treatments or remedies for delay in functioning of the menses. Said products are not effective as remedies for unnatural, sluggish, suppressed, irregular or delayed periods. They are not effective to tone up the generative organs or the whole system, and they do not act directly on the circulation of the uterus. Neither of said products correct irregularities, relieve unnatural suppression or reestablish the monthly flow. They are not effective as reliable or efficient remedies in many of the most stubborn or longstanding causes of unnatural suppression of menstruation. Further, said products do not form absolutely safe or harmless treatments if taken according to directions and are not recommended by famous physicians or generally by physicians, are not always effective as abortifacients, will not prevent conception, and might cause serious injury physically if so used.

PAR. 6. There are among respondent's competitors in commerce, as herein set out, those who do not in any way misrepresent the character and nature of their products and who do not make use of any of the misleading representations herein set out and similar ones with respect to the therapeutic value of their respective products.

PAR. 7. The aforesaid false and misleading statements and representations used by the respondent in offering for sale and selling the various products as herein described 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 and mistaken belief that said representations and implications are true and into the purchase of substantial quantities of respondent's various products on account of said erroneous and mistaken belief.

As a result thereof, trade in said commerce is unfairly diverted to respondent from competitors who do not in the sale and distribution of their respective products make use of the same or similar misrepresentations. In consequence thereof substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States.

PAR. 8. The methods, acts and practices of respondent herein set forth are to the prejudice of the public and of competitors of the respondent as hereinabove alleged. Said methods, acts, and practices constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 11th day of March 1938, issued its complaint and caused same to be served upon the respondent, Western Refining 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 before Randolph Preston, 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, this proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence and brief in support of the complaint, 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 Western Refining Co., Inc., is a corporation duly organized and existing under the laws of the State of Massachusetts. Respondent, Western Refining Co., Inc., uses the

trade names "The Motex Company" and "Cote Products Company" under which to do business in the sale and distribution of its products.

Respondent is, and has been, engaged in the sale and distribution of certain medical preparations for use in the treatment of diseases, ailments, and conditions peculiar to women, and has its office and place of business at 16 Robeson Street, Lowell, Mass.

PAR. 2. The respondent causes, and has caused, its products, when sold, to be transported from its aforesaid place of business in the State of Massachusetts, to purchasers of same located in various other States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent has been and is in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with other corporations, and with individuals and partnerships also engaged in the sale and distribution of products used and useful in the treatment of the same diseases, ailments, and conditions peculiar to women.

PAR. 4. The products which have thus been marketed by the respondents are variously known and described as "Motex" and "Motex Pills." The formula for said products is substantially as follows:

	<i>Grain</i>
Aloes -----	1
Ext. Cotton Root Bark -----	1
Ergotin (Bonjean) -----	1
Ferrous sulphate (Exissicated) -----	1
Ext. Black Hellebore -----	1
Oil Savin -----	¼

(2nd Stip. Par. 5)

In some instances, the respondent has used a formula consisting of Apiol, 5 min., Ergot, 2 grains, Oil of Savin, ½ minim, Aloin, ⅓ grain, the amount of Ergot being double the amount used in the ordinary Motex and Cote Pills. The effect of the combination of the drugs in said formula of respondent in some case, is to produce abortions, and in many instances the use of said products has been dangerous to that part of the public taking same. The dosage prescribed on the label of said product, to wit, two tablets before each meal and one before bed-time, making seven tablets per day, which included 7 grains of ergotin, is a very large and dangerous dose; 7 grains of ergotin a day, taken for a number of days, may and often does produce a very serious and dangerous condition known as acute ergotism which is a toxic and poisonous effect of an overdose of ergotin. Another constituent of said formula, to wit, aloin, is a

strong purgative, and the dosage as prescribed herein may, and often does, produce very harmful results to the patient.

PAR. 5. In the operation of its said business, and for the purpose of inducing the purchase of said products by members of the purchasing public, respondent has made use of certain advertising literature such as booklets, pamphlets, circulars and labels containing statements purporting to be descriptive of the various products therein named and statements as to the efficacy of said products in the treatment of the diseases, ailments and conditions for which same are recommended to be effective. This advertising literature, during the periods mentioned in the complaint, has been and is distributed among prospective purchasers located in the various States of the United States and in the District of Columbia; at times more than 400,000 copies per month of such advertising literature being so distributed, the same containing statements as to the value and effectiveness of respondent's products, as aforesaid.

PAR. 6. With reference to respondent's products known as "Motex" and "Motex Pills," it has made statements in the advertising literature herein above described as follows:

#### DELAYED WOMEN

Use genuine Motex Pills. (There's ONLY ONE called Motex.) Women continually report Quick Results, without pain, harm or inconvenience, in many unusual, long overdue, difficult, discouraging, abnormal delays, after many ordinary compounds failed. Motex Pills, liquid center, tasteless, easy to take, are of a type doctors often prefer, as quickly absorbed by body. Costs us over 300% more than ordinary compounds, Yet Costs You No More. J. J. "was 3 months delayed. Everything now O. K." J. F., "Motex Pills a blessing to women. Got results with no pain." A. P., "Took Motex Pills and came around. They did the work." Motex Pills Are Our Highest Strength yet costs you only \$2.00 per box. Orders rushed same day received in plain, sealed box. Copy of "A Secret Every Woman Should Know" free with order. The Motex Co., Dept. 10-E, 16 Robeson St., Lowell, Mass.

\* \* \* \* \*

#### FREE TO WOMEN DELAYED

#### BEFORE ORDERING ELSEWHERE

Rush your request at once for Free Copy of "A Secret Every Woman Should Know" telling how women bring back a return of the flow at home, in long overdue, discouraging abnormal delays, even after various home methods and relief compounds have failed them. You May Bless The Day You Sent For This Free Copy. Sent prepaid in plain wrapper. The Motex Co. Dept. 1-B, 16 Robeson St., Lowell, Mass. Copr. 1936 M. Co.

\* \* \* \* \*

Findings

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## FREE TO WOMEN

## DELAYED

Before Ordering Elsewhere rush your request for Absolutely Free Copy of "A Secret Every Woman Should Know." Hundreds of women the nation over have reported safe, painless return of the flow in long overdue, discouraging, abnormal delays, after securing this knowledge free, and using it in their own homes themselves, even after various home methods and relief compounds have failed them! You May Bless The Day You Sent For This Free Copy, which will be rushed to you, postpaid, in plain wrapper. The Motex Co., Dept. 1 CW 18 Robeson St., Lowell, Mass. Copr. 1936, The M. Co.

In the said advertising literature hereinabove set out, and in other statements of a similar nature appearing in evidence, the respondent, directly and by necessary implication represents that its said products are safe, competent and reliable remedies for all delay in fluctuation of the menses; that menstruation is brought on in a few hours by the use of said products; that said products are harmless and safe; that said products are a general preventive of ill health; that such products are a remedy for unnatural, sluggish, suppressed, irregular and delayed menstrual periods, including painful, fetid, scanty, and absent monthly flow, and other similarly troublesome conditions of the menstrual function when due to unnatural causes; that they are effective to tone up the generative organs and the whole system, and act directly on the circulation of the uterus and are effective abortifacients.

PAR. 7. Said products are not effective as competent and reliable treatments or remedies for delay in functioning of the menses and have no value in this connection. They are not effective as remedies or as competent treatments for unnatural, sluggish, suppressed, irregular or delayed menstrual periods; they do not have the effect of toning up the generative organs, or the whole system, and they do not act directly on the circulation of the uterus. Neither of said products have any therapeutic value so as to correct irregularities, relieve unnatural suppression, or reestablish the monthly flow. They are not effective as reliable or efficient remedies in stubborn or long standing causes of unnatural suppression of menstruation. Said products are not safe or harmless treatments when taken according to directions. Respondent's products are not effective as abortifacients, and may cause serious injury if so used.

PAR. 8. There are, among respondent's competitors in commerce, those who do not in any way misrepresent the character and nature of their respective products, and who do not make use of any of the misleading representations as herein found to have been used by the

respondent, with respect to the therapeutic value of their respective products.

PAR. 9. The aforesaid false and misleading statements and representations used by respondent in offering for sale and selling the various products as herein described, 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 and mistaken belief that said representations are true, and into the purchase of substantial quantities of respondent's various products on account of such erroneous and mistaken belief. As a result thereof, trade in commerce, among and between the various States of the United States has been diverted to respondent from its competitors who do not, in the sale and distribution of their products, make use of the same or similar misrepresentations.

#### CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public and of competitors of the respondent, 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 Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of the said complaint, brief in support of the complaint filed herein, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Western Refining Co. Inc., a corporation, trading as The Motex Co., Cote Products Co. or trading under any other trade name or names, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with offering for sale, sale and distribution of medical preparations now known as "Motex," "Motex Pills," "Cote Pills," or any other medical preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under these names 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—

## Order

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1. Representing that respondent's products constitute safe, competent, or scientific remedies or treatments for delayed menstruation or have any value in the treatment thereof, or that their use will have no ill effects upon the human body.

2. Representing that respondent's products are safe, competent or reliable cures or remedies for delayed, sluggish, painful, or suppressed menstruation, or that they constitute competent and effective treatments therefor; or have any value in the treatment thereof.

3. Representing that respondent's products are effective in toning up the generative organs of the system or act directly on the circulation of the uterus.

4. Representing that respondent's products have any therapeutic value so as to correct irregularities, relieve unnatural suppression or reestablish the monthly flow, or that said products are effective in stubborn or long standing cases of unnatural suppression of menstruation.

5. Representing directly or by implication that the use of respondent's products will produce a miscarriage if taken by pregnant women.

6. Representing through the failure to reveal that the use of any of respondent's such products may result in serious or irreparable injury to health, or through any other means or device, or in any other manner that respondent's preparations contain no harmful or dangerous drugs or that the use of said products will have no ill effects upon the human body.

*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

MADAME MARGUERITE TURMEL, INC., ALSO DOING  
BUSINESS AS MADAME MARGUERITE TURMEL AND  
MADAME TURMEL

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 3513. Complaint, July 27, 1938—Decision, Mar. 28, 1940*

Where a corporation engaged in sale and distribution of its "Knogray" for gray or streaked or faded hair, to purchasers in various States and in the District of Columbia, in competition with others engaged in sale, in commerce as aforesaid, of preparations for same general purposes, and including many who do not in any manner misrepresent their products or properties thereof; in advertising its said preparation in newspapers, circulars, bulletins, and other publications of interstate circulation—

Represented that product in question, applied to scalp and hair, would color roots thereof and affect color of new growth and eliminate necessity for repeated applications to prevent such new growth from showing gray, streaked, or faded above scalp line, and that product in question was not a dye, and that use thereof would cause natural color to be restored to hair, through such statements, among others, as "\* \* \* colors hair roots perfectly," "\* \* \* do not confuse \* \* \* with ordinary hair 'dyes' where you must ask for a specific color \* \* \*" and "You can match the exact natural color of your hair perfectly";

Facts being changed color by application of preparation to gray, streaked or faded hair of user was not color produced by latter's bodily functions, but results of product's dyeing or staining properties, and application thereof to hair had no effect in changing, and could not change, color of new growth hair appearing upon head as such, subsequent to application, unless thereafter repeated, and it did not color roots of hair so as to have substantial effect on color of new growth, and use did not eliminate the necessity for repeated applications in order to prevent such growth from showing gray, streaked or faded above scalp line

With effect of confusing, misleading, and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such statements and representations relative to efficacy and effectiveness of product in question were true, and into purchase thereof because of such beliefs, thus engendered, and of thereby diverting unfairly substantial trade in commerce to it from its competitors engaged in the sale and distribution of similar preparations or products designed and intended for similar usage, and who truthfully advertise extent of value and effectiveness thereof; 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.

Complaint

30 F. T. C.

Before *Mr. John J. Keenan*, trial examiner.

*Mr. John N. Wheelock* and *Mr. John R. Phillips, Jr.*, for the Commission.

*Mr. Arthur B. Spingarn* and *Mr. H. H. Zand*, 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 Madame Marguerite Turmel, Inc., a corporation, doing business under its own name and under the trade names Madame Marguerite Turmel and Madame Turmel, 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, Madame Marguerite Turmel, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its office and principal place of business at 256 West Thirty-first Street in the city of New York, State of New York. Respondent, under its own name and also in the trade names of Madame Marguerite Turmel and Madame Turmel, is now and has been for more than 2 years last past, engaged in the sale and distribution of a preparation designated as "Knogray," purporting to be for the treatment of human hair for the purpose of coloring gray hair or what is referred to as streaked or faded hair. Respondent offers for sale and sells such preparation to members of the public situated in various States of the United States and in the District of Columbia. Respondent causes such preparation to be transported from its place of business in the city of New York, State of New York, to purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia. In so carrying on its business, respondent maintains a course of trade in commerce in such preparation among and between the various States of the United States and the District of Columbia.

PAR. 2. During all of the times mentioned herein other corporations and firms, individuals, and partnerships in the various States of the United States have been and are engaged in the business of selling preparations designed and used for the same general purposes for which respondent represents the preparation "Knogray" to be effective, as herein set forth. Such other corporations and such firms,

individuals, and partnerships 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 the origin of the shipment thereof, to the respective purchasers thereof. In the course and conduct of its business of selling and distributing the preparation "Knogray" in commerce, as herein described, the respondent has been, during all of the times mentioned herein, and is now, in competition in said commerce with such other corporations and such firms, individuals, and partnerships.

PAR. 3. In the course and conduct of its business of selling the preparation "Knogray" 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, circulars, and bulletins, having an interstate circulation, purporting to be descriptive of such 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, circulars, and bulletins, having interstate circulation:

Knogray colors hair roots perfectly.

Knogray colors the hair so satisfactorily (the roots as well as the tips of the hair).

Knogray will satisfy you as no other hair coloring can. Please do not confuse Knogray with ordinary hair "dyes" where you must ask for a specific color and use that color without any chance of varying it.

You can match the exact natural color of your hair perfectly.

Not alone can you secure a perfect match for your own hair, but any member of your household annoyed with gray hair, can do the same out of your bottle, whatever the color of their hair.

Before hearing of Knogray you never knew that there was a preparation which by a very simple and easy process, would enable you to get a perfect and exact color match of your hair or any natural shade you desire; and

With Knogray you can match exactly the natural shade of your hair before it starts to turn gray.

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 preparation "Knogray" when applied to the human scalp and hair will color the roots of the hair and effect the color of new growth hair, and eliminate the necessity for repeated applications of such preparation in order to prevent the new growth of hair from showing gray, streaked, or faded above the scalp line;

## Complaint

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(2) that such preparation is not a dye; (3) that the use of such preparation causes the natural color to be restored to the hair.

PAR. 4. In truth and in fact, the preparation "Knogray" will not color the roots of the hair when applied to the scalp and hair so as to have any substantial effect on the color of new growth hair, and its use will not eliminate the necessity for repeated applications in order to prevent new growth hair from showing gray, streaked, or faded above the scalp line.

The effect upon the color of the hair of the user of such preparation is that of a stain or dye. It acts upon the hair as a stain or dye in causing the hair of the user thereof, that has become gray, streaked, or faded, to appear of a different color.

The use of such a preparation will not restore or cause the original natural color to be imparted to the hair. The changed color produced by the application of such preparation to the gray, streaked or faded hair of the user is not a color produced by the bodily functions of such user, but is a result of the dyeing or staining properties of such preparation. The application of such preparation to the human hair has no effect in changing, and cannot effect a change in, the color of the hair which appears upon the head of the user as new growth subsequent to such application, unless the application of such preparation is thereafter repeated.

PAR. 5. The aforesaid statements and representations of respondent relative to the efficacy and of the effectiveness in use of the preparation "Knogray" have a capacity and tendency to and do confuse, mislead, and deceive a substantial number of members of the purchasing public into the erroneous and mistaken beliefs that such statements and representations are true, and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Substantial trade in said commerce is thereby unfairly diverted to respondent from its competitors who are engaged in the sale and distribution of similar preparations, or other preparations, designed and intended for similar use, who truthfully advertise the extent of the value and effectiveness 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. 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 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 27, 1938, issued, and on July 28, 1938, served its complaint in this proceeding upon respondent, Madame Marguerite Turmel, Inc., a corporation doing business under its own name and also in the trade names of Madame Marguerite Turmel and Madame Turmel, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Thereafter respondent filed its answer. After hearings had begun, respondent, with the permission of the Commission, withdrew its answer and substituted therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. Thereafter this proceeding regularly came on for final hearing before the Commission on the 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, Madame Marguerite Turmel, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its office and principal place of business at 256 West Thirty-first Street in the city of New York, State of New York. Respondent, under its own name and also in the trade names of Madame Marguerite Turmel and Madame Turmel, is now and has been for more than 2 years last past, engaged in the sale and distribution of a preparation designated as "Knogray," purporting to be for the treatment of human hair for the purpose of coloring gray hair or what is referred to as streaked or faded hair. Respondent offers for sale and sells such preparation to members of the public situated in various States of the United States and in the District of Columbia. Respondent causes such preparation to be transported from its place of business in the city of New York, State of New York, to such purchasers. In so carrying on its business, respondent maintains a course of trade in such preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. During all of the times mentioned herein other corporations and firms, individuals, and partnerships in the various States

## Findings

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of the United States have been and are engaged in the business of selling preparations designed and used for the same general purposes for which respondent represents the preparation "Knogray" to be effective, as herein set forth. Such other corporations and such firms, individuals, and partnerships 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 the origin of the shipment to the purchasers thereof. In the course and conduct of its said business in commerce, as herein described, the respondent has been, and is now, in competition in commerce with such other corporations and such firms, individuals, and partnerships, many of whom do not in any manner misrepresent their said products or the properties thereof.

PAR. 3. In the course and conduct of its said business in commerce, as herein described, and in furtherance of the sale of its said preparation, the respondent has caused statements and representations to appear in newspapers, circulars, bulletins, and other publications having an interstate circulation, concerning and descriptive of such preparation and of its effectiveness in use, as follows:

Knogray colors hair roots perfectly.

Knogray colors the hair so satisfactorily (the roots as well as the tips of the hair).

Knogray will satisfy you as no other hair coloring can. Please do not confuse Knogray with ordinary hair "dyes" where you must ask for a specific color and use that color without any chance of varying it.

You can match the exact natural color of your hair perfectly.

Not alone can you secure a perfect match for your own hair, but any member of your household annoyed with gray hair, can do the same out of your bottle, whatever the color of their hair.

Before hearing of Knogray you never knew that there was a preparation which by a very simple and easy process, would enable you to get a perfect and exact color match of your hair or any natural shade you desire: and

With Knogray you can match exactly the natural shade of your hair before it started to turn gray.

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 preparation "Knogray" when applied to the human scalp and hair will color the roots of the hair and affect the color of new growth hair, and eliminate the necessity for repeated applications of such preparation in order to prevent the new growth of hair from showing gray, streaked, or faded above the scalp line; (2) that such preparation is not a dye; (3) that the use of such preparation causes the natural color to be restored to the hair.

PAR. 4. In truth and in fact, the preparation "Knogray" will not color the roots of the hair when applied to the scalp and hair so as to have any substantial effect on the color of new growth hair, and its use will not eliminate the necessity for repeated applications in order to prevent new growth hair from showing gray, streaked, or faded above the scalp line.

The effect upon the color of the hair of the user of such preparation is that of a stain or dye. It acts upon the hair as a stain or dye in causing the hair of the user thereof, that has become gray, streaked, or faded, to appear of a different color.

The use of such preparation will not restore or cause the original natural color to be imparted to the hair. The changed color produced by the application of such preparation to the gray, streaked, or faded hair of the user is not a color produced by the bodily functions of such user, but is a result of the dyeing or staining properties of such preparation. The application of such preparation to the human hair has no effect in changing, and cannot effect a change in, the color of the hair which appears upon the head of the user as new growth subsequent to such application unless the application of such preparation is thereafter repeated.

PAR. 5. The aforesaid statements and representations of respondent relative to the efficacy and of the effectiveness in use of the preparation "Knogray" have a capacity and tendency to and do confuse, mislead, and deceive a substantial number of members of the purchasing public into the erroneous and mistaken beliefs that such statements and representations are true, and into the purchase of such preparation because of said erroneous and mistaken beliefs so engendered. Substantial trade in said commerce is thereby unfairly diverted to respondent from its competitors who are engaged in the sale and distribution of similar preparations, or other preparations, designed and intended for similar usage, who truthfully advertise the extent of the value and effectiveness 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.

#### CONCLUSION

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

## Order

30 F. T. C.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in the complaint, and states that it waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Madame Marguerite Turmel, Inc., a corporation, trading as Madame Marguerite Turmel and as Madame Turmel, 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 its cosmetic preparation designated "Kno-gray," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under that 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 said preparation will color the roots of the hair or have any effect thereon or on new hair growth, or will restore the natural or original color to the hair, or will affect the color of the hair in any way other than as a dye.
2. Representing that said preparation is not a dye or is anything other than a dye.
3. Representing that anything less than repeated applications of said preparation will cause the hair to retain the color imparted to it by said 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.

## Complaint

IN THE MATTER OF

JOSEPH T. GIBBONS, TRADING AS WASHINGTON  
LAUNDRYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3930. Complaint, Oct. 18, 1939—Decision, Mar. 28, 1940*

Where an individual engaged, in the city of Washington, in the laundry, dry cleaning, and dyeing business, and in collecting clothes, linens, and other articles from customers in the District of Columbia and in the States of Maryland and Virginia, and transporting such clothes, etc., to his place of business in said District, and thereafter delivering from said place such clothes, etc., cleaned, dyed, or laundered, to such various customers, and collecting therefrom his charges for so cleaning, etc., and maintaining, as thus engaged, course of trade and commerce in and between said District and States referred to—

Represented, through statement on laundry boxes or other containers in which were placed many of the clothes, linens, and other articles, "We wash everything with Ivory Soap," that he washed with soap in question all clothes, linens, and other articles submitted for laundering, facts being he had ceased, prior to time concerned, to use such soap exclusively, and did not wash therewith all clothes, etc., thus submitted;

With capacity and tendency to cause members of purchasing public to have erroneous and mistaken belief that he washed with soap in question, well and favorably known over period of years by substantial number of purchasing public and preferred by many for such purpose, all clothes, etc., placed with him for cleaning, and, by reason of such belief, to tender to him substantial quantities of clothes and other articles, as aforesaid, for cleaning and laundering with such soap, and pay him substantial sums therefor:

*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. Lynn C. Paulson* for the Commission.

*Mr. Ross H. Snyder*, of Washington, D. C., for respondent.

## COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Joseph T. Gibbons, an individual, trading as Washington Laundry, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect

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

PARAGRAPH 1. The respondent, Joseph T. Gibbons, is an individual trading as Washington Laundry and having his principal office and place of business at 2627 K Street, NW., in the city of Washington, District of Columbia. Respondent is now, and for more than 1 year last past has been, engaged in the laundry, dry cleaning and dyeing business. Respondent collects clothes, linens, and other articles from his customers at their respective points of location in the District of Columbia and in the States of Maryland and Virginia, and transports or causes to be transported said clothes, linens, and other articles to his aforesaid place of business in the District of Columbia. Respondent cleans, dyes, and launders said clothes, linens, and other articles at his aforesaid place of business in the District of Columbia, and thereafter delivers, or causes to be delivered, from his aforesaid place of business in the District of Columbia, said clothes, linens, and other articles to his customers at their respective points of location in the District of Columbia and in the States of Maryland and Virginia. Respondent thereafter collects from his aforesaid customers his charges for collecting and delivering, and for cleaning, dyeing, or laundering said clothes, linens, and other articles. In the course and conduct of his aforesaid business, respondent maintains and at all times mentioned herein has maintained, a course of trade in commerce in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

PAR. 2. In the course and conduct of his aforesaid business respondent delivers from his said place of business in the District of Columbia, to his customers at their respective points of location in the District of Columbia and in the States of Maryland and Virginia, many of the clothes, linens, and other articles, in laundry boxes or other containers upon which respondent places or causes to be placed, the statement and representation as follows: "We wash everything with Ivory Soap."

Through the use of aforesaid statements and representation, respondent represents that he washes with Ivory soap all of the clothes, linens, and other articles which are submitted to him for laundering.

PAR. 3. The aforesaid statement and representation by the respondent is misleading and untrue. In truth and in fact respondent does not wash with Ivory soap all of the clothes, linens, and other articles which are submitted to him for laundering. In fact, respondent washes with Ivory soap very few, if any, of said clothes, linens, and other articles.

Over a period of years Ivory soap has become well and favorably known by a substantial number of the purchasing public to such an extent that many people prefer to have their clothes, linens, and other articles washed or laundered with Ivory soap.

PAR. 4. The use by the respondent of the aforesaid false and misleading statement and representation has the capacity and tendency to, and does, cause members of the purchasing public to have the erroneous and mistaken belief that the aforesaid false and misleading statement and representation is true, and to tender to respondent substantial quantities of clothes, linens and other articles for laundering, and to pay respondent substantial sums for such laundering, because of the erroneous and mistaken belief that said clothes, linens, and other articles were laundered or washed with Ivory soap.

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 the 18th day of October 1939, issued and served its complaint in this proceeding upon respondent, Joseph T. Gibbons, an individual trading as Washington Laundry, 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, and stating that respondent discontinued the use of laundry boxes or containers printed as described in the complaint on about the 15th of December, A. D., 1938, and that since said date he has not used any boxes or other containers printed as described in the complaint, 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, Joseph T. Gibbons, is an individual trading as Washington Laundry and having his principal office and place of business at 2627 K Street, NW., in the city of Washington, District of Columbia. Respondent is now, and for more than 1 year last past has been, engaged in the laundry, dry cleaning, and dyeing business. Respondent collects clothes, linens, and other articles from his customers at their respective points of location in the District of Columbia and in the States of Maryland and Virginia and transports, or causes to be transported, said clothes, linens, and other articles to his aforesaid place of business in the District of Columbia. Respondent cleans, dyes, and launders said clothes, linens, and other articles at his aforesaid place of business in the District of Columbia and thereafter delivers, or causes to be delivered, from his aforesaid place of business in the District of Columbia, said clothes, linens, and other articles to his customers at their respective points of location in the District of Columbia and in the States of Maryland and Virginia. Respondent thereafter collects from his aforesaid customers his charges for collecting and delivering and for cleaning, dyeing, or laundering said clothes, linens, and other articles. In the course and conduct of his aforesaid business, respondent maintains and at all times mentioned herein has maintained, a course of trade in commerce in the District of Columbia and between the District of Columbia and the States of Maryland and Virginia.

PAR. 2. In the course and conduct of his aforesaid business, for a period of time ending on or about the 15th of December A. D., 1938, respondent delivered from his said place of business in the District of Columbia, to his customers at their respective points of location in the District of Columbia and in the States of Maryland and Virginia, many of the clothes, linens, and other articles in laundry boxes or other containers upon which respondent placed, or caused to be placed, the statement and representation as follows: "We wash everything with Ivory Soap."

Through the use of the aforesaid statement and representation, respondent represented that he washed with Ivory Soap all of the clothes, linens, and other articles which were submitted to him for laundering.

PAR. 3. The aforesaid statement and representation by the respondent was misleading and untrue. Prior to the time respondent ceased to use laundry boxes and containers upon which had been placed the representation, "We wash everything with Ivory Soap,"

he had ceased to use Ivory Soap exclusively and did not wash with Ivory Soap all of the clothes, linens, and other articles which were submitted to him for laundering.

Over a period of years Ivory Soap has become well and favorably known by a substantial number of the purchasing public to such an extent that many people prefer to have their clothes, linens, and other articles washed or laundered with Ivory Soap.

PAR. 4. The use by respondent of the aforesaid false and misleading statement and representation had the capacity to, and if continued still would, cause members of the purchasing public to have the erroneous and mistaken belief that respondent washes with Ivory Soap all of the clothes, linens, and other articles which are placed with him to be cleaned, and because of said erroneous and mistaken belief to tender to respondent substantial quantities of clothes, linens, and other articles for cleaning and laundering with Ivory Soap and to pay respondent substantial sums for such cleaning and laundering.

#### CONCLUSION

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.

#### 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 that he is not now using and has not since on or about December 15, 1938, used laundry boxes or containers printed as described in the 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, Joseph T. Gibbons, trading as Washington Laundry, in connection with the offering for sale, sale or solicitation of laundry, dry cleaning or dyeing services in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that wearing apparel and other articles intrusted or delivered to him for laundering or cleaning will be washed with Ivory Soap,

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or any other designated cleaning agent, when such wearing apparel and other articles are not washed or cleaned with Ivory Soap or the particular cleaning agent designated.

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

## Syllabus

## IN THE MATTER OF

PATCH PREMEK CORPORATION, AND H. K. PATCH,  
TRADING AS H. K. PATCH COMPANY

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

*Docket 3469. Complaint, Sept. 27, 1938<sup>1</sup>—Decision, Mar. 29, 1940*

Where a corporation and an individual, who was president thereof and controlled and directed its business activities, sales policies, and practices, engaged in sale and distribution of their "PremeK 33," or "C. S. 53," medicinal preparation for various ailments, diseases, and conditions, to purchasers at various points in various other States, in substantial competition with others engaged in sale and distribution, in commerce among the various States, of preparations for use in connection with treatment of ailments, diseases, and conditions for which they recommended and claimed their said preparation to be effective and competent treatment, and including many who do not in any manner misrepresent the character, nature, and therapeutic properties of their products; in advertisements which they disseminated, in cooperation with one another in acts and things below set forth, through newspapers and other periodicals of general circulation throughout the various States, and through booklets, leaflets, pamphlets, and other printed matter distributed among prospective customers—

- (a) Represented that their said preparation was an amazing new discovery, and the most effective way to end irritations of all kinds, and that it constituted most effective treatment for, and would end, numerous ailments and conditions, including, among others, eczema, athlete's foot, prickly heat, skin irritations and rashes, acne in various forms, and dandruff and eczema; and
- (b) Represented that use thereof would stop perspiration and provided only sure way to prevent noxious body odors, and that it was a bactericide which would prevent reinfection and which penetrated skin pores and deep-seated organisms, and killed parasites responsible for irritation, and that it had been successful in the treatment of chronic irritations where other medications had failed;

Facts being that only ingredient in preparation in question of therapeutic consequence was sulfur in colloidal or finely divided form, which was neither new nor amazing discovery, but had been in use as an adjunct or accessory in medication generally for a long time, most that could properly be claimed for preparation in question, excepting as to scabies, was that under proper direction or medical supervision it might be used as beneficial accessory treatment in case of some of conditions or ailments in question resulting from superficial or external causes, and it was not a quick or effective treatment for, and would not cure, any of conditions, symptoms, or ailments in question, with exception aforesaid, and it was not a bactericide and would not accomplish results claimed therefor as above, and claims as to its therapeutic value and properties greatly exceeded those which might truthfully be made for such a product;

<sup>1</sup> Amended and supplemental.

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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 products possessed properties claimed and represented, and would accomplish such results, and of causing purchase of substantial quantities thereof as consequence of such beliefs, thus induced, and of thereby unfairly diverting to themselves trade from their competitors; 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 acts and practices therein.

Before *Mr. Charles P. Vicini* and *Mr. John J. Keenan*, trial examiners.

*Mr. Jesse D. Kash* 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 Patch Premek Corporation, a corporation, and H. K. Patch, individually, and trading under the firm name and style, H. K. Patch 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 amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Patch Premek 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 at 1716 East Seventh Street, Los Angeles, Calif. Respondent H. K. Patch, who is president of said respondent Patch Premek Corporation, controls and directs the business activities, sales policies, and practices of the respondent Patch Premek Corporation. Said respondents have cooperated each with the other and have acted in concert in doing the acts and things hereinafter alleged. Respondents are now and have been for some time last past engaged in the business of selling and distributing a certain purported medicinal preparation which is recommended for use in the treatment of various ailments, diseases, and conditions which may be present or exist in the human body. This product is known as, and sold under the name of "Premek 33," and is similar to a preparation sold by the respondents to the medical profession under the name and designation of "C. S. 53."

PAR. 2. Respondents, in the course and conduct of their said business, cause said product, when sold, to be transported from their said place of business in the State of California to the purchasers thereof located at various points in the several 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 said preparation in commerce between and among the various States of the United States, in the District of Columbia, and with foreign countries.

Respondents have been and are in substantial competition with corporations, firms, partnerships, and individuals likewise engaged in the business of selling and distributing in said commerce preparations for use in connection with the treatment of the ailments, diseases, and conditions for which the respondents represent and claim their preparation to be an effective and competent treatment.

There are among the competitors of the respondents in said commerce many who do not in any manner misrepresent the character, nature, and therapeutic properties of the products sold and distributed by them.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said preparation, respondents have caused false advertisements containing representations and claims with respect to the character, nature, and properties of said preparation 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 the use of advertisements in newspapers and other periodicals having a general circulation throughout the various States of the United States and through the use of booklets, leaflets, pamphlets, and other printed matter distributed among prospective purchasers. Among others, and typical of the representations and claims contained in said false advertisements so used and disseminated as aforesaid, the respondents represent that their said preparation is an amazing new discovery; that it is the most effective way to end irritations of all kinds; that it is the most effective treatment for and that its use will end eczema, athlete's foot, dhobie and jock strap itch, prickly heat, insect bites, dermatitis herpetiformis, skin irritations and rashes, pimples, barber's itch, chafing, shingles, ringworm or epidermophytosis, scabies, impetigo, acne in various forms, pruritus, aching feet, soft corns, dandruff and eczema of the scalp, furnuculosis of the ear canal; that its use will stop perspiration and it provides the only sure way to prevent noxious body odors; that it is a bactericide and will prevent reinfection; that it penetrates the skin pores and deep-seated organ-

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isms and kills the parasites which cause irritation; and that it has been successful in the treatment of chronic irritations where other medications have failed.

PAR. 4. The aforesaid representations and claims used and designated by the respondents in the manner above described are grossly exaggerated, misleading and untrue, and constitute false advertisements. In truth and in fact "Premek 33" is by quantitative analysis shown to contain:

	<i>Percent</i>
Colloidal elemental sulfur.....	50.00
Magnesium oxide.....	3.00
Resublimed beta-naphthol.....	.20
Glycerine.....	5.00
Gum arabic.....	5.00
Water.....	36.8

and the only ingredient therein of consequence therapeutically is the colloidal or finely divided sulfur, and sulfur is neither a new nor an amazing discovery but has been in use as an adjunct or accessory in medication generally for a long time. Said preparation is not a quick or effective treatment for nor will it cure any of the conditions, symptoms, or ailments hereinabove mentioned except scabies. Its use in some of such conditions is fraught with possible danger to the public health. Except as to scabies, the most that can be accomplished by, or properly claimed for, respondents' said preparation is that as to some of the conditions or ailments mentioned, which result from superficial or external causes, said preparation may be used under proper direction or medical supervision as a beneficial accessory treatment. Said preparation is not a bactericide, does not prevent reinfection and does not penetrate sufficiently to destroy subcutaneous parasites which cause irritation. Respondents' claims as to the therapeutic value and properties of said preparation greatly exceed those which might truthfully be made for such a preparation.

PAR. 5. 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. 6. The use by respondents 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 respondents' said preparation possesses the properties claimed and represented and will accomplish the results represented, and causes the purchase of substantial quantities of

respondents' said preparation as a result of the erroneous and mistaken beliefs induced as aforesaid. 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 competitors in commerce among and between the various States of the United States and in the District of Columbia, and with foreign countries.

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 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 June 1938, issued, and on the 5th day of July 1938, served its complaint in this proceeding upon the respondent Patch Premek Corporation, a corporation charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. Said Patch Premek Corporation filed its answer to said complaint on the 18th day of July 1938. On September 27, 1938, the Commission issued, and subsequently served, its amended and supplemental complaint in this proceeding, upon said Patch Premek Corporation, and also upon the respondent H. K. Patch, an individual, trading as H. K. Patch Co., charging them with the use of unfair methods of competition in commerce and unfair acts and practices in commerce in violation of the provisions of said act. Thereafter, and after certain hearings had been held in this proceeding, the Commission, by order entered herein, granted the request of respondent Patch Premek Corporation for permission to withdraw its answer filed on July 18, 1938, and to substitute therefor an answer admitting all of the material allegations of fact set forth in said amended and supplemental complaint, with one exception therein specified. Said substitute answer, which waived all intervening procedure and further hearings as to said facts was duly filed in the office of the Commission. The respondent H. K. Patch joined in said substitute answer. 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. Respondent, Patch Premek 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 at 1716 East Seventh Street, Los Angeles, Calif. Respondent H. K. Patch, an individual, is president of said respondent, Patch Premek Corporation, and controls and directs the business activities, sales policies and practices of respondent, Patch Premek Corporation. Respondent, H. K. Patch also trades under the name of H. K. Patch Co. Said respondents have cooperated each with the other and have acted in concert in doing the acts and things herein-after alleged. Respondents are now and have been for some time last past engaged in the business of selling and distributing a certain medicinal preparation which is recommended for use in the treatment of various ailments, diseases, and conditions which may be present or exist in the human body. This product is known as, and sold under the name of "Premek 33" and is also sold by the respondents to the medical profession under the name and designation "C. S. 53."

PAR. 2. Respondents, in the course and conduct of their said business, cause said product, when sold, to be transported from their said place of business in the State of California to the purchasers thereof located at various points in various other States of the United States. Respondents maintain and at all times mentioned herein have maintained a course of trade in said preparation in commerce between and among the various States of the United States, in the District of Columbia, and with foreign countries.

Respondents have been and are in substantial competition with corporations, firms, partnerships, and individuals also engaged in the business of selling and distributing in commerce among and between the various States of the United States preparations for use in connection with the treatment of the ailments, diseases, and conditions for which the respondents represent and claim their preparation to be an effective and competent treatment.

There are among the competitors of respondents in said commerce many who do not in any manner misrepresent the character, nature, and therapeutic properties of the products sold and distributed by them.

PAR. 3. In the course and conduct of their said business and for the purpose of inducing the purchase of their said preparation, respond-

ents have caused false advertisements containing representations and claims with respect to the character, nature and 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 advertisements in newspapers and other periodicals having a general circulation throughout the various States of the United States, and through the use of booklets, leaflets, pamphlets, and other printed matter distributed among prospective customers. Among others and typical of the representations and claims contained in said false advertisements so used and disseminated as aforesaid, the respondents represent that their said preparation is an amazing new discovery; that it is the most effective way to end irritations of all kinds; that it is the most effective treatment for and that its use will end eczema, athlete's foot, dhobie and jock strap itch, chafing, shingles, ringworm or epidermophytosis, prickly heat, insect bites, dermatitis herpetiformis, skin irritations and rashes, pimples, barber's itch, scabies, impetigo, acne in various forms, pruritus, aching feet, soft corns, dandruff and eczema of the scalp, furnuculosis of the ear canal; that its use will stop perspiration and it provides the only sure way to prevent noxious body odors; that it is a bactericide and will prevent reinfection; that it penetrates the skin pores and deep-seated organisms and kills the parasites which cause irritation; and that it has been successful in the treatment of chronic irritations where other medications have failed.

PAR. 4. The Commission finds that the statements and representations hereinabove set forth in paragraph 3 hereof, and others similar thereto, all of which purport to be descriptive of the remedial, curative, or therapeutic properties of respondents' product, are grossly exaggerated, misleading and untrue and constitute false advertisements. In truth and in fact, "Premek 33" is by quantitative analysis shown to contain:

	<i>Percent</i>
Colloidal elemental sulfur.....	50.00
Magnesium oxide.....	3.00
Resublimed beta-naphthol.....	.20
Glycerine.....	5.00
Gum arabic.....	5.00
Water .....	36.8

and the only ingredient therein of consequence therapeutically is the colloidal or finely divided sulfur, and sulfur is neither a new or an amazing discovery, but has been in use as an adjunct or accessory in medication generally for a long time. Said preparation is not a quick or effective treatment nor will it cure any of the conditions,

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symptoms, or ailments hereinabove mentioned except scabies. Except as to scabies, the most that can be accomplished by, or properly claimed for respondents' said preparation is that as to some of the conditions or ailments mentioned, which result from superficial or external causes, said preparation may be used under proper direction or medical supervision as a beneficial accessory treatment. Said preparation is not a bactericide, does not prevent reinfection, and does not penetrate sufficiently to destroy subcutaneous parasites which cause irritation. Respondents' claims as to the therapeutic value and properties of said preparation greatly exceed those which might truthfully be made for such a preparation.

PAR. 5. The Commission finds that the aforesaid false advertisements disseminated in the manner above described induce or are likely to induce, directly or indirectly, the purchase of a drug.

PAR. 6. The Commission finds that the use by respondents 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 represented, and causes the purchase of substantial quantities of respondents' said preparation as a result of the erroneous and mistaken beliefs induced as aforesaid. As a result, trade has been diverted unfairly to respondents from their competitors, and in consequence substantial injury has been done and is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

#### CONCLUSION

The aforesaid acts and practices of the respondents 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 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said amended

and supplemental complaint, with one exception therein specified, and state that they waive all intervening procedure and further hearing as to the 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 respondents Patch Premek Corporation, a corporation, and its officers, and H. K. Patch, individually and trading as H. K. Patch Co., or trading under any other name or names, their respective 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 a medicinal preparation now designated as "Premek 33" and "C. S. 53" or any other 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 Commerce Act, of said medicinal preparation, which advertisements represent, directly or through implication.

1. That said preparation is a cure, or remedy for eczema, athlete's foot, dhobie or barber's itch, jock strap itch, prickly heat, insect bites, dermatitis herpetiformis, skin irritations or rashes, pimples, chafing, shingles, ringworm or epidermophytosis, impetigo, acne, pruritus, aching feet, soft corns, dandruff, eczema of the scalp or furnuculosis of the ear canal, or that said preparation constitutes a competent or effective treatment for any of said ailments or conditions other than to serve as an accessory treatment for those which are due to superficial or external causes only.

2. That said preparation is a bactericide or that it will prevent reinfection.

3. That the use of said preparation will stop perspiration or prevent body odors.

4. That said preparation is a "new" or an "amazing" discovery.

*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 M. IRVINE, TRADING AS CONSOLIDATED  
SILVER COMPANY 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 3789. Complaint, May 12, 1939—Decision, Mar. 29, 1940*

Where an individual engaged in offer and sale of sales-promotional plans, including sales-promotion cards, silverware, and other materials used in connection therewith, to retailers and others in the various States and in the District of Columbia;

In selling, through agents supplied with order blanks, contract forms and various other items of advertising literature, plan in question, which contemplated distribution by dealer-purchaser to dealer's customers of cards, purchased of said individual at from \$3.50 to \$4.50 a thousand (with remaining payment therefor by merchant due upon receipt of cards), for sending in by customer or dealer-purchaser for "redemption" in "William A. Rogers silverware or tableware"—

- (a) Represented, through printed forms prepared by him, and setting forth terms of agreement between him and retailer, and made use of by his agents in taking retailers' orders, that he would supply to retailer, without charge, circulars, posters, and other advertising material and display set of silverware; facts being he failed, in many instances, to supply such circulars and advertising material, failed, in many cases, to supply dealers with particular display set agreed upon, failed, in one instance, to supply any display set until after repeated demands therefor, and, notwithstanding contract reference to "display set," supplied actually, in most instances, as display silverware, three small spoons attached to piece of cardboard;
- (b) Represented, in solicitation of orders through his said agents, that cards and operation of entire plan were without cost to dealer, in that he would refund to dealer entire purchase price of cards as soon as 25 percent thereof had been forwarded to him for redemption by dealer's customers, facts being, under contract provision, no refund was to be made unless and until such proportion had been thus sent in, in which event dealer became entitled only to refund of price of cards actually sent in, and provision in question was couched in such vague and ambiguous language and printed in such inconspicuous type as readily to permit his agents to misconstrue to retailers provision in question, or entirely ignore same, and dealers, in many instances, were unable to obtain from him any refunds, despite fact of sending in 25 percent or more of cards as above set forth;
- (c) Represented, through his agents, permitted readily so to represent, through character of contract forms and other advertising literature put by him into their hands, that he was connected with the manufacturer of William A. Rogers silverware, or Oneida, Ltd., and was putting on, for benefit of such manufacturer, advertising campaign, notwithstanding fact he had no connection whatever with company in question and was not authorized to put on any such campaign therefor, but merely bought, as any other purchaser,

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silverware used by him in connection with plans in question, from said company or from jobbers or wholesalers of such ware in the open market;

- (d) Represented, through his said agents, that, in addition to supplying circulars and other advertising material, he would, at his own expense, distribute such circulars in trade area served by retailer, and would otherwise assist latter in putting sales-promotional plan into effect, notwithstanding fact, in numerous instances, he failed to make such distribution or render such assistance;
- (e) Presented his entire sales-promotional plan aforesaid, through his agents, to retailers in such a way and under such representations, furthered by order blanks and contract forms furnished by him to his agents, as to lead retailer to believe that latter's customers might obtain silverware merely by sending to him designated number of sales cards, and that such ware would be sent without cost to particular customer sending in said cards for redemption, notwithstanding fact that retailer's customers, in order to obtain such silverware, had to remit to him, along with each card, sum of 1 cent, of which requirement and provision set forth on cards themselves, and not submitted to retailers upon being solicited, latter in many instances had no information until subsequent to their purchase and payment for and receipt of delivery of cards in question; and
- (f) Set forth, featured and displayed, in order form and advertising material by him supplied to his agents and by latter exhibited to retailer, representations to effect that latter's customers were beneficiaries of a "free offer" and were to receive something free, facts being 1 cent remitted with each card by participating customers resulted in payment by latter of substantial amount, representing approximately full value of silverware obtained;

With effect of misleading and deceiving substantial number of retailers and members of purchasing public, who were buying, as above set forth, their William A. Rogers silverware of him, into mistaken and erroneous belief that they were participating in a bona fide sales-stimulation plan in connection with the advertisement of such silverware, with the manufacturer of which said individual was in no wise connected other than as indirect purchaser therefrom, and with result, as consequence of such erroneous and mistaken belief that retailers and members of purchasing public were induced to and did purchase substantial quantities of his said sales cards and merchandise:

*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.

Before *Mr. Webster Ballinger*, trial examiner.

*Mr. George Foulkes* and *Mr. M. C. Pearce* for the Commission.

*Mr. Harry N. Dell*, of Detroit, 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 William M. Irvine, trading as Consolidated Silver Co. of America, hereinafter referred to as respondent, has violated the provisions of the said act, and it

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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, William M. Irvine, is an individual doing business under the name and style of Consolidated Silver Co. of America, with his office and principal place of business located at 7338 Woodward Avenue, Detroit, Mich. Respondent is now, and for more than 1 year last past has been, engaged in the business of offering for sale and selling a sales-promotional plan including sales promotion cards, silverware and other materials which are used in carrying the plan into effect, to retailers and others located in various States of the United States and in the District of Columbia.

PAR. 2. The respondent, being engaged in business as aforesaid, causes said sales-promotional cards and silverware, and other materials used in connection with said sales promotion plan, when sold, to be transported from his office and principal place of business in Detroit, Mich., to purchasers thereof located at their respective points of location 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 sales cards, silverware, and other material in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course of the operation of his business, and in order to sell his products, respondent enters into a form of agreement or written contracts with retail merchants who are contacted by respondent's selling agents.

The written form of contract provides for the purchase by the merchant of so-called advertising cards or advertising trade cards, for which the merchant pays \$4.50 per thousand, and the distribution of the same to the merchant's customers by the merchant upon the purchase by the customers of a certain specified amount of the merchant's goods.

By the terms of said contract respondent undertakes to redeem advertising cards by sending to a customer, who forwards to respondent a specified number of said advertising cards, various items of merchandise.

Respondent furnishes retail merchants with various display posters and advertisements to be used by said retail merchants in putting the aforesaid plan into effect and operation.

PAR. 4. In the course and operation of his business and for the purpose of inducing retail merchants to purchase his advertising

cards and to use the plan above set forth, respondent makes the following representations:

1. That respondent, doing business as Consolidated Silver Co. will redeem the sales cards distributed by merchants to their customers without any additional cost to the customers, by sending all customers who forwarded a specified number of said cards to said company certain designated pieces of silverware or tableware.

2. That said silverware or tableware is sent "free" to customers of retailers who take advantage of and purchase respondent's sales promotion plan.

3. That respondent refunds to merchants the entire purchase price of said sales cards after a designated number of said sales cards have been sent in by customers of said merchants for redemption.

4. That respondent, trading as Consolidated Silver Co. of America, is a representative of, or is connected with, or is putting on an advertising campaign for, the manufacturers of Wm. A. Rogers Silverware Oneida, Ltd., of Oneida, N. Y.

5. That respondent advertises the sales promotional plan locally for merchants who purchase sales cards and assists retail merchants in putting said sales-promotional plan into operation and effect.

6. That the silver spoons sent by respondent to customers in exchange for sales cards are reinforced with additional silver at the point of wear.

7. That the silverware sent to customers by the respondent in exchange for sales cards is superior in quality to Tudor plate.

8. That respondent provides merchants who purchase respondent's plan of sales promotion with display sets of silverware or tableware for use by said merchants in putting respondent's plan into effect.

9. That the customers of merchants can obtain an entire set of silverware or table ware without cost to said customers by securing advertising cards and sending said cards to respondent for redemption.

10. That the purchase and use by merchants of respondent's sales-promotional plan is without cost to said merchants.

PAR. 5. Respondent's representations as above set forth are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent does not redeem the sales cards by sending pieces of silverware or tableware to merchants' customers who forward sales cards to respondent for redemption without any additional cost to said customers. Respondent requires such customers to pay a sum of money in addition to forwarding said sales cards before respondent redeems the sales cards. The silverware sent to customers of

merchants is not free to said customers but they are required to pay an amount of money for said silverware, which amount of money is substantial and represents full payment for the same. In truth and in fact, respondent does not refund to merchants the amount of money merchants pay for sales cards after part of the sales cards have been sent to respondent for redemption by the merchants' customers. Respondent is not a representative of or in any manner connected with Oneida, Ltd., except as an indirect purchaser of its merchandise. Respondent is not conducting an advertising campaign for Oneida, Ltd. The silverware sent to customers for redemption of sales cards is not superior in quality to Tudor plate and is not comparable with or of similar quality to Tudor plate but is inexpensive and of low quality. The spoons sent to merchants' customers are not reinforced at the point of wear as represented. Respondent does not advertise the sales promotional plan locally for merchants who purchase sales cards or assist said merchants in putting said sales promotional plan into operation and effect. Respondent does not provide merchants, who purchase respondent's promotional sales plan, with display sets of silverware or tableware for use of said merchants in putting said plan into effect. It is not possible for customers to acquire an entire set of silverware or tableware from respondent by collecting and forwarding sales cards to respondent. Respondent's sales promotion plan is not without cost to the merchants who purchase and use the same in their business.

PAR. 6. 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 retail merchants and 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 sales-promotional plan and silverware or tableware.

PAR. 7. The aforesaid acts and practices of said 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 12th day of May 1939, issued and subsequently served its complaint in this proceeding upon respondent, William M. Irvine, trading as Consolidated Silver Co. of

America, 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 thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by Harry N. Dell, attorney for the respondent, before Webster Ballinger, 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. The respondent, William M. Irvine, is an individual doing business under the name and style of Consolidated Silver Co. of America with his office and principal place of business located at 7338 Woodward Avenue, Detroit, Mich. Respondent is now, and for more than 2 years last past has been engaged in the business of offering for sale and selling a sales-promotional plan, including sales-promotion cards, silverware and other materials which are used in carrying the plan into effect, to retailers and others located in various States of the United States and in the District of Columbia.

PAR. 2. The respondent causes said sales-promotion cards and silverware and other materials used in connection with said sales promotional plan, where sold, to be transported from his office and principal place of business in Detroit, Mich., to purchasers thereof located at their respective points of location in various States of the United States other than the State of Michigan and in the District of Columbia. Respondent maintains a course of trade in said sales cards, silverware, and other materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent sells his sales-promotional plan to retailers located in cities throughout the various States of the United States, such sales being made through the medium of agents who travel about

the country contacting retailers in various lines of business. Such retailers are solicited by the agents to participate in respondent's sales-promotional plan by giving the agents orders for respondent's sales cards or advertising cards. In making such contacts and solicitations respondent's agents are supplied with order blanks, contract forms, and various other items of advertising literature, which facilitate misrepresentation on the part of such agents with respect to the character of respondent's sales-promotional plan. Such material is furnished to the agents by respondent.

Under the respondent's sales-promotional plan the dealer distributes certain sales cards among his customers as merchandise is purchased by such customers, and the customer may forward such cards to the respondent for "redemption" in "William A. Rogers silverware or tableware." The purchase price of such cards to the retailer ranges from \$3.50 per thousand to \$4.50 per thousand. A part of the purchase price is payable at the time the order is given and the remainder upon the receipt of the cards by the dealer. On one side such cards bear the name of the dealer together with certain advertising on behalf of such dealer. On the reverse side such cards bear certain language purporting to disclose the manner in which the respondent will redeem such cards by giving merchandise therefor.

PAR. 4. The orders taken by respondent through his agents from retail dealers for such sales cards are on printed forms prepared by respondent which set forth the terms of the agreement between the respondent and the retail dealer. Among such provisions is one to the effect that the respondent will supply to the retailer without charge circulars, posters, and other advertising material and a display set of silverware. The Commission finds, however, that in many instances such circulars and advertising material are not supplied by the respondent as provided in the contract, and the respondent has in many cases failed to supply dealers with the particular display set of silverware agreed upon. In one instance the respondent failed to supply any display set until after repeated demands had been made by the retailer. While the contract refers to a display "set" of silverware, thus implying that a substantial number of pieces of silverware will be supplied, actually the only display silverware supplied in most instances has consisted of but three small spoons attached to a piece of cardboard.

PAR. 5. In soliciting orders for sales cards the respondent's agents represent that the cards and the operation of the entire sales promotional plan are without cost to the dealer, in that the respondent will refund to the dealer the entire purchase price of the cards as soon as 25 percent of the cards have been forwarded to the respondent by the

dealer's customers for redemption. The actual provision of the contract is that no refund will be made to the dealer unless and until 25 percent of the cards have been sent in for redemption, and even then the dealer is not entitled to the refund of the entire purchase price of all cards purchased but it is entitled only to a refund of the price of the cards actually sent in for redemption. The Commission finds that this provision of the order is couched in such vague and ambiguous language and is printed in such inconspicuous type as to readily permit respondent's agents to misconstrue to retail dealers such provision of the contract or entirely ignore it.

The Commission further finds that in many instances dealers have been unable to obtain any refunds from the respondent despite the fact that 25 percent or more of the cards had been sent in for redemption.

PAR. 6. The Commission further finds that the contract forms and other advertising literature put into the hands of his agents by the respondent are of such a character as to readily permit representation by such agents to the effect that the respondent is connected with the manufacturer of William A. Rogers silverware, to wit, Oneida, Ltd., or is putting on an advertising campaign for the benefit of such manufacturer. The Commission further finds that respondent's agents have in fact generally made such representations. Actually the respondent has no connection whatever with Oneida, Ltd., and is not authorized to put on any advertising campaign for such company. Respondent merely purchases his silverware used in connection with these plans from Oneida, Ltd., or from jobbers or wholesalers of such silverware in the open market like any other purchaser.

A further representation made by respondent's agents to dealers is that, in addition to supplying circulars and other advertising material, the respondent will, at his own expense, distribute such circulars into trade areas served by the retailer and will otherwise assist the retailer in putting the sales-promotional plan into effect. The Commission finds that in numerous instances the respondent has failed to make such distribution or render such assistance.

PAR. 7. The entire sales-promotional plan is presented by respondent's agents to retailers in such a way and under such representations as to lead the retailer to believe that his customers may obtain silverware merely by sending to respondent a designated number of sales cards, and that such silverware will be sent without cost to the particular customer sending in such cards for redemption. The order blanks and contract forms furnished by respondent to his agents further such representation. The Commission finds, however, that in order to obtain such silverware the retail merchant's customers must remit to

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respondent along with each card the sum of 1 cent. While the sales cards themselves state that 1 cent must be remitted with each card, such cards are not submitted to the retail dealers at the time the dealers are solicited, and in many instances the retailers have no information with respect to this additional charge until after they have purchased and paid for the sales cards and received delivery thereof.

PAR. 8. The order form and advertising material supplied by the respondent to his agents, and exhibited by the agents to retail dealers, prominently feature and display representations to the effect that the retailer's customers are the beneficiaries of a "free offer" and are to receive something "free." Actually the requirement that 1 cent be remitted with each card sent in by customers of retailers participating in the plan results in the payment by such customers of a substantial amount which represents approximately the full value of the silverware obtained.

PAR. 9. The Commission finds that the respondent's use of the acts and practices herein set forth has had, and now has, a tendency and capacity to, and does, mislead and deceive a substantial number of retailers and members of the purchasing public into the mistaken and erroneous belief that they are participating in a bona fide sales stimulation plan in connection with the advertising of William A. Rogers silverware, whereas such retailers and members of the purchasing public are in fact merely purchasing William A. Rogers silverware from the respondent, who is in no way connected with the manufacturer of William A. Rogers silverware other than as an indirect purchaser therefrom. As a result of such erroneous and mistaken belief retailers and members of the purchasing public have been induced to and have purchased substantial quantities of respondent's sales cards and merchandise.

#### 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, the answer of respondent, testimony and other evidence taken before Webster Ballinger, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition

thereto, brief on behalf of the Commission in support of the complaint (respondent not having filed brief and oral argument now 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, William M. Irvine, trading as Consolidated Silver Co. of America, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of silverware or of sales promotional plans, including sales cards, gift cards, premium certificates or coupons redeemable in silverware or other articles of merchandise, do forthwith cease and desist from:

1. Representing that the respondent is a representative of or has any connection with the manufacturer of Wm. A. Rogers silverware; provided, however, that this order shall not be construed to prohibit the respondent from dealing in such silverware.

2. Representing that the respondent is conducting any special campaign or advertising campaign to introduce or advertise any article of merchandise on behalf of the manufacturer of Wm. A. Rogers silverware or on behalf of any other manufacturer or concern.

3. Representing to purchasers of respondent's sales-promotional plans, or to their customers, that sales cards, gift cards, premium certificates, or other similar devices can be redeemed in silverware or other merchandise unless and until all 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 price to be paid in connection with the obtaining of such silverware or other articles of to such conditions.

4. Representing that respondent will refund any sum of money to dealers purchasing said sales cards, gift cards, premium certificates, or other and similar devices on the redemption of a specified number of cards or certificates when such refund is not actually made, and if there are any conditions connected with such refund such conditions must be clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with such offer of refund in such a manner that there is no deception as to such condition.

5. Representing that respondent will give silverware or other merchandise free, when such silverware or other merchandise is not actually given free.

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6. Representing that respondent will advertise his sales-promotional plan locally for dealers purchasing such plan or that respondent will assist such dealers in putting such plan into operation, when in fact respondent does not conduct such advertising and render such assistance.

7. Representing that respondent will supply dealers purchasing respondent's sales-promotional plan with display sets of silverware or other merchandise for use in putting such plan into operation, when respondent does not supply such display sets as represented.

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

## Syllabus

IN THE MATTER OF  
VALLIGNY 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 3602. Complaint, Sept. 23, 1938—Decision, Mar. 30, 1940*

Where a corporation engaged in manufacture, sale, and distribution of its "Shampoo-Kolor" hair 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 other preparations and products for treatment of conditions of the hair for which it recommended use of its said preparation, and including many who do not in any manner misrepresent their products or 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 and publications circulating throughout the various States, and through bulletins distributed among prospective purchasers, and through other means—

- (a) Represented that said "Shampoo-Kolor" would color roots of hair and affect color of new growth and eliminate necessity of repeated applications to prevent new hair growth from showing gray, streaked, or faded above scalp line, and would cause natural color to be restored to hair, facts being applications of such preparation did not have any effect on color of new growth and use thereof would not restore natural color or cause original natural color to be imparted to hair, and such product would not color roots of hair, and change in color produced by application thereof to gray, streaked, or faded hair was not produced by user's bodily functions, but was result of product's dyeing or staining properties, change in color of hair appearing after application could not be effected subsequent thereto, unless application was thereafter repeated, and its claims for its said product, as above indicated, were grossly exaggerated, false and deceptive, and greatly exceeded any claims as to efficacy thereof which might truthfully be made; and
- (b) Represented that such preparation was manufactured in France or imported therefrom into the United States, and was uniquely different or entirely revolutionary in methods or results, through such statements as "The uniquely different French hair-coloring preparation," "Entirely revolutionary in method and in results," "No other preparation can make same claim for coloring hair \* \* \*," and "The modern French way \* \* \*," etc., facts being it was not made or compounded in France or imported therefrom into the United States, but was domestically made product, mixture of aniline dyes contained therein was also contained in competitive products, similar results could be obtained from use of other hair dyes of similar nature, and it was not uniquely different or entirely revolutionary, 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 that its said product possessed

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properties claimed and represented and would accomplish results indicated, and with result of causing substantial portion of such public, because of such belief, to purchase substantial quantities of its preparation aforesaid, and of thereby diverting trade unfairly to it from its said competitors who truthfully advertise the effectiveness of their respective preparations and 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.

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

*Mr. George Foulkes* and *Mr. John R. Phillips, Jr.*, for the Commission.

*Mr. Arthur B. Spingarn*, 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 Valligny 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. The respondent, Valligny Products, 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 at 254 West Thirty-first Street, New York City, N. Y.

PAR. 2. The respondent is now and has been for more than 2 years last past engaged in the business of manufacturing, selling, and distributing a preparation designated as "Shampoo-Kolor" purporting to be for the treatment of human hair for the purpose of coloring gray hair or streaked or faded hair. Respondent sells said preparation to members of the purchasing public situated in various States of the United States and the District of Columbia, and 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, 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 commerce in said preparation 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 corporations and with partnerships, firms, and individuals selling and distributing other preparations and products designed and intended for, and used in, the treatment of the conditions of the human hair 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 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 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 bulletins distributed among prospective purchasers of said preparation and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

The uniquely different French hair-coloring preparation.

Entirely revolutionary in method and in results.

Colors roots; leaving hair soft, natural.

Colors roots.

No other preparation can make same claim for coloring hair as Shampoo-Kolor does.

The modern French way, producing even, natural, lasting shades always.

Will color every gray hair at roots near scalp as no other preparation does.

Most natural color ever used.

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 the human hair for the purpose of coloring gray, streaked, or faded hair, respondent has represented, directly and by implication, among other things: (1) That the preparation "Shampoo-Kolor," when applied to the human scalp and hair, will color the roots of the hair and affect the color of new growth hair and eliminate the necessity for repeated applications of such preparation in order to prevent the new growth of hair from showing gray, streaked or faded above the scalp line; (2) that the

use of such preparation causes the natural color to be restored to the hair; (3) that such preparation is manufactured in France or is imported into the United States from France; and (4) that such preparation is uniquely different or entirely revolutionary in methods or results.

PAR. 6. The aforesaid representations, used and disseminated by respondent in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, the preparation "Shampoo-Kolor" will not color the roots of the hair when applied to the scalp and hair. Applications of such preparation do not have any effect on the color of new growth hair. The use of such preparation will not restore or cause the original natural color to be imparted to the hair. The change in color produced by the application of such preparation to the gray, streaked, or faded hair of the user is not a color produced by the bodily functions of such user but is a result of the dyeing or staining properties of such preparation. The application of such preparation to the human hair has no effect in changing, and cannot affect a change in, the color of the hair which appears upon the head of the user as new growth, subsequent to such application, unless the application of such preparation is thereafter repeated.

The aforesaid preparation which is sold and distributed in the United States by the respondent is not manufactured or compounded in France and such preparation is not imported into the United States from France. Such preparation is compounded or manufactured by the respondent in the United States. Such preparation contains a mixture of aniline dyes and is not "uniquely different" for the reason that various other hair dyes which are sold and distributed in the United States by competitors of the respondent contain a mixture of aniline dyes. Such preparation is not "entirely revolutionary in methods or results," for similar results can be secured by the use of various other hair dyes of a similar nature.

Respondent's claims as to the efficacy of said preparation are grossly exaggerated, false, and deceptive, and greatly exceed any claims as to the 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 cosmetic.

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 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 September 23, 1938, issued, and on September 26, 1938, served, its complaint in this proceeding upon respondent, Valligny Products, 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. Thereafter, respondent filed its answer. After hearings had begun, respondent, with the permission of the Commission, withdrew its answer and substituted therefor an answer admitting all the material allegations of fact set forth in the complaint and waiving all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the 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, Valligny Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York and has its office and prin-

principal place of business at 254 West Thirty-first Street, New York, N. Y.

PAR. 2. The respondent is now and has been for more than 2 years last past engaged in the business of manufacturing, selling, and distributing a preparation designated as "Shampoo-Kolor" purporting to be for the treatment of human hair for the purpose of coloring gray hair or streaked or faded hair. Respondent sells said preparation to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes the said preparation, when sold by it, to be transported from its aforesaid place of business in the State of New York to such purchasers. 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 corporations and with partnerships, firms, and individuals selling and distributing other preparations and products designed and intended for, and used in, the treatment of the conditions of the human hair 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 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, in commerce, as herein described, for the purpose of inducing the purchase of its said preparation, respondent has caused 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 bulletins distributed among prospective purchasers of said preparation and through other means. Among and typical of the representations so used and disseminated as aforesaid are the following:

The uniquely different French hair-coloring preparation.  
Entirely revolutionary in method and in results.  
Colors roots; leaving hair soft, natural.  
Colors roots.

No other preparation can make same claim for coloring hair as Shampoo-Kolor does.

The modern French way, producing even, natural, lasting shades always.

Will color every gray hair at roots near scalp as no other preparation does. Most natural color ever used.

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 the human hair for the purpose of coloring gray, streaked, or faded hair, respondent has represented, directly and by implication, among other things: (1) That the preparation "Shampoo-Kolor," when applied to the human scalp and hair, will color the roots of the hair and affect the color of new growth hair and eliminate the necessity for repeated applications of such preparation in order to prevent the new growth of hair from showing gray, streaked or faded above the scalp line; (2) that the use of such preparation causes the natural color to be restored to the hair; (3) that such preparation is manufactured in France or is imported into the United States from France; and (4) that such preparation is uniquely different or entirely revolutionary in methods or results.

PAR. 6. The aforesaid representations, used and disseminated by respondent in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements. In truth and in fact, the preparation "Shampoo-Kolor" will not color the roots of the hair when applied to the scalp and hair. Applications of such preparation do not have any effect on the color of new growth hair. The use of such preparation will not restore the natural color to hair or cause the original natural color to be imparted to the hair. The change in color produced by the application of such preparation to the gray, streaked or faded hair of the user is not a color produced by the bodily functions of such user but is a result of the dyeing or staining properties of such preparation. The application of such preparation to the human hair cannot effect a change in the color of the hair which appears upon the head of the user as new growth, subsequent to such application, unless the application of such preparation is thereafter repeated.

The aforesaid preparation which is sold and distributed in the United States by the respondent is not manufactured or compounded in France and such preparation is not imported into the United States from France. Such preparation is compounded or manufactured by the respondent in the United States. Such preparation contains a mixture of aniline dyes and is not "uniquely different" for the reason that various other hair dyes which are sold and distributed in the

United States by competitors of the respondent contain a mixture of aniline dyes. Such preparation is not "entirely revolutionary in methods or results," for similar results can be secured by the use of various other hair dyes of a similar nature.

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

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to said 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 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 commerce as herein described who truthfully advertise the effectiveness in use of their respective preparations and 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.

#### 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 the complaint, and states that it waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Valligny Products, 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 cosmetic preparation designated "Shampoo-Kolor," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under that 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 said preparation will color the roots of the hair or have any effect thereon or on new hair growth, or will restore the natural or original color to the hair, or will affect the color of the hair in any way other than as a dye.

2. Representing that anything less than repeated applications of said preparation will cause the hair to retain the color imparted to it by said preparation.

3. Representing that said preparation is compounded or manufactured in France or in any country other than the United States.

4. Representing that said preparation is "unique" or "revolutionary" in methods or results.

*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 F. JELKE 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 3347. Complaint, Mar. 3, 1938—Decision, Apr. 3, 1940*

Where a corporation engaged in manufacture of a certain oleomargarine product composed of vegetable fat added to that portion of milk from which butterfat had been removed, and of added vitamin concentrates, so that emulsion in question contained vitamins A and D, and in sale and distribution of said product for use as a spread for bread, seasoning, cooking, and for same or similar purposes as those for which butter is used, through wholesalers and retailers and by sale directly to consumers, to purchasers in various other States and District of Columbia, in substantial competition with others engaged in making and selling oleomargarine and butter and sale and distribution of such products in commerce among the various States and in the District of Columbia, including those who make, distribute, and sell former without in any way misrepresenting the content thereof or method by which made; in advertising its said product in magazines and other media having general circulation among purchasers and prospective purchasers at various points throughout the United States and in the District of Columbia—

- (a) Represented and implied that its said oleomargarine product was made in or from whole milk or milk from which no part of the cream or butterfat content had been removed, and that it contained butterfat extracted from whole milk or cream taken therefrom by a process of churning as used in the making of butter, through use of such terms and words as "fresh pasteurized milk," "pasteurized milk," "churn," "churned," and "churnery," and depiction of old-fashioned dasher butter churn in connection with aforesaid words and terms, and term "milk solids" as used in such statements as "made entirely from pure vegetable oils, churned in FRESH, PASTEURIZED MILK," and depiction above referred to, together with such statements as "From a sunlit churnery," etc., and "made from wholesome American vegetable oils churned in a large percentage of pasteurized milk," etc.;

Facts being product in question was not made in or from whole milk, but from skim or skimmed milk from which cream or butterfat content had been removed, and contained no butterfat extracted from whole milk or cream taken therefrom by process of churning, as used in the making of butter, and was not "churned," as used and understood by purchasing public; and

- (b) Represented, imported, and implied that its said product contained an appreciable quantity of milk solids, including butterfat extracted from whole milk, and contained more of such solids than butter, and had more food value than butter, through statement that there were "43.8% more milk solids" in its said margarine "than in expensive spreads for bread," and such statements as "Milk Solids Contain Protein—Milk Sugar—and Minerals \* \* \*";

Facts being that said product did not contain the butterfat solid from milk, the principal, most valuable, and commonly known milk solid, less than 1½

## Complaint

percent of its product was milk solids which, as therein contained and contained in butter to the extent of 1 percent, were of no significance to either product, and its own preparation did not contain the milk solid butterfat which makes up about 80 percent of butter and, in short, contained no appreciable quantity of milk solids and no butterfat, principal and most valuable milk solid in butter, and did not contain more milk solids than butter and was not of more value as food than such product ;

With tendency and capacity to mislead and deceive substantial portion of purchasing public, through such false, deceptive and misleading statements and representations and aforesaid depiction in connection therewith, into erroneous belief that its said product was made in or from whole milk and contained butterfat extracted therefrom or from the cream taken therefrom through churning, as used in the making of butter, and contained an appreciable quantity of milk solids, including butterfat extracted from whole milk, and more of such solids than butter, and had, therefore, more food value than said product, and to induce number of consuming public, because of such erroneous belief, to purchase its said product, and thereby unfairly to divert trade to it from competitors in commerce :

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

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

*Mr. John M. Russell* for the Commission.

*Mr. Carroll J. Lord* of Ashcraft & Ashcraft, of Chicago, Ill., for respondent.

## COMPLAINT

Pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the John F. Jelke Co., Inc., 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, John F. Jelke Co., Inc., is an Illinois corporation, which has its principal office and place of business at 759 South Washtenaw Avenue in the city of Chicago, State of Illinois. Respondent is now, and has been for some time, engaged in the business of making, and selling, and distributing in commerce as herein set out, a certain product known as "Good Luck Oleo-margarine."

PAR. 2. Said respondent, being engaged in business as aforesaid, causes said product, when sold, to be transported from its office and

place of business in the State of Illinois to purchasers thereof located at various points in States of the United States other than the State from which said shipments are made. Respondent now maintains a constant current of trade in commerce in said product, distributed and sold by it, between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations and with firms and individuals engaged in the business of making, and in selling and distributing oleomargarines and butter in commerce among and between the various States of the United States and in the District of Columbia.

In the course and operation of said business, and for the purpose of inducing the purchase of its said oleomargarine, respondent has made use of advertisements in newspapers, magazines, and periodicals having a general circulation throughout the various States of the United States and has also made use of other types of advertising generally circulated to purchasers and prospective purchasers located in all of the States, containing statements regarding the content of its said product and regarding the methods whereby it is produced or made.

Among such statements so made and used by the respondent as to its said product appear the following representations, and other representations of similar import and meaning:

Made from pure vegetable products churned in fresh, pasteurized milk.

From a sunlit churnery.

\* \* \* made from wholesome American vegetable oils churned in a large percentage of pasteurized milk \* \* \*

There are 43.8% more milk solids in Good Luck Margarine than in expensive spreads for bread.

PAR. 4. By the means and in the manner aforesaid the respondent represents that its said product is made in and from whole milk; that is, milk from which no part of the cream or butterfat content has been removed. Respondent's said product is not made in or from whole milk but from skim or skimmed milk, that is, milk from which the cream or butterfat content has been removed.

The term "fresh pasteurized milk" used by the respondent as aforesaid is understood and interpreted by a substantial portion of the purchasing public to mean whole milk as that term is hereinabove described.

The words "churn," "churned," and "churnery" have long been associated by the general public with the process by which butterfat is extracted from cream taken from whole milk in the process of making butter.

The use of the words "churn" and "churnery" by the respondent, as aforesaid, in connection with the words "fresh pasteurized milk" and "milk solids" imports and implies, and a substantial proportion of the purchasing public is thereby led to believe, that respondent's said product is made from whole milk, or cream taken from whole milk, and that it contains butterfat, extracted from whole milk, or the cream taken from whole milk, by "churning" as used in the process of making butter and extracting butterfat from cream.

In truth and fact respondent's said product does not contain butterfat extracted from whole milk or cream by "churning" as "churning" is done in the process of making butter, nor is said product "churned" in the sense that the term "churned" is understood by the public.

The statement to the effect that its said product contains 43.8 percent more milk solids than more expensive spreads, meaning butter, is so used by the respondent as to import and imply that there is a substantial difference in the food value of its said product and butter because of the fact that its said product contains 43.8 percent more milk solids than butter.

In truth and fact the quantity of such milk solids in each product is negligible, to wit: about 1 percent in butter and only about 1.438 percent in respondent's product, and the presence or absence of such milk solids in such quantities has no relation to the food value of either of said products.

PAR. 5. There are among respondent's competitors many who make, distribute, and sell oleomargarine, who do not in any way misrepresent the content of their product, or the methods by which it is made.

PAR. 6. Said representatives so made by the respondent, as hereinbefore set out, in its advertising, in connection with the selling and distributing of its product is false and deceptive and had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that said representation is true. Further, as a true consequence of the mistaken and erroneous beliefs induced by the acts and practices of respondent, as hereinbefore set out, a substantial number of the consuming public purchased a substantial volume of respondent's product with the result that trade in said commerce has been unfairly diverted to the respondent from individuals, firms, and corporations engaged in the business of making, selling, and distributing similar products, including butter, who truthfully advertise their respective products. As a result thereof, substantial injury has been and is now being done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. The above and foregoing acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition 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 thereafter caused its complaint to be served in this proceeding upon respondent, John F. Jelke Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John M. Russell, attorney for the Commission, and in opposition to the allegations of the complaint by Carroll J. Lord, attorney for the respondent, before John L. Hornor, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral argument of counsel aforesaid, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest 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, John F. Jelke Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois. It has its principal office and place of business at 759 South Washtenaw Avenue, Chicago, Ill. Respondent is now, and for many years last past has been, engaged in the manufacture of a certain oleomargarine product known as "Good Luck Oleomargarine" and "Good Luck Margarine" and in the sale and distribution of said product in commerce between and among the various States of the United States and in the District of Columbia. Respondent distributes its said product through wholesalers and retailers and by sale directly to consumers. This product is used as a spread for

bread, for seasoning, cooking, and for the same or similar purposes as butter is used.

PAR. 2. Respondent causes its product, when sold, to be transported from its place of business in Chicago, Ill., to the purchasers thereof located in the various States of the United States and in the District of Columbia. Sales of respondent's product are made in all of the States except Arizona, Idaho, Montana, Nebraska, Oregon, Tennessee, Utah, Washington, Wisconsin, Wyoming, and California.

PAR. 3. In the course and conduct of its said business, the respondent is and has been engaged in substantial competition with other corporations and with firms and individuals engaged in the business of making and selling oleomargarine and butter 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.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of its said product, respondent has made statements and representations in magazines and other advertising media having a general circulation among purchasers and prospective purchasers located at various points throughout the United States and in the District of Columbia, regarding the content of its product and regarding the methods whereby it is produced or made.

Among the statements and representations so made and used by the respondent with reference to its said product and the methods whereby it is produced or made, are the following:

Time, Jan. 25, 1937  
by Ripley

Believe It or Not!

\* \* \* \* \*

**FORCED  
BY LAW  
TO USE A**

**MISLEADING NAME!**

According to Webster's New International Dictionary "Oleo Oil" is made from *meat fats* JELKE'S GOOD LUCK contains NO oleo oil, nor any animal fat. It is made entirely from pure vegetable oils, churned in FRESH, PASTEURIZED MILK. Yet the LAW says it must be labeled "OLEOMARGARINE" which is MISLEADING.

There are 43.8% *MORE MILK SOLIDS* IN GOOD LUCK MARGARINE THAN IN EXPENSIVE SPREADS FOR BREAD!

Shown under this paragraph is a picture of an old-fashioned dasher butter churn, under which appear the following statements:

**MILK SOLIDS CONTAIN  
PROTEIN—MILK SUGAR—  
AND MINERALS \* \* \*  
Believe It or Not! by Ripley**

\* \* \* \* \*

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**DEMAND THESE SAFEGUARDS IN ANY  
SPREAD-FOR-BREAD!**

Dated for freshness \* \* \* Approved by Good Housekeeping Institute \* \* \*  
Accepted by the American Medical Association \* \* \* Made from pure vegetable products churned in fresh, pasteurized milk \* \* \* From a sunlit churnery inspected by the U. S. Government \* \* \* Jelke's GOOD LUCK Margarine gives you all these assurances of purity, safety.

JOHN F. JELKE COMPANY

CHICAGO

\* \* \* \* \*

Woman's Home Companion

December 1936

**JELKE'S  
GOOD LUCK  
VEGETABLE  
OLEOMARGARINE  
OUR GUARANTEE**

GOOD LUCK is a pure, nutritious food made from wholesome American vegetable oils churned in a large percentage of pasteurized milk under the most modern and sanitary conditions and is rich in food energy.

PAR. 5. Through said advertisements used by the respondent in the manner aforesaid, the respondent represents and implies, and the purchasing public is led to believe, that respondent's said product is made in or from whole milk; that is, milk from which no part of the cream or butterfat content has been removed. Respondent's said product is not made in or from whole milk, but from skim or skimmed milk, which is that portion of the milk from which the cream or butterfat content has been removed. The terms "fresh pasteurized milk" and "pasteurized milk" used by the respondent in said advertisements as aforesaid are terms to designate, describe, or refer to whole milk; that is, milk from which no part of the cream or butterfat content has been removed, and they are so understood by the purchasing public. The general public has long associated the words "churn," "churned," and "churnery" with the process or the method by which butterfat is extracted from cream taken from whole milk in making butter. The use of the words "churn" and "churnery" and the picturization of an old-fashioned dasher butter churn in said advertisements by the respondent as above set out in connection with the words "fresh pasteurized milk," "pasteurized milk," and "milk solids," import and imply and a substantial portion of the purchasing public is thereby led to believe, that respondent's said product is made from whole milk or cream taken from whole milk and it contains butterfat extracted from whole milk or the cream taken from whole milk by the process of "churning," that is used in the making of butter. Respondent's said product does not contain butterfat extracted from whole milk or the cream taken from whole milk, nor is said product "churned" in the sense that the term "churned" is used and understood by the purchasing public.

PAR. 6. Respondent's statement that "there are 43.8 percent more milk solids in Good Luck Margarine than in expensive spreads for bread" imports and implies, and the purchasing public is thereby led to believe, that said product contains an appreciable quantity of solids, including butterfat, extracted from whole milk, and that it contains more of such solids than butter and has more food value than butter.

Respondent's said product does not contain the butterfat solid from milk, the principal, most valuable, and commonly known milk solid. Only about 1.438 percent of respondent's product is milk solids. About 1 percent of butter is composed of the milk solids found in respondent's said products, but butter contains approximately 80 percent of milk solid butterfat which is not found in respondent's product. The 1.438 percent of milk solids contained in respondent's product and the 1 percent of these milk solids contained in butter are of no significance in either of said products, and the presence or absence of one-half of 1 percent more or less of such milk solids would make no significant difference in the food value of either product.

Respondent's said product does not contain an appreciable quantity of milk solids and does not contain butterfat, the principal and most valuable milk solid in butter. It does not contain more milk solids than butter, nor is it of more value as a food than butter.

PAR. 7. Milk has been defined as "the whole fresh lacteal secretion obtained by the completed milking of one or more healthy cows." The public understands the word "milk" or any term in which the word "milk" is used without clear and nondeceptive qualification to mean whole milk, which is milk from which no part of the cream or butterfat content has been removed. Skim milk or skimmed milk is that portion of milk which remains after the removal of the cream in whole or in part. The solids of milk include butterfat. Butter is a food product which is made exclusively from milk or cream, or both, either with or without common salt. Butter is constituted by weight of milk solids, all tolerance having been allowed for, approximately as follows:

Butter Fat.....	80. %
Protein.....	1. %
Milk Sugar.....	0.5%
Ash.....	0.1% to 0.2%
Lactic Acid.....	0.1%

PAR. 8. Respondent's said product has been made in several ways. Prior to 1932, animal fat was used. From 1932 to 1935, both animal

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fat and cottonseed oil were used. In 1935, the animal fat was discontinued and only cottonseed oil is now used. The cottonseed oil used has been refined, deodorized, and hydrogenated, hydrogen being pushed through the cottonseed oil, changing it from a liquid into a solid. Prior to December 1933, respondent used whole milk in its product, but since December 1933 it has used only skim or skimmed milk therein, except for experimental purposes where whole milk has been used to a very limited degree. The product, since December 1933, has been composed of vegetable fat, usually neutralized as to flavor, which, with salt, is added to that portion of milk from which the butterfat has been removed. A vitamin concentrate is added so that the emulsion contains vitamins A and D. Respondent's product is presently made from the following ingredients in approximately the percentages indicated:

Cottonseed oil.....	80%
Salt.....	3%
Vitamin concentrates.....	1/10 of 1%
Milk from which butterfat has been removed.....	17%

These ingredients are placed in a machine where they are swiftly agitated by a power-operated whipper or beater until a proper emulsion has been made, when the emulsion, in a thin liquid form, is fed from the machine where agitated into a large steel drum, well below zero Fahrenheit in temperature, where the emulsion freezes thinly on the sides of the drum and is removed therefrom as it freezes by a knife which slices the mixture off the drum. This frozen mixture falls on a belt which carries it to a machine known as a worker where it is worked, from whence it is carried into the packaging machinery. Respondent's finished product contains approximately 16 percent moisture and approximately 1 percent of milk solids, both of which come from the skim or skimmed milk placed in the original mixture.

The machine into which respondent's product is placed and agitated is known among dealers in such machines and in the oleomargarine industry as an "emulsion churn" and it is referred to in the industry as a "churn." The respondent has, during all of the time it has manufactured its said product, used some type of emulsion churn to agitate its mixture and obtain a proper emulsion. This emulsion churn or agitator which is, and has been, used by respondent in the process of manufacturing its product in no way resembles a churn that is used in making butter or an old-fashioned dasher butter churn or any apparatus or device that is known to the public generally as a churn. The public generally has no knowledge of the process used in making respondent's said product or other oleomarga-

rine products and no knowledge as to the practice in the trade and on the part of the manufacturers of such machines of referring to them as "emulsion churns" or "churns." Members of the public generally who visit respondent's plant do not recognize the machine used as a churn or the process of making respondent's said product as churning, but must have these matters explained to them by the respondent before they understand that the machine is a "churn" or that the product is "churned."

The effect of respondent's so-called churning is directly the opposite to the effect of churning in the process of making butter. Respondent's "churning" blends, mixes, and produces an emulsion, while the churning process used in the making of butter removes, separates, or collects, among other things, butterfat, from an emulsion, namely, cream, in which such fat was suspended. Respondent's so-called churning produces an emulsion, while churning "breaks down" an emulsion.

The machine used by the respondent in agitating its said product in the process of manufacture is not a churn and respondent's said product is not churned, as those terms are understood by the public generally, and the use by the respondent of these words in referring to its said machine and in describing the process by which its said product is made is misleading and deceptive to many members of the purchasing public.

PAR. 9. There are among respondent's competitors who make, distribute, and sell oleomargarine those who do not in any way misrepresent the content of their product or the method by which it is made.

PAR. 10. The acts and practices of the respondent in using the false, deceptive, and misleading statements and representations and the picturization of an old-fashioned dasher butter churn in connection with the sale and distribution of its said product as hereinabove set forth, have the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that respondent's said product is made in or from whole milk as that term is herein defined; that it contains butterfat extracted from whole milk or the cream taken from whole milk by the process of churning as that process is used in the making of butter; that said product contains an appreciable quantity of milk solids including butterfat extracted from whole milk and that it contains more of such solids than butter and, therefore, has more food value than butter, and to induce a number of the consuming public because of said erroneous belief to purchase respondent's said product and

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thereby unfairly to divert trade to the respondent from its competitors in commerce among and between the various States of the United States and in the District of Columbia.

## CONCLUSION

The acts and practices of the respondent as herein found are each and all to the prejudice and injury 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.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before John L. Horner, 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 John M. Russell, counsel for the Commission, and by Carroll J. Lord, 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 respondent, John F. Jelke Co., Inc., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its oleomargarine product, now sold and distributed under the trade name Good Luck Oleomargarine, whether sold under that trade name or any other trade name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Using the words "churn," churned," "sunlit churnery," or any derivative of the word "churn," or the picture of an old-fashioned dasher churn, or any word or words or picturization importing or implying that its product has been churned in the manner and through the process by which butter is made from milk or cream, in designating, describing, or referring to its said product or the process by which it is made.

2. Using the terms "fresh pasteurized milk" or "pasteurized milk," or any other terms or words signifying milk which do not clearly reveal that the milk referred to is not whole milk, to designate, describe, or refer to milk used by the respondent in the process of manufacturing its said product when the milk so used is other than whole milk from which no part of the cream or butter-fat content has been removed.

3. Using the word "milk" to designate, describe, or refer to that part of milk remaining after any part of the cream or butterfat has been removed, unless the word "milk" is qualified by a word or words which clearly reveal that the "milk" referred to is not whole milk but "skim" or "skimmed" milk.

4. Representing that said product contains 43.8 percent or any other percentage more "milk solids" than butter or than other spreads for bread; that said product contains any appreciable quantity of "milk solids"; that the food value of said product is attributable to the "milk solid" content thereof; or that the "milk solid" content of said product gives it more food value than butter.

*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 AND COMPANY

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

*Docket 3456. Complaint, June 16, 1938—Decision, Apr. 3, 1940*

Where a corporation engaged in operating stores in New York and in the city of Chicago, from which it sold, to purchasers in States involved and to those in other States, in substantial amount, women's dresses, fur coats, and other wearing apparel, in substantial competition with others engaged in sale and distribution of similar wearing apparel and like merchandise in commerce among the various States and in the District of Columbia, and including those who do not misrepresent the kind, value, quality, composition, or conditions of the women's dresses, fur coats, or other like merchandise sold by them—

- (a) Represented, in advertisements in newspapers of general circulation in various States, in course of soliciting sale of and selling certain of its said fur coats, and representing and describing certain lots thereof at \$68.50 each, that garments were worth as much as \$200, and were all brand new and of the latest styles, and that several were genuine "Black Persian Lamb Fur Coats" and worth amount aforesaid, facts being coat last referred to was not black Persian lamb, but was made from cross-bred caracul lamb peltries of types produced in Bagdad, Syria, or Iraq, was not "brand new," latest style, but had been made over from one previously manufactured and was a definitely defective type of garment, skins of which were in very weak condition and had not been kept under proper storage conditions, and it possessed no such retail value, but, based on wholesale cost of all coats in group, had wholesale cost of about \$45 at time of sale, none of the coats advertised as aforesaid were worth \$200, but had been purchased wholesale at prices ranging from \$42.50 to \$44 each, and based on its customary mark-up over cost, possessed retail value of not to exceed \$100, and coats of similar furs and design and in good condition selling at wholesale for from \$65 to \$110 sold at average retail price of about \$165; and
- (b) Represented and described as "silk" and "ice smooth satin," certain group of dresses offered in advertisements thereof in newspapers of general circulation in various States other than the State of New York, facts being fabrics in question were composed entirely of rayon which, when so manufactured as to simulate silk, has appearance and feel thereof and is by purchasing public practically indistinguishable therefrom, and were not, as aforesaid, composed of silk, product of cocoon of the silk worm, as long definitely and specifically understood from word "silk" by purchasing and consuming public generally, and as associated in public mind with words or terms "satin," "taffeta," "crepe de chine," and "crepe" as meaning fabrics made from 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 representations were true, and to cause them to purchase said garments as result of such erroneous

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beliefs, induced as above set forth, and with effect of unfairly diverting trade to it from its competitors; 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.

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

*Mr. James L. Fort* and *Mr. Robert Mathis, Jr.*, for the Commission.

*Mr. Horace G. Hitchcock* of Chadbourne, Wallace, Parke & White-side, 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 Saks & 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, Saks & Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its main office located at Fifth Avenue and Fiftieth Street, New York City, in said State, and with places of business located at Thirty-fourth and Broadway, at Fifth Avenue and Fiftieth Street, aforesaid, city and State aforesaid, and (Saks Fifth Avenue) in Chicago, State of Illinois.

Respondent is now, and for many years last past has been, engaged in the business of operating department stores from which it sells and has sold merchandise, including women's dresses, fur coats, and other wearing apparel, to its customers located in the various States of the United States, and in the District of Columbia. It causes and, during the time above mentioned, has caused its said goods, when sold, to be shipped from its places of business in New York City, aforesaid, to purchasers thereof located in the various States of the United States other than the said State of New York. There is now, and has been at all times mentioned herein, a course of trade in commerce by said respondent in said articles of wearing apparel and other like merchandise between and among the various States of the United States.

PAR. 2. In the course and conduct of its business, as aforesaid, respondent is now, and at all times herein mentioned has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of such wearing apparel and like merchandise in commerce between and

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among the various States of the United States, and in the District of Columbia. There are among the competitors of respondent in said commerce many who do not misrepresent the kind, value, quality, composition, or conditions of the dresses, fur coats, and other wearing apparel sold by them.

PAR. 3. In the course and conduct of its business as hereinabove described, respondent, in soliciting the sale of and selling certain women's dresses, and fur coats, caused, and now causes, the said dresses and fur coats to be advertised in newspapers and other publications having an interstate circulation, as follows:

- (a) Special group of  
WOMEN'S DRESSES  
Regular and Half Sizes

16.96

The two enchanting dresses sketched are pure silk sheers. But that is not all. Vivid prints on cool white grounds. Thin dark marquisettes. Pastel crepes with their own jackets. Printed chiffon evening dresses in unforgettably beautiful cool combinations. Dark town sheets with touches of lingerie. And a special group of chic printed silk jerseys with matching silk turbans. Sizes 16½ to 24½; 34 to 44.

Fourth Floor—SAKS at 34th St;

- (b) SIDEWALK  
CAFE DRESSES

12.95

of ice-smooth black satin newly important in the summer fashion scheme. Note the short puff sleeves; the hand-sculptured look; the dazzling sunburst pin. Black only. Sizes 12 to 20.

SAKS at 34th St.

- (c) 368 FINE  
FUR COATS  
worth as much as \$200.00

69.50

Pay only 12.00 Now:

The rest over a period of five months.

Every coat is brand new—a forecast of what the smartest women will be wearing next winter. We list just a few of the coats in this record-breaking event to give you an idea of what the values are:

- 1 Hudson Seal (dyed Muskrat) Fur coat worth 200.00
- 3 Black Persion Lamb Fur Coats worth 200.00
- 1 Natural Grey Squirrel Fur Coat worth 200.00
- 2 Black Caraculs with Silver Fox collars worth 155.00
- 4 Squirrel Locks Fur Coats worth 155.00
- 2 Scotch Moleskin Fur Coats worth 155.00
- 4 Muskrat Fur coats worth 155.00

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10 Ponyskin Fur coats worth 145.00  
 2 fine Raccoon Fur coats worth 145.00  
 2 Mink-dyed Marmot Fur Coats worth 145.00  
 6 Grey Krimmer Lamb Fur Coats worth 125.00  
 25 Persian type Caracul Fur Coats worth 125.00  
 15 Black or colored Kidskin Fur Coats worth 100.00  
 20 Black Caracul Fur Coats worth 100.00 to 125.00  
 10 Brown or Grey Caracul Fur Coats worth 100.00 to 125.00  
 6 Panther Fur Coats worth 95.00

\* \* \* \* \*

## SAKS AT 34TH

The statements, and the designation and description of said dresses as, "silk jersey" and "satin" served, and now serve, as representations on the part of the respondent that said dresses were, and are, made from fabrics composed of the product of the cocoon of the silkworm, commonly known and referred to as silk. The representations that these dresses are made of silk are grossly false and misleading. In truth and in fact, said dresses, designated and described as "silk jersey" and "satin" are not made from fabrics composed of the product of the cocoon of the silkworm which is commonly known and referred to as silk.

The statements and descriptions used in connection with the offering for sale and sale of said coats by the respondent, as hereinabove set forth, served, and now serve, as representations and implications on the part of said respondent that all of the coats advertised were (1) of a retail value greatly in excess of \$69.50, the price at which they were advertised for sale; (2) that all of said coats were substantially of the retail value or worth, and customarily sold for the particular sum, indicated; and (3) that all of said coats were "brand new" and of the latest styles.

The representations and implications so made and used by the respondent in connection with the offering for sale and sale of said coats as aforesaid, were, and are, grossly false and misleading. In truth and in fact, said fur coats, so designated and described, (1) were and are not of a retail value greatly in excess of \$69.50; (2) only a few of said coats, if any, were of the retail value or worth, and customarily sold for the particular sum, indicated in said advertisement; and (3) with the possible exception of several "leaders," said coats were not, and are not, brand new and of the latest styles.

PAR. 4. The words "silk" and "satin" have had for many years past and still have, in the minds of the purchasing and consuming public, a definite and specific meaning, to wit: the product of the cocoon of the silkworm. Silk products for many years have held, and still hold,

great public esteem and confidence because of their preeminent qualities. Silk fiber has long been woven into a variety of fabrics, and a variety of distinctive terms has been applied to the fabrics resulting from different types of weaving. The designation or description of wearing apparel, or other merchandise, as "silk" or "satin" leads a substantial portion of the purchasing public to believe that such wearing apparel, or other merchandise, is made from a fabric composed of the product of the cocoon of the silkworm.

PAR. 5. The acts and practices of the respondent in using the statements, descriptions, and designations, and the representations and implications, hereinabove set out, in connection with the offering for sale and sale of said dresses and coats have had, and now have, the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and implications were, and are, true and to cause many members of the purchasing public, because of said erroneous and mistaken belief, to purchase a substantial quantity of respondent's said products. As a consequence thereof, substantial trade in said commerce is diverted unfairly to the respondent from its competitors in said commerce, 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 16th day of June 1938, issued and subsequently served its complaint in this proceeding upon the respondent Saks & Co., a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On July 7, 1938, the respondent 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 James L. Fort, attorney for the Commission, and in opposition thereto by Horace G. Hitchcock, of the firm of Chadbourne, Wallace, Park and Whiteside, before Edward E. Reardon, Esq., a trial examiner theretofore duly designated by the Commission, 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, answer,

testimony and other evidence, briefs of counsel, and upon oral arguments of Robert Mathis, Jr., of counsel for the Commission, and Horace G. Hitchcock, of counsel for the respondent; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom :

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Saks & Co., is a corporation organized and existing under and by virtue of the laws of the State of New York and having its office and principal place of business at No. 611 Fifth Avenue in the city and State of New York. Respondent also operates stores at Fifth Avenue and Fiftieth Street and at Thirty-fourth Street and Broadway, in the city and State of New York, and another store in the city of Chicago and State of Illinois, which is operated under the trade name of Saks Fifth Avenue.

PAR. 2. The respondent is now, and for many years last past has been, engaged in the sale of merchandise including women's dresses, fur coats, and other wearing apparel from its stores above mentioned to purchasers, some of whom are located in New York and others in States other than the State of New York. Of respondent's sales and deliveries of merchandise, a substantial amount is to residents of States other than New York, and of its sales and deliveries of fur coats and other fur articles alone about \$15,000 worth out of a total volume of fur sales of \$275,000 per annum, or about 5 percent, are made by the respondent to persons resident in States other than New York. There is now and has been at all times mentioned herein a course of trade by said respondent in said articles of wearing apparel and like merchandise in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of its business, as aforesaid, respondent is, and at all times herein referred to has been, in substantial competition with other corporations, firms, and partnerships engaged in the sale and distribution of similar wearing apparel and like merchandise in commerce between and among the various States of the United States and in the District of Columbia. There are among the competitors of respondent, in such commerce, various corporations, partnerships, and firms engaged in the sale of wearing apparel and other like merchandise who do not misrepresent the kind, value, quality, composition or conditions of the women's dresses, fur coats, or other like merchandise, sold by them.

## Findings

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PAR. 4. In the course and conduct of its business, as described herein, respondent in soliciting the sale of and selling certain of its fur coats has caused advertisements to be published in newspapers of general circulation in various States of the United States. In said advertisements said respondent represented and described certain lots of fur coats for sale at \$68.50 each, said coats being represented in said advertisements as being (1) worth as much as \$200; (2) all "brand new" and of the latest styles; (3) and that several of the coats so advertised were genuine "Black Persian Lamb Fur Coats" and were worth \$200 each.

The foregoing statements and representations made by the respondent served as representations to the purchasing public that all of such coats so advertised, offered for sale, and sold (1) were of the value and worth of \$200 each; (2) were "brand new," and of the latest styles and (3) were all genuine furs of the kind and type which each was represented to be; and that the "Black Persian Lamb" coats so advertised were worth \$200 each in addition to being "brand new" and of the latest styles.

PAR. 5. In truth and in fact, the coat represented by the respondent in its advertisements as a "Black Persian Lamb" coat and which was purchased from respondent as such coat worth \$200 was not a black Persian lamb coat but was made from cross-bred caracul lamb peltries of types which are produced in Bagdad, Syria, or Iraq. The coat so sold as a black Persian lamb coat was not a "brand new" coat of the latest style at the time of the sale but was a coat that had been made over from a previously manufactured one, nor was said coat one of a retail value of \$200. It was a definitely defective type of garment, the skins of which were in very weak condition and which had not been kept under proper storage conditions for furs. Based on the wholesale cost of all the coats in this group, the wholesale cost of the fur coat so sold by respondent in its then condition was about \$45 at the time of its sale. The retail value of the coat as a new coat in good condition at the time of its sale by the respondent was not any amount near the advertised value of \$200 but was in fact considerably less than that sum.

In truth and in fact, none of the fur coats which were advertised by respondent were worth an amount near \$200 but were of a value considerably less than that amount. All of the coats so advertised, including those designated as black Persian lamb, were purchased in the same lot at a wholesale price of from \$42.50 to \$44 each. Based on respondent's customary mark-up over cost, the Commission finds that the retail value of said coat did not exceed \$100. Coats of

similar furs and design, in good condition, sell at wholesale for from \$65 to \$110 and sell at an average retail price of about \$165.

PAR. 6. Further, in the course and conduct of its said business, respondent in soliciting the sale of and selling certain women's dresses has caused advertisements to be published in newspapers of general circulation in various States of the United States other than the State of New York in which advertisements said respondent represented and described as "silk" and "ice smooth satin" a certain group of dresses offered therein.

The foregoing statements and representations made by the respondent serve as representations to the purchasing public that such fabrics so advertised, offered for sale and sold, were and are silk fabrics. The representations as hereinabove set forth are and were false and misleading in that said fabrics so represented, designated and referred to are not and were not composed of silk, the product of the cocoon of the silkworm, but are and were composed entirely of materials other than silk, to wit, acetate rayon.

PAR. 7. Over a period of many years the word "silk" 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. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has been woven for a long time into a variety of fabrics. A number of distinctive terms, such as "satin," "taffeta," "crepe de chine," and "crepe," have been applied to the fabrics resulting from the type of weaving of silk fiber. Dress goods and other items of wearing apparel designated, described and referred to as "satin," "taffeta," "crepe de chine," and "crepe" have been for a long time, and at the present time still are, associated in the public mind with fabrics made from silk, the product of the cocoon of the silkworm.

"Rayon" is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk, and when so manufactured it has an appearance and feel of silk and is by the purchasing public practically indistinguishable from silk. By reason of these qualities, rayon, when manufacturer to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

PAR. 8. There are among the competitors of the respondent corporations, partnerships, and firms, engaged in selling and offering for sale of fabrics, women's dresses, wearing apparel, and fur coats, and other allied products, in commerce between and among the

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various States of the United States and in the District of Columbia, who do not misrepresent in any manner the kind, value, quality, material, composition or conditions of the fur coats and other wearing apparel manufactured, offered for sale and sold by them.

PAR. 9. The use by respondent of the representations set forth herein in selling and offering for sale its women's dresses and fur garments has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that such representations are true, and to cause them to purchase said garments as a result of such erroneous beliefs induced as above set forth. The use by respondent of the representations and statements aforesaid has unfairly diverted trade to the respondent from its competitors, and thereby substantial injury is being done, and has been done, by respondent to competition in commerce among and between the various States of the United States.

## 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, Esq., 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 Robert Mathis, Jr., Esq., counsel for the Commission and by Horace G. Hitchcock, Esq. of the firm Chadbourne, Wallace, Parks & Whiteside, 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, Saks & 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 furs or fur products or its textile fabrics, including women's dresses and women's wearing apparel, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using any geographical or zoological terms to describe or designate furs or fur products made in whole or in part of fur other than those which truthfully express the true geographical or zoological origin of the animal from which the peltries have actually been obtained.

2. Representing as the customary or regular worth or value of any furs, or fur products made in whole or in part of fur, prices and values which are in excess of the price at which such products are regularly and customarily sold in the normal and usual course of business.

3. Representing that furs or fur products made in whole or in part of old furs which have been renovated, rebuilt, remanufactured, or restyled are new by failure to affix tags or labels on said products clearly and conspicuously indicating that said products are renovated, rebuilt, remanufactured, or restyled, as the case may be.

4. Representing in any manner that furs or fur products which are composed in whole or in part of renovated, rebuilt, remanufactured, or restyled furs are new or are composed of new material.

5. Using the unqualified descriptive terms "satin," "taffeta," "crepe de chine," or "crepe," or any other descriptive terms indicative of silk, to describe, designate or in any manner refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, provided, however, that when said words or descriptive terms are used truthfully to designate or describe the type of weave, construction or finish, such words must be qualified by using in connection and conjunction therewith in letters of at least equal size and conspicuousness a word or words clearly and accurately naming or describing the fibers or materials from which said products are made.

6. Using the term "silk" or any other term or terms of similar import or meaning indicative of silk, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, provided, that in the case of a fabric or product composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content when immediately accompanied by a word or words accurately describing and designating such other materials 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 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  
GENERAL DISTILLERIES CORPORATION

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

*Docket 2445. Complaint, June 19, 1935—Decision, Apr. 10, 1940*

Where a corporation engaged, under rectifier's basic permit, in purchasing, rectifying, blending, and bottling whiskies and other spirituous liquors, and in production of gin by process of redistillation of alcohol over juniper berries and other aromatics, and in sale of said various products among the various States and in the District of Columbia, and engaged, for some 2 years last past, under distiller's basic permit, in producing, bottling, and selling brandy produced in distillery leased therefor by it, and, as thus variously engaged, in substantial competition with others engaged in manufacture by distillation of whiskies, gins, and other alcoholic beverages from the raw materials and in sale thereof in trade and commerce as aforesaid, and with those engaged in rectifying, blending and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages and in sale thereof in commerce as aforesaid, and including among said competitors those who, as distillers from mash, wort, or wash of the whiskies, brandies, and other alcoholic beverages sold by them, truthfully use words "distillery," "distilleries," "distilling," or "distillers" as part of their corporate or trade names, on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products, and those who, engaged in purchasing, rectifying, blending, bottling, and selling whiskies, gins, and various other alcoholic beverages, do not use such words as aforesaid—

Represented, through use of word "Distilleries" in its corporate name, printed on its stationery, invoices, billheads, and order blanks, and on the labels attached to the bottles in which it sold and shipped its said products, and in various other ways to its customers, and furnished same with means of representing to their vendees, both retailers and ultimate consuming public, that said whiskies and other alcoholic beverages contained in such bottles were by it made through true process of distillation from mash, wort, or wash, notwithstanding fact it did not distill said whiskies and other alcoholic beverages, excepting brandy as above set forth, by it so bottled, labeled, sold, and transported, and did not own, operate, or control any place or places where such alcoholic beverages, with exception aforesaid noted, are made by process of distillation from mash, wort, or wash, as long definitely understood from word "distilleries" when used in connection with industry in question and products thereof by trade and ultimate purchasing public, and it was not a distiller, for the alcoholic bottled beverages of which there is a preference on the part of a substantial portion of the purchasing public; With effect of misleading and deceiving dealers and purchasing public into the belief that it was a distiller, and that the whiskies and other alcoholic beverages sold by it were by it distilled from mash, wort, or wash, and of inducing dealers and purchasing public, acting in such belief, to buy its said products made and bottled by it, and of thereby diverting trade to it from its competitors who do not, by their corporate or trade name or in any other man-

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ner, misrepresent themselves as distillers; to the substantial injury of substantial 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 J. Keenan* and *Mr. W. W. Sheppard*, trial examiners.  
*Mr. DeWitt T. Puckett* for the Commission.

*Mr. Joseph W. Ress*, of Hartford, Conn., and *Mr. Briggs G. Simpich*, of Washington, D. C., for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that General Distilleries Corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized in March 1934, existing and doing business under the laws of the State of Connecticut, with its principal office and place of business in the city of Hartford in said State. It is now, and since its organization, has been engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its said business, it causes its said products when sold to be transported from its place of business aforesaid into and through various States of the United States to the purchasers thereof, consisting of wholesalers and retailers located in other States of the United States and the District of Columbia. In the course and conduct of its business as aforesaid, respondent is now, and since its organization has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and since its organization

has been, in substantial competition with other corporations, and with individuals, firms, and partnerships engaged in the business of purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent has upon its said premises a still which it uses in the production of gin by a process of rectification, whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics. Such rectification of alcoholic spirits and liqueurs does not make or constitute respondent a distiller as defined by section 3247 of the Revised Statutes regulating Internal Revenue, nor as commonly understood by the public or the liquor industry. For a long period of time the word "distilleries" when used in connection with the liquor industry and the products thereof has had and still has a definite significance and meaning to the minds of the wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, places where such liquors are manufactured by the process of original and continuous distillation from mash, wort, or wash, through continuous closed pipes and vessels until the manufacture thereof is completed; and a substantial portion of the purchasing public prefers to buy spirituous liquors prepared and bottled by distillers.

PAR. 3. In the course and conduct of its business as aforesaid, by the use of the word "distilleries" in its corporate name, printed on its stationery and advertising, and on the labels attached to the bottles in which it sells and ships its said products, and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that respondent is a distiller and that the whiskies, gins, and other spirituous beverages therein contained were by it manufactured through the process of distillation from mash, wort, or wash, as aforesaid, when, as a matter of fact, respondent is not a distiller, does not distill the said whiskies, gins, and other spirituous beverages by it so bottled, labeled, sold, and transported, and does not own, operate or control any place or places where such beverages are manufactured by the process of distillation from mash, wort, or wash.

PAR. 4. There are among the competitors of respondent engaged in the sale of spirituous beverages, as mentioned in paragraph 1 hereof, corporations, firms, partnerships, and individuals who manufacture and distill from mash, wort, or wash, as aforesaid, whiskies, gins, and other spirituous beverages sold by them and who truthfully use the

words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate or trade names and on their stationery and advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, and other spirituous beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery or advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 5. Representation by respondent, as set forth in paragraph 3 hereof, is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the beliefs that respondent is a distiller and that the whiskies, gins, and other spirituous beverages sold by the respondent are manufactured and distilled by it from mash, wort, or wash, as aforesaid, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public acting in such beliefs, to purchase the whiskies, gins, and other spirituous beverages bottled and sold by the respondent, thereby diverting trade to respondent from its competitors who do not by their corporate or trade names or in any other manner misrepresent that they are manufacturers by distillation from mash, wort, or wash, of such products, and thereby respondent does substantial injury to substantial competition in interstate commerce.

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

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 19, 1935, issued and served its complaint in this proceeding upon respondent General Distilleries 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 filing of respondent's answer thereto, testimony and other evidence in support of the allegations

## Findings

30 F. T. C.

of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Joseph W. Ress, attorney for the respondent before John J. Keenan and W. W. Sheppard, 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 presented in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid and Briggs G. Simpich, Esq., of Washington, D. C., 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 is a corporation organized in 1934, existing and doing business under and by virtue of the laws of the State of Connecticut, with its principal place of business at 77-79 Homestead Avenue, Hartford, Conn. Its officers are:

President.....	Abraham Abrahamson,
Treasurer and Manager.....	Julian Shoor,
Secretary.....	David Lyon Abramson.

Since March 9, 1934, it has been and still is engaged in business as a rectifier and wholesaler of distilled spirits and the production of gin by the process of redistillation of alcohol over juniper berries and other aromatics pursuant to a rectifier's basic permit No. R-504, issued to it by the Federal Alcohol Administration Division of the Treasury Department. Its present permit authorizes it to engage at the above address in the business of rectifying and blending distilled spirits, gin, wine, and other spirituous beverages, and while so engaged, to sell, offer and deliver for sale in interstate commerce and foreign commerce such spirits, wine, gin, and other spirituous liquors so rectified or blended, conditionally upon its compliance with sections 5 and 6 of the Federal Alcohol Administration Act, and all other provisions thereof; the twenty-first amendment and laws relating to the enforcement thereof; all laws of the United States relating to distilled spirits, wine, gin, and malt beverages, including taxes with respect thereto; and all applicable regulations made pursuant to the law which are now or may hereafter be in force; and the laws of the States in which the permittee engages in business. The permit issued in 1934 was from the former Alcohol

Control Administration and on October 17, 1935, the permit respondent is presently operating under was issued by the Federal Alcohol Administration.

While its charter is sufficiently broad to permit it to engage in almost any phase of the liquor business, actually until September 26, 1938, it was engaged solely in the blending of whiskies, wines, gins, and other spirituous beverages, and the selling of same at wholesale. It purchases these spirits which it blends from various distillers and bottles them under its warehousing and bottling basic permit issued at the same time and by the same authority as was its rectifier's permit. On September 26, 1938, it was granted a distiller's basic permit No. D-898, by the Administrator of the Federal Alcohol Administration authorizing it to produce brandy by distillation on the premises of the Earnest C. Alderman Distillery, Barnes Hill Road, Burlington, Conn., said Alderman being the holder of basic distiller's permit M. D.-59.

Of the whiskies purchased by it in bulk from distillers, it bottles some straight without alteration and other whiskies after blending or rectifying. The gin manufactured by it through the process of redistillation of purchased alcohol over juniper berries and other aromatics is bottled and sold to the trade and constitutes approximately 15 percent of the volume of its business. The whiskies, both straight and blended, constitute 50 to 60 percent of its trade, and the brandy which it produces, since September 26, 1938, constitutes the balance. The respondent does not now and never has, except since September 26, 1938, produced or manufactured distilled spirits of any kind, from mash, wort, or other raw materials. The rectification of alcoholic spirits by this respondent as aforesaid in the production of gin, does not make or constitute it a distiller or a distilling company as defined by section 3247 of the Revised Statutes of the United States regulating Internal Revenues.

The Commission finds that this respondent is now and has been since 1934 engaged in the business of purchasing, rectifying, blending, and bottling whiskies and other spirituous liquors and in the sale thereof in constant course and trade in commerce between and among various States of the United States and the District of Columbia; that since the issuance to it of the distiller's basic permit D-898, on September 26, 1938, it has produced, bottled and sold brandy produced in a distillery which it leases for that purpose in Burlington, Conn.; that approximately 25 percent of its sales and distribution has been in States other than the State of Connecticut.

In the course and conduct of its said business, it causes its products, when sold, to be transported from Hartford, Conn., into and through

various other States of the United States to the purchasers thereof, who are wholesalers and retailers located in these other States of the United States and in the District of Columbia.

In the course and conduct of its business as aforesaid, respondent is now and since March 4, 1934, has been in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the manufacture by distillation of whiskies, gins, and other alcoholic beverages from the raw materials and in the sale thereof in trade and commerce between and among the various States of the United States and in the District of Columbia; and in the course and conduct of its business as aforesaid, respondent is now, and has been during said period, in substantial competition with other corporations, individuals, firms, and partnerships engaged in the business of rectifying, blending and bottling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages and in the sale thereof in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. On the premises of respondent are various tanks for storage and blending, bottle fillers, labeling machines, and the equipment usually found in a rectifying plant. There is also distilling apparatus for the production of gin by distilling purchased alcohol over juniper berries and other aromatics. The respondent is now and has been since September 26, 1938, producing brandy by distillation from leased premises pursuant to a basic distiller's permit No. D898, issued by the Administrator of the Federal Alcohol Administration. The law permits the use of the name or designation of distiller, or distilleries with respect to brandies produced under said permit.

Rectifying, in the distilled spirits rectifying industry, means the mixing or blending whiskies of different grades or types. A blend of whiskies is a combination of various straight whiskies of different types or ages, and blended whisky is a product with something other than whisky in it, such as neutral spirits (grain alcohol) and sometimes caramel or prune juice, or whatever the rectifier sees fit to put into it.

During such times as a rectifier is either bottling or labeling his products, a gager from the Alcohol Tax Unit of the Bureau of Internal Revenue is present, solely for the protection of the Government's revenue. A great many distilling companies, in addition to the distilleries, operate a rectifying plant at some little distance from their distilling plant where they perform substantially the same operations as a rectifier. Blown somewhere in the glass of the bottles used, mostly in the bottom of the bottle, there is a symbol consisting of a letter

followed by a number identifying the bottler. For instance, there is a "D" for distiller, and an "R" for rectifier, the number following the said letter corresponds with the distiller's rectifier's basic permits, thus "R-504" designated General Distilleries Corporation as a rectifier to those who know and understand such designations. Distillers also bottle liquor from their rectifying plants and label it as "Blended and bottled by," or "bottled by," as the case may be so that by the use of such phrases alone appearing on the label followed by the name of the bottler one cannot tell whether the bottler was a distiller or a rectifier. The designation "D-898" designates the General Distilleries Corporation to those who know and understand such designation as distillers.

Section 3247 of the Revised Statutes (U. S. C. A. Tit. 26, section 1183 (a)), regulating Internal Revenue, defines a "distiller" as follows:

Every person who produces distiller spirits or who brews or makes a mash, wort, or wash fit for distillation or for the production of spirits, or who, by any process of evaporation, separates alcoholic spirits from any substance or who, making or keeping mash, wort, or wash has also in his possession or use a still, shall be regarded as a distiller.

Section 3244 of the Revised Statutes (U. S. C. A. Tit. 26, section 1398 (f)), defines a "rectifier" as follows:

Every person who rectifies, purifies, or refines distilled spirits or wine by any process other than by original and continuous distillation from mash, wort, or wash, through continuous enclosed vessels or pipes, until the manufacture thereof is complete, and every wholesaler and liquor dealer who has in his possession any still or leach tub, or who keeps any other apparatus with the purpose of refining in any manner distilled spirits, and every person who without rectifying, purifying, or refining distilled spirits, shall, by mixing such spirits, wine or other liquor with any materials, manufacture any spurious imitation, or compound liquors for sale under the name of whisky, brandy, gin, rum, wine spirits, cordials, or wine bitters, or any other name, shall be regarded as a rectifier, and that being engaged in the business of rectifying, etc.

PAR. 3. The testimony of those having long experience in both the distilled spirits rectifying industry and distilling industry established that this respondent's plant and operations do not make or constitute this respondent a distiller in the sense commonly understood by the liquor industry. There were also called a large number of witnesses who were lay-members of the purchasing public, and with few exceptions, their testimony was to the effect that by such terms as "distilling," "distillery," and "distiller," when used in the trade or corporate name of a concern handling alcoholic beverages, they understood that concern to be engaged in an initial process of producing spirituous or alcoholic beverages from grain or mash, and that they have a distinct preference for a distillery bottled package over one bottled by a rectifier, for the reason that they would expect to get

a much better product which had been distilled under proper supervision and without tampering. And said witnesses indicated definitely that they would prefer and choose liquor carrying the label of a distilling company or a distiller.

The Commission finds that for a long period of time, the word "distilleries" when used in connection with the liquor industry and with products thereof, has had and still has a definite significance and meaning to the minds of wholesalers and retailers in such industry and to the ultimate purchasing public, to wit, the manufacture of such liquors by the process of distillation from mash, wort, or wash, and that a substantial portion of the purchasing public prefers to buy alcoholic beverages prepared and bottled by distillers.

PAR. 4. All of respondent's products are sold under its corporate name "General Distilleries Corporation." In the sale of whiskies, some of said whiskies are sold without the name of the distiller thereon on the face of said bottle, but only the words "Bottled by General Distilleries Corporation." Other whiskies, straight and blended, are sold with the name of the distilling company or producer who manufactured or blended said whiskey and the label also bears designation "Bottled by General Distilleries Corporation." Its rum is sold without the name of the producer on the front label and with no other information than "Bottled by General Distilleries Corporation." It does not distill rum. Prior to securing its permit to distill brandy, respondent sold brandy with labels bearing the name of the winery and distillery and respondent's own name as the bottler thereof. On its blended whiskies, the respondent, after carrying the name of the whisky, has the designation "Blended and Bottled by General Distilleries Corporation." On its gins, the respondent carries the label "Distilled and Bottled by General Distilleries Corporation." On other of its whiskies which it bottles exclusively for customers, said labels bear the designation "Bottled Exclusively for," then gives the name of the liquor store for whom it is bottled, with no other designation on the face thereof as to who is the distiller or bottler. As to straight whiskies, since about August 1936, under a requirement of the Federal Alcohol Administration, respondent is compelled to place a label on the bottle naming the State in which the liquor was distilled and its age. In the matter of blended whisky, respondent is required to place a back label on the bottle stating the amount of whisky and the amount of neutral spirits therein. The respondent must get the approval of the Federal Alcohol Administration on all labels before using them, and has apparently complied with the rules and regulations of the Federal Alcohol Administration. The respondent's corporate name as it appears on the label is required to

correspond with the name as it appears on the basic permit as issued by the Federal Alcohol Administration. The Federal Alcohol Administration never passed upon the propriety or impropriety of the name used by the respondent corporation.

The Commission finds that in the course and conduct of its business as aforesaid, by the use of the word "Distilleries" in its corporate name, printed on its stationery, invoices, billheads, order blanks, and on the labels attached to the bottles in which it sells and ships its said products and in various other ways, respondent represents to its customers and furnishes them with the means of representing to their vendees, both retailers and the ultimate consuming public, that said whiskies and other alcoholic beverages therein contained were by it manufactured through a true process of distillation from mash, wort, or wash, when as a matter of fact, respondent is not a distiller, and does not distill the said whiskies and other alcoholic beverages, except brandy, by it so bottled, labeled, sold and transported, and does not own, operate, or control any place or places where whiskies and other such alcoholic beverages, except the brandy since September 26, 1938, are manufactured by a process of distillation from mash, wort, or wash, and the said beverages are not produced and bottled by respondent as a distiller, in its distilleries, or in its distillery. That the brandy which has been, since September 1938, produced by the respondent is under a special permit whereby it is allowed only as the lessee of a distillery to produce upon its own responsibility brandy from such fruit or materials as brandy is usually produced; that said permit does not permit and respondent does not produce under said permit any whiskies or other alcoholic beverages.

PAR. 5. There are among the competitors of respondent engaged in the sale of alcoholic beverages as mentioned in paragraph 1 hereof corporations, firms, partnerships, and individuals, who distill from mash, wort, or wash, whiskies, brandies and other alcoholic beverages sold by them and who truthfully use the words "distillery," "distilleries," "distilling," or "distillers" as part of their corporate names or trade names on their stationery, advertising, and on the labels of the bottles in which they sell and ship such products. There are also among such competitors, corporations, firms, partnerships, and individuals engaged in the business of purchasing, rectifying, blending, bottling, and selling whiskies, gins, cordials, liqueurs, vermouths, cocktails, and other alcoholic beverages who do not use the words "distillery," "distilleries," "distilling," or "distillers" as a part of their corporate or trade names, nor on their stationery, advertising, nor on the labels attached to the bottles in which they sell and ship their said products.

PAR. 6. The representation by the respondent as set forth in paragraph 4 hereof is calculated to and has the capacity and tendency to and does mislead and deceive dealers and the purchasing public into the belief that respondent is a distiller and that the whiskies and other alcoholic beverages sold by the respondent are distilled by it from mash, wort, or wash, and is calculated to and has the capacity and tendency to and does induce dealers and the purchasing public, acting in such belief, to purchase the aforesaid products manufactured and bottled by the respondent, thereby diverting trade to the respondent from its competitors who do not by their corporate or trade name or in any other manner misrepresent that they are distillers, and thereby respondent does substantial injury to substantial competition in interstate commerce.

#### 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 respondent, testimony and other evidence taken before John J. Keenan and W. W. Sheppard, 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 DeWitt T. Puckett, counsel for the Commission, and by Joseph W. Ress and Briggs G. Simpich, 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, General Distilleries 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 whiskies, gins, or other spirituous beverages (except brandies actually distilled by it, and except gins produced by it through a process of rectification whereby alcohol purchased but not produced by respondent is redistilled over juniper berries and other aromatics) in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, through the use of the word "Distilleries" or any other word of like import, in its corporate name, on its stationery,

advertising, or labels attached to the bottles in which its said products are sold and shipped, or in any other way, (a) that the respondent is a distiller of the said whiskies, gins or other spirituous beverages; or (b) that the said whiskies, gins or other spirituous beverages were by it manufactured through a process of distillation; or (c) that respondent owns, operates or controls a place or places where any such products are by it manufactured by a process of original and continuous distillation from mash, wort or wash, through continuous closed pipes and vessels until the manufacture thereof is completed, unless and until respondent shall actually own, operate, or control such a place or places.

*It is further ordered,* That the 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 PINNACLE COAL COMPANY AND  
ELLIS MORRELL

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

*Docket 3234. Complaint, Sept. 30, 1937—Decision, Apr. 10, 1940*

Where a corporation had long been engaged in the operation of a mine at Pinnacle in Colorado, and in the sale of coal therefrom under name "Pinnacle" in said and adjacent States, including Iowa, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming, and had expended large sum in advertising said coal and, for a number of years, was second largest coal mine operator in county in question and still one of the larger operators, and had built up a good reputation for coal mined by it as product of good grade and quality, and included in trade-mark registered by it word "Pinnacle," together with words that it was mined and shipped only by it, and made use of such trade-mark and words in its business for over 20 years and applied same to coal mined by it and to its freight cars, trucks, wagons, bins, etc., and coal under name "Pinnacle" had come to be generally recognized in the trade and among sellers and purchasers thereof in sales territory concerned as mined by it and exclusively from mine of that name and town; and thereafter corporate competitor, and relatively small operator, engaged in shipping to customers in Nebraska coal produced from mine some 42 miles distant from said Pinnacle mine or mine there located—

Made use of its corporate name, including word "Pinnacle," in connection with offer and sale of coal in question, and featured said corporate name in advertising material and made use of name "Pinnacle" in label under which it sold said coal, together with claims and representations thereon to effect that it was of highest quality, notwithstanding fact product in question was not that from said Pinnacle mine, to which it was generally inferior;

With capacity and tendency to mislead and deceive members of purchasing public into erroneous and mistaken belief that coal produced and sold by it under such label had been produced from mine at Pinnacle, operated by corporation aforesaid, and was of a grade and quality equal to that of the coal so named and produced by said corporation, and to induce members of purchasing public to buy its said coal by reason of such mistaken and erroneous belief, and with result of diverting trade unfairly to it from competitors, including those who offer and sell in commerce coal produced in mines other than that located at Pinnacle as above set forth, and operated by said corporation, and do not represent their coal as produced from such Pinnacle mine, and those who do not misrepresent in any particular the grade and quality of their product:

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

## Complaint

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

*Mr. Alden S. Bradley* and *Mr. Joseph C. Fehr* for the Commission.

## COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Consolidated Pinnacle Coal Co., a corporation and Ellis Morrell, an individual, 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, Consolidated Pinnacle Coal Co., is a corporation organized and existing under the laws of the State of Colorado, having its principal office and place of business in Denver, Colo. Respondent, Ellis Morrell, a resident of Denver, Colo., is president and manager of respondent corporation and at all times herein specified has directed and dictated the sales policies and business activities of said respondent corporation.

PAR. 2. Respondents have been for more than 2 years last past engaged in the business of selling and distributing coal. Respondents cause said coal when sold to be transported from said place of business in Denver, Colo., to the purchasers thereof located in various States of the United States other than Colorado.

Respondents are in competition with individuals, partnerships, and corporations engaged in the sale and distribution of coal in interstate commerce.

PAR. 3. Respondents, in the course and conduct of their business aforesaid, have used, and now use, the word "Pinnacle" as a part of the corporate name aforesaid and on stickers, advertisements, letterheads, and various other forms of advertising which forms of advertising were for the purpose of effecting sales of coal vended by them.

PAR. 4. The word "Pinnacle" used in connection with coal, has for more than 25 years signified and meant, and has been understood by the general purchasing public to signify and mean, coal produced from a certain mine known as the "Pinnacle mine" located in the

county of Routt, State of Colorado, owned and operated by Victor American Fuel Co., a corporation of Denver, Colo.

The Victor American Fuel Co. aforesaid has for more than 25 years past owned and operated and now owns and operates the "Pinnacle mine" above referred to and at all times produced a large and extensive tonnage of coal. Such coal, so produced and sold, is known and described throughout the mining trade and known to the general purchasing public as "Pinnacle" coal. Such coal has consistently maintained a high reputation on account of its quality, utility and fuel value, and is now widely and favorably known throughout the States wherein the same is sold. It has long had and now has a constant and favorable good will and the name "Pinnacle" as applied to or used in connection with coal has become and is a substantial asset of great value to the many individuals, partnerships, and corporations engaged in the mining, sale and transportation of such coal in interstate commerce.

The coal sold by the respondents in interstate commerce, as aforesaid, is not mined from the Pinnacle mine nor from any mine adjacent thereto, but is mined in a district separate and apart from that wherein the Pinnacle mine is located, separated from said Pinnacle mine by a range of mountains, and is not the same as, nor similar to, the coal known and described as "Pinnacle" coal, but is inferior thereto.

PAR. 5. The purchasing public has long recognized in "Pinnacle" coal certain attributes which make said coal desirable. Among these attributes are the following: (1) Low in ash content, (2) clean, (3) no clinkers, (4) no slacking, (5) high in heat units, which render "Pinnacle" coal a most economical fuel and give it a high fuel rating. The respondents represent that its said coal (1) is low in ash content, (2) has highest fuel rating, (3) is cleanest coal mined, (4) has no clinkers, (5) never slacks, (6) is most economical fuel, and (7) has highest heat units.

Said representations are false, deceptive, and misleading for in truth and in fact as these terms are understood by the purchasing public, respondents' said coal is not low in ash content, does not have the highest fuel rating, is not the cleanest coal mined, is not without clinkers, does slack, is not the most economical fuel, and not the highest in heat units.

PAR. 6. The practice of the respondents in using the word "Pinnacle" in the corporate name of the corporate respondent and in the advertising as aforesaid in selling coal mined in mines other than the Pinnacle mine has the capacity and tendency to and does mislead and deceive the members of the purchasing public into the false belief

that the coal so offered for sale and sold by them has actually been and is being mined from the Pinnacle mine, and that respondents' said coal is the coal that is commonly known and described as "Pinnacle" coal. Members of the purchasing public, as a result of such erroneous belief have been and are now being induced to purchase respondents' said coal.

PAR. 7. There are among the competitors of the respondents various individuals, partnerships, and corporations who sell and offer for sale in interstate commerce coal produced in mines other than the Pinnacle mine, who do not falsely represent that the coal so sold and offered for sale by them was mined from the Pinnacle mine and who do not falsely represent the quality and grade of such coal to be of the quality and grade of Pinnacle coal, and who do not in any manner misrepresent their coal or its source.

Such acts and practices of the respondent have the tendency and capacity to unfairly divert trade in said commerce to respondents from competitors who do not misrepresent the source of the coal vended by them nor the quality and grade thereof.

PAR. 8. The above and foregoing acts, practices, and representations of the respondents have been, and are all to the prejudice of the public and respondents' competitors as aforesaid, and have been and are, unfair methods of competition within the meaning and intent of section 5 of an act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 30, 1937, issued its complaint and caused same to be served upon the respondent Consolidated Pinnacle Coal Co., a corporation, charging respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. The individual respondent, Ellis Morrell, could not be located and the complaint was never served upon him. After the issuance of said complaint and the filing of respondent Consolidated Pinnacle Coal Co.'s answer thereto, testimony and other evidence in support of the allegations of the complaint and in opposition thereto were introduced before 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 this proceeding regularly came on for final hearing before the Commission upon the complaint herein, the aforesaid answer, the testi-

mony and other evidence and 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 public interest, and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The corporate respondent, Consolidated Pinnacle Coal Co., is a Colorado corporation with its principal office and place of business in Denver, Colo. For a number of years said corporation has been engaged in the business of operating coal mines in Routt County, Colo., and in selling to retail dealers the coal produced from such mines. Prior to March 1, 1938, and prior to the date of the issuance of the complaint herein, the corporate respondent sold a portion of its output of coal to retail dealers located in States other than the State of Colorado. In connection with such sales the corporate respondent caused its coal, when sold, to be transported from the mines operated by it in Routt County, Colo., into other States of the United States wherein such purchasers were located. In the course and conduct of its said business the corporate respondent was in active competition in commerce among and between the various States of the United States with other corporations and with persons and partnerships also engaged in the sale and shipment of coal to purchasers buying for resale.

The individual respondent, Ellis Morrell, has not been connected with the corporate respondent, Consolidated Pinnacle Coal Co. since March 1, 1938, and is now engaged in the trucking business in the State of New Mexico.

PAR. 2. In recent years one of the principal competitors of the respondent Consolidated Pinnacle Coal Co., in the mining of coal in Routt County, Colo., and the sale of such coal in the State of Colorado and States adjacent thereto, has been the Victor American Fuel Co., which company has operated a mine at Pinnacle, in Routt County, Colo. The output of this mine has been sold by said Victor American Fuel Co. in the State of Colorado and in States adjacent thereto, including the States of Iowa, Kansas, Nebraska, North Dakota, South Dakota, and Wyoming. In the years 1915 to 1937, both inclusive, said Victor American Fuel Co. produced from the mine operated by it at Pinnacle, Colo., 2,687,809 tons of coal, and in said years it spent more than \$200,000 in advertising the coal so produced by it, and the name "Pinnacle" as applied to such coal. For a number of years said Victor American Fuel Co. has been the second largest coal mine operator in Routt County, Colo., and is

still one of the larger operators. It has built up a good reputation for coal mined by it and such coal has been known to the trade as a coal of good grade and quality. It is generally recognized in the trade and among the sellers and purchasers of coal in the sales territory in which Pinnacle coal is sold and distributed that Pinnacle coal is mined exclusively from the Pinnacle mine situated in the town of Pinnacle, County of Routt, Colo. On February 22, 1922, the Victor American Fuel Co. caused to be registered in the United States Patent Office a trade-mark which has been used by it in its business since April 22, 1916, which trade-mark included the word "Pinnacle" in combination with the words "mined and shipped only by the Victor American Fuel Co." On May 24, 1922, it caused another trade-mark to be registered in said Patent Office, which latter trade-mark consisted of the single word "Pinnacle," which trade-mark has been continually used by it in its business since April 22, 1916, and has been applied and fixed to the coal mined by it and to the freight cars, trucks, wagons, and bins, and to other carriers, vehicles, and receptacles containing such coal. Also, these trade-marks were filed in the office of the Secretary of State of the State of Colorado, on October 20, 1925.

PAR. 3. The corporate respondent, Consolidated Pinnacle Coal Co., is a relatively small mine operator. The Commission finds that in November and December 1936, the corporate respondent made shipments of a number of cars of coal which it had produced from a mine then operated by it near the town of Hayden in Routt County, Colo., which shipments were delivered by the corporate respondent to its customers in the State of Nebraska. The mine from which such coal was produced is located 42 miles from the mine operated by the Victor American Fuel Co. near the town of Pinnacle in Routt County, Colo. The coal so produced by the corporate respondent was sold by it under a round label about 3 inches in diameter. In the center of such label was a star with seven points. The corporate name of said respondent containing the word "Pinnacle" was printed around the border. On each point of the star there was printed a claim or representation concerning the grade or quality of the coal, which claims and representations were to the effect that such coal was of the highest quality. The evidence shows, and the Commission finds, that the coal produced by the corporate respondent and sold under the representations hereinabove set out was of inferior grade to the coal produced by the Victor American Fuel Co. and sold under the name Pinnacle coal. The corporate respondent's coal mined from the mine located near the town of Hayden had a

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high moisture content and a high ash content. It disintegrated rapidly in handling and in transportation from the mine to the consumer and was generally inferior to the coal produced by the Victor American Fuel Co. from the mine operated by it at Pinnacle, Colo.

PAR. 4. The use by the corporate respondent, Consolidated Pinnacle Coal Co., of the word "Pinnacle" in its corporate name and the use of the labels and other advertising material which featured its corporate name containing the word "Pinnacle" had the capacity and tendency to mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the coal produced and sold by the corporate respondent under such label had been produced from the mine located at Pinnacle, Colo., operated by the Victor American Fuel Co. and that such coal was of a grade and quality equal to that of the Pinnacle coal produced by the Victor American Fuel Co. and had the capacity and tendency to induce such members of the purchasing public to purchase corporate respondent's coal on account of such mistaken and erroneous beliefs.

PAR. 5. There are among the competitors of the respondent Consolidated Pinnacle Coal Co., various persons and partnerships and other corporations who offer for sale and sell coal in commerce between and among several of the States of the United States, which coal is produced in mines other than the mine located at Pinnacle, Colo., and operated by the Victor American Fuel Co., and which competitors do not represent that the coal so offered for sale and sold by them was produced from said mine located at Pinnacle, Colo.; also, there are among the competitors of respondent those who do not misrepresent in any particular the grade and quality of the coal sold by them. As a result trade has been unfairly diverted to the corporate respondent from such competitors.

## CONCLUSION

The aforesaid acts and practices of the corporate respondent Consolidated Pinnacle Coal Co., as herein found, 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 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 Consolidated Pinnacle Coal Co. (respondent Ellis Morrell

not having been served), testimony and other evidence taken before examiners 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 not having filed brief); and the Commission having made its findings as to the facts and its conclusion that said respondent, Consolidated Pinnacle Coal Co., has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent Consolidated Pinnacle Coal 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 coal, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Pinnacle" in any corporate or trade name, or at all, when the coal sold by respondent has not been mined from the Pinnacle Mine situated at Pinnacle in the County of Routt, State of Colorado.

2. Designating or describing coal which has not been mined from the Pinnacle Mine situated at Pinnacle in the County of Routt, State of Colorado, as being Pinnacle coal; or otherwise representing that such coal is Pinnacle coal.

*It is further ordered,* That the respondent, Consolidated Pinnacle Coal 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.

*It is further ordered,* That the case growing out of the complaint herein be, and the same hereby is, closed as to Ellis Morrell, subject to the Commission's right to reopen the case in the event future developments so warrant.

IN THE MATTER OF  
FORSON 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 3361. Complaint, Mar. 18, 1938—Decision, Apr. 10, 1940*

Where a corporation engaged in sale and distribution of its "Nu-Myst" medicament and vaporizer therefor, to drug jobbers and dealers; in advertisements thereof through means of radio broadcasts over stations of extrastate audience and through advertisements in newspapers, periodicals, and trade journals of general circulation throughout the United States, and circulars distributed to customers, and through use of the mail, advertising folders, letters, and literature—

Represented that its said preparation was a cure or remedy for whooping cough, colds, hay fever, rose fever, and asthma, and a competent and effective treatment for such ailments and conditions which would relieve the same, and was more than a relief from local irritation which might be caused by ailments in question, and that said product would destroy bacteria and prevent growth thereof;

Facts being that it was not a cure or remedy or competent or effective treatment for said various ailments and conditions and would not give relief therefor beyond point above noted nor destroy or prevent growth of bacteria, specifically was not a cure for colds generally, causes of which so-called allergies are many-fold, and, lacking anything to control bronchial tube spasms, would not control asthma nor, lacking germicidal quality, relieve whooping cough, and its various representations aforesaid were misleading and untrue;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that all of its said representations were true, and with result, as a consequence of such belief, that a number of consuming public purchased substantial volume of its product in preference to that of those engaged in substantial competition with it in sale and distribution of similar products in commerce among the various States and in the District of Columbia and in sale and distribution of products intended and used for purposes for which it recommended its said product:

*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. Arthur F. Thomas* and *Mr. Randolph Preston*, trial examiners.

*Mr. William L. Taggart* for the Commission.

*Mr. Philip Steinman* and *Mr. Lawrence H. Sanders*, of New York City, for respondent.

## COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Forson Laboratories, Inc., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act of Congress, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

**PARAGRAPH 1.** Respondent, Forson Laboratories, 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 353 Fifth Avenue, in the city of New York, State of New York. Respondent is now and has been for several years last past engaged in the business of distributing and selling in commerce as hereinafter set out a certain medical product designated as Nu-Myst.

**PAR. 2.** Said respondent being engaged in business as aforesaid, causes said medical product, when sold, to be transported from its office and principal place of business in the State of New York to purchasers thereof located at various points in 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 commerce in said product so distributed and sold by the respondent between and among the various States of the United States and in the District of Columbia.

**PAR. 3.** In the course and conduct of its said business, the respondent is now and has been in substantial competition with other corporations and with firms and individuals likewise engaged in the business of distributing and selling inhalants or similar medicinal products in commerce among and between the various States of the United States, and in the District of Columbia.

**PAR. 4.** In the course of the operation of said business and for the purpose of inducing individuals, firms, and corporations to purchase said medicinal product respondent has made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into the various States of the United States and has caused advertisements to be inserted in newspapers, periodicals and trade journals with a general circulation throughout the United States; has printed and circulated to customers and prospective customers throughout the several States, through the use of the United States

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mails and otherwise, advertising folders, letters, and literature. In all such advertisements and advertising literature, the respondent has made such statements as the following:

*This direct, natural treatment strikes at the root of the trouble—the mucous membranes. Nu-Myst brings speedy relief to sufferers from colds, hay fever, rose fever, asthma and other nasal and bronchial infections.*

Nu-Myst contains the proper remedies and essential oils to combat colds without absorbing drugs into the system. It contains no drugs that are contra-indicated during the menstrual period.

The "common cold" is one of the most common causes of dysmenorrhea (painful menses). It is possible for the infection to settle in the entire genital tract. The use of many of the drugs contained in some cough and cold medicines is contra-indicated during menstruation.

All of said statements, together with many similar statements, appearing in respondent's advertising literature and radio broadcasts purport to be descriptive of respondent's product and its effectiveness in treating and curing the "common cold" and other diseases and infections of the nasal passages and bronchial tubes. In all of its advertising, respondent represents through statements and representations hereinabove set out and other statements of similar import, nature and effect that its product, Nu-Myst, will prevent and cure, or is beneficial in the treatment of, many of the diseases, ailments, afflictions, and conditions which may be present in the nasal passages and bronchial tubes.

Among the diseases, ailments, afflictions, and conditions named by the respondent in said advertising literature and radio broadcasts as diseases, ailments, afflictions, and conditions which the use of the above-named product will prevent and cure, or will be beneficial in the treatment of, are the following: Colds, hay fever, rose fever, asthma, and whooping cough.

In its aforesaid advertisements, respondent also unfairly disparages various inhalants and other competitive products designed for use in treating colds and coughs distributed by its competitors through representing that the use of many of the drugs contained in many cough and cold medicines are contra-indicated during menstruation, but that its product, Nu-Myst, contains no drugs which are contra-indicated during the menstrual period.

PAR. 5. The representations made by respondent with respect to the nature and effectiveness of its product when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, the use of respondent's product will not prevent and cure, nor is it substantially beneficial in the treatment of all or any of the said diseases, ailments, afflictions, and conditions hereinabove named. Respondent's product will not have any curative value in these con-

ditions, nor materially alter their course, nor will it substantially relieve the various manifestations of these conditions. The drugs generally contained in cough and cold medicines are not contraindicated during menstruation, and there is no justification for respondent's representation that its product should be used during menstruation in preference to other forms of medication.

Respondent's product consists of several essential oils in 87½ percent alcohol. It is essentially a mild contra-irritant mixture.

PAR. 6. There are among respondent's competitors many who manufacture, distribute, and sell various products designed, intended, and sold for the use of either treating or curing the various diseases, ailments, afflictions, and conditions of the nasal passages and bronchial tubes hereinabove named and who do not in any way misrepresent the quality or character of their respective products or their effectiveness when used, and who do not unfairly disparage the products of competitors.

PAR. 7. Each and all of the false and misleading statements and misrepresentations made by the respondent in designating or describing its product and the effectiveness of its product in curing, treating, or relieving the diseases, ailments, afflictions, or conditions of the nasal passages and bronchial tubes hereinabove named and in unfairly disparaging similar products sold by competitors were, and are, calculated to and have a tendency and capacity to mislead a substantial portion of the purchasing public into the erroneous belief that said representations are true and that said products will, in truth, accomplish the results claimed without any detrimental effect on the menstrual function, while products of competitors will detrimentally affect menstruation. Further, as a direct consequence of the mistaken and erroneous beliefs induced by the acts and representations of the respondent as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of the respondent's product with the result that trade has been unfairly diverted to the respondent from competitors referred to in paragraph 6 hereof. As a result thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The above and foregoing acts, practices, and representations of the respondent have been, and are, to the prejudice of the public and respondent's competitors as aforesaid and constitute unfair methods of competition within the meaning 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 March 18, 1938, issued and thereafter served its complaint upon the respondent, Forson Laboratories, Inc., a corporation charging it with the use of unfair methods of competition in violation of the provisions of said act. The respondent entered its appearance and filed its answer to the complaint, and thereafter, beginning on June 29, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by W. L. Taggart, attorney for the Commission, and in opposition to the allegations of the complaint by Lawrence H. Sanders, and Philip Steinman, attorneys for the respondent, before Arthur F. Thomas and Randolph Preston, trial examiners of the Commission; 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 said complaint, the answer thereto, the testimony and other evidence, brief in support of said complaint, and oral argument, no brief having been filed on behalf of the respondent, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts, and its conclusion drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Forson Laboratories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, having its office and principal place of business located in New York City, and is engaged in the sale and distribution of a medicament known as "Nu-Myst," and a vaporizer for the same, to jobbers and dealers in the drug trade. Respondent causes, and has caused said product, when sold, to be transported from its principal place of business in New York City, to purchasers thereof, some located in the State of New York and others located in various States of the United States. Respondent maintains and during all the times mentioned herein, has maintained a constant current of trade in said product, sold by it in commerce between and among various States of the United States, and in the District of Columbia, and is in substantial competition with other firms, corporations, and individuals also engaged in the business of selling and distributing products similar to that of respondent, in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. "Nu-Myst" is a liquid composed of certain common ingredients generally prescribed by physicians for relieving conditions caused by those afflictions usually termed "colds." The carrying medium for the medicinal oils or drugs is the 87.5 percent alcohol content of the mixture, the formula of which is as follows:

	<i>Percent</i>
Menthol.....	3.2
Camphor.....	.6
Thymol.....	.2
Oil of pine.....	7.0
Eucalyptol.....	.5
Benzyl benzoate.....	.5
Aromatics.....	.5
Alcohol.....	87.5

The product is sold in a package consisting of a container in which are a bottle of the medicament and an aluminum vaporizer, and a circular of instructions. The vaporizer is a fluid-holding receptacle attached to a device in such a manner that the receptacle may be placed over an electric light bulb. The heat from the bulb vaporizes the liquid.

PAR. 3. In the course and conduct of its business and for the purpose of inducing individuals, firms, and corporations to purchase said medicinal products, respondent has made use of radio broadcasts over stations of sufficient power to convey the programs emanating therefrom into various States of the United States, and has caused advertisements to be inserted in newspapers, periodicals, and trade journals with a general circulation throughout the United States; has had printed and circulated to prospective customers throughout the United States, through the use of the United States mail, advertising folders, letters, and literature. In all such advertising matter the respondent has made such statements as the following:

This true, natural treatment strikes at the root of the trouble—the mucous membranes. "Nu-Myst" brings speedy relief to sufferers from colds, hay fever, rose fever, asthma, and other nasal and bronchial afflictions.

Inhibits the growth of bacteria on the mucous membranes.

The new, natural, pleasant relief for colds, coughs, hay fever, rose fever and many nasal and bronchial infections.

PAR. 4. By the use of the statements in the foregoing advertising respondent represents that its product is more than a relief from any local irritation that may be caused by the ailments therein mentioned, but is a competent and beneficial treatment for colds, rose fever, asthma, whooping cough, and other nasal or bronchial afflictions. Such representations are misleading and untrue. The diseases named, except colds, are grouped under the so-called "allergies" and

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the causes of "allergies" are manifold, running into a hundred or more, and since there are so many causes it is impossible for a formula such as "Nu-Myst" to bring relief from any one of these conditions. Colds may be due to bacterial invasion and there is nothing in the ingredients as disclosed by the formula, the vapor of which will destroy bacteria. While the ingredients of the mixture are commonly used for the relief of local irritations of the mucous membranes of the nose, and may be so used effectively, the mixture has no curative value. It will not cure asthma, which is a spasmodic contraction of the bronchial tubes, because there is nothing in this formula that will relieve these bronchial tube spasms; nor will it relieve whooping cough which is a germ disease, and nothing in this formula will have any effect upon the germ itself.

PAR. 5. Each and all of the false and misleading statements and representations made by the respondent in describing its product as hereinabove set out, were and are calculated to, and have had the tendency and capacity to 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 respondent's product in preference to that of its competitors described in paragraph 1 hereof, with the result that trade has been diverted unfairly to respondent from its said competitors, engaged in the business of selling and distributing in commerce among and between the various States of the United States, products intended and used for the purposes for which respondent recommends its said product.

#### 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, answer of the respondent, testimony and other evidence taken before Arthur F. Thomas and Randolph Preston, examiners 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 (no brief having been filed on behalf of respondent), and oral

arguments by William L. Taggart, counsel for the Commission, and by Philip Steinman, 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 Forson Laboratories, Inc., 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 its medicinal preparation designated "Ny-Myst," or any other preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that 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 representing:

1. That respondent's preparation is a cure or remedy for colds, whooping cough, hay fever, rose fever, or asthma.

2. That respondent's preparation is a competent or effective treatment for, or that it will relieve, colds, whooping cough, hay fever, rose fever, or asthma, beyond such temporary relief as may be afforded by the temporary allaying of local irritation.

3. That respondent's preparation will destroy bacteria or prevent the growth of bacteria.

*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  
MICHIGAN BEAN SHIPPERS ASSOCIATION ET AL

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

*Docket 3937. Complaint, Oct. 27, 1939—Decision, Apr. 11, 1940*

Where a trade organization and members thereof concerned with or engaged in the growing and handling of Michigan beans, as hereinafter set forth, namely—

I. A nonprofit corporation which (1) was organized to and did perform the function of promoting general and special interests of its members and those engaged in the growing and handling of Michigan beans throughout said State, (2) constituted an instrumentality for furthering and making effective purposes and objectives of the individual members and others, (3) was successor to trade association first organized some 40 years theretofore, and (4) elevator operator and jobber members of which, and of its predecessor, had performed essential function in providing ready cash market for farmers' beans and numerous other farm commodities and in developing additional market demand and outlets for the large amount of beans grown in State in question, in which were produced 80 percent of the white pea, or "navy," beans, comprising one-third of bulk of bean crop moving in interstate commerce, and had been instrumental in keeping local growers in contact with distant buyers and consumers widely located throughout the eastern half of the United States, and, together with their association, in securing and establishing maintenance of uniform grades of Michigan beans and securing adoption thereof in the country's market, leading, substantially through such and certain other activity, to universal recognition and acceptance of such product as of highest standard and quality, and to insuring maintenance thereof on the part of growers and the trade generally, and (5) elevator operator members of which, with property investments aggregating several million dollars, furnished employment to several thousand individuals in State in question in course of performing functions necessary to prepare farmers' crop for market; and

II. Nine member concerns engaged as jobbers, or as jobbers and elevator operators, as case might be, in business of buying and selling beans, barley, wheat, and other farm commodities, and which, for a number of years theretofore and during period concerned, in the course and conduct of their respective businesses, (1) bought beans and other farm commodities from producers and others in State in question for resale therein and in other States and Territories of the United States and in the District of Columbia, and in foreign nations, and, pursuant to sales thereof, shipped or caused to be shipped such commodities from various points in said State to purchasers at their respective locations within or without such State, as above indicated, and (2) bought and sold quantities of beans, barley, wheat, and other farm commodities in such State for shipment, in part, into the stream of commerce between and among the various States, etc., as above set forth, (3) individually and collectively purchased and sold, and shipped or caused to be shipped, from year to year, 80 percent of the annual crop of "navy" beans

and a major portion of the barley, wheat, and other farm commodities grown therein, and shipped greater portion of such crops to purchasers without such State, and (4) prior to adoption of practices below set forth, were in active and substantial competition with one another and with other elevator men and jobbers in such State in making and seeking to make purchases and sales of such various products and commodities, and, except as below set forth, continued in such competition with each other and with other members of the industries concerned, and (5) constituted majority of elevator men and jobbers buying and selling beans in the State of Michigan—

- (a) Made up and computed daily, through offices of association in question, price for choice hand-picked white pea beans in bulk to country shippers, which, designated as an "association close," they disseminated and distributed among themselves and to the industry, press and public generally, and used as a basis or guide for making quotations and consummating sales and purchases to producers and to the "trade," i. e., vendee consumers and processors of beans, including major canning companies, chain stores and others of the United States and foreign importers, and which "association close," purportedly representing average price in bulk at which beans were being bought by jobbers from shippers in State at time "close" was issued, (1) was based in fact on bids received by association only from approved or limited number of members engaged in buying or selling, (2) did not always reflect range of prices being offered by such purchasing members over any given period of time, but only prices being paid at time of making of the report, and (3) did not always supply accurate arithmetical average of prices in question, and did not in fact represent such an average or accurately reflect such prices;
- (b) Fixed and maintained (1) differentials, margin, or spread, to be received by elevator men for function performed by them in buying beans and barley from producers and reselling same to producers and others, and (2) differentials to be received by jobbers for beans and barley, between prices paid by them to elevator men and that at which they sold said products to trade, from time to time, and (3) schedules of charges for "picking" beans or determining percent of foreign materials, culls, and other demerits in threshed beans brought to elevators by producers, and separation and removal thereof from quantities as tendered by them, and established and used uniform contract embodying terms and conditions of sale for buying and selling said product;
- (c) Adopted and maintained "scoop-shovel" rule by which they agreed to refuse to buy and sell or trade in beans or other farm commodities which had been "scoop-shoveled," and defined as "scoop-shoveler" one not equipped with proper buildings and machinery to clean beans and grains as they come from farmers' vehicles before being weighed, and who does not in every instance use such facilities before making purchases of farmers' said products, and does not maintain permanent location 8 months a year in territory in which there is regular buyer equipped with necessary machinery properly to clean, weigh, and store such products, and employed such rule to discourage use of method of processing beans to grade, through use by farmers and growers at their places of business, of portable bean picker which, invented and placed on the market, made possible machine grading to a limited degree at such places of business

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and, while not eliminating necessity of hand picking at the elevators where were maintained and operated necessary equipment and labor required for grading and picking beans in substantial quantities, with a not inconsiderable concentration of labor along with expensive machinery and equipment of stationary type, would, in some years, have tendency to curtail volume of business done by local elevators; and

Where members above referred to—

(d) Made use of their said association as an instrumentality for establishing and maintaining rules, regulations, practices, and policies as aforesaid, and to secure adherence thereto by the members and by nonmember competitors; and

(e) Held meetings furthering such collective and cooperative activities;

With effect of restricting, restraining, and lessening competition by, between, and among themselves, and other members of bean industry in State of Michigan in interstate trade and commerce in beans, and with capacity and tendency to lower prices to producing public, farmers, and growers of beans and barley, and to prevent use of machines and of methods of marketing whereby "picking" can be done at farms and places where beans are grown:

*Held*, That such acts, methods, and practices, under the circumstances set forth, were all to the prejudice of the public and had a dangerous tendency to and did hinder and prevent price competition between and among themselves in purchase and sale of said product in commerce, and tended to place in themselves power to control prices therefor in State of Michigan, and to create in them a monopoly in the sale in commerce of beans grown in such State, and unreasonably restrain commerce therein, and constituted unfair methods of competition.

*Mr. Lynn C. Paulson* for the Commission.

*Mr. William P. Smith*, 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 the Michigan Bean Shippers Association, its officers, L. W. Todd, president, R. C. Smith, vice president, L. L. Green, vice president, Asa E. Walcott, secretary-treasurer; its directors, E. H. Bueschlen, William R. Neumann, A. L. Ward; and its members, Charles Wolohan, Inc., J. P. Burroughs & Son, Hammerslag & Tinkham, Inc., Minor Walton Bean Co., Michigan Elevator Exchange, Ryon Grain Co., Stickle-Swift, Inc., Hart Brothers, Michigan Bean Co., individually and as representative members of the said Association, 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 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, Michigan Bean Shippers Association is a nonprofit corporation, organized under the laws of the State of Michigan (pursuant to the provisions of Act, No. 327, of the Public Acts of 1921 of the State of Michigan, known as the Michigan General Corporation Act), with its office at 401 Eddy Building, Saginaw, Mich. It was incorporated in the year 1934 by the members of the Michigan Bean Jobbers Association, its predecessor (a trade association that was first organized in 1892 and which was subsequently reorganized and incorporated in 1912). Said Michigan Bean Shippers Association has approximately 161 members of which those named herein are representative, and certain associate members not herein named. Its officers are: L. W. Todd, president; R. C. Smith, vice president; L. L. Green, vice president; and Asa E. Walcott, secretary-treasurer. Its directors are: R. C. Smith, L. L. Green, L. W. Todd, Claude H. Estee, E. H. Bueschlen, William R. Neumann, and A. L. Ward. Said association is organized for the purpose and performs the function of promoting general and special interests of its members, and constitutes an instrumentality for the furthering and making effective of the purposes and objectives of the individual members, jointly and severally.

PAR. 2. Respondent, Charles Wolohan, Inc., is a Michigan corporation with its general offices at Birch Run, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, J. P. Burroughs & Son is a Michigan corporation, with its principal office located at Holman & Grand Traverse, Flint, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Hammerslag & Tinkham, Inc., is a Michigan corporation, with its principal office located at 35 Pearl Street NW., Grand Rapids, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Minor Walton Bean Co. is a Michigan corporation, with its principal office located at 240 Logan Street SW., Grand Rapids, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Michigan Elevator Exchange is a Michigan corporation operating under the Michigan cooperative laws, with its principal office located at 221 North Cedar Street, East Lansing, Mich. It is, and for several years last past has been, engaged in the business of

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buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

Respondent, Ryon Grain Co., is a Michigan corporation, with its principal office located at 428 Mutual Building, Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Stickle-Swift, Inc., is a Michigan corporation, with its principal office located at 1804 Olds Tower, Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Hart Bros. is a partnership, of which M. J. Hart is the senior partner and operating manager. Its principal office is located at 1418 S. Hamilton Street, Saginaw, Mich. Respondent, Hart Bros. is engaged in buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

Respondent Michigan Bean Co. is a Michigan corporation, with its principal office located at 1741 North Niagara Street, Saginaw, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

The above-named respondents do not constitute the entire membership of the respondent Michigan Bean Shippers Association, but are representative members thereof. All members of the respondent Michigan Bean Shippers Association are made parties respondent herein as a class, of which those specifically named are representative of the whole. For convenience the above-named respondents and the other members of the Association of whom those named are representative will hereinafter be referred to as member respondents.

PAR. 3. In the course and conduct of their respective businesses the member respondents: (a) buy beans and other farm commodities from producers and others in the State of Michigan for resale in other States of the United States, the Territories thereof, the District of Columbia, and foreign nations, and when such sales are made, ship or cause to be shipped said commodities from various points in the State of Michigan, to the purchasers thereof at their respective locations in the other States of the United States, the Territories thereof, the District of Columbia, and foreign nations; (b) buy and sell quantities of beans, barley, wheat, and other farm commodities in the State of Michigan, destined to enter and flow in continuous streams of commerce between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign nations.

Beans, barley, wheat, and other farm commodities are familiar articles of commerce between and among the various States of the United States, the Territories thereof, the District of Columbia, and with foreign nations, and the streams of commerce in beans, barley, wheat, and said other farm commodities between the various States of the United States, the Territories thereof, the District of Columbia and with foreign nations, are made up in substantial part from quantities of the said commodities grown in the State of Michigan.

White pea beans, commonly known as "navy" beans, make up the bulk of the bean crop flowing in interstate commerce between and among the various States of the United States and the District of Columbia. Eighty percent of the white pea beans grown in the United States are grown in the State of Michigan. In the course and conduct of their businesses the members respondents, individually and collectively, buy and sell and ship, or cause to be shipped, from year to year, 80 percent of the annual crop of this variety of beans grown in the State of Michigan and a major portion of the barley, wheat, and other farm commodities grown in that State. The greater portion of the crops of these commodities, grown from year to year in the State of Michigan, bought and sold by the member respondents, is sold and shipped or caused to be sold and shipped by them to purchasers located in ther States of the United States, the Territories thereof, the District of Columbia, and in foreign nations, and form part of the streams of commerce of these commodities between and among the States of the United States, its Territories, and with foreign nations.

In the aforesaid manner the member respondents are at all times engaged in commerce in beans and other farm commodities.

PAR. 4. Prior to the adoption of the practices hereinafter alleged, the member respondents were in active and substantial competition with one another and with other elevator men and jobbers located and doing business in the State of Michigan not named as respondents herein (some of whom have been members of the respondent association and others of whom have not been members of the respondent association) in making and seeking to make purchases and sales of beans, barley, wheat, and other farm commodities in such commerce, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time, and the said member respondents would now be in active and substantial competition with each other and with other members of the elevator and jobber industries.

The said respondents now constitute, and have during all of the times mentioned herein constituted, a majority of the elevator men

and jobbers buying and selling beans, barley, wheat, and other farm commodities in the State of Michigan. The greater portion of the beans, barley, wheat, and other farm commodities grown in the State of Michigan are processed and consumed in other States of the United States in competition with beans, barley, wheat, and other farm commodities produced in other States of the United States and said member respondents, prior to the adoption of the practices herein alleged and referred to were in active and substantial competition with elevator men and jobbers located in other States of the United States who trade in beans, barley, wheat, and other farm commodities and but for the facts hereinafter alleged such competition between said member respondents and said elevator men and jobbers located in other States of the United States would have continued to be active and substantial, whereas, due to the acts and things that have been done and are being done by said member respondents, such competition is greatly diminished.

PAR. 5. Respondents, named or referred to in paragraphs 1 and 2 herein, for more than 4 years last past, have cooperated, combined, conspired, and agreed, and now cooperate, combine, conspire, and agree to do many acts and things for the purpose and with the effect of suppressing, restraining, and eliminating competition in trade and commerce, described in paragraphs 1, 2, and 3 herein, in beans and other farm commodities between and amongst themselves and other members of the industry in the State of Michigan and between and amongst themselves and other members of the industry in other States of the United States. Among the acts and things they have done and do through cooperation, combination, conspiracy, and agreement are the following :

1. They daily make up and compute or cause to be made up and computed, through the offices of the respondent Michigan Bean Shippers Association, a price for choice hand-picked white pea beans in bulk to country shippers, and disseminate and distribute or cause to be disseminated and distributed, among and between themselves, and to the industry generally, said price as an "association close."

From time to time the procedure for making up and computing such daily "Association closes" changes, but in the main and generally the practice is as follows: Certain of the member respondents, at an appointed time each day, report to the said respondent Association bids made by them on the basis of "paying prices for choice hand-picked white pea beans in bulk, to country shippers," and when these bids are received by the Association, said Association makes up and computes a figure or price which then becomes the "association close" for the remainder of the day during which the bids are re-

ported and for that portion of the next day up to the time bids are similarly reported. Said made up or computed price is not a true average of the bids reported to and received by the said Association. Bids are reported to the Association only by those of its members agreed upon by the Association for such reporting. Individual bids are revealed by the Association to any regular member thereof in good standing. Each such bidder is obligated to take at least one carload of the commodity for which he has submitted a bid and bids are good for acceptance for a fixed period of time, usually until 9 a. m. of the next business day.

Member respondents use each "association close" as a basis for making quotations and consummating sales and purchases to producers and to the trade. The "trade" as used herein, and as commonly understood by respondents, is comprised of the consumers and processors of beans and other farm commodities to whom the member respondents sell and ship the beans and other farm commodities, the important classes of such "trade" being the major canning companies, the major chain stores, and others of the United States, and foreign importers.

The daily making up and computation and dissemination of an "association close" by respondents in concert, through combination, as aforesaid, has the capacity, tendency, and effect to cause, and does cause, prices for beans and other farm commodities to become established and maintained at levels favorable to the respondents and unfavorable to those from whom they buy and to whom they sell, and thereby unduly suppresses competition and restrains trade in such commodities in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. They have from time to time fixed and maintained differentials to be received by elevator men for the function they perform in buying beans from producers and reselling them to jobbers. They have also fixed and maintained differentials for elevator men for the function they perform in buying and reselling barley, wheat, and other farm commodities in like and similar manner.

An elevator man buys beans from producers and resells them to jobbers. The spread between the price at which he buys and the price at which he sells is known to the industry and to the respondents as a "margin" and is herein referred to as a "differential." Respondents have from time to time fixed the "margin" or "differential" by agreement, and do now fix and maintain "margins" or "differentials" in a like and similar manner.

The fixing and maintaining of "margins" and "differentials" for elevator men in the manner described herein in conjunction with the

establishment and maintenance of "Association closes," forecloses all opportunity for price competition by the elevator men, and thereby tends unduly to suppress competition and create monopoly and to deprive producers of these commodities of the benefits of competition.

3. They fix and maintain from time to time, for beans and other farm commodities, "differentials" to be received by jobbers between the price paid by them, the jobbers, to elevator men, and the price they, the jobbers, sell such beans and other farm commodities to the "trade."

4. They fix and maintain schedules of charges for "picking" beans and for "docking" barley, wheat, and other farm commodities. As a part of the charges fixed and maintained, respondents keep the "pick" and the "dockage" extracted in the "picking" and "docking" processes.

"Picking" and "docking" are terms applied to the process of determining the percent of foreign materials, culls, and defective kernels in threshed beans and grains brought to elevators by producers, and the separation and removal of same from the quantities as tendered by them. They are terms having a common and recognized meaning to the respondents.

5. They have agreed to refrain from transporting beans and other farm commodities free of charge from the producers at their respective points of production to the elevator or shipping point at which the member respondents have their respective elevators and places of business.

6. They have fixed and maintained uniform storage charges for the storing of beans and other farm commodities in their respective elevators and warehouses.

The principal business of elevator operators is to buy beans, barley, wheat, and other farm commodities from the farmers and producers and resell them to jobbers and to the "trade," but in conjunction with this function, storage services are also performed by them for hire. It so happens that beans, barley, wheat, and some other farm commodities are not perishable and accordingly the farmers and growers often store their crops of these commodities with the elevator.

7. They have fixed and maintained uniform schedules of "drying" charges.

Member respondents through respondent Association have fixed a schedule of "drying" charges for beans, barley, wheat, and other farm commodities and have established and maintained a moisture and test weight table providing for uniform discounts on wheat if the grain is damaged, as smut or various foreign materials.

8. They have established and agreed to use and have used uniform contracts and terms and conditions of sale for buying and selling beans

and other farm commodities. They have agreed to refrain from deviating from such terms and conditions of sale as are established by them from time to time, and they have attempted to coerce nonrespondent members to use and maintain the contracts, terms, and conditions of sale which they (the respondents) through combination, have arrived at and established and do maintain.

9. They have adopted and maintained a rule of practice known to them and referred to by them as the "scoop-shovel" rule by which they have agreed to refuse to buy and sell or trade in beans and other farm commodities which have been "scoop-shoveled." They have defined a "scoop shoveler" "as being one who is not equipped with the proper buildings and machinery for cleaning the beans and grain as they come from farmers' vehicles before they are weighed, and one who does not use such facilities in every instance before making purchase of farmers' beans and grain, and who does not maintain a permanent location at least 8 months a year in a territory in which there is a regular buyer, equipped with the necessary machinery to properly clean, weigh, and store beans and grains." They have provided by agreement that "scoop-shovelers" or firms or individuals governed in any sense by "scoop-shoveling" are not entitled to membership in the respondent Michigan Bean Shippers Association.

It has been the long-established practice in the State of Michigan for farmers and growers to haul their beans and other farm commodities to local elevators for sale. This practice is in part a result of the fact that beans must be graded and "picked" and elevators, until recently, maintained the only equipment for grading and "picking." Grading and "picking" machinery was of a stationary type which necessitated the bringing of beans to the elevators. About 1931 a portable bean picker was invented and placed upon the market by the use of which beans could be graded and "picked" at the farmers' and growers' places of business. The use of the portable bean picker obviated the necessity of bringing the beans to the local elevators for grading and "picking" and has a tendency to curtail the volume of business done by the local elevators. The "scoop-shovel" rule referred to above was designed and adopted for the purpose of discouraging the use of the portable picker and of preventing the trade of the respondent members from being diverted into other channels.

10. They have established and maintained the practice of making price quotations to the "trade" for beans uniformly, using Alma, Mich., as a base point for all price quotations.

11. They have established and maintained other rules, regulations, practices, and policies of a like and similar character.

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The effect of the establishment and maintenance of the rules, regulations, practices, and policies described in paragraph 5, subsections (1) to (11), inclusive, of this complaint, pursuant to combination, conspiracy, and agreement as hereinabove alleged has been and is to suppress, eliminate, and restrain competition between and amongst the respondents in their respective businesses.

Said member respondents use the Michigan Bean Shippers Association as an instrumentality for establishing and maintaining the rules, regulations, practices, and policies aforesaid and also hold meetings and engage in other collective and cooperative activities to the same end, and collectively and collusively at all times referred to herein have sought to induce, persuade, and coerce, and have induced, persuaded, and coerced all those engaged in the business of buying and selling beans, barley, wheat, and other farm commodities in the State of Michigan to adhere to the said rules, regulations, and practices.

PAR. 6. Said cooperation, agreement, combination, and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining the sale of said beans, barley, wheat, and other farm commodities in trade and commerce between, among, in and with the several States of the United States, the District of Columbia, foreign nations, and Territories of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said beans and other farm commodities in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; of substantially lowering prices to the producing public, the farmers and growers, of beans, barley, wheat, and other farm commodities and particularly those who are obliged to sell their crops of these commodities to the said member respondents; of preventing the growth and development of new methods of marketing beans and of the use of marketing machinery and new methods of marketing whereby "picking" can be done at the farms and places where beans are grown; of eliminating competition, with the tendency and capacity of creating a monopoly in the marketing of said beans and other farm commodities in said commerce.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in com-

merce 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 October 1939, issued and served its complaint in this proceeding upon said respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On December 18, 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 respondents by their attorney, William P. Smith, and William 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, Michigan Bean Shippers Association is a nonprofit corporation, organized under the laws of the State of Michigan (pursuant to the provisions of Act, No. 327, of the Public Acts of 1931 of the State of Michigan, known as the Michigan General Corporation Act), with its office at 401 Eddy Building, Saginaw, Mich. It was incorporated in the year 1934 by the members of the Michigan Bean Jobbers Association, its predecessor (a trade association that was first organized in 1892 and which was subsequently reorganized and incorporated in 1913). At the time of the issuance of the complaint, October 27, 1939, said Michigan Bean Shippers Association had approximately 161 members of which those named herein are representative, and certain associate members not herein

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named. Its officers then were: L. W. Todd, president; E. H. Bueschlen, vice president; C. H. Estee, vice president; and Asa E. Walcott, secretary-treasurer. Its directors then were: L. D. Cline, L. W. Tinkham, L. W. Todd, Claude H. Estee, E. H. Bueschlen, William R. Neumann, and J. G. Glaser. Said Association was organized for the purpose and has performed the function of promoting general and special interests of its members and, as hereinafter set forth those engaged in the growing and handling of Michigan beans throughout the State of Michigan. During all times referred to in the complaint, it constituted an instrumentality for the furthering and making effective of the purposes and objectives of the individual members and others, jointly and severally.

PAR. 2. Since 1892, and during all times referred to in the complaint (for more than 4 years prior to October 27, 1939), the elevator operator and jobber members of the Michigan Bean Shippers Association, and of its predecessor, the Michigan Bean Jobbers Association, have performed an essential function in providing a ready cash market for the farmers' beans and numerous other farm commodities, and have particularly sought to develop additional market demand and outlets for the large amount of beans grown in the State of Michigan. They have been instrumental in keeping the local growers in contact with the distant buyers and consumers who are widely located throughout the eastern half of the United States. The said elevator operators have a substantial business property investment aggregating several million dollars, and furnish employment to several thousand individuals in Michigan in the course of performing the functions necessary to prepare the farmers' crop for marketing. The Association and its members have been active and instrumental in securing the establishment and maintenance of uniform grades of Michigan beans and securing their adoption in the markets of the country. By this activity over many years, they have done much to secure universal recognition and acceptance of Michigan beans as being of the highest standard and quality. Compulsory inspection of the Michigan "navy" beans, instituted in 1938, which was effectuated through the active assistance and cooperation of the said Association with the Michigan State Department of Agriculture, has tended to insure the maintenance of this high quality both on the part of the growers and the "trade" generally.

PAR. 3. (a) Respondent, Charles Wolohan, Inc., is a Michigan corporation with its general offices at Birch Run, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(b) Respondent, J. P. Burroughs & Son, is a Michigan corporation, with its principal office located at Holman and Grand Traverse, Flint, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(c) Respondent Hammerslag & Tinkham, Inc., is a Michigan corporation, with its principal office located at 35 Pearl Street NW., Grand Rapids, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(d) Respondent, Minor Walton Bean Co., is a Michigan corporation, with its principal office located at 240 Logan Street SW., Grand Rapids, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(e) Respondent, Michigan Elevator Exchange, is a Michigan corporation operating under the Michigan Cooperative Laws, with its principal office located at 221 North Cedar Street, East Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

(f) Respondent, Ryon Grain Co., is a Michigan corporation, with its principal office located at 428 Mutual Building, Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(g) Respondent, Stickle-Swift, Inc., is a Michigan corporation, with its principal office located at 1804 Olds Tower, Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(h) Respondent, Hart Bros., is a partnership, of which M. J. Hart is the senior partner and operating manager. Its principal office is located at 1418 South Hamilton Street, Saginaw, Mich. Respondent, Hart Bros., is engaged in buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

(i) Respondent, Michigan Bean Co., is a Michigan corporation, with its principal office located at 1741 North Niagara Street, Saginaw, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

PAR. 4. (a) In the course and conduct of their respective businesses during more than 4 years prior to the issuance of the complaint (that

is, for more than 4 years prior to October 27, 1939), the member respondents (1) bought beans and other farm commodities from producers and others in the State of Michigan for resale in that State, in other States of the United States, the Territories thereof, the District of Columbia, and foreign nations, and when such sales were made, shipped, or caused to be shipped said commodities from various points in the State of Michigan to the purchasers thereof at their respective locations in that State or in the other States of the United States, the Territories thereof, the District of Columbia, and foreign nations; (2) bought and sold quantities of beans, barley, wheat, and other farm commodities in the State of Michigan, some of which were destined to enter and flow in continuous streams of commerce between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign nations.

(b) Barley, wheat, and other farm commodities are familiar articles of commerce between and among the various States of the United States, the Territories thereof, the District of Columbia, and with foreign nations, and the streams of commerce in barley, wheat, and said other farm commodities between the various States of the United States, the Territories thereof, the District of Columbia, and with foreign nations, are and were during all times referred to in the complaint made up in part from quantities of the said commodities grown in the State of Michigan.

(c) White pea beans, commonly known as "navy" beans, make up approximately one-third of the bulk of the bean crop flowing in the interstate commerce between and among the various States of the United States and the District of Columbia. Eighty percent of the white pea beans grown in the United States are grown in the State of Michigan. In the course and conduct of their businesses the member respondents, individually and collectively, buy and sell and ship, or cause to be shipped, from year to year, 80 percent of the annual crop of this variety of beans grown in the State of Michigan and a major portion of the barley, wheat, and other farm commodities grown in that State. The greater portion of the crops of these commodities, grown from year to year in the State of Michigan, bought and sold by the member respondents, is sold and shipped or caused to be sold and shipped by them to purchasers located in other States of the United States, the Territories thereof, the District of Columbia, and in foreign nations, and form part of the streams of commerce of these commodities between and among the States of the United States, its Territories, and with foreign nations.

(d) In the aforesaid manner the member respondents are and were at all times referred to in the complaint (that is, for more than 4 years prior to October 27, 1939), engaged in interstate commerce in beans and other farm commodities.

(e) Beans purchased by elevator operator member respondents from growers cannot enter into commerce or into the consumer market until they have been processed to the grades established by the Michigan State Department of Agriculture, and inspected in accordance with the rules and regulations prescribed by said department.

PAR. 5. (a) Prior to the adoption of the practices hereinafter found, the member respondents were in active and substantial competition with one another and with other elevator men and jobbers located and doing business in the State of Michigan not named as respondents herein (some of whom have been members of the respondent Association and others of whom have not been members of the respondent Association) in making and seeking to make purchases and sales of beans, barley, wheat, and other farm commodities in such commerce, and, except as hereinafter found, such active and substantial competition has continued to the present time, and the said member respondents are now in active and substantial competition with each other and with other members of the elevator and jobber industries.

(b) The said respondents now constitute, and during all of the times mentioned in the complaint have constituted, a majority of the elevator men and jobbers buying and selling beans in the State of Michigan.

PAR. 6. Respondents, named or referred to herein, for more than four years immediately prior to the issuance of the complaint (October 27, 1939) have concertedly through cooperation and agreement:

(a) Daily made up and computed or caused to be made up and computed, through the offices of the respondent Michigan Bean Shippers Association, a price for choice hand-picked white pea beans in bulk to country shippers, and disseminated and distributed or caused to be disseminated and distributed, among and between themselves, and to the industry, the press, and public, generally, said price as an "association close."

Said "association closes" purported to be the average price in bulk at which beans were being bought by jobbers from shippers in the State of Michigan at the time the "association close" was issued. They were not the average of such prices, nor did they accurately reflect such prices, for at least three reasons, to wit, one, under the method used in computing the said "association closes" bids were received by the

Association only from those of its members approved by the Board of Directors of the Association for such reporting with the result that only a limited number of the individuals, firms, and corporations engaged in buying and selling beans in the State of Michigan reported to the Association; two, the reports submitted to the Association by the members who did report did not always reflect the range of prices being paid by them over any given period of time, but did only reflect the price they were paying at the time of the making of the report; three, the "association close" was determined from the prices reported but was not always an accurate arithmetic average of such prices.

Member respondents used each "association close" as a basis or guide for making quotations and consummating sales and purchases to producers and to the "trade." The "trade" as used herein, and as commonly understood by respondents, is comprised of the consumers and processors of beans to whom the member respondents sell and ship the beans, the important classes of such "trade" being the major canning companies, the major chain stores, and others of the United States, and foreign importers.

(b) From time to time fixed and maintained differentials to be received by elevator men for the function they perform in buying beans and barley from producers and reselling them to jobbers and others.

An elevator man buys beans from producers and resells them to jobbers and others. The spread between the price at which he buys and the price at which he sells is known to the industry and to the respondents as a "margin" and is herein referred to as a "differential."

(c) Fixed and maintained from time to time, for beans and barley "differentials" to be received by jobbers between the price paid by them, the jobbers, to elevator men, and the price they, the jobbers, sell such beans and barley to the "trade."

(d) Fixed and maintained schedules of charges for "picking" beans.

"Picking" is a term applied to the process of determining the percent of foreign materials, culls, and other demerits in threshed beans brought to elevators by producers, and the separation and removal of same from the quantities as tendered by them. It is recognized by respondents as a term having this meaning.

(e) Established and used a uniform contract embodying terms and conditions of sale for buying and selling beans.

(f) Adopted and maintained a rule of practice known to them and referred to by them as the "scoop-shovel" rule by which they

agreed to refuse to buy and sell or trade in beans and other farm commodities which had been "scoop-shoveled." They defined a "scoop shoveler" "as being one who is not equipped with the proper buildings and machinery for cleaning the beans and grain as they come from farmers' vehicles before they are weighed, and one who does not use such facilities in every instance before making purchases of farmers' beans and grain, and who does not maintain a permanent location at least eight months a year in a territory in which there is a regular buyer, equipped with the necessary machinery to properly clean, weigh and store beans and grains." The bylaws of the Michigan Bean Shippers Association provided that "scoop-shovelers" or firms or individuals governed in any sense by "scoop-shoveling" were not entitled to membership in the respondent Association.

It has been the long-established practice for farmers and growers to haul their beans and other farm commodities to the local elevators for sale. In the State of Michigan, this practice as applied to beans is in part a result of the fact that they must be graded and "picked" and elevators maintain and operate the necessary equipment and labor required for grading and "picking" beans in substantial quantities.

These operations by the elevators furnish a not-inconsiderable amount of employment, and this concentration of available labor together with the expensive machinery and equipment which was of a stationary type, necessitated the bringing of the beans to the elevators.

Some years ago a portable bean picker was invented and placed on the market, by the use of which beans could be machine graded to a limited degree at the farmers' and growers' place of business. The use of this device, while not eliminating the necessity of hand-picking, did in some years have a tendency to curtail the volume of business done by the local elevators, and the "scoop-shovel" rule referred to above was applied to discourage the use of that method of processing the beans to grade.

(g) Said member respondents used the Michigan Bean Shippers Association as an instrumentality for establishing and maintaining the rules, regulations, practices, and policies as aforesaid and to secure adherence thereto by the said member respondents and by non-member competitors, and have also held meetings furthering such collective and cooperative activities.

PAR. 7. The doing and performing of the acts, practices, and methods as set forth in paragraph 6, (a) to (g) inclusive, hereof, had

the capacity and tendency unduly to suppress, restrain, and lessen competition, and has restricted, restrained, and lessened competition, by, between and among the said respondents, and between and among the said respondents and other members of the bean industry in the State of Michigan, in interstate trade and commerce in beans; and have had the capacity and tendency to lower prices to the producing public, the farmers and growers of beans and barley, and have tended to prevent the use of machines and of methods of marketing whereby "picking" can be done at the farms and places where beans are grown.

PAR. 8. Neither at the present time nor at the issuance of the complaint herein were R. C. Smith, L. L. Green, or A. L. Ward, either officers or directors of the Michigan Bean Shippers Association, but these individuals were, at both of such times, officers of respondent members which are either named in the complaint or referred to as the class of which those named are representative.

#### CONCLUSION

The acts, methods, and practices of the respondents as herein 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 between and among respondents in the purchase and sale of beans and barley in commerce within the intent and meaning of the Federal Trade Commission Act; have tended to place in respondents the power to control prices for beans and barley grown in the State of Michigan; have tended to create in the respondents a monopoly in the sale in commerce of beans grown in the State of Michigan; have unreasonably restrained such commerce in beans, 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 entered into between the respondents herein by their attorney, W. P. Smith, 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 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, Michigan Bean Shippers' Association, a nonprofit corporation, its officers, L. W. Todd, president, Asa E. Walcott, secretary-treasurer; its directors, Claude H. Estee, E. H. Bueschlen, William R. Neumann, and its members, Charles Wolohan, Inc., J. P. Burroughs & Son, Hammerslag & Tinkham, Inc., Minor Walton Bean Co., Michigan Elevator Exchange, Ryon Grain Co., Stickle-Swift, Inc., Hart Brothers, Michigan Bean Co., individually and as representative members of said Association, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of beans or barely in interstate commerce or in the District of Columbia, do forthwith cease and desist from concertedly, through cooperation and agreement:

1. Establishing, making up or computing, or causing to be established, made up or computed, or publishing or disseminating, or causing to be published or disseminated, from time to time or at any time, through the offices of the Michigan Bean Shippers' Association, or any other central agency, or otherwise, a price, bid, quotation or "close" for beans: *Provided*, That this shall not prohibit collection and dissemination of prices paid or bids or quotations made in past and closed transactions, nor the publishing and disseminating of accurate and correct reports showing the range of prices paid or received in past and closed transactions.

2. Making any report or reports, or representation to the Michigan Bean Shippers' Association, or any other central agency, of price or prices, bid or bids, paid or made for beans grown in the State of Michigan, which is or are not accurate, true, and correct.

3. Fixing and maintaining the differential, charge or spread, or differentials, charges or spreads to be made or received for the function or functions performed by elevator men and/or jobbers in buying and selling beans or barley in commerce.

4. Fixing and maintaining schedules of charges, and charges for separating and removing foreign materials, culls, and other demerits from beans.

5. Adopting and maintaining any rule or rules of practice, regulation or measure, which tends to prevent the use of any machine, device or method for cleaning, grading, and processing beans, unless said machine, device or method is injurious and detrimental to the welfare of the bean industry of the State of Michigan.

6. Establishing and using a uniform contract embodying terms and conditions of sale for buying and selling beans.

Order

30 F. T. C.

*It is further ordered,* That the complaint herein be, and the same hereby is, dismissed as to R. C. Smith, L. L. Green, and A. L. Ward, as officers and/or directors of the respondent, Michigan Bean Shippers Association.

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

## Syllabus

## IN THE MATTER OF

MILLS SALES COMPANY OF NEW YORK, INC., AND  
DAVID JACOBY, EVELYN JACOBY, JOSEPH JACOBY,  
ESTELLE J. KRUGER AND WALTER JACOBY, INDI-  
VIDUALLY AND AS OFFICERS OF MILLS SALES COM-  
PANY OF NEW YORK, INC.

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

*Docket 3910. Complaint, Oct. 5, 1939—Decision, Apr. 12, 1940*

Where a corporation and four individuals who were officers thereof and formulated, directed, dictated, and controlled all of its acts, policies, and practices, as below set forth, engaged in sale and distribution of cosmetics, shaving and dental creams, drug and household sundries, pen and pencil sets, and various other articles of merchandise, and of push cards and punchboards to purchasers in various of the States and in the District of Columbia—

(a) Sold and distributed certain assortments of their merchandise together with push cards and punchboards which involved the operation of games of chance, gift enterprises, or lottery schemes, by which such merchandise might be distributed to ultimate consumers or purchasers thereof wholly by lot or chance under variety of plans and including schemes by which customer received for 5 cents paid specified articles of merchandise or nothing other than privilege of making push or punch in accordance with success or failure in securing from card or board certain specified numbers, or under similar schemes dependent upon explanatory legends placed on cards or boards by dealer purchasers thereof in case of devices arranged for such purpose; and

Supplied thereby to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of such merchandise as exposed, offered and sold by retail dealer purchasers thereof in accordance with such sales plan or method involving game of chance or sale of a chance to procure such articles at prices much less than normal retail prices thereof, contrary to an established public policy of the United States and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plan or 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 dealers in and ultimate consumers of such merchandise were attracted by their sales plan or method because of the element of chance involved therein and above described, and were thereby induced to purchase their merchandise in preference to like and similar products offered and sold by said competitors who do not use same or similar sales plan or method and with capacity and tendency to divert unfairly to them trade from their competitors aforesaid and deprive purchasing public of benefit of free competition in merchandise in question;

## Syllabus

30 F. T. C.

- (b) Sold and distributed to dealers many kinds of push cards and punchboards involving chance or lottery feature in sale and distribution of various specified articles of merchandise by dealer purchasers of said cards and boards, who sold and distributed candy, cigarettes, clocks, and various other articles through use of such devices, packed and assembled therewith and in accordance with explanatory legends set forth on devices in question as bought by them and under or pursuant to which legend and plan purchasers securing lucky or winning numbers received articles, the prices of which were much less than normal retail prices thereof, and purchasers obtaining numbers not so specified received nothing other than privilege of making push or punch from card or board, or in accordance with such legend or plan as dealer purchasers placed on said devices and involving chance or lottery feature as hereinabove described; and in accordance with which legends and schemes, retail dealers as direct or indirect purchasers of said assortments as arranged as aforesaid set forth, exposed same to purchasing public and sold and distributed articles in question by means of such push cards or punchboards and in accordance with particular sales plan thereon displayed involving game of chance or sale of a chance to procure articles of merchandise at prices much less than normal retail prices thereof, contrary to an established public policy of the United States Government and in violation of criminal laws;

With result that many dealers in and ultimate consumers of such merchandise were induced to deal, use or purchase same from dealers selling or distributing such products by means of their aforesaid push cards and punchboards and because of lottery features involved therewith and inherent therein, in competition with many who, under a powerful moral compulsion not to use in connection with sale or distribution of their merchandise such devices, and faced with alternative of consenting to use thereof or suffering loss of substantial trade, do not sell and distribute their products by means of such push cards, punchboards, or similar devices because of element of chance or lottery features involved therein, and as involving practices are contrary to public policy of the United States Government, and refrain from supplying to or placing in the hands of others such or similar devices for use in connection with sale and distribution of their merchandise to general public by lot or chance, and with result further of teaching and encouraging gambling among members of public and supplying to and placing in hands of others means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise; all to the injury of the public:

- Held*, (1) That such acts and practices of said corporation and individuals in selling and distributing their assortments of merchandise, together with said push card and punchboard devices above set forth, were all to the prejudice and injury of the public and competitors and constituted unfair methods of competition in commerce and unfair acts and practices therein; and
- (2) That such acts and practices in selling and distributing said devices, separate and apart from other merchandise, to dealers for use in sale and distribution of said dealers' products, as above set forth, were all to the prejudice and injury of the public and constituted unfair acts and practices in commerce.

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## Complaint

Before *Mr. Randolph Preston*, trial examiner.

*Mr. D. C. Daniel* for the Commission.

*Mr. Nathan Gross*, of New York City, for respondents.

## COMPLAINT

*Count 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 Mills Sales Co. of New York, Inc., a corporation, and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger, and Walter Jacoby, individually and as officers of Mills Sales Co. of New York, 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Mills Sales Co. of New York, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 901 Broadway, New York, N. Y., and a branch store located at 87 Orchard Street, New York, N. Y. Respondents, David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger, and Walter Jacoby are the president, vice president, treasurer, secretary, and assistant secretary, respectively, of corporate respondent Mills Sales Co. of New York, Inc. The individual respondents have their principal place of business at the same address as the corporate respondent, and said respondents formulate, direct, dictate, and control all of the acts, policies and practices of the corporate respondent, as hereinafter described. The aforesaid corporation is now and for some time last past has been engaged in the sale and distribution of cosmetics, shaving and dental creams, drug and household sundries, perfumes, notions, pen and pencil sets, comb and brush sets, billfolds, and various other articles of merchandise to dealers 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 places of business in New York, N. Y., to purchasers thereof in various States of the United States other than New York 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 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 said business, as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of their merchandise, together with push cards and punchboards, which said push cards and punchboards involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is, or may be, distributed to the ultimate consumers or purchasers thereof wholly by lot or chance.

Some of said push cards and punchboards have printed on the upper portions of the faces thereof instructions or legends showing the sales plan or method by which said articles of merchandise are to be sold or distributed to the purchasing public. Others of said push cards and punchboards have blank spaces at the tops of the faces thereof upon which blank spaces the purchasers of said cards and boards place instructions or legends of similar import and meaning. Sales are generally 5 cents each and said push cards and punchboards have a number of partially perforated disks or holes, and each purchaser is entitled to a push or punch from said push card or punchboard, and when a push or punch is made, a disk or printed slip is separated and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to specified articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a push or punch from said card or board. The said articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase or procure respondents' said assortments of said merchandise, together with said push card and punchboard devices, either directly or indirectly, from respondents, expose the same to the purchasing public and sell or distribute said merchandise in accordance with the sales plan or method described in paragraph 2 hereof. Respondents thus supply to and place in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale or distribution of said merchandise, in accordance with the aforesaid sales plan or method.

PAR. 4. The sale of said merchandise to the purchasing public, in the manner above described, involves a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail prices thereof. The use by respondents of said sales plan or method in the sale of their said merchandise and the sale of said merchandise by and through the use thereof and by the aid of such sales plan or method is a practice of the sort which is contrary to an established public policy of the United States and in violation of criminal laws. Many persons, firms, and corporations who sell and distribute like or similar merchandise in competition with respondents, as above alleged, are unwilling to adopt and use said method or sales plan, or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers of, said merchandise are attracted by respondents' said sales plan or method because of the element of chance involved therein, as hereinabove alleged, and are thereby induced to purchase respondents' said merchandise in preference to like or similar merchandise offered for sale and sold by respondents' said competitors who do not use the same or a similar sales plan or method. The use of said sales plan or method by respondents has the capacity and tendency to unfairly divert to respondents trade from their competitors who do not use the same or an equivalent or similar sales plan or method and to deprive the purchasing public of the benefit of free competition in said merchandise.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the injury and 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.

*Count 2*

PARAGRAPH 1. Respondent, Mills Sales Co. of New York, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 901 Broadway, New York, N. Y., and a branch store located at 87 Orchard Street, New York, N. Y. Respondents, David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger and Walter Jacoby are the president, vice-president, treasurer, secretary, and assistant secretary, respectively, of corporate respondent, Mills Sales Co. of New York, Inc. The individual respondents have their

principal place of business at the same address as the corporate respondent, and said respondents formulate, direct, dictate, and control all of the acts, policies, and practices of the corporate respondent, as hereinafter described. The aforesaid corporation is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid places of business in New York, N. Y., to purchasers thereof in various States of the United States, other than the State of New York, 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 push card and punchboard devices 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 have sold and distributed to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used by said dealers in making sales of their merchandise to the consuming public. Respondents have sold and distributed many kinds of said push cards and punchboards, but all of said push cards and punchboards involve the same chance or lottery features when used in connection with the sale or distribution of merchandise, and vary only in detail. The majority of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push card and punchboards vary in accordance with the individual device, but each purchaser is entitled to one punch or push from the device, and when a push or punch is made a disc or printed slip is separated and a number disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail prices of said articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a push or punch from said card or board. The

articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing said punchboards or push cards without said printed instructions or legends thereon place printed instructions or legends of similar import and meaning on the faces of said push cards or punchboards on the blank space provided therefor. The said legends or instructions placed on the faces of said devices by said dealers involve the same chance or lottery features as those legends or instructions placed or printed on the faces of the others of said devices by respondents.

PAR. 3. Many persons, firms, and corporations who sell and distribute candy, cigarettes, clocks, razors, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondents' said push card and punchboard devices, and have packed and assembled assortments comprised of various articles of said merchandise, together with said push card and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards or punchboards in accordance with the sales plan as described in paragraph 2 hereof. Many dealers in, and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of respondents' said push cards and punchboards because of the lottery features involved therewith and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of said merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell and distribute their said merchandise by means of push card or punchboard devices or similar devices because of the element of chance or lottery features involved therein and because such practices are contrary to public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such push card or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot or chance.

PAR. 4. The sale of said merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail price thereof. The use by said dealers of said sales plan or method in the sale of their merchandise and the sale of their merchandise by and through the use thereof and by the aid of said sales plan or 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.

The sale or distribution of said push cards and punchboards by respondents as hereinabove alleged teaches and encourages gambling among members of the public and supplies to, and places in the hands of, others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their said merchandise, all to the injury of the public.

PAR. 5. The aforesaid acts and practices of respondents, as hereinabove alleged, are all to the prejudice and injury of the public and constitute 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 5, 1939, issued, and thereafter served, its complaint in this proceeding upon respondents Mills Sales Co. of New York, Inc., a corporation, and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger and Walter Jacoby, individually and as officers of Mills Sales Co. of New York, Inc., charging them with the use of unfair methods of competition in commerce 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 respondents' answer, the Commission, by order entered herein, granted respondents' 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 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, Mills Sales Co. of New York, Inc., is a corporation organized and doing business under the laws of the State of New York, with its principal office and place of business located at 901 Broadway, New York, N. Y., and a branch store located at 87 Orchard Street, New York, N. Y. Respondents, David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger and Walter Jacoby, are the president, vice-president, treasurer, secretary, and assistant secretary, respectively, of corporate respondent Mills Sales Co. of New York, Inc. The individual respondents have their principal place of business at the same address as the corporate respondent, and said respondents formulate, direct, dictate, and control all of the acts, policies and practices of the corporate respondent as hereinafter described. The aforesaid corporation is now and for some time last past has been engaged in the sale and distribution of cosmetics, shaving and dental creams, drug and household sundries, perfumes, notions, pen and pencil sets, comb and brush sets, billfolds, and various other articles of merchandise to dealers 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 places of business in New York, N. Y., to purchasers thereof in various States of the United States other than New York 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 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 said business, as described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of their merchandise, together with push cards and punchboards, which said push cards and punchboards involve the operation of games of chance, gift enterprises or lottery schemes by which said merchandise is, or may be, distributed to the ultimate consumers or purchasers thereof wholly by lot or chance.

Some of said push cards and punchboards have printed on the upper portions of the faces thereof instructions or legends showing

the sales plan or method by which said articles of merchandise are to be sold or distributed to the purchasing public. Others of said push cards and punchboards have blank spaces at the tops of the faces thereof upon which blank spaces the purchasers of said cards and boards place instructions or legends of similar import and meaning. Sales are generally 5 cents each and said push cards and punchboards have a number of partially perforated discs or holes, and each purchaser is entitled to a push or punch from said card or punchboard, and when a push or punch is made, a disc or printed slip is separated and a number disclosed. The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to specified articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a push or punch from said card or board. The said articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

PAR. 3. Retail dealers who purchase or procure respondents' said assortments of said merchandise, together with said push card and punchboard devices, either directly or indirectly, from respondents, expose the same to the purchasing public and sell or distribute said merchandise in accordance with the sales plan or method described in paragraph 2 hereof. Respondents thus supply to and place in the hands of others the means of conducting lotteries, gift enterprises, or games of chance in the sale or distribution of said merchandise, in accordance with the aforesaid sales plan or method.

PAR. 4. The sale of said merchandise to the purchasing public, in the manner above described, involves a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail prices thereof. The use by respondents of said sales plan or method in the sale of their said merchandise and the sale of said merchandise by and through the use thereof and by the aid of such sales plan or method is a practice of the sort which is contrary to an established public policy of the United States and in violation of criminal laws. Many persons, firms, and corporations who sell and distribute like or similar merchandise in competition with respondents, as above described, are unwilling to adopt and use said method or sales plan, or any sales plan or method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers of, said merchandise are attracted by respondents' said sales plan or method because of the element of chance involved therein, as hereinabove described, and are thereby induced to purchase respondents' said merchandise in preference to like or similar merchandise offered for sale and sold by respondents' said competitors who do not use the same or a similar sales plan or method. The use of said sales plan or method by respondents has the capacity and tendency to unfairly divert to respondents trade from their competitors who do not use the same or an equivalent or similar sales plan or method and to deprive the purchasing public of the benefit of free competition in said merchandise.

PAR. 6. In the course and conduct of its business, the aforesaid corporation is now, and for some time last past has been, engaged in the sale and distribution of devices commonly known as push cards and punchboards separate and apart from any other merchandise to dealers in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said devices, when sold, to be transported from their aforesaid place of business in New York, N. Y., to purchasers thereof in various States of the United States, other than the State of New York, 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 push card and punchboard devices 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 their business, as described in paragraph 6 hereof, respondents have sold and distributed to dealers push cards and punchboards so prepared and arranged as to involve games of chance, gift enterprises, or lottery schemes when used by said dealers in making sales of their merchandise to the consuming public. Respondents have sold and distributed many kinds of said push cards and punchboards, but all of said push cards and punchboards involve the same chance or lottery features when used in connection with the sale or distribution of merchandise, and vary only in detail. The majority of said push cards and punchboards have printed on the faces thereof certain legends or instructions that explain the manner in which said devices are to be used in the sale or distribution of various specified articles of merchandise. The prices of the sale on said push cards and punchboards vary in accordance with the individual device, but each purchaser is entitled to one punch or push from the device, and when a push or punch is made a

disc or printed slip is separated and a number disclosed. The numbers are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the push or punch completed. Certain specified numbers entitle purchasers to articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail pricess of said articles of merchandise. Persons obtaining numbers not so specified receive nothing for their money other than the privilege of making a push or punch from said card or board. The articles of merchandise are thus distributed to the consuming or purchasing public wholly by lot or chance.

Dealers purchasing said punchboards or push cards without said printed instructions or legends thereon place printed instructions or legends of similar import and meaning on the faces of said push cards or punchboards on the blank space provided therefor. The said legends or instructions placed on the faces of said devices by said dealers involve the same chance or lottery features as those legends or instructions placed or printed on the faces of the others of said devices by respondents.

PAR. 8. Many persons, firms, and corporations who sell and distribute candy, cigarettes, clocks, razors, clothing, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia have purchased respondents' said push card and punchboard devices and have packed and assembled assortments comprised of various articles of said merchandise, together with said push card and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, have exposed the same to the purchasing public and have sold or distributed said articles of merchandise by means of said push cards or punchboards in accordance with the sales plan as described in paragraph 7 hereof. Many dealers in and ultimate consumers of, said merchandise have been induced to deal with or purchase said merchandise from dealers selling or distributing the same by means of respondents' said push cards and punchboards because of the lottery features involved therewith and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of said merchandise in commerce between and among the various States of the United States and in the District of Columbia. Said competitors are faced with the alternative of descending to the use of said push card and punchboard devices or other similar devices which they are under a powerful moral compulsion not to use in connection with the sale or distribution of their merchandise, or to suffer the loss of substantial trade. Said competitors do not sell

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and distribute their said merchandise by means of push card or punchboard devices or similar devices because of the element of chance or lottery features involved therein and because such practices are contrary to the public policy of the Government of the United States and such competitors refrain from supplying to or placing in the hands of others such push card or punchboard devices or any other similar devices to be used in connection with the sale and distribution of the merchandise of such competitors to the general public by lot or chance.

PAR. 9. The sale of said merchandise to the purchasing public in the manner described in paragraphs 7 and 8 hereof involve a game of chance or the sale of a chance to procure said articles of merchandise at prices much less than the normal retail price thereof. The use by said dealers of said sales plan or method in the sale of their merchandise and the sale of their merchandise by and through the use thereof and by the aid of said sales plan or 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.

The sale or distribution of said push cards and punchboards by respondents as hereinabove described teaches and encourages gambling among members of the public and supplies to, and places in the hands of, others the means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their said merchandise, all to the injury of the public.

## CONCLUSION

The aforesaid acts and practices of respondents in selling and distributing their said assortments of merchandise, together with said push card and punchboard devices, as hereinabove 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 acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act, and, the aforesaid acts and practices of respondents in selling and distributing said push card and punchboard devices, separate and apart from any other merchandise, to dealers for use in the sale and distribution of said dealers' merchandise, as hereinabove found, are all to the prejudice and injury of the public and constitute 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 substitute 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, Mills Sales Co., of New York, Inc. a corporation, its officers, and David Jacoby, Evelyn Jacoby, Joseph Jacoby, Estelle J. Kruger, and Walter Jacoby, individually and as officers of said Mills Sales Co. of New York, Inc., its and 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 cosmetics, shaving and dental creams, drug and household sundries, perfumes, notions, pen and pencil sets, comb and brush sets, billfolds, 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. Selling and distributing any merchandise so packed and assembled that sales of such merchandise to the general public are to be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others any merchandise together with punchboards, push or pull cards, or any other lottery devices, which said punchboards, push or pull cards, or other lottery devices are to be used or may be used in selling or distributing said merchandise to the public.

3. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices either with assortments of 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 merchandise to the public.

4. Supplying to or placing in the hands of others punchboards, push or pull cards, or other lottery devices, which are to be used or may be used in selling or distributing any merchandise to the public.

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

## Syllabus

IN THE MATTER OF  
CURTICE BROTHERS COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSECS. (a) and (d) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 3381. Complaint, Apr. 16, 1938—Decision, Apr. 15, 1940*

Where a corporation engaged in packing, offering, selling, and distributing fruits, vegetables, and vegetable products to various types of food distributors, and, as thus engaged, in using, for future orders for goods to be shipped when harvested and packed, price lists R, A, and S, use of which, in selling at various prices therein listed, it did not make known to all customers, and which were respectively designated for customers who placed orders for less than 300 cases of its products, for those who placed minimum orders for 300 cases thereof for shipment in quantities of not less than 50, and for those who placed minimum orders for 1,000 cases for shipment in quantities of not less than 250, with A prices ranging from 2.5 percent to 8.3 percent, and with S prices ranging from 5.1 percent to 16.6 percent, lower than the prices at which its said products were sold through use of R list—

- (a) Discriminated in price between competing purchasers of products of like grade and quality sold by it in interstate commerce for use, consumption and resale, through selling its products to some of its customers at price fixed or determined by use of R, A, or S price lists, while selling products of like grade and quality to other customers competitively engaged therewith in use, consumption or resale of such products at prices fixed or determined by use of either of the other said lists; and
- (b) Discriminated in price between competing purchasers of its products of like grade and quality sold by it as above set forth, through selling its products at prices specified by said S list to customers who did not take required 1,000 minimum cases;

With the result that the effect of such discriminations in prices made by it as above set forth might be substantially to lessen competition and to injure, destroy, and prevent competition (1) between it and its competitors in the packing, sale and distribution of fruits, vegetables, and vegetable products; and (2) in the use, consumption, and resale of such products, between some of customers receiving the lower prices and some of the customers competitively engaged with former receiving such lower prices, and who deal in products in question and do not receive said prices, and with result that effect of such discriminations might also tend to create a monopoly in it in said line of commerce:

*Held*, That such corporation, under facts and circumstances set forth, discriminated in price in sale of its products between different purchasers in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act; and

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Where such corporation, engaged as aforesaid—

Discriminated between different purchasers of its canned fruits, vegetables and vegetable products by paying, granting, and contracting to pay certain sums of money to and for the benefit of some of its customers, in consideration for advertising services furnished by them in connection with sale or offer of its said products, without making such payments or advertising allowances available on proportionally equal terms to all of its customers competing in sale and distribution thereof:

*Held*, That the granting to favored customers of advertising allowances without making same available to competing customers on proportionally equal terms, constituted violation by corporation of subsection (d) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

*Mr. John T. Haslett* for the Commission.

*Goodwin, Nixon, Hargrave, Middleton & Devany*, of Rochester, N. Y., 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" (the Clayton Act), as amended by an act 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 Robinson-Patman Act), the Federal Trade Commission having reason to believe that Curtice Brothers Co., a corporation, is violating and has been violating the provisions of the said Clayton Act as amended, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Curtice Brothers Co. is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 20 Curtice Street, Rochester, N. Y. Said respondent operates and maintains packing plants at Rochester, Bergen, Mount Morris, and Wilson, all in the State of New York.

PAR. 2. Respondent corporation is now, and has been since prior to June 19, 1936, engaged in the business of packing and offering for sale, selling, and distributing fruits, vegetables, and vegetable products. Respondent sells said products to every type of food distributor, jobber, corporate chain, voluntary chain, and independent retailer. Respondent sells and distributes said products in commerce between and among the various States of the United States and the District of Columbia, and, preliminary to or as a result of such sales, causes such products to be shipped and transported from the places of origin of shipment to the purchasers thereof who are located in States of the

United States other than the State of origin of the shipment, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in said products across State lines between respondent's plants or factories and the purchasers of such commodities. Said products are sold and distributed for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR. 3. 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 packing, selling, and distributing fruits, vegetables, and vegetable products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid since June 19, 1936, respondent has been, and is now, discriminating in price between different purchasers buying such products of like grades and qualities so sold by the respondent in interstate commerce for use, consumption and resale, by giving and allowing some of its said purchasers of such products lower prices than given or allowed other of its said purchasers competitively engaged one with the other in the resale of said products within the United States. Said discriminations in price are brought about by the following practice and policy pursued by respondent to wit:

Respondent sells its products under three different price lists which price lists are designated by the following letters: R, A, and S. Customers in order to purchase respondent's products at the prices under the S classification must place a minimum order for 1,000 cases for shipment in quantities of not less than 250 cases. Customers in order to purchase respondent's products at the prices under the A classification are required to place a minimum order for 300 cases for shipment in quantities of not less than 50 cases. All other customers purchase respondent's products under the R classification. The prices at which respondent's products are sold under the A classification are lower by from 2.5 percent to 8.3 percent than the prices at which said products are sold under the R classification; and the prices at which said products are sold under the S classification are lower by from 5.1 percent to 16.6 percent than the prices at which said products are sold under the R classification. The differentials in price at which said products are sold are not constant and not only vary between different commodities, but also as between different sizes of the same commodity.

Said respondent has in some instances sold its products at prices under the S classification to customers who do not take the required shipments as designated for said classification.

Respondent does not make known to all its customers that it sells its products at the prices set forth in the various classifications, and, as a result thereof, many customers purchase respondent's products either under the A or R classification, whereas if they had known of other or more favorable prices they would have purchased sufficient quantities to entitle them to said favorable prices.

PAR. 5. In the course and conduct of its business, as hereinabove described, respondent, contrary to the provisions of subsection 2 (d) of section 1 of said act of Congress, Public, 692, is now, and since June 19, 1936, has been, discriminating between different purchasers of the said products, by paying, or contracting to pay, certain sums of money to, or for the benefit of, certain of its customers, in consideration for advertising services furnished by said customers in connection with the sale, or offering for sale, of respondent's said products, without making such payments or advertising allowances available on proportionately equal terms to all of their said customers competing in the sale and distribution of their said products.

PAR. 6. The general effect of said discriminations in price so made by respondent as above set forth has been, or may be, substantially to lessen competition and to injure, destroy, and prevent competition between the respondent and its competitors in the packing, sale, and distribution of fruits, vegetables, and vegetable products and also has been or may be substantially to lessen competition and to injure, destroy, and prevent competition in the resale of such products between some of the favored purchasers of such products and some of the competitive customers dealing in said products not receiving such favorable prices. The effect of said discriminations in price also has been, or may be, to tend to create a monopoly in respondent in said line of commerce and to tend to create a monopoly in the said favored purchasers receiving such discriminatory prices in the resale of said products in the various localities or trade territories in the United States in which such purchasers respectively are engaged in business.

PAR. 7. The foregoing alleged acts and practices of said respondent are violations of subsection 2 (a) and 2 (d) 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, sec. 13), and for other purposes."

## 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 section 1 of an act entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13) and for other purposes" approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on April 16, 1938, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof charging respondent with violating the provisions of subsections (a) and (d) of section 2 of said act as amended.

After the issuance of said complaint and the filing of respondent's answer, a stipulation was entered into between W. T. Kelley, chief counsel for the Commission, and counsel for the respondent, containing a statement of certain facts in this proceeding. Thereafter the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, which substitute answer was duly filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, the stipulation and the substitute answer, brief and oral argument of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom.

## FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Curtice Brothers Co., is a corporation organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 20 Curtice Street, Rochester, N. Y. The respondent operates and maintains packing plants at Rochester, Bergen, Mount Morris, and Wilson, all in the State of New York.

PAR. 2. Respondent is now and has been since June 19, 1936, engaged in the business of packing, offering for sale, selling, and distributing fruits, vegetables, and vegetable products. Said products are sold to the various types of food distributors. The respondent

sells and distributes such products in commerce between and among the various States of the United States and the District of Columbia, and, preliminary to or as a result of such sales, causes such products to be shipped and transported from the State of origin of shipment to the purchasers thereof who are located in States of the United States other than the State of origin of the shipment, and there is, and has been at all times herein mentioned, a continuous current of trade and commerce in fruits, vegetables, and vegetable products across State lines between respondent's plants or factories and purchasers of such products. Said products are sold and distributed by the respondent for use, consumption, and resale within the various States of the United States and the District of Columbia.

PAR 3. In the course and conduct of its business as aforesaid respondent is now, and has been at all times since June 19, 1936, in substantial competition with other corporations, individuals, partnerships, and firms engaged in the business of packing, selling, and distributing fruits, vegetables, and vegetable products in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. Since June 19, 1936, in the course and conduct of the business engaged in by the respondent, the respondent has used three different price lists, which price lists were and are designated by the letters R, A, and S. The S price list is designated for those customers who place a minimum order for 1,000 cases of the respondent's products for shipment in quantities of not less than 250 cases. The A price list is designated for those customers who place a minimum order for 300 cases of the respondent's products for shipment in quantities of not less than 50 cases. The R price list is designated for customers who place orders for less than 300 cases of the respondent's products. The prices at which respondent's products were and are sold by use of the A price list were and are lower by from 2.5 percent to 8.3 percent than the prices at which said products were and are sold by the use of the R price list, and the prices at which said products were and are sold by the use of the S price list were and are lower by from 5.1 percent to 16.6 percent than the prices at which said products were and are sold by the use of the R price list.

The respondent sold its products to some of its customers at a price fixed by or determined by the use of one of the price lists designated by the letters R, A, or S, while selling products of like grade and quantity to other customers competitively engaged with such customers in the use, consumption or resale of such products at a price fixed by or determined by the use of either of the other price lists.

The respondent sold its products at prices specified by the S price list to some customers who did not take the required minimum number of 1,000 cases of respondent's products.

The sales, as set forth above, so made by the respondent have resulted and do result in discriminations in price between competing purchasers of products of like grade and quality sold by the respondent in interstate commerce for use, consumption, and resale.

PAR. 5. In practice the respondent has confined its sales made by the use of the price lists referred to as R, A, and S, and set out more particularly in paragraph 4 hereof, to "future orders" for goods to be shipped when harvested and packed.

PAR. 6. Said respondent does not make known to all customers that it sells its products at the various prices set forth in the several price lists.

PAR. 7. The effect of said discriminations in prices so made by respondent as above set forth may be substantially to lessen competition and to injure, destroy, and prevent competition between the respondent and its competitors in the packing, sale, and distribution of fruits, vegetables, and vegetable products, and also may be substantially to lessen competition and to injure, destroy, and prevent competition in the use, consumption, and resale of such products between some of the customers receiving the lower prices and some of the customers competitively engaged with those customers receiving such lower prices and who deal in said products and who do not receive such lower prices. The effect of said discriminations in price also may tend to create a monopoly in respondent in said line of commerce.

PAR. 8. In the course and conduct of its business as heretofore described respondent is now, and since June 19, 1936, has been discriminating between different purchasers of its canned fruits, vegetables, and vegetable products by paying, granting, and contracting to pay certain sums of money to and for the benefit of some of its customers in consideration for advertising services furnished by said customers in connection with the sale or offering for sale of respondent's said products without making such payments or advertising allowances available on proportionally equal terms to all of its customers competing in the sale and distribution of its products.

#### CONCLUSION

Under the facts and circumstances as set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Curtice Brothers Co., has discriminated in price in the sale of its products between different purchasers in violation of subsection (a) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act.

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The Commission further concludes that the respondent, Curtice Brothers Co., has granted to favored customers advertising allowances without making such allowances available to competing customers on proportionally equal terms in violation of subsection (d) of section 2 of the 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, the stipulation as to certain facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, and the substitute answer filed herein on April 8, 1940, by the respondent, admitting all the material allegations of the complaint to be true and waiving the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and conclusions herein, which findings and conclusions are hereby made a part hereof, and the Commission having concluded that said respondent has violated the provisions of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended.

*It is ordered,* That the respondent, Curtice Brothers Co., its officers, representatives, agents, and employees, in connection with the sale of canned fruits, vegetables, and vegetable products sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States where either or any of the sales thereof are in commerce, do forthwith cease and desist:

1. From selling canned fruits, vegetables, and vegetable products to some customers at a price fixed by or determined by the use of, one of the price lists designated by the letter R, A, or S, referred to in paragraph 4 of the findings as to the facts herein, while selling products of like grade and quality to other customers competitively engaged with such customers in the use, consumption or resale of such products at a price fixed by or determined by the use of either of the other of said price lists.
2. From continuing or resuming the discriminations in price referred to and described in paragraph 4 of the Commission's findings as to the facts herein.
3. From otherwise discriminating in price between purchasers of canned fruits, vegetables, and vegetable products of like grade and quality in a manner and degree substantially similar to the manner

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and degree of the discriminations referred to in paragraph 4 of the Commission's findings as to the facts herein, and in any other manner resulting in price discriminations, substantially equal in amount to such discriminations, except as permitted by section 2 of the Clayton Act, as amended.

4. From paying, giving, allowing, or contracting to pay, give or allow anything of value to or for the benefit of some of its customers for advertising services furnished by such customers without making such payments or allowances available to all competing customers on proportionally equal terms.

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

## IN THE MATTER OF

ROSE HEIFLER AND FRED JACKSON DOING BUSINESS  
UNDER THE FIRM NAME OF HEIFLER & JACKSONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3893. Complaint, Sept. 14, 1939—Decision, Apr. 15, 1940*

Where two individuals engaged in sale and distribution of their "Morgan's Pomade" for scalp and hair, to purchasers in various other States and in the District of Columbia, in substantial competition with those engaged in sale and distribution in commerce of similar treatments and devices designed for and useful in treatment of scalp and hair, and including many who do not in any manner misrepresent their treatment and devices; in advertisements of their said product in circulars, pamphlets, and other advertising matter which they distributed and caused to be distributed to members of the purchasing public—

- (a) Represented, directly or by implication, that product in question was not a tint or dye, and that when applied to gray hair it caused hair to change its color without dyeing, and that use thereof would restore original natural color to gray hair; and
- (b) Represented that use of such product supplied the hair shaft with materials in which gray hair was deficient and that use thereof would prevent hair from falling out and that preparation penetrated to the roots of and nourished the hair and was a competent and effective cure and remedy for and preventive of dandruff—

Facts being that product in question was a lead and sulphur dye, dyed exterior of hair shaft when applied to gray hair and did not produce natural but artificial color, did not restore original natural color to gray hair, had no effect on pigment cells of hair shaft, and did not supply thereto color pigments, deficiency of which causes such hair, it would not prevent hair falling out and was not a cure or remedy for or preventive of dandruff and would not penetrate to roots of hair nor nourish same, but might be injurious to tender skin or that on which there were lesions which had broken continuity of integument; and

- (c) Failed to reveal in its said advertisements that application of its said preparation as above set forth might be injurious and represented thereby that preparation in question, when thus applied, was harmless and would produce no injurious effect;

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 causing portion thereof, because of such belief, to buy said product, and with result that trade was thereby diverted unfairly to them from their competitors engaged in sale and distribution in commerce, as aforesaid, of preparations, treatments, and devices for use in treatment of ailments, diseases, and conditions for which they recommend their said product, and who truthfully advertise effectiveness and therapeutic value thereof; 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 constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

*Mr. Clark Nichols* for the Commission.

*Mr. Philip Cooper*, 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 Rose Heifler and Fred Jackson, individuals, doing business under the firm name of Heifler & Jackson, 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, Rose Heifler and Fred Jackson, are individuals doing business under the firm name of Heifler & Jackson and having their office and principal place of business at 740 Bergen Street in the city of Brooklyn, State of New York. The respondents are now, and have been for several years last past, engaged in the business of the sale and distribution of a preparation designated "Morgan's Pomade," which respondents represent as a treatment for the hair and scalp. Respondents cause said preparation, when sold by them, to be transported from their 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 the State of New York, and in the District of Columbia. There is now, and has been for several years last past, a course of trade in said preparation by 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 aforesaid business the respondents are now, and have been during all the times mentioned herein, in substantial competition with other individuals and with corporations 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 preparations, treatments and devices designed for use in the treatment of the ailments and conditions for which respondents recommend the use of their said preparation.

PAR. 2. In the course and conduct of their aforesaid business and to induce the purchase of their said preparation, the respondents have distributed and have caused to be distributed and are now distributing and causing to be distributed to members of the purchasing

public situated in various States of the United States and in the District of Columbia circulars, pamphlets, and other advertising material containing statements and representations relative to the nature of said preparation and its effectiveness in use. Among and typical of the statements and representations by respondents, disseminated as aforesaid, are the following:

It beautifies the hair, it restores it to its original colour, prevents it from falling out, \* \* \* and makes it strong again by the right process through the roots of the hair.

You don't have to state the colour of your hair, as it brings it to its original colour, no matter what colour it was before. This is done by a scientific process.

There is one sure way to destroy dandruff completely. Use Morgan's Pomade \* \* \* After a few treatments most, if not all, of your dandruff will be gone, and with its occasional use every single sign and trace will be completely destroyed. \* \* \* It will have that youthful appearance you have been longing for.

And wonder of wonders, it is not a dye.

Prevents hair from falling. Not a Tint or Dye.

Undoubtedly the finest remedy for Grey or Faded Hair is Morgan's Pomade. This is not a dye, but a special compound which when massaged into the roots of the hair, nourishes it back to its original colour and luster \* \* \*. Scurl is removed by its use and its recurrence prevented.

\* \* \* and it is effective in all cases, restoring the colour where grey, no matter what the previous colour of the hair.

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondents represent directly or by implication that said preparation is not a tint or dye; that said preparation, when applied to gray hair, causes the hair to change its color without dyeing the hair; that the use of the said preparation will restore the original natural color to gray hair; that the use of said preparation supplies to the hair shaft the materials in which gray hair is deficient; that the use of said preparation will prevent the hair from falling out; that said preparation penetrates to the roots of the hair and nourishes the hair; and that said preparation is a competent and effective cure or remedy for, and will prevent, dandruff.

PAR. 4. The aforesaid statements and representations, used and disseminated by respondents in the manner above described, are false, misleading and deceptive. In truth and in fact said preparation, "Morgan's Pomade," contains lead and sulphur and is a lead and sulphur dye. Said preparation, when applied to gray hair, dyes the exterior of the hair shaft and the color produced by its use is not a natural color, but is artificial and produced through the use of a dye. The use of said 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 said preparation does not supply to the hair shaft the color pigments, a deficiency of which materials causes gray hair. The use of said preparation will not prevent the hair from falling out. Said preparation is not a cure or remedy for, and will not prevent, dandruff. Said preparation will not penetrate to the roots of the hair and it will not nourish the hair.

Applications of said preparation to the scalp may be injurious to the health of the user thereof, particularly in the event that said preparation is applied to skin on which there are lesions which have broken the continuity of the integument. The aforesaid advertisements by respondents contain no statement or statements to the effect that said preparation when applied to the scalp may be injurious. Such unqualified advertisements serve as a representation by respondents that such preparation is harmless and will produce no injurious effect when applied to the scalp. The aforesaid advertisements by respondents are therefore misleading and deceptive in that they fail to reveal that said preparation may be injurious to health when applied to the scalp.

PAR. 5. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, with respect to the therapeutic value and effectiveness of their preparation sold and distributed under the trade name of Morgan's Pomade, 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 has caused, and now causes, a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation. As a result, trade has been diverted unfairly to the respondents from their competitors, who are likewise engaged in the sale and distribution in commerce, between and among the several States of the United States and in the District of Columbia, of preparations, treatments and devices for use in the treatment of ailments, diseases, and conditions for which respondents recommend their said product, and who truthfully advertise the effectiveness and therapeutic value of their respective preparations, treatments, and devices. In consequence thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the several States of the United States and the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and respondents' competitors and constitute unfair methods of competi-

tion 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 September 14, 1939, issued, and on September 14, 1939, served its complaint in this proceeding upon the respondents, Rose Heifler and Fred Jackson, charging them with the use of unfair methods of competition in commerce and unfair and deceptive acts or practices in commerce, in violation of the Federal Trade Commission 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 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 substitute answer, and the Commission having duly considered the matter, and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** The respondents, Rose Heifler and Fred Jackson, are individuals doing business under the firm name of Heifler & Jackson and their business address is 740 Bergen Street, in the city of Brooklyn, N. Y. The respondents are now, and have been for several years last past, engaged in the business of selling and distributing a preparation under the trade name of "Morgan's Pomade," which is represented by the makers thereof and by the respondents as a treatment for the scalp and hair.

**PAR. 2.** The respondents, in the course and conduct of said business, have caused such preparation, when sold, to be mailed or shipped to the purchasers thereof, located at various points in the several States of the United States, other than the State from which said shipments are made, and in the District of Columbia.

**PAR. 3.** In the course and conduct of such business, the respondents are, and have been, during all the time mentioned in the complaint, in substantial competition with other persons, and with corporations, firms, and partnerships engaged in the sale and distribution in com-

merce, as "commerce" is defined in the Federal Trade Commission Act, of similar treatments and devices, designed for, and useful in the treatment of, the scalp and hair. Among said competitors are many who do not, in any manner, misrepresent their treatments or devices.

PAR. 4. In the course and conduct of their aforesaid business, and to induce the purchase of their said preparation, the respondents have distributed, and are now distributing, and are causing to be distributed to members of the purchasing public, circulars, pamphlets and other advertising material, containing statements and representations relative to said preparation and its effectiveness in use. Among and typical of such statements and representations are the following:

It beautifies the hair, it restores it to its original colour, prevents it from falling out, \* \* \* and makes it strong again by the right process through the roots of the hair.

You don't have to state the colour of your hair, as it brings it to its original colour, no matter what colour it was before. This is done by a scientific process.

There is one sure way to destroy dandruff completely. USE MORGAN'S POMADE. \* \* \* After a few treatments, most, if not all, of your dandruff will be gone, and with its occasional use every single sign and trace will be completely destroyed. \* \* \* It will have that youthful appearance you have been longing for.

And wonder of wonders, it is not a dye.

Prevents hair from falling. NOT A TINT OR DYE.

Undoubtedly the finest remedy for GREY or FADED HAIR is MORGAN'S POMADE. This is not a dye, but a special compound which when massaged into the roots of the hair, nourishes it back to its original colour and luster \* \* \*. SCURF is removed by its use and its recurrence prevented.

\* \* \* and it is effective in all cases, restoring the colour where grey, no matter what the previous colour of the hair.

PAR. 5. Through the use of the aforesaid statements and representations, the respondents represent, directly, or by implication, that said preparation is not a tint or dye; that said preparation, when applied to gray hair, causes the hair to change its color without dyeing the hair; that the use of said preparation will restore the original natural color to gray hair; that the use of said preparation supplies to the hair shaft the materials in which gray hair is deficient; that the use of said preparation will prevent the hair from falling out; that said preparation penetrates to the roots of the hair and nourishes the hair; that said preparation is a competent and effective cure or remedy for, and will prevent dandruff.

PAR. 6. The aforesaid statements and representations, used and disseminated by the respondents in the manner above described, are false, misleading and deceptive. In truth and in fact, said prepara-

tion, "Morgan's Pomade," contains lead and sulphur and is a lead and sulphur dye. Said preparation, when applied to gray hair, dyes the exterior of the hair shaft and the color produced by its use is not a natural color, but is artificial and produced through the use of a dye. The use of said 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 said preparation does not supply to the hair shaft the color pigments, a deficiency of which material causes gray hair. The use of said preparation will not prevent the hair from falling out. Said preparation is not a cure or remedy for, and will not prevent, dandruff. Said preparation will not penetrate to the roots of the hair and it will not nourish the hair.

Applications of said preparation to the scalp may be injurious to tender skin or skin on which there are lesions which have broken the continuity of the integument. The aforesaid advertisements contain no statements to the effect that application of the preparation to a tender skin or to a skin on which there are lesions which have broken the continuity of the integument, may be injurious. Such unqualified advertisements serve as a representation that such preparation, when applied to the aforementioned skin, is harmless and will produce no injurious effect when applied to such tender skin or skin broken by lesions.

PAR. 7. The use by the respondents of the foregoing false, deceptive and misleading statements and representations, with respect to the therapeutic value and effectiveness of their preparation sold and distributed under the trade name of Morgan's Pomade, 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 has caused, and now causes, a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' preparation. As a result trade has been diverted unfairly to the respondents from their competitors, who are likewise engaged in the sale and distribution in commerce, between and among the several States of the United States and in the District of Columbia, of preparations, treatments and devices for the use in the treatment of ailments, diseases, and conditions for which respondents recommend their said product, and who truthfully advertise the effectiveness and therapeutic value of their respective preparations, treatments and devices. In consequence thereof, substantial injury has been done, and is now being done, by respondents to competition in commerce among and between the several States of the United States and in the District of Columbia.

## CONCLUSION

The aforesaid acts and practices of the respondents, Rose Heifler and Fred Jackson, trading as Heifler & Jackson, are all to the prejudice of the public and of the 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 the respondents, in which answer respondents admit all the material allegations of the complaint 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, Rose Heifler and Fred Jackson, or either of them, their 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 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 preparation containing drugs now designated by the name "Morgan's Pomade," or any other preparation, composed of substantially similar ingredients, or possessing substantially similar properties, whether sold under the same name or any other name, or disseminating, or causing to be disseminated, any advertisements by any 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 preparation, which advertisements represent, directly or through implication, that said preparation is not a tint or dye; that its application causes the hair to change its color without dyeing; that the use of said preparation will restore the original color to gray hair; that its application supplies to the hair shaft the materials in which gray hair is deficient; that the use of said preparation prevents the hair from falling out; that said preparation when applied to the hair and scalp, penetrates into the roots of the hair and enriches the hair; that said preparation is a competent and effective cure or remedy for

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dandruff; or which advertisements fail to reveal that the application of "Morgan's Pomade" to tender, injured or broken skin may result in serious injury to the health of the user.<sup>1</sup>

*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.

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<sup>1</sup> Language immediately preceding, beginning with words, "or which advertisements fail," was stricken by Commission order dated November 5, 1940.

## Syllabus

## IN THE MATTER OF

## BLANCHE KAPLAN, TRADING AS PROGRESSIVE MEDICAL COMPANY AND LADIES AID COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 4002. Complaint, Jan. 30, 1940—Decision, Apr. 15, 1940*

Where an individual engaged, as Progressive Medical Co. and as Ladies Aid Co., in sale and distribution of her Ladies' Aid No. 2, Ordinary Strength and Ladies' Aid No. 3, Extra Strength medicinal preparations; in advertisements thereof which she disseminated and caused to be disseminated through the mails and through booklets, circulars, and other printed or written matter distributed in commerce among the various States, and by other means in commerce, and otherwise and which were intended and likely to induce purchase of her said products—

- (a) Represented that her said preparations were cures or remedies for delayed menstruation, and nonirritating, mild, efficient, and specific treatments thereof, and would quickly stimulate the menstrual flow, facts being they were not a cure or remedy for said condition and did not constitute nonirritating, mild, efficient, and specific treatments therefor, and would not accomplish results which she claimed, and were not safe and harmless, in that they contained powdered aloes, ergotin, and a number of other drugs 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 might result in gastrointestinal disturbances leading to excessive uterine hemorrhage in nonpregnant women, and in cases where said preparations were used to interfere with normal course of pregnancy, might result in uterine infection with extension to other pelvic and abdominal structures and to the blood stream, causing condition known as septicemia or blood poisoning, and lead to other serious conditions and serious or irreparable loss or injury to health; and
- (b) Failed to reveal, in said advertisements of such preparations, that use thereof under conditions prescribed therein or under such conditions as are customary or usual, might result in serious or irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements, representations and advertisements were true, and of inducing portion of such public, because of such erroneous and mistaken belief, to purchase 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. R. P. Bellinger* for the Commission.

Complaint

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## 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 Blanche Kaplan, trading as the Progressive Medical Co. and as the Ladies Aid 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, Blanche Kaplan, is an individual trading as the Progressive Medical Co. and as the Ladies Aid Co., with her office and principal place of business at 3944 Pine Grove Avenue, Chicago, Ill., from which address she transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain medicinal preparations consisting of two formulae known as Ladies' Aid No. 2, Ordinary Strength and Ladies' Aid No. 3, Extra Strength.

In the course and conduct of her business the respondent causes said medicinal preparations when sold to be transported from her place of business in the State of Illinois 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 preparations sold and distributed by her 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 respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning her said medicinal preparations by United States mails and by booklets or 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 her said medicinal preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning her said medicinal preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false rep-

representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

Ladies Aid No. 2—Ordinary Strength—is a world famous remedy, compounded of standard drugs especially for the relief and regulation of that most important female function—the monthly menstruation. It is equally as efficient in the relief of menstrual pains, which in so many thousands of cases tend to make woman's life so miserable.

Delays, irregularities, scanty flow or distress indicate a condition requiring immediate correction. To hesitate is dangerous. Do not delay and risk a more serious condition.

Use Ladies Aid No. 2 immediately and secure peace of mind, good health and freedom from worry. This remedy is used and recommended by physicians and thousands of women everywhere. While one box is usually sufficient, it is advisable to have an ample supply on hand at all times. They do not spoil. Order a supply today.

Ladies Aid No. 3—Extra Strength—is recommended for extremely stubborn, abnormal, discouraging and unyielding cases of menstrual delay or menstrual pain. It is compounded particularly for you women whose case is of long duration and who feel the need of a stronger and more powerful specific. It is non-irritating to the most delicate system yet it quickly stimulates the menstrual flow. Its action is so mild that it offers no interference with home or social duties. While all women are not alike in their response to medical treatment, the average woman usually finds that one or two boxes are sufficient when supplemented with hot mustard baths.

Persistent treatment succeeds in almost all cases. All that we ask is that our directions be followed out carefully. When you consider that a woman's very happiness as well as her health depends on the normal working of her female functions, it is certainly good advice when we urge you so strongly to use Ladies Aid No. 3 immediately and regularly.

Often, even the continued love of a mate is at stake. So many thousands of women have been helped by us that it appears to be nothing but sheer nonsense for suffering or worried women to suffer or to worry any longer. Our advice is that you order an ample supply of Ladies Aid No. 3 today.

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 her medicinal preparations, known and designated as Ladies Aid No. 2—Ordinary Strength—and Ladies Aid No. 3—Extra Strength, are cures or remedies for delayed menstruation, and nonirritating, mild, efficient and specific treatments therefor and will quickly stimulate the menstrual flow.

PAR. 5. In truth and in fact, the medicinal preparations sold and distributed by the respondent as aforesaid known as Ladies Aid No. 2, Ordinary Strength and Ladies Aid No. 3, Extra Strength, are not a cure or remedy for delayed menstruation and do not constitute nonirritating, mild, efficient, and specific treatments therefor. Said preparations will not accomplish the results claimed by the respondent. Furthermore, said preparations are not safe and harmless in

that said preparations contain powdered aloes, powdered extract cotton root bark, iron sulphate dried, powdered extract black hellebore, ergotin, and oil Savin.

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.

Such use of said medicinal preparations 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 nonpregnant women, and in those cases where said medicinal preparations are used to interfere with the normal course of pregnancy, their 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.

The use of said preparations as aforesaid may also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles tending to produce abortion in some instances, often with violent poisonous effects upon the human system. Such use as aforesaid may also produce severe toxic conditions, such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs or other serious or irreparable injury to health.

In addition to the representations hereinabove set forth, the respondent has 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 Ladies Aid No. 2, Ordinary Strength and Ladies Aid No. 3, Extra Strength, 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.

PAR. 6. The use by the respondent of the foregoing false, deceptive and misleading statements and representations with respect to her 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 respondent's medicinal preparations.

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 January 30, 1940, issued, and on February 1, 1940, served, its complaint in this proceeding upon the respondent, Blanche Kaplan, an individual trading as Progressive Medical Co., and as Ladies Aid Co., charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondent filed her answer dated February 17, 1940, 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, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Blanche Kaplan, is an individual trading as the Progressive Medical Co. and as the Ladies Aid Co., with her office and principal place of business at 3944 Pine Grove Avenue, Chicago, Ill., from which address she transacts business under the above trade names.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of certain medicinal preparations, consisting of two formulae known as Ladies' Aid No. 2, Ordinary Strength and Ladies' Aid No. 3, Extra Strength.

In the course and conduct of her business the respondent causes said medicinal preparations when sold to be transported from her place of business in the State of Illinois 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 preparations sold and distributed by her 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 respondent has disseminated, and is now disseminating, and has

caused, and is now causing, the dissemination of false advertisements concerning her said medicinal preparations by United States mails and by booklets or 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 her said medicinal preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning her said medicinal preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her 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:

Ladies Aid No. 2—Ordinary Strength—is a world famous remedy, compounded of standard drugs especially for the relief and regulation of that most important female function—the monthly menstruation. It is equally as efficient in the relief of menstrual pains, which in so many thousands of cases tend to make woman's life so miserable.

Delays, irregularities, scanty flow or distress indicate a condition requiring immediate correction. To hesitate is dangerous. Do not delay and risk a more serious condition.

Use Ladies Aid No. 2 immediately and secure peace of mind, good health and freedom from worry. This remedy is used and recommended by physicians and thousands of women everywhere. While one box is usually sufficient, it is advisable to have an ample supply on hand at all times. They do not spoil. Order a supply today.

Ladies Aid No. 3—Extra Strength—is recommended for extremely stubborn, abnormal, discouraging and unyielding cases of menstrual delay or menstrual pain. It is compounded particularly for you women whose case is of long duration and who feel the need of a stronger and more powerful specific. It is non-irritating to the most delicate system yet it quickly stimulates the menstrual flow. Its action is so mild that it offers no interference with home or social duties. While all women are not alike in their response to medical treatment, the average woman usually finds that one or two boxes are sufficient when supplemented with hot mustard baths.

Persistent treatment succeeds in almost all cases. All we ask is that our directions be followed out carefully. When you consider that a woman's very happiness as well as her health depends on the normal working of her female functions, it is certainly good advice when we urge you so strongly to use Ladies Aid No. 3 immediately and regularly.

Often, even the continued love of a mate is at stake. So many thousands of women have been helped by us that it appears to be nothing but sheer nonsense for suffering or worried women to suffer or to worry any longer. Our advice is that you order an ample supply of Ladies Aid No. 3 today.

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 her medicinal preparations, known and designated as Ladies Aid No. 2, Ordinary Strength, and Ladies Aid No. 3, Extra Strength, are cures or remedies for delayed menstruation, and nonirritating, mild, efficient, and specific treatments therefor and will quickly stimulate the menstrual flow.

PAR. 5. In truth and in fact, the medicinal preparations sold and distributed by the respondent as aforesaid known as Ladies Aid No. 2, Ordinary Strength, and Ladies Aid No. 3, Extra Strength, are not a cure or remedy for delayed menstruation and do not constitute nonirritating, mild, efficient, and specific treatments therefor. Said preparations will not accomplish the results claimed by the respondent. Furthermore, said preparations are not safe and harmless in that said preparations contain powdered aloes, powdered extract cotton root bark, iron sulphate dried, powdered extract black hellebore, ergotin, and oil Savin.

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, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage in nonpregnant women, and in those cases where said medicinal preparations are used to interfere with the normal course of pregnancy, their 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.

The use of said preparations as aforesaid may also produce a very severe circulatory condition by the constriction of blood vessels and contraction of the involuntary muscles tending to produce abortion in some instances, often with violent poisonous effects upon the human system. Such use as aforesaid may also produce severe toxic conditions, such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs or other serious or irreparable injury to health.

In addition to the representations hereinabove set forth, the respondent has 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 Ladies Aid No. 2, Ordinary Strength and Ladies Aid No. 3, Extra Strength, 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.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to her preparations, disseminated as aforesaid, 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 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 preparations.

#### 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 the 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, Blanche Kaplan, an individual trading as Progressive Medical Co. and as Ladies Aid Co., or trading under any other name or names, her 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 as Ladies' Aid No. 2, Ordinary Strength, and Ladies' Aid No. 3, Extra 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,

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 preparations in commerce, as commerce is defined in the Federal Trade Commission Act, and which advertisements represent that said preparations constitute safe, competent, efficient, or specific treatments for delayed menstruation or that their use will have no ill effect upon the human body, and which advertisements fail to reveal that said preparations, 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.

*It is further ordered,* That the respondent shall, within 10 days after the service upon her of this order, file with the Commission an interim report in writing, stating whether she intends to comply with this order, and if so, the manner and form in which she intends to comply; and that within 60 days after the service upon her of this order said respondent shall file with the Commission a report in writing, setting forth in detail the manner and form in which she has complied with this order.

Complaint

30 F. T. C.

IN THE MATTER OF  
JOHN B. CANEPA COMPANY

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

*Docket 3744. Complaint, Mar. 24, 1939—Decision, Apr. 16, 1940*

Where a corporation engaged in the manufacture, sale, and distribution of macaroni and spaghetti products which it packed, sold, and distributed in long containers—

Represented directly or by implication through advertisements, booklets, and labels attached to its products and disseminated in interstate commerce that its macaroni and spaghetti products were of the finest quality because they were made in long lengths and that such products of other manufacturers which were not made in such lengths were not genuine and not of finest quality and that true criterion of genuineness and quality of such products was length in which made, through such typical statements as "I hate to brag but only the finest macaroni (or spaghetti) is made long," or "I hate to brag but genuine macaroni (or spaghetti) is made long," and through depictions in booklets and other advertising matter containing such statements, and representations of the long containers in which the company sold and distributed its said products;

The facts being such statements and representations used and disseminated as aforesaid by it were misleading and unfair, genuine macaroni and spaghetti of finest quality are made both in long and short lengths and offered for sale in both forms, and said products of finest quality are in some instances first made in long lengths and then cut into short lengths and thus offered for sale and sold, and length in which products aforesaid are offered is no criterion of quality and genuineness thereof;

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 into purchasing substantial quantities of its said products because of such mistaken and erroneous opinion or belief thus created:

*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. Randolph Preston*, trial examiner.

*Mr. L. E. Creel, Jr.* and *Mr. Curtis C. Shears* for the Commission.

*Mr. John Harrington* of Fyffe & Clark, 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 John B. Canepa 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, John B. Canepa Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois and having its principal office and place of business at 310 West Grand Avenue in the city of Chicago, State of Illinois. Respondent is now, and has been for more than 2 years last past, engaged in the manufacture, sale, and distribution of macaroni and spaghetti products. In the course and conduct of its business respondent causes its products, when sold, to be transported from its 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 the State of Illinois, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said products, 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 aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said products in booklets, on labels attached to its products in elongated packages, and on other written or 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 by 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, 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:

I hate to brag, but only the finest macaroni is made long;

I hate to brag, but only the finest spaghetti is made long;

I hate to brag, but genuine macaroni is made long;

I hate to brag, but genuine spaghetti is made long;

\* \* \* Insist on Red Cross products packed in The Original Full Length Packages. This is your guarantee against inferior substitutes. You may have wondered at times why Red Cross Macaroni and Spaghetti by comparison appear unusually long. \* \* \* So be sure that you get Red Cross Macaroni and Spaghetti because only the finest can be made long.

The respondent packs, sells, and distributes its spaghetti and macaroni products in long containers. Booklets and other advertising matter of the respondent, containing the aforesaid statements and representations, also contain in direct connection therewith pictorial representations of the long containers in which respondent sells and distributes its said products.

By the means and in the manner aforesaid, together with other statements, not herein set out, of similar import and meaning and disseminated as aforesaid, respondent represents to prospective purchasers situated in various States of the United States and in the District of Columbia that respondent's macaroni and spaghetti products are genuine and are of the finest quality because they are made in long lengths, that macaroni and spaghetti products which are not made in long lengths are not genuine and are not of the finest quality, that macaroni and spaghetti products which are not offered for sale in long lengths are not genuine and are not of the finest quality and that the length in which spaghetti and macaroni products are offered for sale is a true criterion of the genuineness and quality of such products and of the length in which such products were made.

PAR. 3. The said statements and representations of the respondent, used and disseminated as aforesaid, are grossly exaggerated, misleading, and untrue. In truth and in fact, genuine macaroni and spaghetti products containing the finest quality ingredients are made in long lengths and in short lengths and are offered for sale and sold in such forms. Genuine macaroni and spaghetti products containing the finest quality ingredients are made in long lengths and are thereafter cut into short lengths and are offered for sale and sold in short lengths. The length in which macaroni and spaghetti products are offered for sale is not a true criterion of the quality or genuineness of such products or of the length in which such products were made.

PAR. 4. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to said products, has had and now has the capacity and tendency to, and does, and did 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 purchasing substantial amounts of said products of respondent 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 the 24th day of March 1939, issued and served its complaint in this proceeding upon respondent John B. Canepa 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. 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 Curtis C. Shears, Esq., attorney for the Commission, and in opposition to the allegations of the complaint by John Harrington, Esq., attorney for the respondent before Randolph Preston, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, oral arguments 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, John B. Canepa Co., is a corporation organized and doing business under and by virtue of the laws of the State of Illinois and having its principal office and place of business at 30 West Grand Avenue, in the city of Chicago, in the State of Illinois. It is now, and for more than 2 years last past has been engaged in the manufacture, sale, and distribution of macaroni and spaghetti products, maintaining a course of trade in said products among and between various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business during the period hereinbefore mentioned, the respondent has disseminated or caused to be disseminated in interstate commerce advertisements, booklets, and labels attached to its products, for the purpose of induc-

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ing increased sales of same. Among and typical of said advertisements and other aforesaid representations are the following:

I hate to brag, but only the finest macaroni is made long—

and

I hate to brag, but genuine Spaghetti is made long.

Since 1860, Red Cross Macaroni products have borne the reputation of being the finest quality possible to manufacture. Insist on Red Cross products, packed in the original full length packages. This is your guarantee against inferior substitutes. You may have wondered at times why Red Cross Macaroni and Spaghetti by comparison appear unusually long. There is a very definite reason for this.

On or about July 12, 1938, the respondent changed its advertisements and the representations on its packages as aforesaid from the language above quoted, and in lieu thereof made use of the following:

I hate to brag, but genuine Macaroni is made long.

and

I hate to brag, but genuine Spaghetti is made long.

PAR. 3. Respondent has packed and packs, sold and sells, distributed and distributes its spaghetti and macaroni in long containers. Booklets and other advertising matter containing the aforesaid statements and representations also contain, in direct connection therewith, pictorial representations of the long containers in which respondent sells and distributes its products. By the means and in the manner aforesaid, together with other statements of similar import disseminated as aforesaid, respondent has represented and represents to prospective and potential purchasers in various States of the United States and in the District of Columbia that its macaroni and spaghetti products are of the finest quality because they are made in long lengths, and that the macaroni and spaghetti products of other manufacturers which are not made in long lengths are not genuine and not of the finest quality, and that the length in which macaroni and spaghetti products are offered for sale is the true criterion of the genuineness and quality of such products.

PAR. 4. Said statements and representations used and disseminated by the respondent as aforesaid, are misleading and unfair. In truth and in fact, genuine macaroni and spaghetti products of the finest quality are made both in long lengths and in short lengths, and are offered for sale in both such forms. Genuine macaroni and spaghetti of the finest quality are in some instances first made in long lengths and thereafter cut into short lengths, and in this latter form are offered for sale and sold. The length in which macaroni and spa-

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ghetti products are offered for sale is not a criterion of the quality and genuineness of the product.

PAR. 5. The use by the respondent of the foregoing false, misleading, and deceptive statements, representations, and advertisements, disseminated as aforesaid, with reference to its products and, by comparison, to the products of other manufacturers, have had and now have the capacity and tendency to, and did and do, 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 into purchasing substantial quantities of said products of respondent because of such mistaken and erroneous opinion or belief, thus created.

## 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, the answer of the respondent, testimony and other evidence taken before Randolph Preston, 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 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, John B. Canepa 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 macaroni or spaghetti products, 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 products, which advertisements represent, directly or through implication:

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That the lengths in which macaroni or spaghetti products are manufactured or sold by the respondent, or any of its competitors, are in any way indicative of the genuineness or quality of such products.

*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  
INDIAN RIVER MEDICINE COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3940. Complaint, Nov. 3, 1939—Decision, Apr. 17, 1940*

Where a corporation engaged in compounding and in selling and distributing its "Scalf's Indian River Tonic" to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution in commerce as aforesaid, of products for use in connection with treatment of ailments, diseases, and conditions for which it represented and claimed its preparation to be a treatment, and including many who do not falsely represent their products or the benefits to be derived from the use thereof; in advertisements of its said preparation which it disseminated and caused to be disseminated through the mails, insertion in newspapers and periodicals of general circulation, and circulars and other printed or written matter distributed in commerce among the various States, and through continuities broadcast from stations of extrastate audience, and otherwise, and which were intended and likely to induce direct or indirect purchase of its said preparation—

- (a) Represented, directly or indirectly, that its said "Scalf's Indian River Tonic" would prevent and cure colds and build up resistance to other minor ailments, and that it constituted a competent or effective remedy or cure for rheumatism and competent and effective treatment for removing or overcoming causes of such symptomatic conditions as sleeplessness, nervousness, indigestion, and aches and pains in the head and joints; and
- (b) Represented, as aforesaid, that it was a cure or remedy for ailments of the liver, kidneys, and stomach and would increase weight, restore strength, and build up the general health of the user, and was composed of natural vegetable ingredients, and constituted a competent cure or remedy for asthma and had substantial value in the treatment thereof, and afforded positive or certain relief from chronic ailments;

Facts being it would not prevent or cure colds, serve to build up resistance to other ailments, was not a competent or effective cure or remedy for rheumatism, had no value for removing or overcoming causes of sleeplessness, nervousness, or indigestion, and was not a cure or remedy for and had no therapeutic value in the treatment of other ailments and conditions above set forth, would not accomplish results claimed therefor as aforesaid, and was not composed of natural vegetable ingredients, and would not afford positive or certain relief for any ailments, and its aforesaid statements, representations, and advertisements were false and misleading;

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 of causing substantial portion of said public, because of such belief, to purchase its product, and with the result that trade was thereby diverted unfairly to it from its competitors likewise

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engaged in sale and distribution in commerce, as aforesaid, of similar medicinal preparations or those intended for similar usage:

*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. Jesse 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 Indian River Medicine 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. Indian River Medicine Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Tennessee and having its office and principal place of business in La Follette, State of Tennessee. Respondent is now, and has been for more than one year last past, engaged in the business of compounding, selling, and distributing a medicinal or pharmaceutical preparation designated as "Scalf's Indian River Tonic."

Respondent causes its said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Tennessee to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 2. 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 its said business, respondent is now, and has been for some time last past, engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing in commerce among the various States of the United States and in the District of Columbia preparations for use in connection with the treatment of ailments, diseases, and conditions of the human body for which respondent represents and claims its preparation to be a treatment.

PAR. 4. In the course and conduct of its aforesaid business, 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 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 thereof located in various States of the United States other than the State from 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 statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

Low resistance, \* \* \* is the main cause of a great many ailments, especially is this true in the case of a bad cold. Let me urge then the use of Scalf's Indian River Tonic as a cold preventative as it not only keeps your resistance built up but helps you in warding off the dangers of minor ailments.

Scalf's Indian River Tonic \* \* \* a leader among America's health builders.

For 18 weeks I was down with rheumatism, could hardly walk so I heard you speaking on the radio of this Indian River Tonic. I began taking it and in a short time I was well and strong again.

Winter time brings colds and coughs, and colds and coughs result—all too often—in a badly run-down condition that frequently leads into other more serious complications. Begin Now building up that body of yours so that—by the attainment of vigorous health—you will be able to quickly Throw Off all the most common of cold-weather ailments. For the proper conditioning of your system, Your Druggist will strongly recommend the daily use of Scalf's Indian River Tonic.

A natural Vegetable Compound. \* \* \*

Nature's Own Health Builder.

I feel there is no remedy that can be compared with Scalf's Indian River Tonic for stomach trouble.

\* \* \* If you are nervous, cannot sleep at night, tired and worn out when you arise in the morning. If your head aches day after day and you feel you cannot carry on, if your joints ache and pain then Nature has placed her red lantern of danger. It is time to set about getting rid of the cause of such symptoms. Start using Scalf's Indian River Tonic Today.

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I was suffering from what was claimed to be kidney poison. This had brought on a serious nervous condition and my resistance was gone. Scalf's Indian River Tonic brought back my health and strength.

For many years I suffered with a chronic illness that I had been unable to overcome. I could not digest my food. Gas pressure was extremely great and seemed to affect my heart action. My liver did not function properly and my kidneys were in a serious condition. I could not eat or sleep and naturally my nervous system was wrecked. I decided to try Scalf's Indian River Tonic and used an entire six bottle treatment. The results have been amazing. I eat most anything I want. I sleep like a baby.

Scalf's Indian River Tonic \* \* \* certified product of merit that had passed a strict and rigid medical test.

My father was in a very critical condition as a result of flu, run down and it seemed a general broken down condition of his nervous system. He could not regain his health, but finally used Scalf's Indian River Tonic. He is entirely well.

I was subject to colds, and it seemed I could not rid myself of them. I finally started using Scalf's Indian River Tonic \* \* \* I have not had a bad cold since.

Scalf's Indian River Tonic \* \* \* Is \* \* \* Manufactured According to a Formula Described to \* \* \* Stimulate the Blood Stream.

It is just the thing for you in your chronic ailments. It brings relief \* \* \* certain relief.

Scalf's Indian River Tonic \* \* \* gives you the added energy that you need.

I suffered severely from Asthma. Scalf's Indian River Tonic worked a miracle in my case.

I lost my appetite and strength \* \* \* weighed 93 pounds \* \* \* unable to do any work. I began with Scalf's Indian River Tonic and was amazed at how my appetite improved \* \* \* my strength came back and I weighed 127 pounds.

PAR. 5. Through the use of the representations hereinbefore set forth and others similar thereto not specifically herein set out, 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 or indirectly, that its said product will prevent and cure colds and build up resistance to other minor ailments; that it is a competent and effective remedy or cure for rheumatism; that said preparation is a competent and effective treatment for removing or overcoming the causes of such symptomatic conditions as sleeplessness, nervousness, indigestion and gas pressure, aches and pains in the head and joints; that it is a cure or remedy for ailments of the liver, kidneys, and stomach; that it will improve the appetite, increase the weight, restore the strength and build up the general health of the user; that said product is composed of natural vegetable ingredients; that it is a competent cure or remedy for asthma and has substantial value in the treatment thereof; that it affords positive or certain relief from chronic ailments.

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PAR. 6. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation will not prevent or cure colds, nor will it serve to build up resistance to other ailments. It is not a competent or effective cure or remedy for rheumatism. It has no value as a competent or effective treatment for removing or overcoming the causes of sleeplessness, nervousness, indigestion, or gas pressure. It is not a cure or remedy for, nor has it any therapeutic value in the treatment of, ailments of the liver, kidneys, or stomach. It will not improve the appetite or increase the weight or restore the strength or build up the health of the user. Said preparation is not composed of natural vegetable ingredients. It will not remove the cause of aches or pains in the head or joints. It is not a cure or remedy for, nor has it any therapeutic value in the treatment of, asthma. It will not afford positive or certain relief for any ailment.

PAR. 7. Among the competitors of respondent as referred to in paragraph 3 herein are many who do not falsely represent their products or the benefits to be derived from the use thereof.

PAR. 8. The use by the respondent of the foregoing, false, deceptive and misleading statements, representations and claims with respect to its said preparation, disseminated as aforesaid, 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 claims are true, and causes, and has caused, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product. In consequence thereof trade has been diverted unfairly to respondent from its competitors and substantial injury has been done and is being done 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 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 November 3, 1939, issued and on November 6, 1939, served its complaint in this proceeding upon respondent, Indian River Medicine 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. Subsequent to the filing of the original answer, the Commission by order entered herein granted respondent's request for permission to withdraw its answer and to substitute therefor an answer admitting all of the material allegations of fact set forth in said complaint, with two exceptions therein specified, and waiving 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, Indian River Medicine Company, is a corporation organized and doing business under the laws of the State of Tennessee, with its office and place of business located at La Follette, Tenn.

Respondent is now, and has been for more than 1 year last past, engaged in the business of compounding, selling, and distributing a medicinal or pharmaceutical preparation designated "Scalf's Indian River Tonic."

Respondent causes its said preparation, when sold, to be transported from its aforesaid place of business in the State of Tennessee to the purchasers thereof located in various other States of the United States and in the District of Columbia.

**PAR. 2.** 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 its said business, respondent is now and has been for some time last past engaged in substantial competition with other corporations and with firms and individuals likewise engaged in the business of selling and distributing in commerce among the various States of the United States and in the District of Columbia a preparation for use in connection with the treatment of ailments, diseases, and conditions of the human body for which respondent represents and claims its preparation to be a treatment.

**PAR. 4.** In the course and conduct of its aforesaid business, 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

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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 thereof located in various States of the United States other than the State from 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, 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 statements and representations contained in said advertisements disseminated and caused to be disseminated as aforesaid are the following:

Low resistance, \* \* \* is the main cause of a great many ailments, especially is this true in the case of a bad cold. Let me urge them the use of Scalf's Indian River Tonic as a cold preventative as it not only keeps your resistance built up but helps you in warding off the dangers of minor ailments.

Scalf's Indian River Tonic \* \* \* a leader among America's health builders.

For 18 weeks I was down with rheumatism, could hardly walk so I heard you speaking on the radio of this Indian River Tonic. I began taking it and in a short time I was well and strong again.

Winter time brings colds and coughs, and colds and coughs result—all too often—in a badly run-down condition that frequently leads into other more serious complications. Begin NOW building up that body of yours so that—by the attainment of vigorous health—you will be able to quickly Throw Off all the most common of cold-weather ailments. For the proper conditions of your system, Your Druggist will strongly recommend the daily use of Scalf's Indian River Tonic.

A natural Vegetable Compound \* \* \*.

Nature's Own Health Builder.

I feel there is no remedy that can be compared with Scalf's Indian River Tonic for stomach trouble.

\* \* \* If you are nervous, cannot sleep at night, tired and worn out when you arise in the morning. If your head aches day after day and you feel you cannot carry on, if your joints ache and pain then Nature has placed her red lantern of danger. It is time to set about getting rid of the cause of such symptoms. Start using Scalf's Indian River Tonic today.

I was suffering from what was claimed to be kidney poison. This had brought on a serious nervous condition and my resistance was gone. Scalf's Indian River Tonic brought back my health and strength.

For many years I suffered with a chronic illness that I had been unable to overcome. I could not digest my food. Gas pressure was extremely great and

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seemed to affect my heart action. My liver did not function properly and my kidneys were in a serious condition. I could not eat or sleep and naturally my nervous system was wrecked. I decided to try Scalf's Indian River Tonic and used an entire six bottle treatment. The results have been amazing. I eat most anything I want. I sleep like a baby.

Scalf's Indian River Tonic \* \* \* a certified product of merit that had passed a strict and rigid medical test.

My father was in a very critical condition as a result of flu, run down and it seemed a general broken down condition of his nervous system. He could not regain his health, but finally used Scalf's Indian River Tonic. He is entirely well.

I was subject to colds, and it seemed I could not rid myself of them. I finally started using Scalf's Indian River Tonic \* \* \* I have not had a bad cold since.

Scalf's Indian River Tonic \* \* \* is \* \* \* Manufactured According to a Formula Described to \* \* \* Stimulate the Blood Stream.

It is just the thing for you in your chronic ailments. It brings relief \* \* \* certain relief.

Scalf's Indian River Tonic \* \* \* gives you the added energy that you need.

I suffered severely from Asthma. Scalf's Indian River Tonic worked a miracle in my case.

I lost my appetite and strength \* \* \* weighed 93 pounds \* \* \* unable to do any work. I began with Scalf's Indian River Tonic and was amazed at how my appetite improved \* \* \* my strength came back and I weighed 127 pounds.

PAR. 5. The Commission finds that through the use of the statements and representations hereinbefore set forth in paragraph 4 hereof and others similar thereto, not specifically herein set out, 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 or indirectly, that its said product "Scalf's Indian River Tonic" will prevent and cure colds and build up resistance to other minor ailments; that it is a competent and effective remedy or cure for rheumatism; that it is a competent and effective treatment for removing or overcoming the causes of such symptomatic conditions as sleeplessness, nervousness, indigestion, aches, and pains in the head and joints; that it is a cure or remedy for ailments of the liver, kidneys and stomach; that it will increase the weight, restore the strength and build up the general health of the user; that it is composed of natural vegetable ingredients; that it is a competent cure or remedy for asthma and has substantial value in the treatment thereof; that it affords positive or certain relief from chronic ailments.

PAR. 6. The Commission finds that the aforesaid false and misleading statements, representations and advertisements set forth in paragraphs 4 and 5 hereof, which respondent made and makes with re-

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spect to the therapeutic value of its product, are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation will not prevent or cure colds, nor will it serve to build up resistance to other ailments. It is not a competent or effective cure or remedy for rheumatism. It has no value as a competent or effective treatment for removing or overcoming the causes of sleeplessness, nervousness, or indigestion. It is not a cure or remedy for, nor has it any therapeutic value in the treatment of ailments of the liver, kidneys, or stomach. It will not increase the weight, restore the strength or build up the health of the user. Said preparation is not composed of natural vegetable ingredients. It will not remove the cause of aches or pains in the head or joints. It is not a cure or remedy for, nor has it any therapeutic value in the treatment of asthma. It will not afford positive or certain relief for any ailment.

PAR. 7. Among the competitors of respondent as referred to in paragraph 3 hereof are many who do not falsely represent their products or the benefits to be derived from the use thereof.

PAR. 8. The use by the respondent of each and all of the foregoing false, deceptive and misleading statements, representations, and claims with respect to its said medicinal preparation disseminated as aforesaid, 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 claims are true, and causes, and has caused a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's product. As a result, trade has been diverted unfairly to respondent from its competitors who are likewise 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 similar medicinal preparations or other preparations intended for similar usage.

## 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

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forth in said complaint, with two exceptions therein specified, and states that it waives all intervening procedure and further hearing as to the facts, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Indian River Medicine 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 medical product "Scalf's Indian River Tonic," 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 a medical preparation containing drugs now designated by the name "Scalf's Indian River Tonic," or any other medical 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 medical preparation, which advertisements represent directly or through implication—

1. That respondent's preparation will prevent or cure colds or build up resistance to other bodily ailments.
2. That respondent's preparation is a cure or remedy for rheumatism.
3. That respondent's preparation has any therapeutic value in the treatment of the causes of such symptomatic conditions as sleeplessness, nervousness, indigestion, or aches and pains in the head or joints.
4. That respondent's preparation has any therapeutic value in the treatment of liver, kidney, or stomach disorders or that its use constitutes a cure or remedy for any of such disorders.
5. That respondent's preparation will increase weight, restore strength, or build up the health of the user thereof.
6. That respondent's preparation is composed of natural vegetable ingredients.
7. That respondent's preparation is a cure or remedy for asthma or that it has any therapeutic value in the treatment thereof.
8. That respondent's preparation affords positive or certain relief for any ailment.

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*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

EILEEN-JOY FASHIONS, INC., TEEN FROCKS, INC.; AND  
MORRIS SCHARF AND HENRY DUDKIN, INDIVIDUALLY,  
AND AS OFFICERS OF EILEEN-JOY FASHIONS, INC.  
AND TEEN FROCKS, INC., AND FORMERLY COPART-  
NERS TRADING AS EILEEN-JOY FASHIONSCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914*Docket 4038. Complaint, Feb. 23, 1940—Decision, Apr. 17, 1940*

Where two corporations and two individuals, former partners who were officers thereof and at all times since organization thereof dominated and controlled one or both, as case might be, engaged in manufacture of various grades and types of dresses and other wearing apparel for women, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such dresses and other articles of wearing apparel; in furtherance of a practice of falsely representing the constituent fiber or material of which their said products were made, through false representations on tags, labels, price lists, and in various advertising material, and through failure to disclose rayon content of certain of such products, and to induce purchase thereof and endeavor to aid jobbers, retailers, and other purchasers to procure customers' orders therefor—

- (a) Represented, as typical of their said acts and practices, certain of their fabrics as being composed of silk, product of cocoon of silk worm, through placing on and using in tags, labels, price lists, and various advertising circulars and other printed matter, term "Taffeta" as descriptive of material from which fabric in question was made, notwithstanding fact said fabric was not, as understood by members of purchasing public from said word and as associated with such word, used unqualified, to designate, describe, and refer to dress goods and other items of women's wearing apparel, silk, product of cocoon of silk worm, and products of which are and have long been held in great public esteem and confidence for their preeminent qualities;
- (b) Represented, as aforesaid and as typical of said acts and practices, certain of their fabrics as being composed of silk, product of cocoon of silk worm, and as below set forth, through placing on or using in tags, labels, price lists, and various advertising circulars and other printed matter, term "Pure Dye" as descriptive of material from which product in question was made, notwithstanding fact fabric in question was not made of silk, product of cocoon of silk worm, which had not been subject to a metallic bath and which, except for necessary dyeing and finishing materials, contained no other;
- (c) Represented, as aforesaid, certain of their fabrics as being composed of silk, product of cocoon of silk work, through placing on or using in tags, labels, price lists, and in various other advertising circulars and other printed matter, terms "Celanese" and "Celanese Clairanese Taffeta," notwithstanding fact product in question was not composed of silk, product of cocoon of silk work, but was made of material other than silk, or rayon, and words "Celanese" and "Celanese Clairanese," used either sepa-

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rately or in conjunction with word "Taffeta," or any other word or phrase of similar import or meaning, to designate or describe rayon, were not sufficiently well known and understood by purchasing and consuming public to indicate to or inform them that merchandise thus described, designated, or referred to was made, as aforesaid, of material other than silk, and of rayon; and

- (d) Advertised, offered for sale, and sold certain products composed of rayon which, when so made as to simulate silk, has appearance and feel thereof, and is by purchasing public practically indistinguishable therefrom, and is readily believed and accepted by said public as being silk, product of cocoon of silk worm, without indicating or disclosing on labels or tags used by them or in various advertising thereof, constituent rayon fibers or materials of said products, of which they were composed entirely;

With result of placing in the hands of uninformed or unscrupulous jobbers and retailers, through practice of furnishing false and misleading labels, tags, and other advertising material to jobbers, retailers, and other customers, and causing such labels, etc., to be placed upon products purchased from them, and through use of labels, tags, and representations in various advertising which do not indicate or disclose rayon content of their products, means and instrumentality whereby such dealers may, and do, deceive members of purchasing public into erroneous and mistaken belief that, when purchasing garments and material made from rayon, they are buying those made from silk, and with tendency and capacity, through such practices and such nondisclosure, to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that their said products were silk, and with result, by reason of such belief, that number of consuming and purchasing public bought substantial volume of said products, and trade was diverted unfairly to them from their competitors engaged in sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of various kinds and grades of dresses and wearing apparel for women and who truthfully represent the constituent fibers and material 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. 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 Eileen-Joy Fashions, Inc., a corporation, and Teen Frocks, Inc., a corporation, and Morris Scharf and Henry Dudkin, individually and as officers of Eileen-Joy Fashions, Inc. and Teen Frocks, Inc. and as copartners formerly trading as Eileen-Joy Fashions, have violated the provisions of said act; and it appearing to the Commission that a proceeding by it

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

PARAGRAPH 1. Respondent Morris Scharf whose address is Forest Hills, New York, and Henry Dudkin of 115 West One Hundred and Ninety-seventh Street, in the city and State of New York, were members of a copartnership for several years prior to December 24, 1938, known as Eileen-Joy Fashions. Eileen-Joy Fashions, Inc., is a corporation which was organized under the laws of the State of New York on the 22d day of July 1938, and has its office and principal place of business at 1375 Broadway in the city and State of New York. Teen Frocks, Inc., is a corporation which was organized under the laws of the State of New York in the year 1933, and has its office and principal place of business at 520 Eighth Avenue in the city of New York and State of New York. The respondent Morris Scharf is the president of Eileen-Joy Fashions, Inc., and at various times between the years 1933 and 1938 served as president of respondent Teen Frocks, Inc. The respondent Henry Dudkin is president of Teen Frocks, Inc., and at various times between the years 1933 and 1938 served as secretary and treasurer of respondent Teen Frocks, Inc.

The two corporate respondents herein have been at all times since their organization dominated and controlled in their corporate affairs and activities by either one or both of the two respondents Morris Scharf and Henry Dudkin.

PAR. 2. Respondents are now and for several years last past have been engaged in the business of manufacturing, selling, and distributing various grades and types of dresses and other wearing apparel for women.

Respondents cause said products when sold to be transported from their places 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.

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. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations, partnerships, firms, and individuals engaged in the business of selling and distributing dresses and other articles of wearing apparel for women.

PAR. 4. In the course and conduct of their said business the respondents have engaged in the practice of falsely representing the constituent

fiber or material of which the dresses and other articles of wearing apparel for women sold and distributed by them are made by means of false representations on tags, labels, price lists, and in various advertising material and by the failure to disclose the rayon content of certain of their products. In furtherance of this practice and for the purpose of inducing the purchase of their products and endeavoring to aid jobbers, retailers, and other purchasers of their products to procure customers' orders therefor, respondents have caused false statements and representations purporting to be descriptive of their products and the constituent fibers or materials thereof to be inserted in circulars, price lists, newspapers, and other publications distributed among purchasers and prospective purchasers of said products.

PAR. 5. Among and typical of the acts and practices above described, the respondents represent certain of their fabrics as being composed of silk, the product of the cocoon of the silkworm. As an example of this practice, respondents place on tags, labels, price lists, and in various advertising circulars and other printed matter the following terms or similar terms: "Taffeta," and "Pure Dye" as descriptive of the material from which their products are made. By these means respondents represent that the fabrics so described are composed of silk, the product of the cocoon of the silkworm, when in truth and in fact said fabrics are composed entirely of rayon.

PAR. 6. Over a period of many years the word "silk" 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. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a number of distinctive terms have been applied to the fabrics resulting from the different types of weaving of silk fiber. Among such terms is the term "Taffeta." Dress goods and other items of women's wearing apparel designated, described and referred to as "Taffeta" have been for a long time and at the present time still are associated in the public mind with fabrics made from silk, the product of the cocoon of the silkworm. Whenever the term "Taffeta" is used to describe or refer to dress goods or other items of women's apparel and such term is not immediately accompanied by other terms or words adequately and accurately naming the fibers of which such materials are made, such term is understood by members of the purchasing public as designating, describing, and referring to materials made from silk, the product of the cocoon of the silkworm.

The words "Pure Dye" have been for a long time and still are associated in the minds of a substantial portion of the purchasing and con-

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suming public with, and as designating or meaning, unweighted silk, the product of the cocoon of the silkworm, which has not been subjected to a metallic bath, and which contains no other materials except necessary dyeing and finishing materials.

PAR. 7. Another and typical act and practice engaged in by the respondents in falsely representing their products and fabrics, is placing on tags, labels, price lists and in various advertising circulars and other printed matter the following terms: "Celanese" and "Celanese Clairanese Taffeta," to designate or describe products composed entirely of rayon. In other cases, the labels and tags used by the respondents as well as representations contained in the various advertising do not indicate or disclose the constituent fibers or material of said products, which are in fact composed entirely of rayon.

PAR. 8. "Rayon" is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk and when so manufactured 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 manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

The words "Celanese" and "Celanese Clairanese," when used either separately or in combination or conjunction with the word "Taffeta," or any other word or phrase of similar import or meaning, to designate or describe rayon, are not sufficiently well-known and understood by the purchasing and consuming public to indicate to or inform them that the merchandise so described, designated, or referred to is made of a material other than silk, to wit, rayon.

PAR. 9. By the use of the practice of furnishing false and misleading labels, tags and other advertising material to jobbers, retailers, and other customers, and causing them to be placed upon the products which they purchase from respondents, and also by the use of labels, tags, and representations in various advertising which do not indicate or disclose the rayon content of its products, the respondents place in the hands of uninformed or unscrupulous jobbers and retail dealers a means and instrumentality whereby said dealers may and do deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing garments or material manufactured from silk, which are in fact manufactured and composed entirely of rayon.

PAR. 10. The use by respondents of the aforesaid acts and practices including the failure to disclose that their products are made of rayon 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 respondents' products are composed of silk, the product of the cocoon of the silkworm. On account of this erroneous belief a number of the consuming and purchasing public purchase 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 in commerce between and among the various States of the United States and in the District of Columbia of various kinds and grades of dresses and wearing apparel for women, and who truthfully represent the constituent fibers or material of their products. 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. 11. 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 the 23d day of February 1940, issued and served its complaint in this proceeding upon respondents, Eileen-Joy Fashions, Inc., a corporation; Teen Frocks, Inc., a corporation; and Morris Scharf and Henry Dudkin, individually and as officers of Eileen-Joy Fashions, Inc. and Teen Frocks, Inc., and formerly copartners trading as Eileen-Joy Fashions, 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 February 29, 1940, the respondents filed an answer, and on March 18, 1940, respondents filed their supplemental answer in which supplemental answer respondents admitted all of 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 come on for final hearing before the Commission on the said complaint and the supplemental 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 Morris Scharf whose address is Forest Hills, N. Y., and Henry Dudkin of 115 West One Hundred and Ninety-seventh Street, in the city and State of New York, were members of a copartnership for several years prior to December 24, 1938, known as Eileen-Joy Fashions. Eileen-Joy Fashions, Inc., is a corporation which was organized under the laws of the State of New York on the 22d day of July 1938, and has its office and principal place of business at 1375 Broadway in the city and State of New York. Teen Frocks, Inc., is a corporation which was organized under the laws of the State of New York in the year 1933, and has its office and principal place of business at 520 Eighth Avenue in the city of New York and State of New York. The respondent Morris Scharf is the president of Eileen-Joy Fashions, Inc., and at various times between the years 1933 and 1938 served as president of respondent Teen Frocks, Inc. The respondent Henry Dudkin is president of Teen Frocks, Inc., and at various times between the years 1933 and 1938 served as secretary and treasurer of respondent Teen Frocks, Inc. The former partnership of Eileen-Joy Fashions, composed of Henry Dudkin and Morris Scharf, was dissolved and discontinued on or about July 22, 1938, and at that time was succeeded by the corporate respondent, Eileen-Joy Fashions, Inc.

The two corporate respondents herein have been at all times since their organization dominated and controlled in their corporate affairs and activities by either one or both of the two respondents Morris Scharf and Henry Dudkin.

PAR. 2. Respondents are now and for several years last past have been engaged in the business of manufacturing, selling, and distributing various grades and types of dresses and other wearing apparel for women.

Respondents cause said products when sold to be transported from their places 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.

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. 3. Respondents are engaged in substantial competition in commerce among and between the various States of the United States and the District of Columbia with other corporations, partnerships, firms, and individuals engaged in the business of selling and distributing dresses and other articles of wearing apparel for women.

PAR. 4. In the course and conduct of their said business the respondents have engaged in the practice of falsely representing the constituent fiber or material of which the dresses and other articles of wearing apparel for women sold and distributed by them are made by means of false representations on tags, labels, price lists, and in various advertising material and by the failure to disclose the rayon content of certain of their products. In furtherance of this practice and for the purpose of inducing the purchase of their products and endeavoring to aid jobbers, retailers, and other purchasers of their products to procure customers' orders therefor, respondents have caused false statements and representations purporting to be descriptive of their products and the constituent fibers or materials thereof to be inserted in circulars, price lists, newspapers, and other publications distributed among purchasers and prospective purchasers of said products.

PAR. 5. Among and typical of the acts and practices above described, the respondents represent certain of their fabrics as being composed of silk, the product of the cocoon of the silkworm. As an example of this practice, respondents place on tags, labels, price lists, and in various advertising circulars and other printed matter the following terms or similar terms: "Taffeta," and "Pure Dye" as descriptive of the material from which their products are made. By these means respondents represent that the fabrics so described are composed of silk, the product of the cocoon of the silkworm, when in truth and in fact said fabrics are composed entirely of rayon.

PAR. 6. Over a period of many years the word "silk" 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. Silk products for many years have held and still hold great public esteem and confidence for their preeminent qualities. Silk fiber has long been woven into a variety of fabrics and a number of distinctive terms have been applied to the fabrics resulting from the different types of weaving of silk fiber. Among such terms is the term "Taffeta." Dress goods and other items of women's wearing apparel designated, described and referred to as "Taffeta" have been for a long time and at the present time still are associated in the public mind with fabrics made from silk, the product of the cocoon of the silkworm. Whenever the term "Taffeta" is used to describe or refer to dress goods or other items of women's apparel and such term is not immediately accompanied by other terms or words adequately and accurately naming the fibers of which such materials are made, such term is understood by members of the purchasing public as desig-

nating, describing, and referring to materials made from silk, the product of the cocoon of the silkworm.

The words "Pure Dye" have been for a long time and still are associated in the minds of a substantial portion of the purchasing and consuming public with, and as designating or meaning, unweighted silk, the product of the cocoon of the silkworm, which has not been subjected to a metallic bath, and which contains no other materials except necessary dyeing and finishing materials.

PAR. 7. Another and typical act and practice engaged in by the respondents in falsely representing their products and fabrics, is placing on tags, labels, price lists and in various advertising circulars and other printed matter the following terms: "Celanese" and "Celanese Clairanese Taffeta," to designate or describe products composed entirely of rayon. In other cases, the labels and tags used by the respondents as well as representations contained in the various advertising do not indicate or disclose the constituent fibers or material of said products, which are in fact composed entirely of rayon.

PAR. 8. "Rayon" is a chemically manufactured fiber or fabric which may be manufactured so as to simulate silk and when so manufactured 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 manufactured to simulate silk and not designated as rayon, is readily believed and accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

The words "Celanese" and "Celanese Clairanese," when used either separately or in combination or conjunction with the word "Taffeta," or any other word or phrase of similar import or meaning, to designate or describe rayon, are not sufficiently well known and understood by the purchasing and consuming public to indicate to or inform them that the merchandise so described, designated or referred to is made of a material other than silk, to wit, rayon.

PAR. 9. By the use of the practice of furnishing false and misleading labels, tags, and other advertising material to jobbers, retailers, and other customers, and causing them to be placed upon the products which they purchase from respondents, and also by the use of labels, tags, and representations in various advertising which do not indicate or disclose the rayon content of its products, the respondents place in the hands of uninformed or unscrupulous jobbers and retail dealers a means and instrumentality whereby said dealers may and do deceive or mislead members of the purchasing public into the erroneous and mistaken belief that they are purchasing garments or material manufactured from silk, which are in fact manufactured and composed entirely of rayon.

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PAR. 10. The use by respondents of the aforesaid acts and practices including the failure to disclose that their products are made of rayon 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 respondents' products are composed of silk, the product of the cocoon of the silkworm. On account of this erroneous belief a number of the consuming and purchasing public purchase 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 in commerce between and among the various States of the United States and in the District of Columbia of various kinds and grades of dresses and wearing apparel for women, and who truthfully represent the constituent fibers or material of their products.

## CONCLUSION

The aforesaid acts and practices of respondents 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 original and supplemental answer of respondents, in which supplemental 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, Eileen-Joy Fashions, Inc., a corporation, and Teen Frocks, Inc., a corporation, and their officers, representatives, agents, and employees, and Morris Scharf and Henry Dudkin, individually and as officers of Eileen-Joy Fashions, Inc., and Teen Frocks, Inc., and their agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of dresses and other wearing apparel for women in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified terms "satin," "taffeta," "crepe de chine," "crepe," or any other descriptive terms of similar import or meaning

indicative of silk to describe, designate or in any manner refer to any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm, provided, however, that when said words or descriptive terms are used truthfully to designate or describe the type of weave, construction or finish, such words must be qualified by using in connection and conjunction therewith in letters of at least equal size and conspicuousness a word or words clearly and accurately naming or describing the fibers or materials from which said products are made.

2. Using the unqualified term "silk," or any other term or terms of similar import or meaning indicative of silk to describe or designate any fabric or product which is not composed wholly of silk the product of the cocoon of the silkworm, provided that in the case of a fabric or product composed in part of silk and in part of materials other than silk, such term or similar terms may be used as descriptive of the silk content when immediately accompanied by a word or words of equal conspicuousness accurately describing and designating such other materials in the order of their predominance by weight, beginning with the largest single constituent.

3. Using words "pure dye" 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, provided that in the case of a fabric or material composed in part of unweighted silk and in part of materials other than unweighted silk, such words may be used as descriptive of the unweighted 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.

4. Advertising, offering for sale, or selling fabrics, garments, or other products, composed in whole or in part of rayon, without clearly disclosing 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 respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

## Complaint

## IN THE MATTER OF

LENOIR WOODFINISHING COMPANY, INC., AND ARTHUR  
G. SPENCER, TRADING AS LENOIR SOLVENT COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 23, 1914*Docket 4048. Complaint, Mar. 5, 1940—Decision, Apr. 17, 1940*

Where a corporation and an individual, who was president and sales manager thereof and formulated and controlled its sales methods, engaged in manufacture of paints, varnishes, stains, thinners, sealers, and other woodfinishing products, and in sale and distribution thereof to various woodfinishing concerns and furniture manufacturers at various points in the several States, in substantial competition with others engaged in sale of woodfinishing materials in commerce among the various States and in the District of Columbia—

Gave substantial sums of money and other things of value to officials and employees of customers or prospective customers, without said customers' knowledge or consent, for the purpose of inducing such officials or employees to purchase their woodfinishing materials for said customers' use or recommend purchase thereof, or as payments to said officials and employees for having induced such purchase or recommended such use, and thus offered to pay and paid or gave, without knowledge or consent of employer-customers involved, to finishing room foremen of customers or prospective customers, fixed fee of certain amount per drum for every drum of such materials purchased from them by said foremen's customer employers, and in other instances gave customer employees fixed percentages of purchase price of all materials thus bought by such customer employers;

With effect of diverting trade unfairly to them from their competitors engaged also in sale of woodfinishing materials, and who do not indulge in such acts and practices and with tendency and capacity so to do; 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 in commerce and unfair and deceptive acts and practices therein.

*Mr. Gerard A. Rault* for the Commission.

*Mr. Don A. Walser*, of Lexington, N. 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 Lenoir Woodfinishing Co., Inc., a corporation, and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., hereinafter referred to as respondents,

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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. Lenoir Woodfinishing Co., Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal place of business located at Lenoir, N. C. Said respondent is now and since its incorporation in 1938 has been in the business of manufacturing paints, varnishes, stains, thinners, sealers, and other woodfinishing products and in the sale thereof to various woodfinishing concerns and furniture manufacturers in commerce between and among the various States of the United States.

Respondent Arthur G. Spencer is an individual and is president and sales manager of respondent corporation, and as such formulates and controls its methods of selling its products. Prior to the incorporation of respondent Lenoir Woodfinishing Co., Inc., respondent Arthur G. Spencer was in the business of manufacturing woodfinishing materials under the trade name of Lenoir Solvent Co. with his principal place of business located in Lenoir, N. C., and of selling said products to various woodfinishing concerns and furniture manufacturers in commerce between and among the various States of the United States.

PAR. 2. Respondent Lenoir Woodfinishing Co., Inc., causes said woodfinishing materials when sold to be transported from its place of business in North Carolina to its customers located in various other States of the United States. Said respondent maintains a course of trade in said woodfinishing materials in commerce between and among the various States of the United States.

For several years prior to the date of incorporation of Lenoir Woodfinishing Co., Inc., Arthur G. Spencer, trading as Lenoir Solvent Co., caused the woodfinishing materials manufactured by him when sold to be transported from his place of business in the State of North Carolina to his customers located in various other States of the United States and maintained a course of trade in said woodfinishing materials in commerce between and among the various States of the United States.

PAR. 3. Respondent Lenoir Woodfinishing Co., Inc., since the date of its incorporation in the course and conduct of its said business and prior to that date respondent Arthur G. Spencer, trading as Lenoir Solvent Co., have been in substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale of woodfinishing materials 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 said businesses, respondents have given substantial sums of money and other things of value to certain officials and employees of respondents' customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials and employees to purchase respondents' woodfinishing materials for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials and employees for having induced the purchase or recommended the use of respondents' products by their employers.

In some instances respondents have offered to pay and have paid to finishing room foremen employed by respondents' customers or prospective customers a fixed fee of \$5 per drum for every drum of woodfinishing materials purchased by their employers from respondents. In other instances, respondents have given some employees of respondents' customers 7 percent or 10 percent of the purchase price of all materials purchased from respondents by said customers. All of said payments and offers of payment have been made without the knowledge and consent of respondents' customers whose employees are so paid.

PAR. 5. The use by the respondents of the acts and practices hereinabove set forth were and are calculated to have, and have, a tendency and capacity to, and do, divert trade unfairly to respondents from their competitors also engaged in the business of selling woodfinishing materials, who do not indulge in said acts and practices.

As a consequence thereof, injury has been done and is now being done by respondents to competition in commerce between and among the various States of the United States.

PAR. 6. The aforesaid acts and practices, 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 the 5th day of March 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Lenoir Woodfinishing Co., Inc., and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., 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 March 29, 1940, the respondents filed their answer to said complaint, in which answer they 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, 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. Lenoir Woodfinishing Co., Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal place of business located at Lenoir, N. C. Said respondent was organized in the year 1938, and is now, and since the date of its organization has been, engaged in the business of manufacturing paints, varnishes, stains, thinners, sealers, and other woodfinishing products and in the sale and distribution thereof to various woodfinishing concerns and furniture manufacturers located at various points in the several States of the United States.

Respondent Arthur G. Spencer is an individual and is president and sales manager of respondent corporation, and as such formulates and controls its methods of selling its products. Prior to the date of the incorporation of respondent Lenoir Woodfinishing Co., Inc., respondent Arthur G. Spencer was engaged in the business of manufacturing such woodfinishing materials under the trade name Lenoir Solvent Co. with his principal place of business located at Lenoir, N. C., and in the sale and distribution of said products to various woodfinishing concerns and furniture manufacturers located at various points in the several States of the United States.

PAR. 2. Respondent Lenoir Woodfinishing Co., Inc., causes said woodfinishing materials when sold to be transported from its place of business in North Carolina to its customers located in various other States of the United States. Said respondent maintains a course of trade in said woodfinishing materials in commerce between and among the various States of the United States.

For several years prior to the date of incorporation of Lenoir Woodfinishing Co., Inc., Arthur G. Spencer trading as Lenoir Solvent Co., caused the woodfinishing materials manufactured by him when sold to be transported from his place of business in the State of North Carolina to his customers located in various other States of the United

States, and maintained a course of trade in said woodfinishing materials in commerce between and among the various States of the United States.

PAR. 3. Respondent Lenoir Woodfinishing Co., Inc., since the date of its incorporation, in the course and conduct of its said business, and prior to that date, respondent Arthur G. Spencer, trading as Lenoir Solvent Co., have been in substantial competition with other corporations and individuals, and with firms and partnerships engaged in the sale of woodfinishing materials in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The Commission finds that in the course and conduct of their said businesses, respondents have given substantial sums of money and other things of value to certain officials and employees of respondents' customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials or employees to purchase respondents' woodfinishing materials for use by their employers, or to recommend the purchase of the same by their employers, or as payments to said officials and employees for having induced the purchase or recommended the use of respondents' products by their employers.

In some instances respondents have offered to pay and have paid to finishing room foremen employed by respondents' customers or prospective customers, a fixed fee of \$5 per drum for every drum of woodfinishing materials purchased by their employers from respondents. In other instances respondents have given some employees of respondents' customers 7 percent or 10 percent of the purchase price of all materials purchased from said respondents by said customers. All of said payments and offers of payment have been made without the knowledge or consent of respondents' customers whose employees were so paid.

PAR. 5. The use by the respondents of the acts and practices hereinabove set forth were, and are, calculated to have and have a tendency and capacity to and do divert trade unfairly to respondents from their competitors also engaged in the business of selling woodfinishing materials, who do not indulge in said acts and practices.

As a consequence thereof, injury has been done and is now being done by respondents to competition in commerce between and among 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 and unfair

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and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST<sup>1</sup>

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 Lenoir Woodfinishing Co., Inc., its officers, and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., and 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 paints, varnishes, stains, thinners, sealers, and other woodfinishing products, in commerce as commerce is defined in the Federal Trade Commission Act, do cease and desist from giving sums of money and other things of value, to officials and employees of respondents' customers or prospective customers, without the knowledge or consent of said cus-

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<sup>1</sup>The Commission on June 18, 1940, issued modified order to cease and desist, as follows:

"This proceeding having been heard by the Federal Trade Commission upon the motion of the Commission's chief counsel that the order to cease and desist issued herein on April 17, 1940, be modified in certain respects specifically detailed in said motion, and it appearing that on May 23, 1940, the Commission ordered the respondents herein, within 10 days from the service upon them of a copy of said motion, to show cause why the order to cease and desist heretofore entered should not be modified as specified in said motion, and it further appearing that a copy of said order to show cause and said motion was served on the respondents herein on May 25 and 27, 1940, respectively, and it further appearing that respondents have failed to show cause within the 10-day period provided for why the motion of the Commission's chief counsel should not be granted, and the Commission having duly considered the matter, and being now fully advised in the premises;

*"It is ordered*, That the respondents, Lenoir Woodfinishing Co., Inc., its officers, and Arthur G. Spencer, individually and trading as Lenoir Solvent Co., and 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 paints, varnishes, stains, thinners, sealers and other wood finishing products, in commerce, as commerce is defined in the Federal Trade Commission Act, do cease and desist from giving, or offering to give, sums of money or other things of value to officials or employees of respondents' customers or prospective customers, without the knowledge or consent of said customers, for the purpose of inducing said officials or employees to purchase respondents' wood finishing materials for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials or employees for having induced the purchase or recommended the use of respondents' products by their employers.

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

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tomers, for the purpose of inducing said officials and employees to purchase respondents' woodfinishing materials for use by their employers or to recommend the purchase of the same by their employers, or as payments to said officials and employees for having induced the purchase or recommended the use of respondents' products by their employers;

*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  
KAUFMANN BROS. & BONDY, INC.

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

*Docket 3881. Complaint, Aug. 28, 1939—Decision, Apr. 22, 1940*

Where a corporation engaged in sale and distribution of pipes and other articles of merchandise to purchasers in the various other States and in the District of Columbia; in soliciting sale of and in selling and distributing its merchandise—

Furnish various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery scheme, through which said merchandise was sold and distributed to ultimate consumers thereof wholly by lot or chance, and distribution of various push cards and punchboards for use in sale and distribution thereof by means of game of chance, gift enterprise, or lottery scheme, in accordance with various plans and including as typical (1) scheme by which persons succeeding in selecting from list of 50 girls' names that corresponding to name concealed under card's master seal as disclosed after sale of chances thereon, received pipe being thus disposed of, and customer paid for chance amount dependent upon number secured from disc accompanying name of girl selected, so that fact as to whether purchaser received said article or nothing for amount of money paid was determined by lot or chance; (2) scheme under which number of pipes being thus disposed of were secured by certain purchasers securing particular numbers, and purchasers who did not secure one of numbers in question or punch last number in one of four sections into which boards were divided received nothing further for their nickels; and (3) various other assortments of pipes and punchboards involving lot or chance feature and similar to those above described and varying therefrom in detail only; and

Supplied thereby to, and placed in the hands of, others means of conducting lotteries in the sale of its products, in accordance with sales plans above set forth, by retail dealer purchasers, whether as direct or indirect buyers of products in question, who exposed and sold same to purchasing public in accordance with such plans 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;

With the result that many persons were attracted by said sales plans or methods employed by it in sale and distribution of its 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 who do not use same or equivalent methods and with result, through use of such methods and because of said game of chance, of diverting unfairly trade to it from its competitors aforesaid; 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.

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## Complaint

*Mr. L. P. Allen, Jr.* for the Commission.

*Abberley, Bryde, MacFall & Amon*, 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 Kaufmann Bros. & Bondy, 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 to the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH. 1. Respondent, Kaufman Bros. & Bondy, Inc., is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 740 Broadway, West New York, N. J. Respondent is now, and for sometime last past has been, engaged in the sale and distribution of pipes 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 its aforesaid place of business in New Jersey 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 sometime 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 corporations and with partnerships and individuals 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its 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. Respondent distributes, and has distributed, various push cards and punchboards for use, or which are used, in the sale and distribution of its pipes and other merchandise to the consuming public by means of a game of chance, gift enterprise, or lottery scheme. Certain of said assortments are hereinafter described for the

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purpose of showing the methods used by respondent, but this list is not all inclusive of the various assortments, nor does it include all of the details of the several plans which respondent has been or is using in the distribution of pipes and other articles of merchandise by lot or chance:

(a) One assortment consists of a pipe, together with a device commonly called a push card. The push card contains 50 partially perforated discs, and on the face of each disc is printed the word "Push." Beneath each disc is a feminine name and a space is provided on the face of said card for writing in the name of the purchaser opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc 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 said card. The purchaser selecting the feminine name corresponding to the one under the master seal receives the pipe. The push card bears a legend or instructions as follows:

Select Your Favorite Girl's Name  
and Receive a \$10.00  
(picturization of a pipe)  
Flame Grain Kay Woodie.  
Numbers 1 to 35 pay what you draw  
Numbers 36 to 50 pay only 25¢  
No higher.

The sale of respondent's pipe by means of said push card is made in accordance with the above described legend or instructions. Said pipe is allotted to the customers or purchasers in accordance with the above legend or instructions. The fact as to whether a purchaser receives the pipe or nothing for the amount of money paid is thus determined by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of pipes along with push cards involving a lot or chance feature, but such assortments are similar to the one above described and vary only in detail.

(b) Another assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes are distributed to the consuming public by means of said punchboard in the following manner:

The sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers as to which numbers

entitle the purchaser thereof to receive a pipe. The punches on the board are arranged in four sections, and the purchaser of the last punch in each section receives a pipe. A purchaser who does not qualify by obtaining one of the numbers calling for one of the pipes or by punching the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a pipe or makes the last punch in one of the sections receives a pipe for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched or separated from the board. The pipes 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 pipes along with punch boards, involving a lot or chance feature. Such assortments are similar to the one hereinabove described and vary only in detail.

**PAR. 3.** Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of said merchandise 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 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 methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of its 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 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 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 equivalent methods and as a result thereof substantial injury is being and has been done by respondent to competition in common 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 August 28, 1939 issued and served its complaint in this proceeding upon respondent Kaufmann Bros. & Bondy, 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 January 24, 1940, the respondent filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint. 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 fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Repondent, Kaufmann Bros. & Bondy, Inc., is a corporation organized and doing business under the laws of the State of New Jersey, with its principal office and place of business located at 740 Broadway, West New York, N. J. Respondent is now, and for some time last past has been, engaged in the sale and distribution of pipes 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 its aforesaid place of business in New Jersey 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 corporations and with partnerships and individuals 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 its business, as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing its 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 sold and distributed to the ultimate consumers thereof wholly by lot or chance. Respondent has distributed various push cards and punchboards for use, or which are used, in the sale and distribution of its pipes and other merchandise to the consuming public by means of a game of chance, gift enterprise or lottery scheme. 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 used in the distribution of pipes and other articles of merchandise:

(a) One assortment consists of a pipe, together with a device commonly called a push card. The push card contains 50 partially perforated discs, and on the face of each disc is printed the word "Push." Beneath each disc is a feminine name and a space is provided on the face of said card for writing in the name of the purchaser opposite the feminine name selected. Concealed within each of said discs is a number which is disclosed when the disc 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 said card. The purchaser selecting the feminine name corresponding to the one under the master seal receives the pipe. The push card bears a legend or instructions as follows:

Select Your Favorite Girl's Name  
and Receive a \$10.00  
(picturization of a pipe)  
Flame Grain Kay Woodie  
Numbers 1 to 35 pay what you draw  
Numbers 36 to 50 pay only 25¢  
No higher

The sale of respondent's pipe by means of said push card is made in accordance with the above-described legend or instructions. Said pipe is allotted to the customer or purchaser in accordance with the above legend or instructions. The fact as to whether a purchaser receives the pipe or nothing for the amount of money paid is thus determined by lot or chance.

Respondent sells and distributes, and has sold and distributed, various assortments of pipes along with push cards involving a lot or chance feature, but such assortments are similar to the one above described and vary only in detail.

(b) Another assortment consists of a number of pipes, together with a device commonly called a punchboard. Said pipes are distributed to the consuming public by means of said punchboard in the following manner:

The sales are 5 cents each, and when a punch is made from the board a number is disclosed. The numbers begin with 1 and continue to the number of punches there are on the board, but the numbers are not arranged in numerical sequence. The board bears a statement or statements informing prospective purchasers as to which numbers entitle the purchaser thereof to receive a pipe. The punches on the board are arranged in four sections, and the purchaser of the last punch in each section receives a pipe. A purchaser who does not qualify by obtaining one of the numbers calling for one of the pipes or by punching the last number in one of the sections, receives nothing for his money other than the privilege of punching a number from the board. The pipes are worth more than 5 cents each, and a purchaser who obtains one of the numbers calling for a pipe or makes the last punch in one of the sections receives a pipe for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the number punched or separated from the board. The pipes 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 pipes along with punch boards, involving a lot or chance feature. Such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plans. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of its merchandise and the sale of said merchandise

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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 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 are attracted by said sales plans or methods employed by respondent in the sale and distribution of its 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 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 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 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 answer of respondent, in which answer respondent admits all of the material allegations of fact set forth in said complaint and the Commission having made its findings as to the facts and the conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent Kaufmann Bros. & Bondy, 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 pipes or other articles of merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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1. Selling and 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 game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others, any merchandise together with punchboards, push or pull cards, or other lottery devices which said punchboards, push or pull cards or other lottery devices are to be used or may be used in selling or distributing such merchandise to the public.

3. Supplying to or placing in the hands of others, punchboards, push or pull cards or other lottery devices either with assortments of any 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 merchandise to the public.

4. 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 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  
DANIEL A. BRENNAN AND ACCO 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 3196. Complaint, Aug. 5, 1937—Decision, Apr. 23, 1940*

Where an individual and a corporation, respectively interested and engaged in manufacture and sale of paper fasteners, as more specifically set forth as follows, namely:

I. Individual who was inventor and to whom letters patent had been issued on a number of paper fasteners, which, however, up to time herein concerned, had not been manufactured or sold under such patents, and who, for some 10 years last past, had pursued practice of coercing and intimidating manufacturers of such fasteners and retail stores throughout the country, and dealing therein, by means of threats of infringement suits in letters to former, and in circular letters to latter, not in good faith with any actual intention of bringing such infringement suits, but for purpose of obstructing, lessening, and destroying competition of persons threatened with corporation first referred to, and the competition of the paper fasteners made and sold by them with those made and sold by such corporation, with which, during course of said period, he had entered into contract to make and sell paper fasteners under all of his existing patents and all patents for such products to be acquired by him in the future; and

II. Corporation which, as above referred to, was engaged in manufacture and sale of paper fasteners and in distribution thereof to purchasers in various other States and in said District of Columbia in substantial competition in commerce, as aforesaid, with others similarly engaged in manufacture and sale in interstate commerce of such products, and which for many years had been principal manufacturer of such products in the United States and which it sold under trade name "Acco"—

- (a) Entered into a conspiracy to restrict, restrain, and suppress competition in manufacture, sale, and distribution of paper fasteners to customers located throughout the several States of the United States and the District of Columbia, by agreeing between themselves to circularize the manufacturers of and retail dealers in such products with letters threatening suit for infringement of patents owned by said individual, and to cooperate with each other in such conspiracy by exchanging information concerning the manufacturers, dealers in, and users of said product; and

Where said individual, pursuant to said conspiracy and in furtherance thereof—

- (b) Sent, on his letterhead and over his signature, not writing in good faith, and without ever bringing any infringement suit against any manufacturer, dealer in or user of paper fasteners, to certain stationers, list of which, as customers of certain competitors, he had requested of and received from said corporation, a letter purporting to be an infringement notice and purporting to recite unfavorable legal position, as regards patent infringements of patents owned by said individual, occupied by the various manufacturers of paper fasteners mentioned in letter in question, and to put

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recipients of such letters on notice that he intended to assert his rights by means of infringement suits;

- (c) Circularized and mailed to dealers in paper fasteners, somewhat later letter, over his signature, and not in good faith and with no intention of bringing any infringement suits and without ever, up to time of his death, bringing any suit against concern particularly referred to or any dealer in or user of the "Favorite Fastener" made by said concern, but for the purpose of enhancing sales of products made by corporation herein involved and of hindering and harrassing competitors therewith, which letter purported to be infringement notice relative to "Favorite Fastener" made and sold by said concern and threatened infringement suit, and which letter was not confined to customers of said concern, but sent to all known office supply dealers in the United States; and
- (d) Advised such persons as made inquiries as the result of said letters as sent out by him in May and June of year in question, that the only paper fastener on the market that could be safely bought without likelihood of patent litigation was the "Acco" fastener made by aforesaid corporation;

With the effect that the result of the acts and conduct of said individual and said corporation pursuant to such conspiracy, up to the time of the recent death of said individual, was to tend to substantially lessen, restrict, restrain, and suppress competition in interstate sale of paper fasteners throughout the several States and, during period in question, to hinder and prevent competitors of said corporation from selling their products to stationers and other retailers of paper fasteners throughout the United States and, during said period, to create a monopoly in said corporation in manufacture and sale in commerce aforesaid of such products:

*Held*, That such acts and practices, as above set forth, were, up to the time of said individual's death as above set forth, all to the prejudice of competitors of said corporation and of the public, and had a dangerous tendency to and did actually hinder and prevent competition in sale of paper fasteners in commerce, and unreasonably restrained interstate commerce therein, and constituted unfair methods of competition.

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

*Mr. Reuben J. Martin* for the Commission.

*Müller, Gorham, Westcott & Adams*, of Chicago, Ill., for Daniel A. Brennan.

*Church & Church*, of Washington, D. C., for Acco Products, 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 Daniel A. Brennan, an individual, and Acco Products, Inc., a corporation, have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest,

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## Complaint

hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Said respondent, Daniel A. Brennan, is an individual engaged in the practice of patent law, and maintains his office in Room 1452, 10 South La Salle Street in the city of Chicago, within the State of Illinois. Said respondent, Daniel A. Brennan, is an inventor and letters patent have issued to him on a number of paper fasteners. Said respondent does not manufacture or sell any of the products for which he has received patents, and at the present time none of such products are being manufactured and sold under said patents.

PAR. 2. Said respondent, Acco Products, Inc., is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at Thirty-ninth Avenue and Twenty-fourth Street, Long Island City, within said State of New York. Said respondent is now, and for a long period of time, to wit: For more than 5 years last past, has been engaged in the manufacture and sale of paper fasteners and in the distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Said respondent Acco Products, Inc., causes said paper fasteners when sold by it to be transported to the purchasers thereof located in the State of New York, in various other States of the United States and in the District of Columbia. There is now, and for more than 5 years last past has been, a constant current of trade and commerce by said respondent in said paper fasteners between and among the various States of the United States and the District of Columbia. In the course and conduct of its said business the said respondent, Acco Products, Inc., is now, and for more than 5 years last past has been in substantial competition in commerce between and among the various States of the United States and in the District of Columbia with sundry other individuals, firms, partnerships, and corporations likewise engaged in the sale of paper fasteners. Said respondent, Acco Products, Inc., sells its paper fasteners under the trade name "Acco" and has for many years been the principal manufacturer of paper fasteners in the United States.

PAR. 3. Said respondent, Daniel A. Brennan, obtained his first patent on paper fasteners in the year 1930, and since that time has obtained five additional patents for paper fasteners. In the spring of 1936, said respondent, Daniel A. Brennan, entered into an agreement with respondent Acco Products, Inc., by which he licensed said respondent, Acco Products, Inc., to manufacture and sell paper fasteners under all of his existing patents and under all patents for paper fasten-

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ers to be acquired by him, the said respondent, Daniel A. Brennan, in the future, but to the present date respondent, Acco Products, Inc., has not manufactured or sold any paper fastener under any patent issued to or owned by said respondent Daniel A. Brennan.

PAR. 4. Said respondent, Daniel A. Brennan, since the year 1930, has pursued a practice of coercing and intimidating manufacturers of paper fasteners and retail stores throughout the country dealing in paper fasteners by means of threats of infringement suits, which said threats were contained in letters to manufacturers of paper fasteners and in circular letters mailed to retail dealers in paper fasteners generally. None of said threats of infringement were made in good faith or with any actual intention of bringing any such said infringement suits, but they were made for the purpose of obstructing, lessening, and destroying the competition of said persons threatened, with respondent, Acco Products, Inc., and the competition of the paper fasteners manufactured and sold by them with the paper fasteners manufactured and sold by respondent Acco Products, Inc.

PAR. 5. Said respondent, Daniel A. Brennan and said respondent, Acco Products, Inc., acting in cooperation with each other for more than 1 year last past and particularly since June 9, 1936, have entered into an understanding, agreement, combination, or conspiracy among and between themselves to restrict, restrain, and suppress competition in the manufacture, sale, and distribution of paper fasteners to customers located throughout the several States of the United States and the District of Columbia as aforesaid, by agreeing to circularize the manufacturers of and retail dealers in paper fasteners by means of letters threatening suit for infringement of patents owned by said respondent, Daniel A. Brennan, and to cooperate with each other by exchanging information concerning the manufacturers, dealers in, and users of paper fasteners.

PAR. 6. Said individual respondent, Daniel A. Brennan, and said corporate respondent, Acco Products, Inc., in furtherance of their aforesaid understanding, agreement, combination, or conspiracy, prepared and sent to all manufacturers of paper fasteners and to all known dealers in paper fasteners, a letter dated May 5, 1936, on the stationery and over the signature of said respondent, Daniel A. Brennan, which said letter purported to be an infringement notice and which purported to recite the position as regards infringements occupied by the various manufacturers of paper fasteners and to put the recipient on notice that said respondent, Daniel A. Brennan, intended to assert his rights by means of infringement suits. Thereafter, and subsequent to the making of the agreement between said respondents whereby said respondent, Acco Products, Inc., was

licensed to manufacture paper fasteners under patents held or to be acquired by said respondent, Daniel A. Brennan, said respondents, acting in cooperation with each other, circularized the dealers in paper fasteners by means of a letter dated June 10, 1936, over the signature of said respondent, Daniel A. Brennan, which said letter purported to be an infringement notice relative to "Favorite Fastener" manufactured and sold by Cook and Cobb and threatened to bring suit for infringement. The said infringement notices were not confined to customers of Cook and Cobb but were sent to all known office-supply dealers in the United States. Said letters were not mailed in good faith by respondent who had no intention of bringing any infringement suits but were mailed for the purpose of enhancing the sales of the products manufactured by respondent, Acco Products, Inc., and of hindering and harassing the competitors of said Acco Products, Inc. In truth and in fact, no infringement suits against any manufacturer, dealer, or user of paper fasteners has ever been brought by said respondent Daniel A. Brennan.

PAR. 7. The result of the acts and conduct of said respondent, Daniel A. Brennan, and of the said respondent, Acco Products, Inc., as hereinbefore set out in paragraphs 4, 5, and 6, has been and now is to unnaturally tend to substantially lessen, restrict, restrain, and suppress competition in the interstate sale of paper fasteners throughout the several States of the United States, and to enhance the prices of said paper fasteners above the prices which have theretofore prevailed and which would prevail in normal, natural, and open competition between said respondent, Acco Products, Inc., and other manufacturers of paper fasteners, and also to tend to create a monopoly in said respondent, Acco Products, Inc., in the manufacture and sale of paper fasteners in interstate commerce.

PAR. 8. The foregoing alleged acts and practices of the said respondents, Daniel A. Brennan and Acco Products, Inc., have been and still are to the prejudice of the buying public generally and to purchasers of paper fasteners in particular and of their competitors as aforesaid 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 DISMISSING COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 5, 1937, issued, and on August 6, 1937, served its complaint in this proceeding upon respondent

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ents, Daniel A. Brennan and Acco Products, Inc., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Reuben J. Martin, attorney for the Commission. Thereafter the Commission, by order entered herein, granted respondents' motions for permission to withdraw said answers and to substitute therefor answers 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 answers were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, said substitute answers and the 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 respondent, Daniel A. Brennan, was prior to his death on February 15, 1940, engaged in the practice of patent law and maintained his office at 10 South La Salle Street in the city of Chicago within the State of Illinois. Said respondent, Daniel A. Brennan, was an inventor and letters patent were issued to him on a number of paper fasteners. The said respondent, Brennan, did not manufacture or sell any of the products on which letters patent were issued to him and at the present time none of such products are being manufactured and sold under said patents.

PAR. 2. The respondent, Acco Products, Inc., is a corporation organized and existing under the laws of the State of New York. It maintains its office and principal place of business at Thirty-ninth Avenue and Twenty-fourth Street, Long Island City, N. Y. The said respondent, Acco Products, Inc., for more than 5 years has been, and is now, engaged in the manufacture and sale of paper fasteners and in the distribution thereof in commerce between and among the various States of the United States and in the District of Columbia. Said respondent, Acco Products, Inc., when said paper fasteners are sold by it, causes them to be transported to the purchasers thereof, located in the State of New York, in various other States of the United States and in the District of Columbia. There is now, and for more than 5 years last past has been, a constant current of trade in commerce, by said respondent in said paper fasteners, between and among the

various States of the United States and the District of Columbia. Said respondent, Acco Products, Inc., in the course and conduct of its said business, is now, and for more than 5 years last past has been, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia, with other individuals, firms, partnerships, and corporations who are similarly engaged in the manufacture and sale in interstate commerce of paper fasteners. Said respondent, Acco Products, Inc., sells its paper fasteners under the trade name "Acco" and said respondent has for many years been the principal manufacturer of paper fasteners in the United States.

PAR. 3. Said respondent, Brennan, from the year 1930 up to the time of his death on February 15, 1940, pursued a practice of coercing and intimidating manufacturers of paper fasteners and retail stores throughout the country dealing in paper fasteners by means of threats of infringement suits, which said threats were contained in letters to manufacturers of paper fasteners and in circular letters mailed to retail dealers in paper fasteners generally. None of said threats of infringement were made in good faith or with any actual intention of bringing any such said infringement suits, but they were made for the purpose of obstructing, lessening, and destroying the competition of said persons threatened with respondent, Acco Products, Inc., and the competition of the paper fasteners manufactured and sold by them with the paper fasteners manufactured and sold by respondent Acco Products, Inc.

PAR. 4. Respondent, Brennan, entered into a contract effective March 21, 1936, with the respondent, Acco Products, Inc., by which he licensed said Acco Products, Inc., to manufacture and sell paper fasteners under all of his existing patents and all patents for paper fasteners to be acquired by said respondent, Brennan, in the future. Thereafter, the said respondent, Brennan, and the said respondent, Acco Products, Inc., entered into a conspiracy to restrict, restrain, and suppress competition in the manufacture, sale, and distribution of paper fasteners to customers located throughout the several States of the United States and the District of Columbia by agreeing between themselves to circularize the manufacturers of and retail dealers in paper fasteners with letters threatening suit for infringement of patents owned by said respondent Brennan; and to cooperate with each other in this conspiracy by exchanging information concerning the manufacturers, dealers in, and users of paper fasteners. Pursuant to said conspiracy and in furtherance thereof, respondent, Brennan, requested of and received from respondent, Acco Products, Inc., a list of stationers who were customers of certain competitors and under

date of May 5, 1936, said respondent, Brennan, sent out to said stationers on his letterhead and over his signature a letter purporting to be an infringement notice and purporting to recite the unfavorable legal position as regards patent infringements of said patents owned by respondent, Brennan, occupied by the various manufacturers of paper fasteners mentioned in said letter and purporting to put the recipients of said letters on notice that said respondent, Brennan, intended to assert his rights by means of infringement suits. Said letter was not written in good faith and no infringement suit was ever brought by said respondent, Brennan, against any manufacturer, dealer in, or user of paper fasteners.

PAR. 5. Pursuant to the conspiracy set out in paragraph 4 hereof, the respondent, Brennan, using the list furnished him by the respondent, Acco Products, Inc., circularized the dealers in paper fasteners by means of a letter dated June 10, 1936, over his signature which said letter purported to be an infringement notice relative to "Favorite Fastener" manufactured and sold by Cooke & Cobb and threatened to bring suit for infringement. Said letters were not confined to customers of Cooke & Cobb but were sent to all known office supply dealers in the United States. Said letters were not mailed in good faith by the respondent, Brennan, who had no intention of bringing any infringement suits and who up to the time of his death on February 15, 1940, never brought any suit against Cooke & Cobb or against any dealer in or user of the "Favorite Fastener" but were mailed for the purpose of enhancing the sales of the products manufactured by respondent, Acco Products, Inc., and of hindering and harassing the competitors of said respondent Acco Products, Inc.

PAR. 6. The respondent, Brennan, advised such persons as made inquiries, as the result of his letters of May 5, 1936, and June 10, 1936, that the only paper fastener on the market that could be safely bought without the likelihood of patent litigation was the Acco fastener manufactured by the respondent Acco Products, Inc.

PAR. 7. The result of the acts and conduct of the respondent, Brennan, and of the respondent, Acco Products, Inc., pursuant to the conspiracy hereinbefore set-out up to the time of the death of said respondent, Brennan, on February 15, 1940, was to tend to substantially lessen, restrict, restrain, and suppress competition in the interstate sale of paper fasteners throughout the several States of the United States and during said period to hinder and prevent said competitors of Acco Products, Inc., from selling their products to stationers and other retailers of paper fasteners throughout the United States. Said acts also tended during said period to create

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## Order

a monopoly in the respondent, Acco Products, Inc., in the manufacture and sale of paper fasteners in interstate commerce.

## CONCLUSION

The acts and practices of the respondents as herein set forth were up to the time of the death of the respondent, Brennan, on February 15, 1940, all to the prejudice of competitors of respondent, Acco Products, Inc., and of the public; had a dangerous tendency to and did actually hinder and prevent competition in the sale of paper fasteners in commerce within the intent and meaning of the Federal Trade Commission Act; did unreasonably restrain interstate commerce in paper fasteners and constituted unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

In view of the foregoing findings as to the facts and conclusion, *It is ordered*, That said complaint be, and the same hereby is, dismissed.

## ORDER DISMISSING COMPLAINT

This matter coming on to be heard by the Commission upon the record, and it appearing that respondent, Daniel A. Brennan, died on February 15, 1940, and the Commission having duly considered the matter, and being fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed.

IN THE MATTER OF  
MCKINLEY-ROOSEVELT COLLEGE OF ARTS AND  
SCIENCES

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

*Docket 3571. Complaint, Aug. 31, 1938—Decision, Apr. 23, 1940*

Where a corporation engaged in sale of courses of home study instruction in various subjects, including education, writing, psychology, theology, chemistry, business and commerce, law, agriculture, engineering, accounting, advertising, sales management, and many other subjects, and in sending lesson material and text books in the respective courses sold by it to the purchasers thereof in various other States, from the apartment in which was carried on the entire business of the school and which was occupied as a residence by the individual and his wife who were president and secretary-treasurer thereof—

- (a) Made use of words "College" and "University" as respectively included in corporate and former corporate name under which it did business, and displayed said names, as case might be, on catalogs descriptive of the various courses and subjects taught by it, and on letterheads and other printed matter, and in advertisements in periodicals of general circulation in various States set forth, and represented thereby that it offered home study courses of instruction leading to degrees in art, sciences, philosophy, education, and a large number of other branches of learning, at low cost and on easy terms; Facts being school conducted by it as aforesaid lacked all the requirements with respect to equipment and educational facilities which would entitle it to be classified as a college or university, and, while it might be possible for a student to take by correspondence one-half of required work leading to a degree, all accredited educational institutions of higher learning require that at least 2 years of study of the full 4-year course leading to a degree be by actual attendance in classes, and degrees conferred by it were not recognized by such institutions;

With result that, through such false and misleading use of words "College" and "University," there was created in minds of members of public desiring to obtain an education by correspondence, erroneous impression that it was in fact conducting a college or university, as generally accepted and understood as meaning educational institutions of higher learning, with power to confer degrees, resident students, and resident faculty of learned persons acting as instructors in various branches of learning, including the liberal arts and sciences, and, in case of universities, one or more special branches of learning such as theology, law and medicine; and

- (b) Set forth in its catalogs names of the officers of administration and faculty members, followed respectively by a series of letters indicative of and representing various academic degrees, such as those conferred in recognition of academic work or scholastic attainment by recognized colleges and universities, and thereby represented to prospective purchasers of its courses of study that persons thus named and referred to therein as members of its faculty possessed degrees which had been granted them by recognized colleges or

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universities, and that such persons were all educators of high scholastic attainment and fully qualified to give instruction in the respective subjects listed in said catalog, and that they were full-time resident members of the faculty of the school;

Facts being degrees referred to were conferred by said corporation or business while being carried on under corporate name including word "University," and were so conferred, in many instances, without having respective persons concerned complete the course or courses of instruction by correspondence or otherwise, or make any showing as a basis for the conferring of such degrees, which, in some instances, were conferred upon faculty members without their knowledge, and which, as aforesaid, were listed in its catalogs distributed widely in the various States and the conferring of which was beyond the authority of such business or corporation, with no faculty of learned persons acting as instructors in various branches of higher learning, including the liberal arts and sciences and one or more special branches of learning, such as theology, law or medicine;

With tendency and capacity to confuse, mislead and deceive members of the public into the erroneous belief that its said claims and representations were true, and that the school conducted by it was a college, university, or graduate school with authority to confer degrees, and with resident student body and resident faculty of learned persons, with academic degrees granted by recognized institutions of higher learning, and to induce members of public, including prospective students, to purchase its courses because of erroneous belief engendered as above set forth, and to divert trade to it from competitors engaged in sale in commerce among the various States and in the District of Columbia of similar home-study correspondence courses, and with effect of diverting business to it from competitors who do not make the same or similar misleading representations and do not misrepresent the nature of their schools, the qualifications of their instructors or the academic degrees earned or awarded to them, but truthfully and accurately state the facts in respect thereto; to their substantial injury and prejudice:

*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* and *Mr. William C. Reeves*, trial examiners.

*Mr. William L. Pencke* for the Commission.

*Mr. William R. Peacock*, 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 McKinley-Roosevelt College of Arts and Sciences, 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, McKinley-Roosevelt College of Arts and Sciences, 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 4240 Clarendon Avenue, in the city of Chicago, State of Illinois. Said respondent is now, and has been since on or about the 1st day of December 1936, 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 various subjects such as arts and sciences, home economics, engineering, agriculture, psychology, education, chemistry, business, theology, letters, speech, and law, all of which are pursued by correspondence through the medium of the United States mails. Respondent, 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 Illinois to the purchasers thereof located in the several States of the United States other than the State of Illinois and in the District of Columbia. For more than 2 years prior to the said 1st day of December 1936, said business was conducted by the same corporation under the then corporate name of McKinley-Roosevelt University. On the date above given, the corporate name was changed to McKinley-Roosevelt College of Arts and Sciences.

**PAR. 2.** There is now, and has been at all times hereinafter mentioned, a course of trade in said courses of instructions 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.

**PAR. 3.** In the course and conduct of its business as aforesaid, respondent is now, and for many years last past has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the sale and distribution of similar correspondence courses of instruction 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, respondent distributes to purchasers and prospective purchasers of its said courses of study catalogues descriptive of the various courses and subjects taught by it. Said catalogue bears on its outside cover the title

McKinley-Roosevelt  
College of  
Arts and Sciences  
College of  
Engineering  
Annual Catalogue

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and on the title page the inscription

McKinley-Roosevelt  
University  
Founded 1908  
Charter in 1913 by the State of Illinois  
As an Educational Institution  
Not for Profit

Page 3 of said catalog contains the names of the officers of administration and faculty members. Each of said names is followed by a series of letters, indicative of and representing various degrees or titles conferred in recognition of academic work, a number of names carrying four different degrees.

On its letterheads and other printed matter appear the words "McKinley-Roosevelt University."

PAR. 5. The use of the words "College" and "University" in respondent's corporate name, catalogs, and other printed matter as aforesaid serves as a representation to prospective purchasers of respondent's courses and to students who enroll that said McKinley-Roosevelt College of Arts and Sciences is in fact a college or a university. The use of the words "College" and "University" to describe or refer to respondent's correspondence school is false and misleading in that it creates in the minds of a part of the public, and especially those members of the public who are interested in obtaining an education by correspondence, the impression that the respondent is operating and conducting a college or a university, which terms are generally accepted and understood to mean an educational institution of higher learning with the power to confer degrees and with a resident faculty of learned persons acting as instructors in various branches of learning which include the liberal arts and sciences and one or more special branches of learning, such as theology, law, and medicine.

In setting forth said various academic degrees after the names of its said administrative officers and faculty members, respondent represents to prospective purchasers of its said courses and to students enrolling in its said correspondence school that the persons possessing said respective degrees are all teachers of high scholastic attainments, especially well qualified to teach the several subjects offered by said school, and implies that said members of its faculty are full-time resident teachers and professors.

PAR. 6. In truth and in fact said McKinley-Roosevelt College of Arts and Sciences is not an educational institution of higher learning consisting of resident colleges but is a correspondence school conducted by the president of respondent from an apartment in the city of Chicago; it has no power to confer degrees which are recognized by

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colleges and universities having a reputable character as institutions of learning; it has no faculty of learned persons as instructors in various higher branches of learning including the liberal arts and sciences and one or more special branches of learning such as theology, law, or medicine. The faculty listed in respondent's said catalog consists of individuals residing in various States of the United States who are engaged in professions and avocations other than teaching. Lessons and papers which are received in respondent's place of business in Chicago from its students for review and correction are forwarded by respondent to said various faculty members, who grade or correct the lessons and return them to respondent's office in Chicago, whence they are again sent to its said students. Final examinations of said students are conducted in the same manner.

In truth and in fact, a number of the degrees appearing after the names of said faculty members are not degrees conferred by a duly recognized institution of higher learning in recognition of scholastic attainment but are conferred upon said persons by respondent, and in some instances without their knowledge.

PAR. 7. The false, misleading, and deceptive practices as hereinabove described, in using the words "College" and "University" in its corporate name and the words "College" and "University" in its catalogs, stationery, and otherwise; in representing by the use of said corporate name and through advertisements, catalogs, circulars, and otherwise that it is an institution of higher learning with power to confer degrees in the arts and sciences; in representing that the members of its faculty are all individuals possessing many degrees conferred upon them by institutions of higher learning for study and scholastic attainment and as well qualified to teach the respective subjects described in respondent's literature, all have a tendency to and do induce prospective purchasers to subscribe to respondent's courses of study and to enroll in its said extension school, in the erroneous and mistaken belief that the representations and statements made by respondent as hereinabove set forth are true.

PAR. 8. There are among competitors of respondent many who truthfully represent the character of their schools and the accomplishments and attainments of their teaching personnel and who do not in any other manner unfairly and untruthfully represent their method of doing business.

PAR. 9. Each and all of the false and misleading statements and representations made by the respondent, as hereinabove set out, are calculated to and do have a tendency and capacity to lead a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true. Further, as a direct conse-

quence of such mistaken and erroneous beliefs, induced by the aforesaid acts and representations of respondent, a substantial number of the consuming public has purchased respondent's courses of instruction, with the result that trade has been unfairly diverted to the respondent from other corporations, individuals, and firms likewise engaged in the business of selling similar correspondence courses of instruction who truthfully advertise and represent their schools and who do not hold themselves out to be universities. 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.

PAR. 10. The aforesaid acts and practices of respondent are all to the prejudice of the public and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices 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, 1938, issued its complaint in this proceeding and caused the same to be served upon respondent, McKinley-Roosevelt College of Arts and Sciences, 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 an answer thereto by respondent, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, counsel for the Commission, before Miles J. Furnas and William C. Reeves, examiners 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 was tendered by or on behalf of respondent in opposition to the allegations of said complaint, but counsel for said respondent tendered three pieces of documentary evidence which were received as exhibits. 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. The respondent, McKinley-Roosevelt College of Arts and Sciences, is a corporation organized under the laws of the State of Illinois, with its principal place of business at 4240 Clarendon Avenue, in Chicago, in said State. Since on or about December 1, 1936, respondent has been engaged in the business of selling courses of home-study instruction in various subjects, including education, writing, psychology, theology, chemistry, business and commerce, law, agriculture, engineering, accounting, advertising, sales management, and many other subjects. It has caused the lesson material and textbooks in the respective courses of instruction sold by it to be sent by the United States mail from its place of business in 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 respondent has been, and is now, in active competition with various persons and partnerships and other corporations also engaged in the sale of courses of instruction of the same general nature as those sold by respondent, as well as in other lines of study, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, McKinley-Roosevelt College of Arts and Sciences, is the successor of a number of correspondence schools operated under various corporate names by Walter Raleigh Taylor. Respondent's immediate predecessor was McKinley-Roosevelt University, a corporation, which by change of name became McKinley-Roosevelt College of Arts and Sciences, the designated respondent herein. The said Walter Raleigh Taylor is the president of respondent corporation, and his wife, Jessie M. Taylor, is its secretary-treasurer. Respondent corporation was originally incorporated in 1913 as Washington University and has operated under the charter then granted after several changes of the corporate name. Respondent has also made use of the name McKinley-Roosevelt Graduate College to designate its school and courses of instruction offered.

PAR. 3. The respondent since its organization has not conducted a residence school, and neither did it when operating under the name McKinley-Roosevelt University. The entire business of the school conducted by respondent is carried on in an apartment of a building located in one of the residential districts of Chicago, Ill., which apartment is occupied as a residence by the said Walter Raleigh Taylor and his wife, Jessie M. Taylor. The school so conducted by respondent lacks all of the requirements with respect to equipment and educational facilities which would entitle it to be classified as a

college or university. It has set up courses of study to be given entirely by correspondence. Respondent has caused and is causing advertisements to be published in magazines and other periodicals having a general circulation in various States of the United States, in which advertisements the announcement is made that the respondent offers home-study courses of instruction leading to degrees in art, sciences, philosophy, education, and a large number of other branches of learning at low cost and on easy terms. One type of such advertisements was headed:

Earn a Degree at Home.  
Home Study Courses Leading to  
Degrees in Arts, Sciences \* \* \*

It may be possible for a student to take by correspondence one-half of the required work leading to a degree. However, all accredited educational institutions of higher learning require that at least 2 years of study of the full 4-year course leading to a degree be by actual attendance at classes. Degrees conferred by respondent are not recognized by accredited institutions of higher learning.

PAR. 4. In the course and conduct of its business, respondent distributed to purchasers and prospective purchasers of its said courses of study catalogs descriptive of the various courses and subjects taught by it. Said catalogs had on their outside cover the title

McKinley-Roosevelt  
College of  
Arts and Sciences  
College of  
Engineering  
Annual Catalogue

and on the title page the inscription

McKinley-Roosevelt  
University  
Founded 1908

Chartered in 1913 by the State of Illinois  
As an Educational Institution  
Not For Profit

Said catalogs contained the names of the officers of administration and faculty members. Each of said names is followed by a series of let-

ters indicative of and representing various academic degrees such as those conferred in recognition of academic work or scholastic attainment by recognized colleges and universities.

On its letterheads and other printed matter appear the words "McKinley-Roosevelt University."

PAR. 5. The use by respondent in its corporate name of the word "College" and the word "University" and the reference in its catalogs, advertisements, and advertising matter to the correspondence school conducted by it as a college or university serve as representations to prospective purchasers of the courses of instruction offered for sale by it that such school is in fact a college or university. The use by respondent of the words "College" and "University," as stated, is false and misleading and is calculated to, and does, create in the minds of members of the public who desire to obtain an education by correspondence the erroneous impression that respondent is in fact conducting a college or university, which terms are generally accepted and understood to mean educational institutions of higher learning with power to confer degrees, having resident students and a resident faculty of learned persons acting as instructors in various branches of learning, including the liberal arts and sciences, and in reference to universities one or more special branches of learning such as theology, law, and medicine.

PAR. 6. While the business conducted by respondent was being conducted as McKinley-Roosevelt University, numerous degrees were conferred upon numerous persons described in its catalogs as members of the faculty of the school conducted by it, which catalogs were given wide distribution in various States of the United States. These degrees were conferred upon the respective persons in many instances without having them complete the course or courses of instruction by correspondence or otherwise, or make any showing as a basis for conferring such degrees, and, in some instances, such degrees were conferred upon faculty members without their knowledge. The letters indicative of the degrees so conferred appeared after the respective names of the persons described in such catalogs as members of the faculty and thereby said McKinley-Roosevelt represented to prospective purchasers of the courses of study for sale by it that the persons possessing said degrees had been granted the same by recognized colleges or universities, that they were all educators of high scholastic attainments and fully qualified to give instruction in the respective subjects listed in said catalogs, and that such persons were full-time resident members of the faculty of said school.

PAR. 7. While the school now conducted by respondent was being conducted as McKinley-Roosevelt University, a stipulation was made and entered into on November 17, 1936, by and between the Commission

and said McKinley-Roosevelt University, in which stipulation it agreed and the Commission now finds that said McKinley-Roosevelt University was not an educational institution of higher learning; that it did not have authority to confer degrees; that it did not have a faculty of learned persons acting as instructors in various branches of higher learning including the liberal arts and sciences and one or more special branches of learning such as theology, law, or medicine; and that it had conferred a large number of degrees upon a number of persons, including persons described by it as members of the faculty of the school conducted by it. In said stipulation said McKinley-Roosevelt University further agreed to cease and desist from the use of the word "University" as a part of its corporate name and from the use of a corporate or trade name containing the word "University," in any way that would import or imply that said school was in fact a "University" as commonly understood and generally accepted by the public. It was further stipulated that said school should cease and desist from using symbols representing academic degrees after the names of members of its faculty when such degrees were conferred by it and did not represent degrees conferred by institutions of higher learning in recognition of study and attainment. Thereafter, the name of the corporation was changed as heretofore stated. Since said change of name, respondent has made use of catalogs, office, and business stationery and advertising matter which it has given wide distribution in various States of the United States in which the school so conducted by respondent is described and referred to as the McKinley-Roosevelt University founded in 1908. Catalogs so distributed also contain a list of names of persons described as members of the faculty of such school, and after each of said names are combinations of letters indicative of college or university degrees, many of which were conferred upon the respective persons by said McKinley-Roosevelt University and did not represent degrees conferred by institutions of higher learning in recognition of study and attainment.

PAR. 8. The representations of respondent as aforesaid are false and misleading and have had and do have the tendency and capacity to confuse, mislead, and deceive members of the public into the erroneous belief that such claims and representations are true and that the school conducted by respondent is a college, university, or graduate school, with authority to confer degrees and with a resident student body and a resident faculty of learned persons with academic degrees granted by recognized institutions of higher learning. Said representations of respondent have had the tendency and capacity to induce members of the public, including prospective students, to purchase respondent's courses of instruction because of the erroneous belief engendered as

above set forth and to divert trade to respondent 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 similar home-study courses pursued by correspondence. There were and are among the competitors of respondent those who do not make the same or similar misleading representations as made by respondent, as herein set out, and who do not misrepresent the nature of the schools conducted by them, the qualifications of their instructors or the academic degrees earned or awarded to them, but who truthfully and accurately state the facts in such respects. Respondent's said acts and practices have tended to and have in fact diverted business to respondent from its said competitors to the substantial injury and prejudice of such competitors.

#### CONCLUSION

The acts and practices of respondent as herein found are all to the prejudice and injury of the public and to 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

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 and William C. Reeves, examiners of the Commission theretofore duly designated by it, in support of, and in opposition to, the allegations of said complaint, 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, McKinley-Roosevelt College of Arts and Sciences, 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 correspondence courses of study and instruction in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. From using the word "college" or the word "university" in the corporate or trade name used in the conduct of such business or as descriptive thereof.
2. From representing, through the use of the word "college" or "university" in any corporate or trade name or in catalogs, advertising literature, or otherwise, or by any other means, that the business con-

ducted by respondent is a university or college or institution of higher learning.

3. From representing, through the use of the symbols indicating academic degrees after the names of members of its faculty, or by any other means, that members of its faculty are educators duly qualified by a higher education, when the degrees so indicated are not the result of study pursued in residence at recognized colleges or universities duly authorized to grant the respective degrees indicated, or when the symbols of academic degrees used do not represent degrees actually granted by such institutions to such members of its faculty for attainment in the field of knowledge, and when the persons to whom the degrees represented by the symbols used are attributed are not teachers, educators, or persons of high educational attainment.

*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  
ANESTHETIC LABORATORIES, INC., FORMERLY  
GUILD ANESTHETIC LABORATORIES

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

*Docket 3816. Complaint, June 9, 1939—Decision, Apr. 29, 1940*

Where a corporation engaged in manufacture of medicinal preparation for use as local anesthetic, under name "Guild Procaine Epinephrine Anesthetic," and in sale and distribution thereof to purchasers, such as practicing dentists, physicians and dental colleges, in other States and in the District of Columbia; in advertisements which it disseminated concerning its said product through the mails, in circulars and other printed or written matter distributed in commerce between the various States, and through other means, and which were intended and likely to induce purchase of its said preparation—

- (a) Represented that it was a guild or association of persons operating for the benefit, education, and enlightenment of the dental and medical professions, without profit, and that its purpose was the advancement of the science of anesthesia, through use of its corporate or trade name "Anesthetic Advancement and Research Guild, Inc.," and statements displaying the same, and such matter or legends as "Organized in the Interests of the Medical and Dental Professions" and "\* \* \* has made a most thorough study and analysis of local anesthetics and finds that there is absolutely no reason nor foundation for present high prices," and "In its serious efforts to help the Dental Profession the Guild feels that its policy of education and enlightenment should include, wherever an item is not equitably priced, the production in its own fully equipped laboratory of the Equivalent or Better of the item involved that it may thus offer to the dentist at the lowest possible price," and "The success of the Guild is your success. \* \* \*," etc.; and
- (b) Made use also of trade or corporate name "Guild Anesthetic Laboratories" in various advertising matter, circulars, letterheads, and other printed matter disseminated as aforesaid, and featured in certain of such matter word "guild" in such corporate or trade name, and thereby represented that its organization was that of a guild or association of persons engaged in kindred pursuits for mutual protection, aid and cooperation, and not a commercial corporation organized for profit;

Facts being it was not a guild or association of persons engaged in such pursuits, but commercial business organized, existing, and operated for profit, was not impartially engaged in research for purpose of advancement of science of anesthesia for benefit of dental or medical professions, and did not operate solely for benefit, education, and enlightenment of such professions;

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 of inducing portion of such public,

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because of such belief, to purchase its drug-containing medicinal 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.

Before *Mr. Randolph Preston*, trial examiner.

*Mr. Robert Mathis, Jr.* for the Commission.

*Mr. Robert L. Kahn*, 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 Guild Anesthetic Laboratories, 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. Guild Anesthetic Laboratories, is now and has been at all times mentioned herein, a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 2457-2459 South Michigan Avenue, in the city of Chicago, and State of Illinois. Said respondent corporation was originally incorporated in 1937 under the name of Anesthetic Advancement and Research Guild, Inc., an Illinois corporation, and within the year last past, changed its name to the one presently used, to wit: Guild Anesthetic Laboratories.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a medicinal preparation known as "Guild Procaine Epinephrine Anesthetic," for use as a local anesthetic. Respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois, to purchasers thereof, such as practicing dentists, physicians and dental colleges, located in other States of the United States and the District of Columbia. At all times respondent has maintained a course of trade in said 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. 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

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concerning its medicinal preparation, by United States mails and 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 preparation; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false and misleading 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 preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of false statements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

**ANESTHETIC ADVANCEMENT AND RESEARCH GUILD, INC.  
ORGANIZED IN THE INTERESTS OF THE  
MEDICAL AND DENTAL PROFESSIONS**

The Anesthetic Advancement and Research Guild has made a most thorough study and analysis of local anesthetics and finds that there is absolutely no reason nor foundation for present high prices.

In its serious efforts to help the Dental Profession the GUILD feels that its policy of education and enlightenment should include, wherever an item is not equitably priced, the production in its own fully equipped laboratory of the EQUIVALENT OR BETTER of the item involved that it may thus offer to the dentist at the lowest possible price.

The success of the Guild is your success. You are invited to join the ranks of our countless friends throughout the country, Dentists like yourself who are anxious to help usher in a new era for the Dental trade.

Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, and also through the use of the corporate or trade name of "Anesthetic Advancement and Research Guild, Inc.," the respondent represents that it is a guild or association of persons operated for the benefit, education and enlightenment of the dental and medical professions without profit and that its purpose is the advancement of the science of anesthesia.

PAR. 4. In addition to the above statements and representations, the respondent also uses the trade or corporate name of "Guild Anesthetic Laboratories," in various advertising matter, circulars, letterheads, and other printed matter disseminated as aforesaid. In certain of this printed matter the word "guild," when used in the corporate or trade name, is set out in a different type of lettering

with the effect of stressing, emphasizing, and directing the attention of the reader to the word "guild."

By this means the respondent represents that this organization is that of a guild or an association of persons engaged in kindred pursuits for mutual protection, aid and cooperation, and not a commercial corporation organized for profit.

PAR. 5. In truth and in fact the respondent is not a guild or association of persons engaged in kindred pursuits for protection and cooperation, but instead is a commercial business organized, existing, and operated for profit. Respondent is not impartially engaged in research for the purpose of advancement of the science of anesthesia, in the interest of the dental or medical profession. It does not operate solely for the benefit, education, and enlightenment of the dental and medical profession.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, and 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 induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations containing drugs.

PAR. 7. The aforesaid acts and practices of 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, MODIFIED FINDINGS AS TO THE FACTS AND ORDER <sup>1</sup>

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 admitted all the material allegations of fact set forth in said complaint and stated that it waived all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion herein on the 14th day of March 1940, that respondent had violated the provisions of the Federal Trade Commission Act, and it appearing that said findings as to the facts should be modified in certain respects, and the Commission having duly considered the matter and being now fully advised in the premises, finds

<sup>1</sup> Original findings and order, as of March 14, 1940, not published.

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. Respondent Anesthetic Laboratories, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of Illinois with its principal office and place of business located at 2457-2459 South Michigan Avenue in the city of Chicago, State of Illinois. This corporation was originally incorporated in 1937 under the name Anesthetic Advancement and Research Guild, Inc., an Illinois corporation. Within the last year or two the corporate name was changed to Guild Anesthetic Laboratories. This corporate name has been used until very recently, the corporate name now having been changed to Anesthetic Laboratories, Inc.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a medicinal preparation known as "Guild Procaine Epinephrine Anesthetic," for use as a local anesthetic. Respondent causes said preparation, when sold, to be transported from its place of business in the State of Illinois, to purchasers thereof, such as practicing dentists, physicians and dental colleges, located in other States of the United States and the District of Columbia. At all times respondent has maintained a course of trade in said 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. 3. In the course and conduct of its aforesaid business, the respondent has disseminated and has caused the dissemination of false advertisements concerning its medicinal preparation, by United States mails and in circulars and other printed or written matter, all of which have been 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 preparation; and has disseminated and has caused the dissemination of, false and misleading 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 preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of false statements and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

ANESTHETIC ADVANCEMENT AND RESEARCH GUILD, INC.  
ORGANIZED IN THE INTERESTS OF THE  
MEDICAL AND DENTAL PROFESSIONS

The Anesthetic Advancement and Research Guild has made a most thorough study and analysis of local anesthetics and finds that there is absolutely no reason nor foundation for present high prices.

In its serious efforts to help the Dental Profession the GUILD feels that its policy of education and enlightenment should include, wherever an item is not equitably priced, the production in its own fully equipped laboratory of the EQUIVALENT OR BETTER of the item involved that it may thus offer to the dentist at the lowest possible price.

The success of the Guild is your success. You are invited to join the ranks of our countless friends throughout the country, Dentists like yourself who are anxious to help usher in a new era for the Dental trade.

Through the use of the statements hereinabove set forth, and others similar thereto not specifically set out herein, and also through the use of the corporate or trade name of "Anesthetic Advancement and Research Guild, Inc." the respondent represents that it is a guild or association of persons operated for the benefit, education, and enlightenment of the dental and medical professions without profit and that its purpose is the advancement of the science of anesthesia.

PAR. 4. In addition to the above statements and representations, the respondent also uses the trade or corporate name of "Guild Anesthetic Laboratories," in various advertising matter, circulars, letterheads, and other printed matter disseminated as aforesaid. In certain of this printed matter the word "guild," when used in the corporate or trade name, is set out in a different type of lettering with the effect of stressing, emphasizing and directing the attention of the reader to the word "guild."

By this means the respondent represents that this organization is that of a guild or an association of persons engaged in kindred pursuits for mutual protection, aid and cooperation, and not a commercial corporation organized for profit.

PAR. 5. In truth and in fact the respondent is not a guild or association of persons engaged in kindred pursuits for protection and cooperation, but instead is a commercial business organized, existing, and operated for profit. Respondent is not impartially engaged in research for the purpose of advancement of the science of anesthesia, in the interest of the dental or medical profession. It does not operate solely for the benefit, education and enlightenment of the dental and medical profession.

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PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and 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 induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations containing drugs.

## CONCLUSION

The aforesaid acts and practices of 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.

## MODIFIED 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 admitted all the material allegations of fact set forth in said complaint and stated that it 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 respondent had violated the provisions of the Federal Trade Commission Act, and the Commission having issued its order to cease and desist herein on the 14th day of March 1940, and it appearing that said findings as to the facts and order to cease and desist should be modified in certain respects, and the Commission having duly considered the matter and being now fully advised in the premises, makes this its modified order to cease and desist.

*It is ordered,* That the respondent Anesthetic Laboratories, Inc., 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 its medicinal products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner that respondent is a guild or an association of persons engaged in kindred pursuits for mutual protection, aid and cooperation, or that respondent is anything other than a commercial business existing or operating for profit.

2. Representing that respondent is impartially engaged in research for the purpose of advancement of the science of anesthesia or that

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respondent operates for the benefit, education or enlightenment of the medical and dental professions.

3. Using the word "Guild" or any other word or term of similar import or meaning to describe or in any way refer to its business, including the use of the word "Guild" as part of its corporate name.

*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  
**ROXANNA CANNING COMPANY**

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

*Docket 3904. Complaint, Sept. 30, 1939—Decision, Apr. 29, 1940*

Where a corporation engaged in manufacture of dog food and in sale and distribution under various trade names of various brands thereof, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such foods in commerce as aforesaid—

Represented that its said various brands contained beef byproducts, ground beef bone or beef, and that its dog food was a scientifically balanced ration and scientifically balanced beef ration for dogs, through such statements and representations, with respect to ingredients and efficacy of said dog foods, as "Blackspot Brand. A Scientifically Balanced Beef Ration," "Dog Food. Contains Beef By-Products \* \* \* Ground Beef Bone \* \* \*," and "Harty Brand. A Scientifically Balanced Ration," "Contains Beef By-Products \* \* \* Ground Beef Bone \* \* \*," facts being its said products did not contain such ingredients and were neither scientific nor balanced rations, or scientifically balanced beef rations;

With tendency and capacity to mislead and deceive substantial part of purchasing and consuming public into erroneous and mistaken belief that said representations were true, and with consequence, as result of such mistaken and erroneous belief, that such public purchased substantial amount of its said products, and trade was unfairly diverted to it from its competitors engaged in manufacture, sale, and distribution of similar products and who truthfully represent character and ingredients 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 and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

*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 Roxanna Canning 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 Roxanna Canning 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 in the city of Lebanon, State of Ohio.

PAR. 2. Respondent is now and for several years last past has been engaged in the sale and distribution of various brands of dog food, which it sells under the trade names of Harty Dog Food Co. and Dodds Packing Co. For this purpose the respondent maintains a factory and place of business in the city of Dodds, State of Ohio. Respondent causes said dog food, when sold, to be transported 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 dog food in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now and during all the times mentioned herein, has been engaged in substantial competition with other corporations and with firms, individuals, and partnerships selling and distributing dog foods 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 aforesaid business, the respondent has made false, deceptive, and misleading statements and representations with reference to the ingredients of its various brands of dog food and their efficacy as a ration for dogs. Among and typical of such false, deceptive, and misleading representations made by the respondent are statements concerning its said products appearing on labels attached to the containers and cartons in which said products are packed and sold, as follows:

<p>BLACKSPOT Brand A Scientifically Balanced BEEF RATION</p>	<p>DOG FOOD Contains Beef By-Products Cereal Composed of Wheat, Corn, Oats, and Soy Bean Products, Ground Beef Bone, Beef, Carrots, Salt and Cod Liver Oil Prepared in Broth. Guaranteed to contain not less than 8 percent Protein, 2 percent fat and not over 2 percent Fiber. Distributed by DODDS PACKING CO. Lebanon, Ohio.</p>	<p>BLACKSPOT Brand A Scientifically Balanced BEEF RATION</p>
<p>DOG FOOD</p>	<p>DOG FOOD</p>	<p>DOG FOOD</p>
<p>Net Weight 1 lb. WHOLESOME AND NUTRITIOUS</p>	<p>Net Weight 1 lb. WHOLESOME AND NUTRITIOUS</p>	<p>Net Weight 1 lb. WHOLESOME AND NUTRITIOUS</p>

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<b>HARTY</b> Brand  Keeps your Dog Healthy and Hearty  Net Weight One Pound	<b>DOG</b> FEED Contains Beef By-Prod- ucts Cereal Composed of Wheat, Corn, Oats, and Soy Bean Products, Ground Beef Bone, Beef, Carrots, Salt and Cod Liver Oil Prepared in Broth and added water sufficient to process the product properly, guaran- teed to contain not less than 10% protein, 2% fat and not over 1½% fiber or 74% water. Distributed by DODDS PACKING CO. Waynesville, Ohio.	<b>HARTY</b> Wholesome—Nutritious  A Scientifically Balanced Ration  Net Weight One Pound	

Through the use of the aforesaid representations, and others similar thereto not specifically set out herein, the respondent has represented and does now represent that its aforesaid Harty Brand and Blackspot Brand dog foods contain beef byproducts, ground beef bone and beef, and that its dog foods are scientifically balanced rations, and scientifically balanced beef rations.

PAR. 5. The aforesaid statements and representations by respondent relative to said dog foods are false, misleading, and untrue. In truth and in fact, the respondent's dog foods do not contain beef byproducts, ground beef bone, or beef, and are not scientifically balanced rations or scientifically balanced beef rations.

PAR. 6. The use by the 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 members of the purchasing public into the erroneous and mistaken belief that said statements and representations are true and into the purchase of substantial quantities of respondent's dog food because of such 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 are likewise engaged in the sale and distribution of dog foods in commerce between and among the various States of the United States and who do not falsely represent the ingredients of their products. As a consequence thereof, 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. 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 September 30, 1939, issued and on October 1, 1939, served its complaint in this proceeding upon respondent Roxanna Canning 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. 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio. Its principal office and place of business is located in the city of Lebanon, State of Ohio.

Respondent is now and for some time past has been engaged in the sale and distribution of various brands of dog food which it sells under various trade names. For the purpose of manufacturing its dog food respondent operates and maintains a plant located in the city of Dodds, State of Ohio. Respondent causes said dog food, when sold, to be transported from its place of business in the State of Ohio to the respective purchasers thereof located in various States of the United States other than the State of Ohio and in the District of Columbia. The respondent maintains and at all times mentioned herein has maintained a course of trade in said dog food in commerce between and among the various States of the United States and in the District of Columbia.

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PAR. 2. Respondent is now and during all the times mentioned herein has been engaged in substantial competition with other corporations and with firms, individuals, and partnerships selling and distributing dog foods 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, as aforesaid, respondent has made false, deceptive and misleading statements and representations concerning the ingredients of which its various brands of dog food are made and with regard to the efficacy of said dog foods as a ration for dogs. Typical of the false, deceptive, and misleading representations so made by the respondent concerning its dog food are the following:

<p><b>BLACKSPOT</b> Brand A Scientifically Balanced BEEF RATION</p>	<p><b>DOG FOOD</b> Contains Beef By-Prod- ucts Cereal Composed of Wheat, Corn, Oats and Soy Bean Products, Ground Beef Bone, Beef, Carrots, Salt and Cod Liver Oil Prepared in Broth. Guaranteed to contain not less than 8 percent Protein, 2 per- cent fat and not over 2 percent Fiber. Distributed by DODDS PACKING CO. Lebanon, Ohio.</p>	<p><b>BLACKSPOT</b> Brand A Scientifically Balanced BEEF RATION</p>
<p><b>DOG FOOD</b>  Net Weight 1 lb. WHOLESAME AND NUTRITIOUS</p>		<p><b>DOG FOOD</b>  Net Weight 1 lb. WHOLESAME AND NUTRITIOUS</p>
<p><b>HARTY</b> Brand  Keeps your Dog Healthy and Hearty</p>	<p><b>DOG FOOD</b> Contains Beef By-Prod- ucts Cereal Composed of Wheat, Corn, Oats and Soy Bean Products, Ground Beef Bone, Beef, Carrots, Salt and Cod Liver Oil Prepared in Broth and added water sufficient to process the product properly, guaran- teed to contain not less than 10% protein, 2% fat and not over 1½% fiber or 74% water. Distributed by DODDS PACKING CO. Waynesville, Ohio.</p>	<p><b>HARTY</b> Wholesome—Nutritious  A Scientifically Balanced Ration</p>
<p>Net Weight One Pound</p>		<p>Net Weight One Pound</p>

Through the use by the respondent of the above set out representations and others not herein set out respondent has represented and now represents that its various brands of dog foods contain beef byproducts, ground beef bone, and beef, and that its dog food is a scientifically balanced ration, and scientifically balanced beef ration for dogs.

PAR. 4. In truth and in fact the representations and statements made by the respondent with regard to its dog foods are false and misleading. Respondent's dog foods do not contain beef byproducts, ground beef bone, or beef, and are not scientifically balanced rations or scientifically balanced beef rations.

PAR. 5. The use by respondent of the aforesaid false and misleading representations and statements in connection with the sale and distribution of its Black Spot and Harty dog food 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 representations are true. As a result of such mistaken and erroneous belief the purchasing and consuming public have purchased a substantial amount of respondent's products with the result that trade has been unfairly diverted to respondent from its competitors engaged in the manufacture, sale and distribution of similar products, which competitors truthfully represent the character and ingredients of their respective products. As a consequence thereof substantial injury has been and is being 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 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 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.

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*It is ordered,* That the respondent, Roxanna Canning 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 food for dogs known as Black Spot and Harty dog foods, or any other product containing substantially similar ingredients, 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. Using the terms "beef byproducts" or "ground beef bone" or "beef" or any other term of similar import or meaning to designate or describe any ingredients of such products which ingredients are not in fact, respectively, beef byproducts, ground beef bone, or beef.

2. Representing that such products are scientifically balanced rations or scientifically balanced beef rations.

*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

HERBERT S. ERWIN AND MABEL T. ERWIN, TRADING AS  
ERWIN FEATHER QUILT COMPANY

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

*Docket 4011. Complaint, Feb. 2, 1940—Decision, Apr. 29, 1940*

Where two individuals engaged, under trade name, in manufacture, sale and distribution of quilts, comforts, pillows, pads, bedspreads, drapes, and like products, by agents and through various advertising media, to purchasers in various other States and in District of Columbia—

Represented to members of purchasing public that their said products were offered at special prices and for a limited time only, and that prices quoted were reduced or special prices which did not prevail at any and all times, through circulating to purchasers and prospective customers throughout the United States by mail advertising folders, pamphlets, circulars, and other literature, and through agents who personally solicited orders, such false and misleading statements and representations concerning their said products as "Return this card at once for our Special Offer for This Week Only," "Mail this card today for complete information on this outstanding Summer Purchase Plan. One week only \* \* \*," and through statements and invitations of similar tenor with respect to their so-called "Fall and Pre-Holiday Purchase Plan," and through selling to prospective purchasers thus contacted their products at prices quoted, and represented as special prices or those reduced from the usual, customary and regular selling prices and as limited as to time;

Facts being their said quilts, comforts, pillows, and various other products, as above indicated, never had a usual, regular and customary retail price greater or other than that quoted pursuant to said offer, said quoted special or reduced prices at which such products were sold pursuant to said offer were not, in fact, reduced special prices for limited time only, but were in fact the usual, regular and customary retail selling prices of products in question at which they had regularly sold said products to all purchasers at all times for period of more than 1 year last past;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken beliefs that such false, deceptive, and misleading statements and representations were true, and of inducing portion of said public, because of such erroneous and mistaken beliefs, to purchase 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. Carrel F. Rhodes* for the Commission.

*Mr. Malcolm H. Lindsey* and *Mr. Brough Richey, Jr.*, of Columbus, Ohio, for respondents.

Complaint

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## 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 Herbert S. Erwin and Mabel T. Erwin, individually, and trading as Edwin Feather Quilt 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 issue its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents Herbert S. Erwin and Mabel T. Erwin are individuals operating and doing business under the trade name of Erwin Feather Quilt Co., with their office and principal place of business located at 1598 East Livingston Avenue, Columbus, Ohio.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing, selling, and distributing quilts, comforts, pillows, pads, bedspreads, drapes, and like products under the trade name of Erwin Feather Quilt Co. Said respondents now cause, and for more than 1 year last past have caused, their said products to be sold by agents and through various advertising mediums, and have caused the same, when sold, to be transported from their principal place of business in Columbus, Ohio, to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Ohio 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 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. In the course and conduct of the business set out and described in paragraphs 1 and 2 hereof, respondents, for the purpose of inducing the purchase of the commodities offered for sale by them, have circulated to purchasers and prospective customers throughout the United States by mail, advertising folders, pamphlets, circulars, letters, and other literature, and through agents personally soliciting orders, false and misleading statements and representations concerning the value and price of the quilts, comforts, pillows, pads, bedspreads, drapes, and various products sold by them. Among such statements and representations the following are typical examples:

Return this card at once for our Special Offer for This Week Only.

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Mail this card today for complete information on this outstanding Summer Purchase Plan. One week only is the limit we must place on our special offer \* \* \*.

Mail this card today for complete information on this outstanding Fall and Pre-Holiday Purchase Plan. One week only is the limit we must place on our special offer.

Fall and Preholiday Purchase Plan One week only is the limit we must place on our special offer to let you personally examine these exceptional quilts and see for yourself their beautiful colors—attractive designs, and know the comfort that comes from these warm light-weight feather quilts.

Upon inquiry received from prospective purchasers procured through advertisements containing said representations, respondents, in person and through agents, contact the prospective purchasers and sell them said products at prices quoted, which quoted prices are represented to be reduced prices or special prices limited as to time and one-half the usual, customary and regular selling prices therefor.

The aforesaid statements and representations, together with similar statements and representations not herein set out in full, purport to be descriptive of respondents' quilts, comforts, pillows, pads, bedspreads, drapes, and various products and also serve as representations on the part of the respondents to members of the purchasing public that the said products are offered at special prices for a limited time only and that the prices quoted are reduced prices or special prices that do not prevail at any and all times.

PAR. 4. In truth and in fact, the statements and representations and prices quoted pursuant thereto, as hereinabove set out are deceptive, false, and misleading. Respondents' said quilts, comforts, pillows, pads, bedspreads, drapes and like products have never had a usual, regular and customary retail sales price greater or other than the price quoted pursuant to said offers. The quoted special or reduced prices at which said products are sold pursuant to said offers are not in fact reduced special prices for a limited period of time. The said special prices quoted pursuant to the so-called special Pre-holiday or other offer and represented as existing for a limited period of time are in fact the usual, regular and customary retail selling prices of said products and respondents have regularly and customarily sold said products to all purchasers at all times for a period of more than 1 year last past at said prices.

PAR. 5. The use by respondents of the foregoing false, deceptive and misleading statements and representations with respect to their products, 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 induces a portion

of the purchasing public because of such erroneous and mistaken beliefs to purchase respondents' quilts, comforts, pillows, pads, bedspreads, drapes, and other similar products.

PAR. 6. 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 February 2, 1940, issued and thereafter served its complaint in this proceeding upon respondents Herbert S. Erwin and Mabel T. Erwin, individually and trading as Erwin Feather Quilt Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 18, 1940, 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 hearings 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. Respondents Herbert S. Erwin and Mabel T. Erwin are individuals operating and doing business under the trade name Erwin Feather Quilt Co., with their office and principal place of business located at 1598 East Livingston Avenue, Columbus, Ohio.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of manufacturing, selling, and distributing quilts, comforts, pillows, pads, bedspreads, drapes, and like products under the trade name Erwin Feather Quilt Co. Said respondents now cause, and for more than 1 year past have caused, their said products to be sold by agents and through various advertising mediums, and have caused the same, when sold, to be transported from their principal place of business in Columbus, Ohio, to purchasers thereof located at points in the various States of the United States other than the aforesaid State of Ohio and in the District of Columbia.

There is now, and has been for more than 1 year past, a course of trade in said products 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. In the course and conduct of the business set out and described in paragraphs 1 and 2 hereof, respondents, for the purpose of inducing the purchase of the commodities offered for sale by them, have circulated to purchasers and prospective customers throughout the United States by mail, advertising folders, pamphlets, circulars, letters, and other literature, and through agents personally soliciting orders, false and misleading statements and representations concerning the value and price of the quilts, comforts, pillows, pads, bedspreads, drapes, and various products sold by them. Among such statements and representations the following are typical examples:

Return this card at once for our Special Offer for This Week Only.

Mail this card today for complete information on this outstanding Summer Purchase Plan. One week only is the limit we must place on our special offer \* \* \*.

Mail this card today for complete information on this outstanding Fall and Pre-Holiday Purchase Plan. One week only is the limit we must place on our special offer.

Fall and Preholiday Purchase Plan One week only is the limit we must place on our special offer to let you personally examine these exceptional quilts and see for yourself their beautiful colors—attractive designs, and know the comfort that comes from these warm light-weight feather quilts.

Upon inquiry received from prospective purchasers procured through advertisements containing said representations, respondents in person and through agents, contact the prospective purchasers and sell them said products at prices quoted, which quoted prices are represented to be reduced prices or special prices from the usual, customary, and regular selling prices and limited as to time.

The aforesaid statements and representations, together with similar statements and representations not herein set out in full, purport to be descriptive of respondents' quilts, comforts, pillows, pads, bedspreads, drapes, and various products and also serve as representations on the part of the respondents to members of the purchasing public that the said products are offered at special prices for a limited time only and that the prices quoted are reduced prices or special prices that do not prevail at any and all times.

PAR. 4. In truth and in fact, the statements and representations and prices quoted pursuant thereto, as hereinabove set out are deceptive, false and misleading. Respondents' said quilts, comforts, pillows, pads, bedspreads, drapes, and like products have never had a usual, regular

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and customary retail sales price greater or other than the price quoted pursuant to said offers. The quoted special or reduced prices at which said products are sold pursuant to said offers are not in fact reduced special prices for a limited period of time. The said special prices quoted pursuant to the so-called special preholiday or other offer and represented as existing for a limited period of time are in fact the usual, regular and customary retail selling prices of said products and respondents have regularly and customarily sold said products to all purchasers at all times for a period of more than one year last past at said prices.

PAR. 5. The use by respondents of the foregoing false, deceptive and misleading statements and representations with respect to their products, 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 beliefs that such statements and representations are true, and induces a portion of the purchasing public because of such erroneous and mistaken beliefs to purchase respondents' quilts, comforts, pillows, pads, bedspreads, drapes, and other similar 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, Herbert S. Erwin and Mabel T. Erwin, individually and trading as Erwin Feather Quilt Co., or trading under any other name or names, their agents, representatives, and employees directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of quilts, comforts, pillows, pads, bed spreads, drapes, or other like products

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

Representing that the prices at which respondents offer for sale and sell their products constitute a discount to the purchaser, or that such prices are special or reduced prices, or introductory prices, or that such prices are applicable for a limited time only, when in fact such prices are the usual and customary prices at which respondents sell such products in the normal and usual course of business.

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

Complaint

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## IN THE MATTER OF

## LELAND F. BENHAM, TRADING AS LE FLOR COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4031. Complaint, Feb. 14, 1940—Decision, Apr. 29, 1940*

Where an individual engaged in sale and distribution of his "Le Flor Weight Reduction Tablets," together with so-called "deficient element" diet supplied therewith by him to purchasers of said tablets in various other States of the United States and in the District of Columbia; in advertisements of his said preparation which he disseminated and caused to be disseminated through the mails, through insertion in newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States, and by other means in commerce and otherwise, and which were intended and likely to induce purchase of his said product—

- (a) Represented that his so-called "Le Flor Method" treatment for obesity, consisting of said tablets and so-called "deficient element" diet, constituted a cure or remedy for said condition and a competent and scientific treatment therefor, containing no dehydration drugs, facts being said tablets did not constitute either a cure or remedy or competent or scientific treatment for said condition, and was of no value in treatment thereof, and, in presence therein of phenophthalein, contained in effect dehydration drug, only therapeutic value of tablets in question was as a laxative or cathartic, and neither diet supplied by him as aforesaid, nor combination of tablets and diet, constituted cure or remedy or competent and scientific treatment for condition in question; and
- (b) Represented that price of \$1 per box, or 6 for \$5, at which product was being offered for sale, was a special price and that regular and customary one therefor was \$2 per box, facts being price at which he was offering and selling said tablets was the regular, customary, and usual one at which he offered and sold same, and was neither special reduced nor introductory;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements, representations, and advertisements were true, and of inducing portion of such public because of said erroneous and mistaken belief, to purchase his said medicinal preparation:

*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 chase his said medicinal preparation:

*Mr. Carrel F. Rhodes* 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 Le Flor 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 with his principal office and place of business located at 620 North Orleans Street, Chicago, Ill. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of a medicinal preparation for the treatment of obesity. Respondent supplies to purchasers of said medicinal preparation a so-called "deficient element" diet. The medicinal preparation is described as "Le Flor Weight Reduction Tablets" and is sold under the name "Le Flor Method." Prior to August 1937, respondent conducted his business under the trade name Dixie Products Co. and subsequent to that time under the name Le Flor Co.

Respondent causes said preparation, 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 preparation 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 this said preparation, 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, 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 preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the various advertise-

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

Announcing an amazing, new, safe, different reducing method!

\* \* \* No Dehydration Drugs! \* \* \*

Here is good news for you—if you wish to reduce without starvation diet, strenuous exercise or harmful drugs. Do you want to know how modern women Lose Fat quickly and regain their stunning figures—at the same time feeling younger, enjoying better health and increased physical charm?

\* \* \* \* \*

We do not ask you to believe, we merely ask you to try the Le Flor Method and judge for yourself. You may have become skeptical after trying other highly advertised methods that were not suited to you, but we ask that you do yourself the favor of trying the Le Flor Method with the certain knowledge that if you are not entirely satisfied with the results you obtain, your money will be refunded.

Words cannot describe the wonderful feeling you will have when, after a short time with the Le Flor Method, you step upon your scales and discover to your unbounded delight that you are at least on the road back to having again your slender girlish figures, such a figure that men always admire and women everywhere desire.

Our guarantee is positive—there are no strings attached. The Le Flor Method must satisfy you or you pay nothing.

Why be fat any longer? Lose that dangerous, disfiguring, excess weight! Look like the girl you used to be, with no danger to your health. \* \* \* Read about the new, different Le Flor Method of fat reduction! Now you, too, may have a slender youthful figure! \* \* \*

The usual price is \$2.00 per box. As an introductory feature we are offering the LE FLOR method as a six weeks' treatment at the price of 6 boxes for \$5.00. If you are skeptical, we offer a one week's supply of 84 tablets (one box) at the astoundingly low price of only \$1.00.

\* \* \* our liberal offer of one-half price \* \* \*

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set-out herein, respondent represents that his treatment for obesity, described as the Le Flor Method, consisting of Le Flor Weight Reduction Tablets and a so-called "deficient element" diet, is a cure or remedy for obesity and a competent and scientific treatment therefor, which does not contain any dehydration drugs, and that the price of \$1 per box or six boxes for \$5, at which the product is being offered for sale, is a special price, and that the regular and customary price therefor is \$2 per box.

PAR. 4. In truth and in fact, the medicinal preparation sold and distributed by the respondent, as aforesaid, designated Le Flor Weight Reduction Tablets, is not a cure or remedy for obesity and does not constitute a competent or scientific treatment therefor, and is of no therapeutic value in the treatment thereof. These tablets contain dextrose, phenophthalein, powdered extract of bladderwrack and talc. The drug phenophthalein, contained in said tablets, is a dehy-

dration drug and respondent's representation that the tablets contain no dehydration drugs is false. The quantity of bladderwrack contained in said tablets in the dosage prescribed by the respondent is insufficient to have any effect on the body, and if taken in sufficient doses to have any effect in the treatment of obesity, its use would so interfere with digestion as to injure the health of the user. The only therapeutic value in the tablets offered for sale and sold by respondent as a cure or remedy for obesity and as a competent and scientific treatment therefor, is as a laxative or cathartic.

The diet supplied by the respondent to purchasers of said medicinal preparation is not a cure or remedy for obesity or a competent or scientific treatment therefor, nor is the combination of the tablets and the diet a cure or remedy for obesity or a competent or scientific treatment therefor.

In truth and in fact, the price of \$1 per box or six boxes for \$5 at which respondent offers for sale and sells said tablets is the regular, customary and usual price at which said tablets are offered for sale and sold by the respondent. The price of \$1 per box or six boxes for \$5 is not a special, reduced, or introductory price.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said 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, representations and advertisements are true, and induces a portion of the purchasing public, because of said erroneous and mistaken belief to purchase respondent's medicinal preparation.

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 February 14, 1940, issued and thereafter served its complaint in this proceeding upon respondent Leland F. Benham, an individual, trading as Le Flor Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 14, 1940, 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, Leland F. Benham, is an individual with his principal office and place of business located at 620 North Orleans Street, Chicago, Ill. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of a medicinal preparation for the treatment of obesity. Respondent supplies to purchasers of said medicinal preparation a so-called "deficient element" diet. The medicinal preparation is described as "Le Flor Weight Reduction Tablets" and is sold under the name "Le Flor Method." Prior to August 1937, respondent conducted his business under the trade name Dixie Products Co. and subsequent to that time under the name Le Flor Co.

Respondent causes said preparation, 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 preparation 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 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 preparations; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparation in commerce, as

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## Findings

“commerce” is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the various advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

Announcing an amazing, new, safe, different reducing method!

\* \* \* No Dehydration Drugs! \* \* \*

Here is good news for you—if you wish to reduce without starvation diet, strenuous exercise or harmful drugs. Do you want to know how modern women LOSE FAT quickly and regain their stunning figures—at the same time feeling younger, enjoying better health and increased physical charm?

We do not ask you to believe, we merely ask you to try the Le Flor Method and judge for yourself. You may have become skeptical after trying other highly advertised methods that were not suited to you, but we ask that you do yourself the favor of trying the Le Flor Method with the certain knowledge that if you are not entirely satisfied with the results you obtain, your money will be refunded.

Words cannot describe the wonderful feeling you will have when, after a short time with the Le Flor Method, you step upon your scales and discover to your unbounded delight that you are at least on the road back to having again your slender girlish figure, such a figure that men always admire and women everywhere desire.

Our guarantee is positive—there are no strings attached. The Le Flor Method must satisfy you or you pay nothing.

Why be fat any longer? Lose that dangerous, disfiguring, excess weight! Look like the girl you used to be, with no danger to your health. \* \* \* Read about the new, different Le Flor Method of fat reduction! Now you, too, may have a slender youthful figure! \* \* \*

The usual price is \$2.00 per box. As an introductory feature we are offering the LE FLOR method as a six weeks' treatment at the price of 6 boxes for \$5.00. If you are skeptical, we offer a one week's supply of 84 tablets (one box) at the astoundingly low price of only \$1.00.

\* \* \* our liberal offer of one-half price \* \* \*

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondent represents that his treatment for obesity, described as the Le Flor Method, consisting of Le Flor Weight Reduction Tablets and a so-called “deficient element” diet, is a cure or remedy for obesity and a competent and scientific treatment therefor, which does not contain any dehydration drugs, and that the price of \$1 per box or six boxes for \$5, at which the product is being offered for sale, is a special price, and that the regular and customary price therefor is \$2 per box.

PAR. 4. In truth and in fact, the medicinal preparation sold and distributed by the respondent, as aforesaid, designated Le Flor Weight Reduction Tablets, is not a cure or remedy for obesity and does not constitute a competent or scientific treatment therefor, and

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is of no therapeutic value in the treatment thereof. These tablets contain dextrose, phenolphthalein, powdered extract of bladderwrack and talc. The drug phenolphthalein, contained in said tablets, is a dehydration drug and respondent's representation that the tablets contain no dehydration drugs is false. The quantity of bladderwrack contained in said tablets in the dosage prescribed by the respondent is insufficient to have any effect on the body, and if taken in sufficient doses to have any effect in the treatment of obesity, its use would so interfere with digestion as to injure the health of the user. The only therapeutic value in the tablets offered for sale and sold by respondent as a cure or remedy for obesity and as a competent and scientific treatment therefor, is as a laxative or cathartic.

The diet supplied by the respondent to purchasers of said medicinal preparation is not a cure or remedy for obesity or a competent or scientific treatment therefor, nor is the combination of the tablets and the diet a cure or remedy for obesity or a competent or scientific treatment therefor.

In truth and in fact, the price of \$1 per box or six boxes for \$5 at which respondent offers for sale and sells said tablets is the regular, customary, and usual price at which said tablets are offered for sale and sold by the respondent. The price of \$1 per box or six boxes for \$5 is not a special, reduced, or introductory price.

PAR. 5. The use by the respondent of the foregoing, false, deceptive, and misleading statements and representations with respect to his said 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, representations, and advertisements are true, and induces a portion of the purchasing public, because of said erroneous and mistaken belief to purchase respondent's medicinal preparation.

## 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 the respondent, in which answer respondent admits all of 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 Le Flor Co., or trading 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 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 the medicinal preparation now designated "Le Flor Weight Reduction Tablets," or any other 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 preparation, which advertisements represent, directly or through implication:

1. That respondent's preparation is a cure or remedy or a competent or effective treatment for obesity or overweight.

2. That the diet supplied by respondent in connection or conjunction with his said preparation constitutes a competent or effective or scientific treatment for obesity or overweight.

3. That the combination of respondent's preparation and the diet supplied by respondent constitutes a cure or remedy or a competent or effective treatment for obesity or overweight.

4. That respondent's preparation possesses any therapeutic value beyond that of a cathartic or laxative.

5. That respondent's preparation contains no dehydration drugs.

6. That the price at which respondent offers for sale and sells his preparation constitutes a discount to the purchaser, or that such price is a special or reduced or introductory price, or that such price is applicable for a limited time only, when in fact such price is the usual and customary price at which respondent sells said preparation in the normal and usual course of business.

*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  
FASCINATION 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 3321. Complaint, Feb. 1, 1938—Decision, Apr. 30, 1940*

Where a corporation engaged in manufacture and sale of packaged chocolate candy, including assortments which were suitable for distribution by use of punchboards and push cards packed by it in the containers of such candy and assortments in connection with which, on request, it had shipped to the customer by the manufacturer of said devices such boards or cards designed and intended for use in distribution of candies in question wholly by lot or chance, and which included, among others, card and plan by which ultimate purchaser or consumer received package of assorted chocolates in accordance with success or failure in selecting from list of 30 girls' names that corresponding with name concealed under card's large disk as disclosed after sale of all chances, and paid for chance from 1 to 5 cents in accordance with girls' names and accompanying disk selected, and included various other cards and boards designed and intended for use in distribution of products involved, wholly by lot or chance, and of same general nature and operated in substantially same manner as cards above described—

Sold to jobbers its said candies and articles of merchandise for use as special prizes in operation of said push cards and punchboards through resale by retail dealer purchasers of said jobbers of such candy and articles by use of said devices and in accordance with sales plans as above set forth, and thereby supplied to and placed in the hands of others means by which games of chance, gift enterprises, and lotteries involving game of chance or sale of a chance in resale of candies and articles in question were conducted, 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 were unwilling to employ in sale and distribution of their candies and articles of merchandise dealt in by them, any method or sales plan involving games of chance, gift enterprises, or lottery schemes, and refrained from the use thereof, to their competitive disadvantage;

With the result that many purchasers of candy and articles of merchandise from it were attracted by element of chance involved in sale and distribution of such products through use of push cards and punchboards furnished by it and were thereby induced to purchase such candies and merchandise offered by it, in preference to similar candies and articles offered by its competitors who do not furnish therewith such or similar devices, and with result that jobbers purchased substantial amount of such candies and articles from it, and trade was thereby diverted unfairly to it 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 competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

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## Complaint

Before *Mr. William C. Reeves, Mr. Arthur F. Thomas and Mr. Miles J. Furnas*, trial examiners.

*Mr. Henry C. Lank, Mr. D. C. Daniel, Mr. George F. Foulkes and Mr. L. P. Allen, Jr.*, for the Commission.

*Mr. Harry M. Kroon*, 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 Fascination Candy 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, 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, Fascination Candy Co., is a corporation organized and doing business under the laws of the State of Illinois, with its principal place of business located at 1137 North Wood Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to wholesale and retail dealers and jobbers. Respondent causes and has caused its products when sold to be transported from its principal place of business in the city of Chicago, Ill., to purchasers thereof in the State of Illinois 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 said business respondent is in competition with other corporations, and with partnerships and individuals engaged in the sale and distribution of candy and candy 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 wholesale and retail 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 respondent's assortments illustrates the sales plan or method used in the sale and distribution of its products to the purchasing public, and is as follows:

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This assortment consists of a 1-pound basket of assorted candy and a device commonly called a push card. The card contains a number of partially perforated disks and a master seal. On each disk is printed a girl's name, and concealed within each disk is printed a number. Concealed within the master seal there is a name corresponding to the name on one of the disks. The numbers begin with one and continue to the number of pushes there are on the card, but are not arranged in numerical sequence. Persons selecting numbers 1 to 5 pay in cents the amount of such numbers, and for all numbers over five pay 5 cents for the privilege of selecting one of the names. Space is provided on the card for recording the name of each purchaser opposite the name selected. The person selecting the name which corresponds to the name under the master seal receives the basket of candy. The basket of candy is worth more than the amount paid for the lucky push. The numbers are effectively concealed from purchasers and prospective purchasers until a push or selection has been made and the selected disk removed or separated from the card. The name under the master seal is concealed until all the sales have been made and the said master seal has been removed from the card. Thus the amount to be paid by the customer is determined wholly by lot or chance, and the said basket of candy is distributed to the purchasing public 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 its products in accordance with the sales plan hereinabove set forth; and 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 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 basket of candy of far greater value than the amount to be paid therefor. 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 and candy products 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 and candy products in competition with respondent, as above alleged, are unwilling to offer for sale or sell their said products so packed and assembled as above alleged or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, 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 and candy products offered for sale and sold by said competitors of respondent who do not use the same or an equivalent or similar method. The use of said method by respondent has the tendency and capacity, because of said game of chance, to divert to respondent trade and custom from its competitors who do not use the same or an equivalent or similar method, to exclude from said trade 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 trade, to tend to create a monopoly of said trade in respondent and in such other distributors as use the same or an equivalent or similar 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 a tendency and capacity to eliminate from the said trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said method or an equivalent or similar method.

PAR. 6. The aforementioned method, acts, and practices of respondent are all to the prejudice and injury of the public and of respondent's competitors, as above alleged, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 1, 1938, issued its complaint in this proceeding and caused same to be served upon the respondent, Fascination 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 and the filing of an answer thereto by said respondent, testimony and other evidence in support of the allegations of said complaint were introduced by Henry C. Lank, D. C. Daniel, George F. Foulkes, and L. P. Allen, Jr., and testimony on behalf of said respondent was introduced by Harry M. Kroon, its attorney, before William C. Reeves, Arthur F. Thomas, and Miles J. Furnas, examiners for said 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. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony, and other evidence and briefs in support of the complaint; no briefs were filed by on on behalf of said respondent and oral argument was waived by it, 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, Fascination Candy Co., is a corporation organized under the laws of the State of Illinois, with its principal place of business at Chicago in said State; it is engaged in the business of the manufacture and sale of candy; it causes quantities of the candy manufactured by it to be transported, when sold, from its place of business in Chicago, in the State of Illinois, through and into, or into, other States of the United States to 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 manufacture and sale, or the sale, of candy in commerce among several of the States of the United States.

PAR. 2. The respondent, Fascination Candy Co., manufactures packaged chocolate candy exclusively; its annual sales aggregate between \$260,000 and \$300,000; approximately one-half of such sales have been made to jobbers in States other than the State of Illinois; in 1936 and

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## Findings

1937 it sold assortments of candy suitable for distribution by the use of a device sometimes described as punch boards and push cards; with some of these assortments, push cards were packed by respondent in the containers along with the candy and with other such assortments the candy was sold by respondent without the cards, but when requested by the customer respondent had the cards or punchboards sent direct to the customer from the manufacturer of such cards and boards; the sales by respondent with which such cards or boards were furnished aggregated between \$2,000 and \$3,000 annually. One of the cards so furnished by respondent had printed thereon 30 girls' names, each immediately above a disk which concealed a number and in the upper right-hand corner was a larger disk in the form of a seal which concealed a name which was the same as the name above 1 of the smaller disks, with the following printed matter on each of said cards:

Take home this fancy package  
of delicious assorted  
chocolates; name under seal  
wins; 1¢ to 5¢; no higher

These cards were used by retail dealers in the distribution of such assortments of candy as follows: Members of the public were solicited to select one or more of the names on one of the cards and to pay the number of cents indicated by the number concealed by each of the disks below each of the names selected, except that persons who obtained numbers higher than five paid only 5 cents. When all names on one of the cards were selected and collections made, the larger disk was then opened and the name concealed thereby disclosed, and the prize, which consisted of a basket filled with candy, was then given to the person who had selected the name which was the same as that concealed by the seal. In the use of one of these cards, as stated, the selection of a name which would entitle the selector to a basket of candy or whether the charge for each selection made was 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents was wholly a matter of chance. With other assortments of candies sold by it, respondent has furnished push cards of various types and designs and with still other such assortments respondent has furnished devices sometimes known as punchboards with various articles of merchandise given as prizes, but all such cards and boards so furnished by respondent were designed and intended for use in the distribution of candies wholly by lot or chance and were of the same general nature and operated in substantially the same manner as were the push cards described herein.

PAR. 3. The Commission finds that the candies and articles of merchandise intended for use as special prizes in the operation of the push cards and punchboards as described in paragraph 2 hereof, were

sold by respondent to jobbers and with such sales it furnished push cards or punchboards, or both, and such candies and articles of merchandise so sold to jobbers were resold by them with the accompanying push cards or punchboards to retail dealers, and such candies and articles of merchandise were resold by the retail dealers to the purchasing public by the use of one or the other of the devices and in the manner and by the sales plan described in paragraph 2 hereof. The Commission further finds that respondent by furnishing such cards and boards, or either type of said devices, with the candies and articles of merchandise sold by it, 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, or either of such devices, in the resale and distribution by retail dealers of the candies and articles of merchandise 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 such candies and articles of merchandise 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 are among the competitors of respondent persons, partnerships, and corporations engaged in the manufacture and sale, or the sale, of candies and articles of merchandise of the same general nature as those sold by respondent and in commerce between and among various States of the United States, which competitors were unwilling to employ in the sale and distribution of candies and articles of merchandise dealt in by them, any method or sales plan which involved games of chance, gift enterprises, or lottery schemes, and refrained from the use of such practices, and as a result were placed at a disadvantage in competition. Many purchasers of candies and articles of merchandise from respondent were attracted by the element of chance involved in the sale and distribution of such candies and articles of merchandise by the use of push cards and punchboards furnished by respondent, and were thereby induced to purchase such candies and articles of merchandise offered for sale by respondent, in preference to similar candies and articles of merchandise offered for sale by competitors of respondent who did not furnish with candies and articles of merchandise sold by them similar push cards and punch cards or similar devices, and as a result jobbers purchased a substantial amount of candies and articles of merchandise from respondent with the result that trade was thereby diverted unfairly to respondent from said competitors.

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Order

## CONCLUSION

The 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 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 Arthur F. Thomas, William C. Reeves, and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, in support of the allegations of the 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, Fascination Candy 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 others, packages or assortments of candy or other merchandise together with push or pull cards, punchboards or any 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 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:

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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.

## Order

## IN THE MATTER OF

C. R. ANTHONY COMPANY, BURRELL-BERGER, INC., MISS PLAZA, INC., SAMUEL R. PARNES, INC., AND GORGEOUS FROCKS, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 3834. Order, Apr. 30, 1940*

Order modifying prior order of September 12, 1939, 29 F. T. C. 922, 928, so as to require the four corporate respondent sellers of merchandise, and their officers, etc., in connection with sale, etc., of any merchandise or commodities in interstate commerce, to forthwith cease and desist from paying or granting, etc., to respondent C. R. Anthony Co., directly or indirectly, as below specified, any fee or commission, or brokerage or allowance in lieu thereof, upon purchases made by said last-named respondent in its own or any other name, and to require said C. R. Anthony Co., its officers, etc., in connection with purchase by it of merchandise, etc., as above set forth, to cease and desist from receiving or accepting any fee or commission as brokerage, or any allowance in lieu thereof, in its own name, in that of the Anco Co., or in any other name.

*Mr. Frank 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.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the motion of W. T. Kelley, chief counsel, to modify the order to cease and desist heretofore issued on September 12, 1939, in this cause, and all respondents having failed to show cause within 10 days from the service of a true copy of said motion upon them by registered mail at their principal offices and places of business why said motion should not be granted and said order to cease and desist not be modified as prayed for:

*It is ordered*, That respondents Burrell-Berger, Inc., Miss Plaza, Inc., Samuel 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., directly or under the name of The Anco Co., or in or under any other

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name, its agents, representatives, or any intermediary acting in fact for or in behalf of or subject to the direct or indirect control of the C. R. Anthony Co., 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 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.

## Syllabus

IN THE MATTER OF  
CONRAD SCHICKERLING, TRADING AS CONRAD  
SCHICKERLING RESEARCH LABORATORY

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

*Docket 4042. Complaint, Feb. 28, 1940—Decision, Apr. 30, 1940*

Where an individual engaged in sale and distribution of various types of incandescent lamps for use with photography, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution, in commerce as aforesaid, of such lamps adapted to and used for same general purposes—

- (a) Represented, in advertisements of said products in newspapers, periodicals and other publications in general circulation among the various States, and in circulars, price lists and other printed or written matter distributed among purchasers and prospective purchasers, that his "Mushroom Bulb Photo Flood Lamp," or "Full Sun Spectrum Photo Flood Krypton Lamp," was 8 amperes and had output of 38,000 lumens, and contained a coil filament or cooling coil between wire and filament peculiar to said particular device and not found in the ordinary lamp, facts being said lamp was not 8 amperes, but substantially less, had a lumen output substantially less than that set forth, and did not contain coil filament or cooling coil between wire and filament, peculiar to device in question, but only such a coil as is used in practically all lamps of said general nature;
- (b) Represented, as aforesaid, that said lamp was more effective in blackening a negative than other lamps used for the same purpose, and had a 10-hour peak performance, was covered by United States patent rights belonging to him and contained rare gases not ordinarily contained in other lamps of same type, and that said lamp contained krypton gas and had average life of 20 hours at 115 volts, and contained, or had, or brought about, color balance, facts being it did not have an improved color balance, or color balance of any kind whatsoever, was not more effective in blackening a negative than other lamps used for said purpose, had a peak performance of substantially less than 10 hours, was not covered by patent as aforesaid, contained no rare gases not ordinarily used in such devices of same type, but contained ordinary argon nitrogen gases used in majority of other lamps of same kind or type, did not contain krypton gas, except for small amount found in all argon gas, and average life of said bulb was substantially less than 20 hours at 115 volts;
- (c) Represented that his said "Photo Enlarging Lamp" contained coil filament or cooling coil between wire and filament, and that such a device or arrangement was peculiar to his lamp and not be found in ordinary lamp, and that his said lamp contained krypton gas, facts being it did not contain such a coil or cooling coil, which, found in practically all lamps of such general nature, would not be peculiar to his said device, and it did not contain krypton gas except for small amount found in all argon gas, used in most other lamps of same type;
- (d) Represented that his "'1,000 Flash' Photo-Flash-Flood-Lamp" had Dufay color correction, and that he might rightfully use such correction with or

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in said lamps, and that it was a flash bulb or flashed instantaneously, and that for a split second it produced flash or light more intense than at any other time, facts being it did not have such correction and he had no right to use same with or in said device, which was not a flash bulb, but a flood lamp, and it did not flash instantaneously as do flash bulbs, nor have a split second, or any other period of time, producing flash or light more intense than that produced at any other time;

- (e) Represented that his "200 Flash' Photo Lamp" was a flash lamp which worked automatically, and would flash 200 times and replace 200 ordinary flashlight bulbs, and that it was made under his United States patent rights, facts being it was not a flash lamp, but primarily a flood lamp, did not work automatically since it was necessary to shut off current or remove lamp from socket after each flash, failing which it would not light up accurately when next used, and it would not replace 200 flashlight bulbs or any other number of ordinary flashlight bulbs, and was not covered by a United States patent; and
- (f) Made use of trade name including words "Research Laboratory," for the conduct of his said business, and displayed such name in his aforesaid advertisements, and thereby represented that, as part of business in question, he owned, controlled, and directed a research laboratory where such work was conducted in connection with the production of his said lamps, facts being he neither owned, controlled, nor directed any such laboratory, and at no time concerned engaged in direction, control, or conduct of any such research work;

With tendency and capacity to mislead purchasers and prospective purchasers into erroneous and mistaken belief that his said representations, as above set forth, were true, and to induce them to purchase said lamps on account thereof, and thereby to divert trade unfairly to him from competitors engaged in sale in commerce of incandescent lamps used in photography, and including those who, in the sale of their said products, do not similarly or in any manner misrepresent the same or matters pertaining thereto; 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.

*Mr. Donovan R. Divet* 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 Conrad Schickerling, an individual trading as Conrad Schickerling Research Laboratory, 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 Conrad Schickerling is an individual trading as Conrad Schickerling Research Laboratory, with his office

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## Complaint

and principal place of business at 589 Central Avenue, in the city of Orange, State of New Jersey.

PAR. 2. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution in commerce between and among the various States of the United States of various types of incandescent lamps, including incandescent lamps known as Schickerling Mushroom Bulb Photo Flood Lamps, sometimes known as Schickerling Full Sun Spectrum Photo Flood Krypton Lamps, Schickerling Photo Enlarging Lamps, Schickerling "1,000 Flash" Photo-Flash-Flood-Lamps, and Schickerling "200 Flash" Photo Lamps, all of which said lamps are sold and distributed by respondent for use in connection with photography. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause his said lamps, when sold, to be transported from his said place of business in New Jersey, to, into, and through States of the United States other than New Jersey and into the District of Columbia to the purchasers thereof.

PAR. 3. During the time above mentioned, other individuals, and firms and corporations, in various States of the United States have been and are now 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 incandescent lamps adapted to and used for the same general purposes as respondent's said lamps. Respondent has been, during the time aforesaid, and now is in substantial competition in commerce between and among the various States of the United States in the sale of his said incandescent lamps with such other individuals, firms, and corporations.

PAR. 4. In the course and conduct of his aforesaid business and in furtherance of the sale of his products, respondent has caused various statements and representations relative to said products to be inserted in newspapers, periodicals and other publications having a general circulation among and between the various States of the United States, and in circulars, price lists, and other printed and written matter distributed among purchasers, and prospective purchasers. Among and typical of the statements and representations made by respondent concerning the said Schickerling Mushroom Bulb Photo Flood Lamp, sometimes described as Full Sun Spectrum Photo Flood Krypton Lamp, are the following:

- 8 amperes
- 38,000 lumens
- Concentrated cool coil filament
- Improved color balance
- Much higher actinic value
- 10 hour peak performance

## Complaint

30 F. T. C.

Made under license of United States patent rights of Conrad Schickerling  
Rare inert gases  
"Krypton" Lamp  
Rated average laboratory life at 115 volts is 20 hours

Among and typical of the statements and representations disseminated and caused to be disseminated concerning respondent's said Schickerling Photo Enlarging Lamp is that it is a "Koolcoil Krypton" lamp.

Among and typical of the statements and representations disseminated and caused to be disseminated as aforesaid, concerning respondent's said Schickerling "1,000 Flash" Photo-Flash-Flood-Lamp, are the following:

Dufay Color Correction Lamps and  
Dufay-Flash Color Correction Lamps

Automatic controlled—each extra ordinary instantaneous flash of approximately 52,000 lumens of a few seconds durations, producing artificial sunlight illumination at split second peak of light.

Among and typical of the statements and representations disseminated and caused to be disseminated concerning respondent's said Schickerling "200 Flash" Photo Lamp, are the following:

Schickerling "200 Flash" (works automatically) Photo-Lamp; 200 flashes in one bulb.

This new bulb replaces 200 ordinary flash light bulbs

Made under license of United States patent rights of Conrad Schickerling.

PAR. 5. Through the use of the above and foregoing statements and representations, as well as others of similar import and meaning not herein set out, the respondent represents and implies:

That respondent's said Mushroom Bulb Photo Flood Lamp, sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp, is 8 amperes and has a lumen output of 38,000 lumens; contains a coil filament; or that it contains a cooling coil between the wire and filament and that such device or arrangement is peculiar to respondent's lamp or is not to be found in the ordinary lamp; is more effective in blackening a negative than other lamps used for the same purpose, and has a 10-hour peak performance; is covered by United States patent rights belonging to respondent, and contains rare gases not ordinarily contained in other lamps of the same type; contains krypton gas and has an average life of 20 hours at 115 volts; and contains, or has, or brings about, color balance.

That respondent's said Schickerling Photo Enlarging Lamp contains a coil filament; or that it contains a cooling coil between the wire and filament and that such device or arrangement is peculiar to respondent's lamp or is not to be found in the ordinary lamp; and that said lamp contains krypton gas.

That respondent's said "1,000 Flash" Photo-Flash-Flood-Lamp has Dufay color correction, and that respondent may rightfully use Dufay color correction with or in said lamp; and that it is a flash bulb or flashes instantaneously, and for a split second produces a flash or a light more intense than at any other time.

That respondent's said "200 Flash" Photo Lamp is a flash lamp which works automatically; that it will flash 200 times and replace 200 ordinary flashlight bulbs; and is made under United States patent rights of respondent.

PAR. 6. The above and foregoing statements and representations are false, misleading and deceptive for, in truth and in fact, respondent's said Mushroom Bulb Photo Flood Lamp sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp, is not 8 amperes but is substantially less, and it has a lumen output of substantially less than 38,000 lumens. It does not contain a coil filament and a cooling coil between the wire and filament which is peculiar to respondent's lamp but only such a coil as is used in practically all lamps of this general nature, nor does it have an improved color balance or a color balance of any kind whatsoever. It is not more effective in blackening a negative than other lamps used for the same purpose, and it has a peak performance of substantially less than 10 hours, and it is not covered by a United States patent. It does not contain rare gases not ordinarily used in incandescent lamps of the same type, but, on the contrary, contains the ordinary argon nitrogen gases used in the majority of other incandescent lamps of this kind or type. It does not contain crypton gas except for the small amount found in all argon gas. The average life of this bulb is substantially less than 20 hours at 115 volts.

Said Schickerling Photo Enlarging Lamp does not contain a cool coil or a cooling coil between the wire and filament. A cooling coil between the wire and filament would not be peculiar to respondent's said lamp, for such cooling coils are found in practically all lamps of this general nature. Said bulb does not contain crypton gas except for the small amount found in all argon gas which argon gas is used in most other lamps of this same type.

Respondent's said "1,000 Flash" Photo-Flash-Flood-Lamp does not have Dufay color correction and respondent does not have and never has had the right to use Dufay color correction with or in said lamp. It is not a flash bulb but is a flood lamp. It does not flash instantaneously as do flash bulbs and it does not for a split second or for any period of time produce a flash or a light more intense than that produced at any other time. In truth and in fact, the bulb known in photography as a flash bulb can be used but once as it burns out in one lighting. Respondent's said "200 Flash"

Photo Lamp is not a flash lamp but is primarily a flood lamp. It does not work automatically because it is necessary to shut off the electric current or to remove the lamp from the socket after each flash, for without such shutting off or removal the said lamp will not light up accurately the next time it is used. Said globe will not replace 200 flashlight bulbs or any other number of ordinary flashlight bulbs and it is not covered by a United States patent.

PAR. 7. Respondent at all times herein mentioned has conducted and now does conduct his said business under the name of Conrad Shickerling Research Laboratory, and on the said advertisements heretofore mentioned has printed and does print or cause to be printed the words "Conrad Shickerling Research Laboratory." By the use of said name and said words respondent represents that as a part of said business he owns, controls, and directs a laboratory where research work is conducted in connection with the production of his said lamps. In truth and in fact, respondent does not own, control, or direct and never at any time herein mentioned has owned, controlled, or directed a laboratory where such research work is conducted, and respondent is not now and at no time herein mentioned has been engaged in the direction, control, or conduct of any such research work.

PAR. 8. The aforesaid acts and practices, used by respondent in connection with the offering for sale and sale of his said incandescent lamps, have had and now have the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that said representations as herein alleged are true and to induce them to purchase said lamps on account thereof, and thereby to divert trade unfairly to respondent 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 incandescent lamps used in photography. There are among the competitors of respondent mentioned in paragraph 3 hereof of those who in the sale of their incandescent lamps do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, 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.

PAR. 9. 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 the 28th day of February 1940, issued and served its complaint in this proceeding upon the respondent, Conrad Schickerling, an individual, trading as Conrad Schickerling Research Laboratory, charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce, as "commerce" is defined in the Federal Trade Commission Act, in violation of the provisions of said act. On the 15th day of March 1940, 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 Conrad Schickerling is an individual trading as Conrad Schickerling Research Laboratory, with his office and principal place of business at 589 Central Avenue, in the city of Orange, State of New Jersey.

PAR. 2. Respondent is now and for more than 3 years last past has been engaged in the sale and distribution, in commerce between and among the various States of the United States, of various types of incandescent lamps, including incandescent lamps known as Schickerling Mushroom Bulb Photo Flood Lamps, sometimes known as Schickerling Full Sun Spectrum Photo Flood Krypton Lamps, Schickerling Photo Enlarging Lamps, Schickerling "1,000 Flash" Photo-Flash-Flood-Lamps, and Schickerling "200 Flash" Photo Lamps, all of which said lamps are sold and distributed by respondent for use in connection with photography. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause his said lamps, when sold, to be transported from his said place of business in New Jersey to, into, and through States of the United States other than New Jersey and into the District of Columbia, to the purchasers thereof.

PAR. 3. During the time above mentioned, other individuals, and firms and corporations, in various States of the United States have been and are now 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 incandescent lamps adapted to and used for the same general purposes as respondent's said lamps. Respondent has been, during the time aforesaid, and now is in substantial competition, in commerce between and among the various States of the United States, in the sale of his said incandescent lamps with such other individuals, firms, and corporations.

PAR. 4. In the course and conduct of his aforesaid business and in furtherance of the sale of his products, respondent has caused various statements and representations relative to said products to be inserted in newspapers, periodicals, and other publications having a general circulation among and between the various States of the United States, and in circulars, price lists, and other printed and written matter distributed among purchasers and prospective purchasers. Among and typical of the statements and representations made by respondent concerning the said Schickerling Mushroom Bulb Photo Flood Lamp, sometimes described as Full Sun Spectrum Photo Flood Krypton Lamp, are the following:

- 8 amperes
- 38,000 lumens
- Concentrated cool coil filament
- Improved color balance
- Much higher actinic value
- 10-hour peak performance
- Made under license of U. S. Patent rights of Conrad Schickerling.
- Rare inert gases
- "Krypton" Lamp
- Rated average laboratory life at 115 volts is 20 hours.

Among and typical of the statements and representations disseminated and caused to be disseminated concerning respondent's said Schickerling Photo Enlarging Lamp is that it is a "Koolkoil Krypton" lamp.

Among and typical of the statements and representations disseminated and caused to be disseminated as aforesaid, concerning respondent's said Schickerling "1,000 Flash" Photo-Flash-Flood-Lamp, are the following:

- Dufay Color Correction Lamps and
- Dufay-Flash Color Correction Lamps.

Automatic controlled—each extra ordinary instantaneous flash of approx. 52,000 lumens of a few seconds durations, producing artificial sunlight illumination at split second peak of light.

Among and typical of the statements and representations disseminated and caused to be disseminated concerning respondent's said Schickerling "200 Flash" Photo Lamp, are the following:

Schickerling "200 Flash" (works automatically) Photo-Lamp; 200 flashes in one bulb.

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## Findings

This new bulb replaces 200 ordinary flashlight bulbs.

Made under license of U. S. Patent rights of Conrad Schickerling.

PAR. 5. Through the use of the above and foregoing statements and representations, as well as others of similar import and meaning not herein set out, the respondent represents and implies:

That respondent's said Mushroom Bulb Photo Flood Lamp, sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp is 8 amperes and has a lumen output of 38,000 lumens; contains a coil filament; or that it contains a cooling coil between the wire and filament and that such device or arrangement is peculiar to respondent's lamp or is not to be found in the ordinary lamp; is more effective in blackening a negative than other lamps used for the same purpose, and has a 10-hour peak performance; is covered by United States patent rights belonging to respondent, and contains rare gases not ordinarily contained in other lamps of the same type; contains crypton gas and has an average life of 20 hours at 115 volts; and contains, or has, or brings about, color balance.

That respondent's said Schickerling Photo Enlarging Lamp contains a coil filament; or that it contains a cooling coil between the wire and filament and that such a device or arrangement is peculiar to respondent's lamp or is not to be found in the ordinary lamp; and that said lamp contains crypton gas.

That respondent's said "1,000 Flash" Photo-Flash-Flood-Lamp has Dufay color correction, and that respondent may rightfully use Dufay color correction with or in said lamp; and that it is a flash bulb or flashes instantaneously, and for a split second produces a flash or a light more intense than at any other time.

That respondent's said "200 Flash" Photo Lamp is a flash lamp which works automatically; that it will flash 200 times and replace 200 ordinary flashlight bulbs; and is made under United States patent rights of respondent.

PAR. 6. The above and foregoing statements and representations are false, misleading, and deceptive for, in truth and in fact, respondent's said Mushroom Bulb Photo Flood Lamp sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp, is not 8 amperes but is substantially less, and it has a lumen output of substantially less than 38,000 lumens. It does not contain a coil filament, or a cooling coil between the wire and filament which is peculiar to respondent's lamp but only such a coil as is used in practically all lamps of this general nature, nor does it have an improved color balance or a color balance of any kind whatsoever. It is not more effective in blackening a negative than other lamps used for the same purpose, and it has a peak performance of substantially less than 10 hours, and it is not covered by a United States Patent.

It does not contain rare gases not ordinarily used in incandescent lamps of the same type, but, on the contrary, contains the ordinary argon nitrogen gases used in the majority of other incandescent lamps of this kind or type. It does not contain crypton gas except for the small amount found in all argon gas. The average life of this bulb is substantially less than 20 hours at 115 volts.

Said Schickerling Photo Enlarging Lamp does not contain a cool coil or a cooling coil between the wire and filament. A cooling coil between the wire and filament would not be peculiar to respondent's said lamp, for such cooling coils are found in practically all lamps of this general nature. Said bulb does not contain crypton gas except for the small amount found in all argon gas which argon gas is used in most other lamps of this same type.

Respondent's said "1,000 Flash" Photo-Flash-Flood-Lamp does not have Dufay color correction and respondent does not have and never has had the right to use Dufay color correction with or in said lamp. It is not a flash bulb but is a flood lamp. It does not flash instantaneously as do flash bulbs and it does not for a split second or for any period of time produce a flash or a light more intense than that produced at any other time. In truth and in fact, the bulb known in photography as a flash bulb can be used but once as it burns out in one lighting. Respondent's said "200 Flash" Photo Lamp is not a flash lamp but is primarily a flood lamp. It does not work automatically because it is necessary to shut off the electric current or to remove the lamp from the socket after each flash, for without such shutting off or removal the said lamp will not light up accurately the next time it is used. Said globe will not replace 200 flashlight bulbs or any other number of ordinary flashlight bulbs and it is not covered by a United States patent.

PAR. 7. Respondent at all times herein mentioned has conducted and now does conduct his said business under the name Conrad Schickerling Research Laboratory, and on the said advertisements heretofore mentioned has printed and does print or cause to be printed the words "Conrad Schickerling Research Laboratory." By the use of said name and said words respondent represents that as a part of said business he owns, controls and directs a laboratory where research work is conducted in connection with the production of his said lamps. In truth and in fact, respondent does not own, control, or direct and never at any time herein mentioned has owned, controlled, or directed a laboratory where such research work is conducted, and respondent is not now and at no time herein mentioned has been engaged in the direction, control, or conduct of any such research work.

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## Order

PAR. 8. The aforesaid acts and practices, used by respondent in connection with the offering for sale and sale of his said incandescent lamps, have had and now have the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that said representations as herein alleged are true and to induce them to purchase said lamps on account thereof, and thereby to divert trade unfairly to respondent 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 incandescent lamps used in photography. There are among the competitors of respondent mentioned in paragraph 3 hereof those who in the sale of their incandescent lamps do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, 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.

## 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 and considered by the Federal Trade Commission upon the complaint, 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, Conrad Schickerling, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of the incandescent lamps now known as Schickerling Mushroom Bulb Photo Flood Lamps, sometimes known as Schickerling Full Sun Spectrum Photo Flood Krypton Lamps, and of the incandescent lamps now known as Schickerling Photo Enlarging Lamps, and of the incandescent lamps now known as "1,000 Flash" Photo-Flash-Flood-Lamps, and of the incandescent lamps now known as "200 Flash" Photo Lamps, whether sold under these names

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

1. Representing that the amperage of respondent's said Mushroom Bulb Photo Flood Lamp, sometimes described as Schickerling Full Sun Spectrum Photo Flood Krypton Lamp, is 8 amperes or any number of amperes in excess of that actually present, or that the lumen output is 38,000 lumens or any other number of lumens in excess of the lumens actually produced; or that said lamp contains a coil filament, or contains a cooling coil between the wire and filament; that said lamp is more effective in blackening a negative than other lamps used for the same purpose, or has a 10-hour peak performance or is covered by United States patent rights; that it contains rare gases not ordinarily contained in lamps of the same type, or that it contains krypton gas; that it contains or has or brings about color balance, when such is not the fact; that such a device or arrangement as a coil filament, or cooling coil between wire and filament, is peculiar to respondent's said lamp or is not to be found in the ordinary lamps used for the same purpose; or that the average life of its said lamp is 20 hours on a 115-volt circuit.

2. Representing that respondent's said Schickerling Photo Enlarging Lamp contains a coil filament, or that it contains a cooling coil between the wire and filament; or that such a device or arrangement is peculiar to respondent's said lamp, or is not to be found in the ordinary lamp, or that said lamp contains krypton gas.

3. Representing that respondent's said "1,000 Flash" Photo-Flash-Flood Lamp has Dufay color correction, or that respondent may rightfully use Dufay color correction with or in said lamp, or in any lamp, or that said lamp is a flash bulb, or flashes instantaneously, or for a split second produces a flash or a light more intense than at any other time.

4. Representing that respondent's said "200 Flash" Photo Lamp is a flash lamp which works automatically, or that it is made under United States patent rights of the respondent, or in any way misrepresenting the number of times it will flash.

5. Using the words "research laboratory" or the word "laboratory" or any other similar word, words, or phrases in his trade name or in connection with his business, when respondent does not own and operate or directly and absolutely control an appropriately equipped laboratory where research work in connection with said business is conducted by trained technicians.

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

## Syllabus

IN THE MATTER OF  
STANDARD BRANDS INCORPORATED AND STANDARD  
BRANDS OF CALIFORNIA <sup>1</sup>

COMPLAINT, MODIFIED 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, May 1, 1940*

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 re-assumed 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.

<sup>1</sup> The original findings and order are published in 29 F. T. C. 121. The effect of Commission order of May 1, modifying such original findings and order, is to include, as set forth in the new paragraph 15 of the findings, in lieu of the old paragraph 15 of the original findings, respondents' theretofore methods in sale of foll yeast as discriminatory in violation of the statute involved, and to include such methods of selling said foll yeast within the prohibitions of the order, as set forth in the paragraph thereof relating thereto, on page 1157, *infra*.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—QUANTITY DISCOUNTS AND DIFFERENTIALS—WHERE NOT JUSTIFIED 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 33 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 such services and their prestige and good will, 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, and (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

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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 two or three 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; and

Where said corporations, in selling their foil yeast according to price scale of 27 cents a dozen for 300 pieces and up, per month, and 30 cents a dozen for under 300 pieces—

- (e) Discriminated in price between customer competitor purchasers of their said foil yeast through selling said product to independent retailers taking more than 300 pieces per month at price aforesaid of 27 cents, and selling at said price such foil yeast also to units of corporate, voluntary and cooperative groups, regardless of quantity delivered during any one month to any one unit of such groups, members of which were competitively engaged under like circumstances and conditions with independent retailers who purchased

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comparable quantities and did not receive benefit of such lower price and differential, which did not make only due allowance for differences in cost of sale and delivery resulting from differing quantities in which such foil yeast was to such purchasers sold and delivered, and under which differential, amounting annually to substantial sum, some preferred purchasers realized substantial savings annually over other purchasers who did not receive benefit thereof;

With the result that the effect of such price discrimination by said corporations might be substantially to lessen competition or tend to create a monopoly in the sale and distribution of foil yeast in respective lines of commerce in which they and their customers receiving benefits of such discriminatory prices were engaged, and to injure or prevent competition with customers receiving such benefit:

*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<sup>1</sup>

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 Inc. and Standard Brands of California, stating the charges in that respect as follows:

PARAGRAPH 1. Respondent Standard Brands Inc. 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 Inc., and its offices are the same as those of respondent Standard Brands Inc.

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

<sup>1</sup> 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.

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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.

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:

	<i>Cents per pound</i>
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

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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:

	<i>Cents per dozen</i>
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, sec. 13), and for other purposes."

#### REPORT, MODIFIED 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 designated 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 Inc. 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 Inc.

PAR. 2. Respondents are engaged, among other things, in the business of manufacturing, selling, and distributing bakers' yeast and foil

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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 "makers' yeast" is molded into 1-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 respondents' 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 16 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 and 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 its 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.

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

Pacific coast: California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Wyoming, 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).

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*Schedule C*

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 60.....	30	2,000 to 3,000.....	21
60 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, reference 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.

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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
	<i>Cents per pound</i>	<i>Percentage</i>		<i>Cents per pound</i>	<i>Percentage</i>
1-149	25		3,000-4,999	18	28
150-299	23	8	5,000-7,499	17	32
300-499	22	12	7,500-9,999	16	36
500-999	21	16	10,000-49,999	14½	42
1,000-1,499	20	20	50,000 and up	14	44
1,500-2,999	19	24			

<sup>1</sup> Base price.

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 and 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.

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\$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 purchase 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

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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 respondents. 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 purchase 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 and Pacific Tea Co. had a total national consumption 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 cents price bracket, to 8 in the 16 cents price bracket, to 4 in the 17 cents price bracket, to 1 in the 18 cents price bracket and to 1 in the 19 cents 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 cents price bracket, to 9 in the 16 cents price bracket, to 20 in the 17 cents price bracket, to 18 in the 18 cents price bracket, and to 3 in the 19 cents 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 one 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 bakery 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 com-

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petition, 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, substan-

tially 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, destroy, 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 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 sold in commerce immediately prior to April 1, 1940, 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 a dozen.

Respondents sold said foil yeast to units of corporate, voluntary and cooperative groups, at 27 cents a dozen regardless of the quantity delivered during any 1 month to any 1 unit of such groups, and to independent retailers taking more than 300 pieces per month. The members of the said groups were and are competitively engaged under like circumstances and conditions with independent retailers who did

not and do not receive such lower prices and who purchase comparable quantities. Said differentials in price do not make only due allowance for differences in the cost of sale and delivery resulting from the differing quantities in which such foil yeast is to such purchasers sold and delivered. The said differential in price amounts annually to substantial sums, so that some preferred purchasers realized substantial savings annually over other purchasers that did not receive the benefit of said differential. The Commission finds that the effect of such price discrimination by the respondents may be, substantially to lessen competition or tend to create a monopoly in the sale and distribution of foil yeast in respective lines of commerce in which respondents and their customers, receiving the benefits of such discriminatory prices, are engaged and to injure or prevent competition with customers receiving the benefit of such discrimination.

Subsequent to March 31, 1940, respondents, in the course and conduct of their business as aforesaid, in commerce, have sold and do sell to the aforementioned groups foil yeast at 28½ cents per dozen and sell to competing independent retailers, taking less than 300 pieces per month at 30 cents per dozen, and to those competing independent retailers, taking more than 300 pieces per month, at 28½ cents per dozen. Said differential in prices makes only due allowance for the differences in the cost of sale and delivery resulting from the differing quantities in which such foil yeast is to such purchasers sold and delivered.

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 respondents 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

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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 Administration 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 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
		<i>Cents per pound</i>	<i>Cents per pound</i>
1.....	1 to 149.....	11.7854	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.....	1.4568	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

<sup>1</sup> 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.

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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	Grocery Products
Pound yeast:	Foil yeast.
Personal delivery.	Bulk products—Tea.
Shipping sales.	Package products (including Royal
Sales to grocers.	baking powder, Dr. Price baking pow-
Bulk products (including Arkady, Dia-	der, desserts, coffee and tea).
malt, frozen eggs and fermaloid).	
Package products (including Fleisch-	
man baking powder and other leav-	
eners).	

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:

	<i>Percent</i>
Yeast.....	23
Bulk products.....	7.25
Package products.....	11.3

The total average monthly sales, based on three months' operations, amounted to \$6,518,015.44, the detail of which is shown in the following tabulation:

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## AVERAGE MONTHLY SALES

## Bakery Products:

	<i>Dollar Sales</i>
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
<b>Total bakery products.....</b>	<b>2, 292, 613. 59</b>

## Grocery Products:

Foil yeast.....	710, 390. 63
Bulk products.....	3, 878. 26
Package products.....	3, 511, 132. 96
<b>Total grocery products.....</b>	<b>4, 225, 401. 85</b>
<b>Total sales.....</b>	<b>6, 518, 015. 44</b>

The predetermined percentages 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 Respondent's Cost Allocations," are shown in the following tabulation:

*First step in respondents' cost allocations*

	Dollar sales	Predetermined percentages applied to dollar sales	Estimated costs
<b>BAKERY PRODUCTS</b>			
Pound yeast:			
Personal delivery.....	\$1, 413, 095. 03	23	\$325, 011. 66
Shipping sales.....	35, 368. 53	23	8, 134. 78
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
<b>Total.....</b>	<b>2, 292, 613. 59</b>	-----	<b>401, 260. 63</b>
<b>GROCERY PRODUCTS</b>			
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
<b>Total.....</b>	<b>4, 225, 401. 85</b>	-----	<b>560, 429. 03</b>
<b>Grand total.....</b>	<b>6, 518, 015. 44</b>	-----	<b>961, 689. 66</b>

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

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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
<b>BAKERY PRODUCTS</b>			
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
<b>GROCERY PRODUCTS</b>			
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 an 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

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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
<b>Total.....</b>	<b>978,793.38</b> (100.00%)	<b>634,062.95</b> (64.78%)	<b>344,730.43</b> (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 2 classes of products as determined by respondents' independent study and analysis (third step).....	228,673.07 (30.06%)	405,389.88 (63.94%)	634,062.95 (100.00%)
Balance of said costs—allocated to the 2 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)<sup>1</sup> 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

<sup>1</sup>Including sales through the personal-delivery service, shipping sales and sales to grocers.

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

*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
	<hr/>
Total direct costs-----	192,457.95
II. Other costs (indirect costs)-----	138,334.27
	<hr/>

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 six 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	Route selling and delivery costs <sup>1</sup>	Solicitation costs <sup>2</sup>	Service costs <sup>3</sup>	Total direct costs	Total indirect costs <sup>4</sup>	Total cost of sale and delivery applied to bakers' yeast by respondents <sup>5</sup>	Bakery consultants' services <sup>6</sup>	Total cost applied to bakers' yeast by respondents
		Sixth step	Sixth step	Sixth step	Sixth step	Seventh step	Second step		
	<i>Pounds</i>								
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	7,268.82	17,378.81	166.77	17,545.58
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	5,363.07	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	246.78	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

<sup>1</sup> Allocated to brackets on basis of time study for 6 days.

<sup>2</sup> Allocated to brackets on basis of number of calls on customers.

<sup>3</sup> Allocated to brackets on basis of time study.

<sup>4</sup> Allocated to brackets on basis of total direct costs previously allocated to brackets as shown in the immediately preceding column.

<sup>5</sup> Total amount of \$330,792.22 was estimated by respondents by applying predetermined percentages to dollar sales.

<sup>6</sup> 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 were grouped into the separate quantity-brackets. The number of pounds assigned to each quantity-bracket was then applied to the costs 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 (eighth step)	Quantity of bakers' yeast sold through personal-delivery service in January 1937	Costs per pound
		<i>Pounds</i>	<i>Cents</i>
1-149 .....	\$101,091.33	859,226	11.7654
150-299 .....	59,853.88	597,049	10.0250
300-499 .....	37,652.62	488,146	7.7134
500-999 .....	35,762.81	625,842	5.7144
1,000-1,499 .....	17,643.58	358,457	4.8942
1,500-2,999 .....	22,174.20	872,442	2.5416
3,000-4,999 .....	18,855.96	905,271	2.0829
5,000-7,499 .....	13,244.84	921,843	1.4308
7,500-9,999 .....	11,608.48	781,025	1.4735
10,000-49,999 .....	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 revolved 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 product 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 percent) 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

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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 percent) 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 2 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 2 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 2 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 separate 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 percent) of the total known costs.

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## Findings

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 percent) to bakery products; while, of the total \$344,730.43 indirect costs, respondents applied \$179,724.01 (52.13 percent) 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, on which a factual cost study and analysis had been made, 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-product 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.....	<u>34, 294. 63</u>

## Agency delivery:

Pay roll (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.....	<u>24, 302. 61</u>

## Agency administration:

Pay roll—general and clerical.....	51, 129. 34
Office supplies.....	6, 287. 48
Office expenses.....	13, 487. 98
Telephone and telegraph.....	9, 125. 77
Rent.....	27, 459. 51
Miscellaneous.....	6, 632. 48
Repairs—building and equipment.....	5, 098. 92
Taxes.....	6, 436. 42
Total.....	<u>125, 657. 90</u>

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Division stockrooms:	
Pay roll.....	\$4, 887. 44
Rent—warehouse.....	1, 530. 26
Warehouse charges:	
Diamalt.....	1, 182. 10
Frozen eggs.....	5, 168. 93
Other.....	3, 118. 79
Miscellaneous expenses.....	1, 507. 81
 Total.....	 <u>17, 404. 83</u>
Automobiles (unallocated portion).....	857. 20
Foreign commissions.....	297. 67
Division administration:	
Pay roll:	
Managers, assistant office managers.....	23, 376. 38
Account and accounts record.....	22, 978. 60
Clerical.....	26, 057. 81
General.....	5, 122. 89
Limited pensions.....	2, 868. 15
Traveling expense:	
Managers, assistant office managers.....	6, 082. 99
Accounts department.....	1, 127. 66
Office supplies.....	4, 812. 67
Office expense.....	3, 781. 45
Telephone and 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 and express.....	3, 009. 53
Visonatic expenses.....	309. 77
Taxes.....	261. 37
Social security.....	18, 321. 72
Expense distribution.....	1 239. 59
Expense miscellaneous.....	4, 959. 23
Workmen compensation insurance.....	4, 280. 36
 Total.....	 <u>141, 916. 09</u>
 Grand total.....	 <u>344, 730. 43</u>

<sup>1</sup> Denotes deduction.

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## Findings

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-----	<u>344,730.43</u>

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 percent) 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 cost 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 respondents' 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 percent) 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 respondents' method of allocation, a total amount of \$20,746.80 (40.13 percent) 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, thirteen 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 percent) 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, have 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 petitioned 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 6 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 reassumed 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 respond-

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ents 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.

Commissioner Freer not participating.

## MODIFIED 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.

Order

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*It is ordered,* That the respondents, Standard Brands Incorporated, and Standards 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 such 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 manufac-

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ture, 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, 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 foil yeast in interstate commerce, or in the District of Columbia, do forthwith cease and desist from discriminating in price between different purchasers of foil yeast of like grade and quality, either directly or indirectly, by selling said foil yeast at different prices, to wit: 300 pieces per month and up, 27 cents per dozen; under 300 pieces per month, 30 cents per dozen, as set forth in paragraph 15 of said findings of fact as modified.

*It is further ordered,* That the respondents shall on or before May 1, 1940, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order, as modified.

Commissioner Freer not participating.

## IN THE MATTER OF

## WILLIAM S. McCLYMONDS, TRADING AS OXOL LABORATORIES AND WESTERN RESEARCH LABORATORIES

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

*Docket 4035. Complaint, Feb. 17, 1940—Decision, May 1, 1940*

Where an individual engaged in compounding, selling and distributing a medicinal preparation designated "Quinox Capsules" and intended for use by women suffering from delayed menstruation, to purchasers located in various other States and in the District of Columbia; in advertisements of his said "Quinox Capsules" which he disseminated and caused to be disseminated by United States mails, by insertion in newspapers and periodicals having general circulation, and in circulars and other printed or written matter distributed in commerce among and between the various States and by other means in commerce, and which were intended or likely to induce purchase of his said product—

Represented that his said preparation was a cure or remedy for and constituted competent and effective treatment in cases of delayed menstruation, and that it possessed therapeutic value in treatment of, and would relieve, such condition, facts being it did not constitute such a cure or remedy, irrespective of cause of said condition, and was not a competent or effective treatment therefor, and was without any substantial therapeutic value aside from its effect as an ordinary laxative, and would not relieve such condition or have any beneficial effect thereon;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive and misleading statements, representations and claims were true, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of his said medicinal preparation:

*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. Jesse 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 William S. McClymonds, an individual trading as Oxol Laboratories and Western Research Laboratories, 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. William S. McClymonds is an individual trading and doing business under the names of Oxol Laboratories and Western Research Laboratories, with his principal place of business located at 1046 Santa Fe Street, Denver, Colo.

Respondent is now and has been for more than 1 year last past engaged in the business of compounding, selling and distributing a medicinal preparation designated "Quinox Capsules," intended for use by women suffering from delayed menstruation.

Respondent causes his said preparation when sold by him to be transported from his aforesaid place of business in the state of Colorado 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 medicinal preparation 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 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:

Smart women need not suffer monthly pain or delay caused by nervous strain, exposure, etc. The harmless palliative action of Quinox Capsules brings Quick Relief. See your local druggist.

PAR. 3. Through the use of the representations hereinabove set forth, and others not specifically set out herein, all of which purport to be descriptive of the remedial, curative and therapeutic properties of respondent's product, the respondent has represented and does

now represent, that his said product is a cure or remedy for, and constitutes a competent and effective treatment in cases of delayed menstruation and that said product possesses therapeutic value in the treatment of delayed menstruation and relieves such condition.

PAR. 4. The foregoing representations are grossly exaggerated, misleading, and untrue. In truth and in fact, respondent's preparation does not constitute a cure or remedy for delayed menstruation irrespective of the cause thereof, or a competent or effective treatment therefor. Said preparation is without any substantial therapeutic value aside from its effect as an ordinary laxative and will not relieve such condition or have any beneficial effect thereon.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading statements, representations, and claims with respect to his said preparation, disseminated as aforesaid, 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 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 quantities of respondent's medicinal preparation.

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 February 17, 1940, issued and on February 19, 1940, served its complaint in this proceeding upon respondent, William S. McClymonds, an individual, trading as Oxol Laboratories and Western Research Laboratories, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On March 11, 1940, 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, William S. McClymonds, is an individual trading and doing business under the name of Oxol Laboratories and Western Research Laboratories, with his principal office and place of business at 1046 Santa Fe Drive, in the city of Denver, State of Colorado.

Respondent is now and has been for more than 1 year last past engaged in the business of compounding, selling, and distributing a medicinal preparation designated "Quinox Capsules" intended for use by women suffering from delayed menstruation.

Respondent causes his said preparation when sold by him to be transported from his aforesaid place of business in the State of Colorado 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 medicinal preparations 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 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:

Smart women need not suffer monthly pain or delay caused by nervous strain, exposure, etc. The harmless palliative action of Quinox Capsules brings Quick Relief. See your local druggist.

Order

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PAR. 3. Through the use of the representations hereinabove set forth, and others not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's product, the respondent has represented and does now represent, that his said product is a cure or remedy for, and constitutes a competent and effective treatment in cases of delayed menstruation and that said product possesses therapeutic value in the treatment of delayed menstruation and relieves such condition.

PAR. 4. The foregoing representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's preparation does not constitute a cure or remedy for delayed menstruation irrespective of the cause thereof, or a competent or effective treatment therefor. Said preparation is without any substantial therapeutic value aside from its effect as an ordinary laxative and will not relieve such condition or have any beneficial effect thereon.

PAR. 5. The use by the respondent of the foregoing false, deceptive and misleading statements, representations, and claims with respect to his said preparation, disseminated as aforesaid, 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 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 quantities of respondent's medicinal preparation.

#### 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 respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, William S. McClymonds, individually and trading as Oxol Laboratories or as Western Research

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## Order

Laboratories, or trading 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 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 by the name "Quinox Capsules" 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 by implication:

1. That respondent's preparation is a cure or remedy or a competent or effective treatment for delayed menstruation, or that said preparation will relieve delayed menstruation or have any beneficial effect thereon.

2. That respondent's preparation possesses any substantial therapeutic value aside from its effect as an ordinary laxative.

*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  
MAX LEVIN, TRADING AS WESTERN 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 4055. Complaint, Mar. 11, 1940—Decision, May 1, 1940*

Where an individual engaged in the sale and distribution of knives, cameras, razors, and various other articles of merchandise to dealer purchasers in various other States and in the District of Columbia—

Sold and distributed certain assortments thereof which were so packed and assembled as to involve the use of game of chance, gift enterprise, or lottery scheme, when sold and distributed to consumers thereof and included (1) in the case of one such assortment, along with other articles of merchandise involved, a punchboard for use in sale and distribution of such articles under a plan and in accordance with said board's explanatory legend, by which those securing for the 5 cents paid certain numbers became entitled to \$2.50 in cash, others became thus entitled to \$1.00, still others became thus entitled to 25 cents in trade, while holders of certain other specified numbers were entitled to receive articles of merchandise attached to board, and purchasers who did not qualify by obtaining one of the numbers thus specified received nothing for their money, and (2) various other assortments, together with various push cards and punchboard devices for use in sale and distribution of merchandise concerned to the purchasing public by means of game of chance, gift enterprise or lottery scheme, and involving sales plans or methods substantially the same as those above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in sale of his merchandise to purchasing public by dealer purchasers thereof who used such punchboard and push card devices in sale and distribution of its said product in accordance with the aforesaid sales plan or methods involving games of chance or sale of a chance to procure an article of merchandise, a sum of money or a credit in trade of much greater value than price to be paid therefor, 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 adopt said or any method involving use of game of chance or sale of 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 method and by element of chance involved in sale of said merchandise as above described, and were thereby induced to buy and sell his said goods in preference to those offered and sold by said competitors who did not use same and equivalent methods, and with effect through use of such method and because of said game of chance of unfairly diverting trade in commerce to him from his competitors aforesaid who do not use such or equivalent method, to the substantial injury of competition in commerce:

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## Complaint

*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. D. C. Daniel* for the Commission.

*Mr. Samuel D. Menin*, of Denver, Colo., 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 Max Levin, individually and trading under the name of Western 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 Levin, is an individual doing business under the name of Western Novelty Co., with his principal office and place of business located at 1729 Lawrence Street, Denver, Colo. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of knives, cameras, razors, pens, pencils, cigarette lighters, and various other articles of merchandise to dealers. He causes, and has caused, said products, when sold, to be shipped or transported from his aforesaid place of business in the State of Colorado 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 for more than 1 year 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 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 certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when said merchandise is 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 device commonly known as a punchboard, with a number of articles of

merchandise attached thereto. Said punchboard contains a number of small sealed tubes, each of which tubes contains a small slip of paper with a number printed thereon. Sales are 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that the holders of certain specified numbers are entitled to and receive \$2.50 in cash; that the holders of certain other specified numbers are entitled to and receive \$1 in cash; that the holders of certain other specified numbers are entitled to and receive 25 cents "in trade"; that the holders of certain other specified numbers are entitled to and receive the said articles of merchandise attached to said board. A purchaser who does not qualify by obtaining one of the specified numbers receives nothing for his money. The numbers are effectively concealed from purchasers and prospective purchasers until a punch has been made and the number punched separated or removed from said board. The said sums of money, the amounts "in trade" and the said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of his merchandise and sells and furnishes various push card and punchboard devices for use in the sale and distribution of such merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in connection with each of said assortments are substantially the same as the sales plans or methods hereinabove described varying only in detail.

PAR. 3. The dealers to whom respondent sells and furnishes said punchboard and push card devices, use the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plans or methods. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said methods in the sale of such 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, a sum of money or a credit "in trade" of much greater value than the price to be paid therefor. 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 methods or any method involving the use of a game of chance or a 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 methods 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 the merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by the 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 equivalent methods. 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 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 11th day of March 1940, issued and on the 13th day of March 1940, served its complaint in this proceeding upon respondent, Max Levin, individually and trading under the name of Western Novelty 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 April 18, 1940, 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, Max Levin, is an individual who for some time last past did business under the name of Western Novelty Co., with his principal office and place of business located at 1729 Lawrence Street, Denver, Colo. Respondent was engaged in the sale and distribution of knives, cameras, razors, pens, pencils, cigarette lighters, and various other articles of merchandise to dealers. He caused said products, when sold, to be shipped or transported from his aforesaid place of business in the State of Colorado 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 was 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 was in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar 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 sold and distributed certain assortments of said merchandise so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when said merchandise was sold and distributed to the consumers thereof. One of said assortments was sold and distributed to the purchasing public in the following manner: This assortment consisted of a device commonly known as a punchboard, with a number of articles of merchandise attached thereto. Said punchboard contained a number of small sealed tubes, each of which tubes contained a small slip of paper with a number printed thereon. Sales were 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that the holders of certain specified numbers are entitled to and receive \$2.50 in cash; that the holders of certain other specified numbers are entitled to and receive \$1 in cash; that the holders of certain other specified numbers are entitled to and receive 25 cents "in trade"; that the holders of certain other specified numbers are entitled to and receive the said articles of merchandise attached to said board. A purchaser who did not qualify by obtaining one of the specified numbers received nothing for his money. The numbers were effectively concealed from purchasers and prospective purchasers until a punch had been made and the number punched separated or removed from said board. The said sums of money, the amounts "in trade" and the said articles of merchandise were thus distributed to the purchasing public wholly by lot or chance.

Respondent sold and distributed various assortments of his merchandise and furnished various push card and punchboard devices for use in the sale and distribution of such merchandise to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in connection with each of said assortments were substantially the same as the sales plans or methods hereinabove described, varying only in detail.

PAR. 3. The dealers to whom respondent sold and furnished said punchboard and push card devices, used the same in selling and distributing respondent's merchandise in accordance with the aforesaid sales plans or methods. Respondent thus supplied to and placed in the hands of others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plans or methods hereinabove described. The use by respondent of said methods in the sale of such merchandise and the sale of such merchandise by and through the use thereof and by the aid of said methods is a practice of the sort which was and 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, a sum of money or a credit "in trade" of much greater value than the price to be paid therefor. Many persons, firms, and corporations who sell or distribute and have sold and distributed merchandise in competition with the respondent, as above found, were and are unwilling to adopt and use said methods or any method involving the use of a game of chance or a sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors did and do refrain therefrom. Many persons were attracted by respondent's said methods and by the element of chance involved in the sale of said merchandise in the manner above described and were thereby induced to buy and sell respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors of respondent who did not and do not use the same or equivalent methods. The use of said methods by the respondent, because of said game of chance, had a tendency and capacity to, and did, 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 did not and do not use the same or equivalent methods. As a result thereof, substantial injury was 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 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, Max Levin, individually and trading under the name of Western 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 knives, cameras, razors, pens, pencils, cigarette lighters, 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. Selling or distributing said merchandise or any other merchandise so packed and assembled that sales of said merchandise or any 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, said merchandise or any other merchandise, together with push cards, punchboards, or any other lottery devices, which said push cards, punchboards, or other lottery devices are to be used or may be used in selling or distributing said merchandise or any other merchandise to the general public.

3. Supplying to or placing in the hands of others, push cards, punchboards, or any other lottery devices, either with assortments of said merchandise or any 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 said merchandise or any other merchandise to the general public.

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## Order

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 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  
EHRHART CONRAD COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 28, 1914

*Docket 4068. Complaint, Mar. 20, 1940—Decision, May 1, 1940*

Where a corporation engaged in sale and distribution of food products to retail dealer purchaser in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar products in commerce as aforesaid—

Sold and distributed its food products under various plans or methods involving lot or chance in such sale and distribution and including (1) plan under which it thus sold and distributed under label "Plee-zing" its products, together with Plee-zing Treasure Chest devices or cards or booklets for use in sale and distribution of such products to consuming public, in accordance with which plan and explanatory legend displayed on card customers of its retail dealer to whom were distributed such cards or devices became entitled, upon the filling of their respective cards with 100 of the treasure-chest receipts, given with each 25-cent purchase of its said products, to cash awards ranging from 50 cents to \$5, and in exchange for the 15-cent cash redemption value assigned to card or booklet, as determined and disclosed by statement revealed through breaking of card's seal, when filled with the 100 receipts, and returned for said purpose to dealer, whom it compensated for rewards or prizes thus paid; and (2) various other plans or methods of distributing or selling its said food products by lot or chance similar to that above described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in sale of such products to consuming public, in accordance with said sales plans or methods involving game of chance or sale of a chance, to procure articles or products or sums of money of much greater value than amounts to be paid therefor, 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 games of chance or sale of a chance to win something by chance, or any other method contrary to public policy and refrain therefrom;

With effect of inducing consuming or purchasing public to buy its said product in preference to like or similar products offered or sold by its competitors, and with result that many dealers and ultimate purchasers of products similar to those distributed by it were attracted by its said sales plans and methods and by element of chance in sale thereof as above described, and were thereby induced to purchase such products from it in preference to similar goods sold by competitors who do not use same or similar methods, and with capacity and tendency, because of game of chance or sale of a chance to win something by chance, to divert trade to it unfairly from said competitors who do not use same or equivalent or similar methods:

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## Complaint

*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. 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 Ehrhart Conrad 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 Ehrhart Conrad Co. is a corporation organized and doing business under the laws of the State of Pennsylvania with its principal office and place of business located at 106 Carlisle Street, Hanover, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of food products to retail dealers. Respondent causes and has caused its products, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania 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 for more than 1 year last past has been, a course of trade by said respondent in such food 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 its business respondent is, and has been, in competition with other corporations and with individuals and partnerships 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 alleged in paragraph 1 hereof, respondent sells and distributes and has sold and distributed food products labeled "Plee-zing" to retail dealers. Respondent sells and distributes and has sold and distributed to said dealers a so-called "Plee-zing Treasure Chest" device for use in the sale and distribution of said food products to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme. The sales plan or method employed in selling and distributing said food products to the consuming public by means of said device is substantially as follows: The "Plee-zing Treasure Chest" device consists of a card referred to by respondent

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as a booklet, with a gold seal thereon together with 100 small trade "receipts." The said card has provided on the front and reverse sides thereof blank spaces on which said receipts are to be pasted. On the front side or face of said card appear the following instructions or legends:

**"Plee-zing" Treasure Chest  
Plan and Governing Rules  
You will be given one**

"Plee-zing" Treasure Chest receipt with each 25¢ spent with us. Be sure and paste receipts in this booklet. Under the Seals of some "Plee-zing" Treasure Chest booklets are listed valuable PLEE-ZING products.

(Back of Seal in this space) Under the others is listed cash in amounts of 50¢, 75¢, \$1.00, \$2.00, or \$5.00. **THERE ARE NO BLANKS!**

When completely filled with 100 receipts, return this booklet to us with the Seal unbroken. This booklet will then have a cash redemption value of 15¢. We will then break the Seal on page 2 that you may see what is printed under it and, if you wish, you may exchange the cash redemption value for whatever the opening of the Seal discloses. **NO DRAWINGS—NO JUDGINGS—NO DISAPPOINTMENTS!**

This booklet accepted subject to above conditions.

Name\_\_\_\_\_

Address\_\_\_\_\_

**BE SURE TO SIGN THIS BOOKLET**

On the reverse side of said card appear the following legends or instructions:

Thousands of  
\$ Dollars \$ AWARDS  
To our Customers Through  
"Plee-zing" Treasure Chests

Your award is

**CAUTION!**

This Seal must  
not be broken or (Gold Seal  
in this  
space)  
Award is forfeited.  
Read rules on page 5

Shown under  
This Gold Seal

**"There's None Better Than PLEE-ZING"**

This Receipt Booklet Redeemable  
only at

(Here name of retail dealer is inserted)

Date\_\_\_\_\_

2 Copyright 1936, Monarch Printers and  
Binders, Adrian, Mich.

The food products or cash awards so designated or described under said gold seals vary in value in accordance with each individual card and such designations or descriptions of said awards or prizes are effectively concealed from purchasers and prospective purchasers until the said receipts have been pasted on said cards and the gold seals thereon broken and removed therefrom. The said prizes or awards are thus distributed to the purchasing public wholly by lot or chance.

Respondent supplies and furnishes its customers with various plans or methods of selling and distributing said food products by lot or chance, but such sales plans or methods are similar to the one hereinabove described, varying only in detail. Respondent refunds to said dealers said awards or prizes so distributed by such dealers.

PAR. 3. Retail dealers who purchase respondent's said food products and devices expose the same to the purchasing public and sell and distribute such products in accordance with the above-described sales plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said products in accordance with the sales plans or methods hereinabove set forth. Such sales plans or methods have the tendency and capacity to, and do, induce the consuming or purchasing public to purchase respondent's said products in preference to like or similar products offered for sale and sold by its competitors.

PAR. 4. The sale of such products to the consuming public in the manner above described involves a game of chance or the sale of a chance to procure articles of said products or sums of money of much greater values than the amounts to be paid therefor. The use by respondent of said methods in the sale of its products and the sale of such products by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law. The use by respondent of said sales plans or methods has the tendency to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute products in competition with the respondent as above described are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, products similar to those distributed by respondent are attracted by respondent's said sales plans or methods and by the element of chance involved in the sale of said products in the manner above described and are

thereby induced to purchase said products from respondent in preference to similar products offered for sale and sold by said competitors of respondent who do not use the same or similar methods. The use of said methods by respondent has the capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to unfairly divert trade to respondent from its competitors who do not use the same or equivalent or similar methods.

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 March 20, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Ehrhart Conrad 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 March 27, 1940, the respondent filed its answer, in which answer it admitted all of the material allegations of fact set forth in the complaint. The respondent also 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 Ehrhart Conrad Co. is a corporation organized and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 106 Carlisle Street, Hanover, Pa. Respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of food products to retail dealers. Respondent causes and has caused its products, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania 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

for more than 1 year last past has been, a course of trade by said respondent in such food 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 its business respondent is, and has been, in competition with other corporations and with individuals and partnerships 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 distributes and has sold and distributed food products labeled "Plee-zing" to retail dealers. Respondent sells and distributes and has sold and distributed to said dealers a so-called "Plee-zing Treasure Chest" device for use in the sale and distribution of said food products to the consuming public in a manner involving the operation of a game of chance, gift enterprise, or lottery scheme. The sales plans or methods employed in selling and distributing said food products to the consuming public by means of said device is substantially as follows: The "Plee-zing Treasure Chest" device consists of a card referred to by respondent as a booklet, with a gold seal thereon, together with 100 small trade "receipts." The said card has provided on the front and reverse sides thereof blank spaces on which said receipts are to be pasted. On the front side or face of said card appear the following instructions or legends:

"Plee-zing" Treasure Chest

Plan and Governing Rules

You will be given one

"Plee-zing" Treasure Chest receipt with each 25¢ spent with us. Be sure and paste receipts in this booklet. Under the Seals of some "Plee-zing" Treasure Chest booklets are listed valuable PLEE-ZING products. Under (Back of Seal in this space) the others is listed cash in amounts of 50¢, 75¢, \$1.00, \$2.00, or \$5.00. THERE ARE NO BLANKS! When completely filled with 100 receipts, return this booklet to us with the Seal unbroken. This booklet will then have a cash redemption value of 15¢. We will then break the Seal on page 2 that you may see what is printed under it and, if you wish, you may exchange the cash redemption value for whatever the opening of the Seal discloses. NO DRAWINGS—NO JUDGINGS—NO DISAPPOINTMENTS!

This booklet accepted subject to above conditions.

Name \_\_\_\_\_

Address \_\_\_\_\_

## BE SURE TO SIGN THIS BOOKLET

On the reverse side of said card appear the following legends or instructions:

---

Thousands of  
\$ Dollars \$ as

**AWARDS**

To our Customers Through  
"Plee-zing" Treasure Chests

---

Your award is

**CAUTION!**  
This Seal must (Gold-Seal  
not be broken or in this  
Award is forfeited. space)  
Read rules on page 5

Shown under  
This Gold Seal

---

"There's None Better Than  
PLEE-ZING"

---

This Receipt Booklet Redeemable  
only at  
(Here name of retail dealer is  
inserted)

Date -----  
2 Copyright 1936, Monarch Printers and  
Binders, Adrian, Mich.

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The food products or cash awards so designated or described under said gold seals vary in value in accordance with each individual card and such designations or descriptions of said awards or prizes are effectively concealed from purchasers and prospective purchasers until the said receipts have been pasted on said cards and the gold seals thereon broken and removed therefrom. The said prizes or awards are thus distributed to the purchasing public wholly by lot or chance.

Respondent supplies and furnishes its customers with various plans or methods of selling and distributing said food products by lot or chance, but such sales plans or methods are similar to the one hereinabove described, varying only in detail. Respondent refunds to said dealers said awards or prizes so distributed by such dealers.

PAR. 3. Retail dealers who purchase respondent's said food products and devices expose the same to the purchasing public and sell and distribute such products in accordance with the above-described sales

plans or methods. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries, gift enterprises, or games of chance in the sale of said products in accordance with the sales plans or methods hereinabove described. Such sales plans or methods have the tendency and capacity to, and do, induce the consuming or purchasing public to purchase respondent's said products in preference to like or similar products offered for sale and sold by its competitors.

PAR. 4. The sale of such products to the consuming public in the manner above described involves a game of chance or the sale of a chance to procure articles of said products or sums of money of much greater values than the amounts to be paid therefor. The use by respondent of said methods in the sale of its products and the sale of such products by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to the established public policy of the Government of the United States and in violation of criminal law. The use by respondent of said sales plans or methods has the tendency to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute products in competition with the respondent as above described are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, products similar to those distributed by respondent are attracted by respondent's said sales plans or methods and by the element of chance involved in the sale of said products in the manner above described and are thereby induced to purchase said products from respondent in preference to similar products offered for sale and sold by said competitors of respondent who do not use the same or similar methods. The use of said methods by respondent has the capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to unfairly divert trade to respondent from its competitors who do not use the same or equivalent or similar methods.

#### 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 respondent having 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 respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Ehrhart Conrad 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 food products 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 said products or any other merchandise so packed and assembled that sales of said products 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, sales promotion cards, push or pull cards, punchboards, or other devices, together with said food products or other merchandise, which said promotion cards, push or pull cards, punchboards, or other devices are to be used or may be used in the sale and distribution of said products, or any other merchandise, to the general public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to or placing in the hands of others, sales promotion cards, or sales promotion plans or schemes, or any other devices, either with assortments of said products or other merchandise, or separately, which said sales promotion cards, sales promotion plans or schemes, or other devices are to be used or may be used in selling or distributing such products or other merchandise to the general public by means of a game of chance, gift enterprise, or lottery scheme.

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.

## Syllabus

IN THE MATTER OF  
PRUDENTIAL SALES CORPORATIONCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3839. Complaint, June 29, 1939—Decision, May 2, 1940*

Where a corporation engaged in the sale and distribution of electric dry shavers, wrist watches, electric roasters, pen and pencil sets, blankets, and various other articles of merchandise to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar articles in commerce as aforesaid; in soliciting sale of and in selling and distributing its said merchandise—

- (a) Furnished various devices and plans of merchandising which involved the operation of games of chance, gift enterprises, or lottery schemes by which such merchandise was sold and distributed to ultimate consumers thereof wholly by lot or chance and which involved distribution to purchasing public of certain literature and instructions, including among other things, (1) push cards, order blanks, illustrations of merchandise involved and circulars explaining his plan of selling such merchandise and allotting it as premiums or prizes to the operators of said push cards under plan, among others, by which person selecting from a list of 25 feminine names displayed on card, name corresponding to that concealed under card's large master seal, after sale of all chances, received electric dry shaver or article of merchandise being thus disposed of, and person securing certain number as disclosed by disk pushed received combination pen or pencil, and under which amount paid for chance was dependent upon number secured in accordance with card's explanatory legend, and (2) various push cards accompanied by such order blanks, etc., for use in sale and distribution of its merchandise by means of game of chance, gift enterprise, or lottery scheme, and in accordance with sales plans similar to that above described and varying therefrom in detail only; and

Supplied thereby to, and placed in the hands of others, means of conducting lotteries in the sale of its said products by persons to whom it furnished said push cards, and who used same in purchasing, selling, and distributing its merchandise in accordance with the aforesaid sales plan, under which fact as to whether purchaser received an article of merchandise or nothing for amount of money paid, and which of said articles purchaser was to receive, if any, were determined wholly by lot or chance, 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 a 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 its said sales plan or method in the sale and distribution of its merchandise, and by elements of chance involved therein, and were thereby induced to buy and sell its products in preference to those of said competitors who do not use same or equivalent

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method, and with effect of unfairly diverting substantial trade in commerce as above set forth to its competitors who do not use such or equivalent methods; and

Where said corporation engaged as aforesaid—

- (b) Represented through various false, deceptive and misleading statements and representations on the said push cards and in its advertising matter circulated in commerce that its electric dry shaver had a retail value of \$15, facts being that said products had no such value, but were of inferior quality and workmanship, and had a retail value of substantially less than such amount;
- (c) Made use of trade name "Packard," in bold type, on its said push cards, disseminated as aforesaid, together with the picture of an electric dry shaver, and beneath or to the side of said trade name, thus printed, and in small letters words, "Combination Pen and Pencil" so set-out as to be inconspicuous and not readily discernible to purchasers and prospective purchasers, notwithstanding fact product in question was not Packard Electro Shaver, but product of inferior quality and workmanship, and of substantially smaller value;

With result of causing members of purchasing public through arrangement of such depiction and word Packard as aforesaid, to have an erroneous and mistaken belief that electric shaver there referred to was genuine Packard Electro Shaver, retailing for \$15, and preferred on part of purchasers and prospective purchasers because of quality and workmanship thereof; and

- (d) Made use of word, unqualified, "wool", in bold type in its advertisements relating to blankets so sold by it in the course and conduct of its business as hereinbefore described, together with words in much smaller type and in another portion of advertising "Guardsman Has Over 80 Percent Wool Content Guaranteed", with word "wool" so arranged and set-out as readily to attract the attention of purchasers or prospective purchasers while other matter last referred to was so arranged and set out as to be inconspicuous and not readily discernible by purchasers and prospective purchasers, notwithstanding fact said product was not composed entirely of wool as below set forth, or of any type or kind of wool;

With effect of causing members of purchasing public to have a mistaken and erroneous belief that said blankets, thus advertised, were composed entirely of wool as understood in wool trade, and by purchasing public, when used alone or without appropriate or adequate qualifications, as meaning new and unused fiber from the fleece or hair of the sheep or lamb, or of the Angora or Cashmere goat, or of the Camel, Alpaca, Llama, or Vicuna, and as such highly prized by purchasing and consuming public for its qualities of warmth and durability;

- (e) Represented in its advertising matter disseminated among various States as before set out, and in the course and conduct of its said business as above described, certain sports jackets which it thus offered, as actually made from Elkskin, chrome tanned skin of the Elk, and possessing the desirable and preferable qualities of said product, through use of such statements as "Genuine Elkskein," "Feel its soft, pliable Elkskein," and "Only Sportster uses genuine Elkskein," notwithstanding fact said sports jackets were not made from Elkskin and did not possess desirable and preferable qualities and characteristics thereof, but had only a fraction of value of sports jackets made from the genuine, which was soft, pliable, light in weight, washable and exceedingly durable, was highly prized for its desirable qual-

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ities by purchasing and consuming public and especially sportsmen, and preferred by many such users to any other material for use in garments for sport and outdoor wear; and

- (f) Made such false, deceptive and misleading statements, and representations in its circulars, concerning the awarding of gifts, prizes, and premiums to its agents and distributors as "A free gift for you," "Get busy immediately and see just how simple it is to own these valuable articles *absolutely free of cost*," "You will receive *absolutely free* an electric dry shaver," "For disposing of this sales card you receive for yourself an electric dry shaver *without cost to you*," notwithstanding fact its so-called gifts, prizes or premiums were not given away "free" or "without cost" to its agents or distributors, but constituted regular compensation paid by it to them for selling its merchandise, and ordinary and usual method employed by it in so compensating its said agents and distributors, and cost of such gifts was included in that of other articles of merchandise sold by them, and sale of which they were required to procure before receiving from it said so-called gifts, prizes or premiums;

With effect of misleading and deceiving members of the purchasing public and prospective agents and distributors of its said merchandise into erroneous and mistaken belief that said statements and representations were true, and of causing such members to buy substantial amounts of its said products, because of such belief, and causing prospective agents or distributors to sell or distribute its merchandise in preference to that of competitors, including sellers and distributors of like or similar products who do not make such false and misleading statements and representations concerning their products, nor hold out certain gifts, prizes or premiums as free or without cost when such is not the fact, and with effect of unfairly diverting trade to it from competitors aforesaid, 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 method of competition in commerce and unfair and deceptive acts and practices therein.

*Mr. L. P. Allen, Jr.* 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 Prudential Sales 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 interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Prudential Sales Corporation, is a corporation organized and existing under the laws of the State of Illinois,

with its principal office and place of business located at 230 East Ohio Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric dry shavers, wrist watches, electric roasters, smoking ensembles, blankets, clocks, radios, silverware, electric mixers, vacuum cleaners, sports jackets, pen and pencil sets, flashlights, 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 its aforesaid place of business in Illinois to purchasers thereof at their respective points of location 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 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 corporations and with partnerships and individuals 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 its business, as hereinabove described, respondent, in soliciting the sale of and in selling and distributing its 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 its 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. One of respondent's push cards bears 25 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 25 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 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 master seal, and concealed within the master seal is one of the

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feminine names appearing elsewhere on the said card. The push card bears legends or instructions as follows:

Name under Seal Receives a  
   \$15.00  
**ELECTRIC DRY SHAVER**  
 Shave the Modern Way  
 No. 29  
 Receives a  
**PACKARD**  
 Combination Pen & Pencil.  
   Do not  
   remove seal  
   until entire  
   card is sold.  
 Nos. 1 to 29 Pay What You  
 Draw. Nos. Over 29 Pay  
 Only 29¢. No Higher.  
 Write your name on the reverse side  
 opposite name you select.

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, 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 its 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 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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.

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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 its 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 in commerce to respondent from its said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of its business as hereinabove related, respondent causes and has caused various false, deceptive and misleading statements, and representations to appear on its said push cards and in its advertising matter circulated in commerce among and between the various States of the United States, concerning its electric dry shavers, of which the following are examples but are not all-inclusive:

(a) The respondent represents and has represented its electric dry shavers to have a retail value of \$15. In truth and in fact they do not have such value. The said electric dry shavers are of inferior quality and workmanship and have a retail value of substantially less than \$15.

(b) The respondent further misleads and deceives, and has misled and deceived, a large and substantial portion of the purchasing public by placing or causing to be placed on the face of its push cards, which are disseminated as aforesaid, the picture of an electric dry shaver and beneath or to the side of the said picture in bold type the word "Packard." Beneath the aforesaid word "Packard," in small letters, are the words "Combination Pen and Pencil." The word "Packard" is in bold type and is so arranged and set out by respondent on said push cards as to readily attract the attention of purchasers or prospective purchasers thereto, while the words "Combination Pen and Pencil" are in small type and are so set-out as to be inconspicuous and not readily discernible by purchasers and prospective purchasers. By so placing, or causing to be placed, the picture of an electric dry shaver and the word "Packard" in bold type on said push cards in the

manner aforesaid, the respondent causes members of the purchasing public to have the erroneous and mistaken belief that the electric shaver referred to on said push cards is a genuine Packard Lectro Shaver which regularly retails for \$15 each. In truth and in fact the electric dry shavers offered for sale and sold by respondent pursuant to such sales plan are not Packard Lectro Shavers but are electric dry shavers of inferior quality and workmanship and have a value of substantially less than the value of a genuine Packard Lectro Shaver.

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 Packard Lectro Shavers and shavers of a value of \$15, because of their quality and workmanship.

PAR. 6. In the course and conduct of its business, as hereinabove described, the respondent, in soliciting the sale of and in selling said blankets, places, or causes to be placed, the unqualified word "wool," in bold type, in its advertisements relative to such blankets. In much smaller type than is used for the word "wool" and in another portion of said advertising matter, there appears the statement "Guardsmen Has Over 80 percent Wool Content Guaranteed." The word "wool" in bold type is so arranged and set-out in said advertisements as to readily attract the attention of purchasers or prospective purchasers thereto, while the statement "Guardsmen Has Over 80 Percent Wool Content Guaranteed" is in small type and is so arranged and set-out in the said advertisements as to be inconspicuous and not readily discernible by purchasers and prospective purchasers.

The placing by respondent of the unqualified word "wool" in bold type, as above described, and the statement "Guardsmen Has Over 80 Percent Wool Content Guaranteed" in small type, as above described, causes members of the purchasing public to have the mistaken and erroneous belief that the blankets advertised, as above alleged, are composed entirely of wool, as the word "wool" is defined herein. The word "wool" when used alone or without appropriate and adequate qualification, is understood in the wool trade and by members of the purchasing public to mean the new and unused fiber from the fleece or hair of the sheep or lamb, or of the Angora or Cashmere goat, or of the Camel, Alpaca, Llama, or Vicuna, and as such is highly prized by the purchasing and consuming public for its qualities of warmth and durability.

In truth and in fact said blankets of the respondent are not composed entirely of wool as the word "wool" is hereinabove defined. Said blankets are not composed entirely of any type or kind of wool.

PAR. 7. In the course and conduct of its business as hereinabove described, the respondent makes and has made various false, deceptive

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and misleading statements, and representations in its advertising matter disseminated among and between the various States of the United States, concerning the sports jackets which it sells, and has sold, as hereinabove described. Among such statements and representations, but not including all such statements and representations, are the following:

Genuine Elkskein  
Feel its soft, pliable Elkskein  
Only Sportster uses genuine Elkskein

Elkskin is the skin of an elk which has been tanned by what is known as the chrome process. It is exceedingly durable and possesses qualities greatly desired by the purchasing and consuming public. It is soft, pliable, light in weight, and may be washed. It is highly prized for these desirable qualities by the purchasing and consuming public, especially by sportsmen, and is preferred by many such users to any other material for use in garments for sport or outdoor wear. The respondent's sports jackets are not made from the skin of elk and have only a fraction of the value of sports jackets made from genuine elkskin.

The term "Elkskein" is a slightly distorted spelling of the word "elkskin" and is a misleading simulation thereof. The respondent's use in its advertising matter of the term "Elkskein" to describe, designate or refer to its sports jackets serves as representation that said sports jackets so described or designated are actually made from elkskin, the chrome tanned skin of the elk, and possess the desirable and preferable qualities and characteristics of elkskin. The sports jackets sold and distributed by respondent, as hereinabove described, are not made from elkskin and do not possess the desirable and preferable qualities and characteristics of elkskin.

PAR. 8. In the course and conduct of its business, as hereinabove described, respondent causes, and has caused, various false, deceptive and misleading statements, and representations to appear in its sales circulars concerning the awarding of gifts, prizes, and premiums to its agents or distributors. Among and typical of said statements and representations are the following:

A free gift for you  
Get busy immediately and see just how simple it is to own these valuable articles *absolutely free of cost*  
You will receive *absolutely free* an electric dry shaver  
For disposing of this sales card you receive for yourself an electric dry shaver *without cost to you*

In truth and in fact, the aforesaid so-called gifts, prizes, or premiums are not given away "free" or "without cost" by respondent to

its agents or distributors. The so-called gifts are not free but are the regular compensation paid by respondent to its agents or distributors for selling respondent's merchandise, and such method is the ordinary and usual method used by respondent in compensating said agents or distributors for selling its merchandise. The cost of said so-called gifts is included in the cost of other articles of respondent's merchandise sold by the said agents or distributors. The respondent requires its agents or distributors to procure the sale of or sell said articles of merchandise for respondent before they receive the so-called gifts, prizes, or premiums from respondent.

PAR. 9. The use by the respondent of the statements and representations described in paragraphs 5, 6, 7, and 8 hereof has the capacity and tendency to, and does, mislead and deceive members of the purchasing public and prospective agents or distributors of respondent's merchandise into the erroneous and mistaken belief that said statements and representations are true and causes said members of the purchasing public to purchase substantial amounts of respondent's merchandise because of said erroneous and mistaken belief and causes said prospective agents or distributors to sell and distribute respondent's merchandise in preference to selling and distributing merchandise of competitors of the respondent. There are among the competitors of respondent described in paragraph 1 hereof sellers and distributors of like or similar products who do not make such false and misleading statements and representations concerning their products, nor do they hold out certain gifts, prizes, or premiums to be free or without cost when such is not the fact.

PAR. 10. The acts and practices of respondent, hereinabove set forth, have the tendency and capacity to, and do, unfairly divert trade to respondent from said competitors. 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. 11. 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 29, 1939, issued and thereafter served its complaint in this proceeding upon respondent Prudential

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Sales 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. On December 12, 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, Prudential Sales Corporation, is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 230 East Ohio Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of electric dry shavers, wrist watches, electric roasters, smoking ensembles, blankets, clocks, radios, silverware, electric mixers, vacuum cleaners, sports jackets, pen and pencil sets, flashlights, 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 its aforesaid place of business in Illinois to purchasers thereof, at their respective points of location, 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 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 corporations and with partnerships and individuals 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 its business, as hereinabove described, respondent, in soliciting the sale of and in selling and distributing its 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

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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 its 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. One of respondent's push cards bears 25 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 25 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 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 master seal, and concealed within the master seal is one of the feminine names appearing elsewhere on the said card. The push card bears legends or instructions as follows:

Name under Seal Receives a  
\$15.00

**ELECTRIC DRY SHAVER**

Shave the Modern Way

No. 29

Receives a  
**PACKARD**

Combination Pen & Pencil.

Do not  
remove seal  
until entire  
card is sold.

Nos. 1 to 29 Pay What You  
Draw. Nos. Over 29 Pay  
Only 20c. No Higher.

Write your name on the  
reverse side opposite name  
you select.

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

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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.

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 its 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 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 its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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 its 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 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.

PAR. 5. In the course and conduct of its business as hereinabove related, respondent causes and has caused various false, deceptive,

and misleading statements, and representations to appear on its said push cards and in its advertising matter circulated in commerce among and between the various States of the United States, concerning its electric dry shavers, of which the following are examples but are not all-inclusive:

(a) The respondent represents and has represented its electric dry shavers to have a retail value of \$15. In truth and in fact they do not have such value. The said electric dry shavers are of inferior quality and workmanship and have a retail value of substantially less than \$15.

(b) The respondent further misleads and deceives, and has misled and deceived, a large and substantial portion of the purchasing public by placing or causing to be placed on the face of its push cards, which are disseminated as aforesaid, the picture of an electric dry shaver and beneath or to the side of the said picture in bold type the word "Packard." Beneath the aforesaid word "Packard," in small letters, are the words "Combination Pen and Pencil." The word "Packard" is in bold type and is so arranged and set-out by respondent on said push cards as to readily attract the attention of purchasers or prospective purchasers thereto, while the words "Combination Pen and Pencil" are in small type and are so set-out as to be inconspicuous and not readily discernible by purchasers and prospective purchasers. By so placing, or causing to be placed, the picture of an electric dry shaver and the word "Packard" in bold type on said push cards in the manner aforesaid, the respondent causes members of the purchasing public to have the erroneous and mistaken belief that the electric shaver referred to on said push cards is a genuine Packard Lectro Shaver which regularly retails for \$15 each. In truth and in fact the electric dry shavers offered for sale and sold by respondent pursuant to such sales plan are not Packard Lectro Shavers but are electric dry shavers of inferior quality and workmanship and have a value of substantially less than the value of a genuine Packard Lectro Shaver.

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 Packard Lectro Shavers and shavers of a value of \$15, because of their quality and workmanship.

PAR. 6. In the course and conduct of its business, as hereinabove described, the respondent, in soliciting the sale of and in selling said blankets, places, or causes to be placed, the unqualified word "wool," in bold type, in its advertisements relative to such blankets. In much smaller type than is used for the word "wool" and in

another portion of said advertising matter, there appears the statement "Guardsman Has Over 80 Percent Wool Content Guaranteed." The word "wool" in bold type is so arranged and set-out in said advertisements as to readily attract the attention of purchasers or prospective purchasers thereto, while the statement "Guardsman Has Over 80 Percent Wool Content Guaranteed" is in small type and is so arranged and set-out in the said advertisements as to be inconspicuous and not readily discernible by purchasers and prospective purchasers.

The placing by respondent of the unqualified word "wool" in bold type, as above described, and the statement "Guardsman Has Over 80 percent Wool Content Guaranteed" in small type, as above described, causes members of the purchasing public to have the mistaken and erroneous belief that the blankets advertised, as above found, are composed entirely of wool, as the word "wool" is defined herein. The word "wool" when used alone or without appropriate and adequate qualification, is understood in the wool trade and by members of the purchasing public to mean the new and unused fiber from the fleece or hair of the sheep or lamb, or of the Angora or Cashmere goat, or of the Camel, Alpaca, Llama, or Vicuna, and as such is highly prized by the purchasing and consuming public for its qualities of warmth and durability.

In truth and in fact said blankets of the respondent are not composed entirely of wool as the word "wool" is hereinabove defined. Said blankets are not composed entirely of any type or kind of wool.

PAR. 7. In the course and conduct of its business as hereinabove described, the respondent makes and has made various false, deceptive and misleading statements, and representations in its advertising matter disseminated among and between the various States of the United States, concerning the sports jackets which it sells, and has sold, as hereinabove described. Among such statements and representations, but not including all such statements and representations, are the following:

Genuine Elkskein  
Feel its soft, pliable Elkskein  
Only Sportster uses genuine Elkskein

Elkskin is the skin of an elk which has been tanned by what is known as the chrome process. It is exceedingly durable and possesses qualities greatly desired by the purchasing and consuming public. It is soft, pliable, light in weight, and may be washed. It is highly prized for these desirable qualities by the purchasing and consuming public, especially by sportsmen, and is preferred by many

such users to any other material for use in garments for sport or outdoor wear. The respondent's sports jackets are not made from the skin of elk and have only a fraction of the value of sports jackets made from genuine elkskin.

The term "Elkskein" is a slightly distorted spelling of the word "elkskin" and is a misleading simulation thereof. The respondent's use in its advertising matter of the term "Elkskein" to describe, designate or refer to its sports jackets serves as representation that said sports jackets so described or designated are actually made from elkskin, the chrome tanned skin of the elk, and possess the desirable and preferable qualities and characteristics of elkskin. The sports jackets sold and distributed by respondent, as hereinabove described, are not made from elkskin and do not possess the desirable and preferable qualities and characteristics of elkskin.

PAR. 8. In the course and conduct of its business as hereinabove described, respondent causes, and has caused, various false, deceptive and misleading statements and representations to appear in its sales circulars concerning the awarding of gifts, prizes, and premiums to its agents or distributors. Among and typical of said statements and representations are the following:

A free gift for you

Get busy immediately and see just how simple it is to own these valuable articles *absolutely free of cost*

You will receive *absolutely free* an electric dry shaver

For disposing of this sales card you receive for yourself an electric dry shaver *without cost to you*

In truth and in fact, the aforesaid so-called gifts, prizes, or premiums are not given away "free" or "without cost" by respondent to its agents or distributors. The so-called gifts are not free but are the regular compensation paid by respondent to its agents or distributors for selling respondent's merchandise, and such method is the ordinary and usual method used by respondent in compensating said agents or distributors for selling its merchandise. The cost of said so-called gifts is included in the cost of other articles of respondent's merchandise sold by the said agents or distributors. The respondent requires its agents or distributors to procure the sale of or sell said articles of merchandise for respondent before they receive the so-called gifts, prizes or premiums from respondent.

PAR. 9. The use by the respondent of the statements and representations described in paragraphs 5, 6, 7, and 8 hereof has the capacity and tendency to, and does, mislead and deceive members of the purchasing public and prospective agents or distributors of respondent's merchandise into the erroneous and mistaken belief that said statements and representations are true and cause said

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members of the purchasing public to purchase substantial amounts of respondent's merchandise because of said erroneous and mistaken belief and causes said prospective agents or distributors to sell and distribute respondents merchandise in preference to selling and distributing merchandise of competitors of the respondent. There are among the competitors of respondent described in paragraph 1 hereof sellers and distributors of like or similar products who do not make such false and misleading statements and representations concerning their products, nor do they hold out certain gifts, prizes or premiums to be free or without cost when such is not the fact.

PAR. 10. The acts and practices of the respondent, hereinabove set forth, have the tendency and capacity to, and do, unfairly divert trade to respondent from said competitors. 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, Prudential Sales 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 electric shavers, wrist watches, electric roasters, smoking ensembles, blankets, clocks, radios, silverware, electric mixers, vacuum cleaners, sports jackets, pen and pencil sets, flashlights or any other merchandise in commerce, as

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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 any merchandise together with punchboards, push or pull cards or other lottery devices which said punchboards, push or pull cards or other lottery devices are to be used or may be used in selling or distributing such merchandise to the public.

2. Supplying to or placing in the hands of others, punchboards, push or pull cards or other lottery devices either with assortments of 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 merchandise to the public.

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

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

5. Using the trade name "Packard" or the trade name of any other electric shaver in connection with a picture of an electric shaver, or separately, in such manner as to indicate that respondent is offering an electric shaver bearing such trade name when in fact the respondent uses such trade name to refer to an article of merchandise other than an electric shaver.

6. Using a trade name usually associated with a particular article of merchandise in connection with a picture of such article or separately in such a manner as to indicate that the merchandise offered by the respondent is the same as that usually associated with such trade name when the respondent is actually offering merchandise other than that usually associated with such trade name.

7. Using the word "wool" or any other word or term descriptive of wool to describe, designate or in any way refer to any fabric or product which is not composed wholly of wool, provided, however, that in the case of fabrics or products composed in part of wool and in part of other fabrics, such words may be used as descriptive of the wool content if there is used in immediate connection or conjunction therewith in letters of at least equal size and conspicuousness words truthfully describing and designating each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

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8. Using the word "Elkskein" or any other simulation of the word "elkskin" to describe or refer to sports jackets or other articles of merchandise which are not made from the skin of an elk tanned by the chrome process.

9. Using the term "free" or any other term of similar import or meaning to describe or refer to goods, wares or merchandise regularly included in a combination offer with other articles of merchandise or which are given as compensation for services.

*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

## THE CHAPMAN HEALTH PRODUCTS COMPANY, JOHN W. CHAPMAN, AND NELLIE C. CHAPMAN, INDIVIDUALLY AND AS OFFICERS OF THE CHAPMAN HEALTH 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 4004. Complaint, Jan. 31, 1940—Decision, May 2, 1940*

Where a corporation and two individuals who were officers thereof and formulated, controlled and directed its policies, acts, and practices, engaged in sale and distribution of their N. A. R. Tablets for rheumatism, neuritis, and arthritis, and of their Faid or Daintee preparation for obesity, and acting together and in cooperation with each other, in performing acts and practices below set forth; in advertisements of their said products which they disseminated and caused to be disseminated through the mails, through insertion in newspapers and periodicals of general circulation and through circular and other printed or written matter distributed in commerce, and otherwise, and which were intended and likely to induce purchase of their said preparations—

(a) Represented that their said N. A. R. Tablets constituted a cure or remedy for rheumatism, neuritis, and arthritis, and possessed a therapeutic value for treatment thereof;

Facts being that preparation in question does not effect a cure or a remedy for said ailments and possesses no therapeutic value in the treatment thereof, except insofar as preparation's analgesic properties might afford temporary relief from the pains caused thereby; and

(b) Represented that their said Faid or Daintee constituted a cure or remedy for obesity and a competent, safe and scientific treatment therefor, and that its use would have no ill effect upon the body;

Facts being said medicinal preparation is not a cure or remedy for said condition, does not constitute a competent, safe or scientific treatment therefor, and would not accomplish results claimed by them, and is not safe and harmless in that it contains desiccated thyroid and certain other 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 and usual, and might produce nausea, muscular debility, gastrointestinal irritation, and various other conditions and also result, among other things, in chronic poisoning, permanent injury to tissues and organic functions and body mechanism and irreparable injury to the heart; and

(c) Failed to reveal in its said advertisements that use of said preparation last referred to under conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health; .

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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 a portion of said public, because of such relief, to purchase its said medicinal preparation:

*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.

## 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 Chapman Health Products Co., a corporation, John W. Chapman and Nellie C. Chapman, as individuals and as officers of The Chapman Health Products 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. The Chapman Health Products Co. is a corporation created, organized, and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business at 4618 Euclid Avenue, Cleveland, Ohio. John W. Chapman and Nellie C. Chapman are individuals and are, respectively, president and treasurer, and vice president and secretary, of The Chapman Health Products Co., with their office and principal place of business at the same address as said corporate respondent.

Respondents, John W. Chapman and Nellie C. Chapman, as individuals and as officers of said corporate respondent, formulate, control, and direct the policies, acts and practices thereof. All of the respondents have acted together and in cooperation with each other in performing the acts and practices hereinafter alleged.

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, including two formulæ designated as N. A. R. Tablets, recommended as a treatment for rheumatism, neuritis, and arthritis, and Faïd otherwise known as Daintee, recommended as a treatment for obesity.

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 Ohio to purchasers thereof located in other States of the United States and in the District of Columbia.

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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 of N. A. R. Tablets disseminated and caused to be disseminated, as aforesaid, are the following:

Rheumatism!  
Neuritis!  
Arthritis!

The torturing pangs from any of these ailments not only may be quickly relieved by taking a few N. A. R. Tablets, but continued use should eliminate the acids causing these troubles.

## N. A. R. TABLETS

Among and typical of the false representations contained in the advertisements of Faid, otherwise known as Daintee, disseminated and caused to be disseminated, as aforesaid, are the following:

Don't worry about fat, take Faid reducing tablets.

In order to get the best results, Faid must be taken at regular intervals.

For ordinary cases, take one tablet after each meal and one at bedtime. While this is not intended to bring about rapid effects, it should under ordinary conditions show results. Should more rapid action be desired, take two tablets after each meal omitting the one at bedtime.

No set dosage can be made for all users for this is governed a great deal by individuals and their habits. However, the dosage described will, we believe fit the average individual.

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You are taking Faid to obtain certain results so be very careful not to miss a single dose or the accumulative effect started may be lost which would necessitate starting all over again.

As to how long the Faid tablets should be taken, no definite period can be fixed in advance of their actual use and the reaction of the particular individual to them. Much will depend upon the circumstances of each case and the response of each individual to the treatment. It therefore is expected that each person will use his or her own sound judgment as to when and how long to use the tablets \* \* \* in privacy under your own control.

The Faid Method, used according to directions, should do all that is claimed for it. The directions are important and should be followed carefully if best results are to be obtained.

## Distributed by

The Chapman Health Products Co., Cleveland, Ohio.

Some Good Selling Points By The Chapman Health Products Co. Cleveland, Ohio.

Faid is a scientific prescription to assist in taking off surplus fat. Should they fear the thyroid ingredient it can be said that an inactive thyroid gland is usually the cause of fat accumulation. One half grain is only sufficient to stimulate thyroid activity. Many doctors prescribe this drug in doses several times this amount.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent that their medicinal preparation, known and designated as N. A. R. Tablets, is a cure or remedy for rheumatism, neuritis and arthritis and possesses therapeutic value in the treatment therefor.

PAR. 5. In truth and in fact, the medicinal preparation sold and distributed by the respondents as aforesaid, known as N. A. R. Tablets, is not a cure or remedy for rheumatism, neuritis or arthritis. Said preparation does not possess any therapeutic value in the treatment of any of said ailments, except in so far as the analgesic properties of said preparation may afford temporary relief from the pains caused by said ailments.

PAR. 6. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents also represent that their medicinal preparation designated as Faid, otherwise known as Daintee is a cure or remedy for obesity and a competent, safe and scientific treatment therefor, and that its use will have no ill effect upon the human body.

PAR. 7. In truth and in fact, the medicinal preparation sold and distributed by the respondents as aforesaid, designated as Faid, otherwise known as Daintee, is not a cure or remedy for obesity and does not constitute a competent, safe or scientific treatment therefor. Said preparation will not accomplish the results claimed by the respondents. Furthermore said preparation is not safe and harmless

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in that said preparation contains powdered extract phytolacca berries, sodium baborate, berberine hydrochloride, apocynoid, and desiccated thyroid.

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.

Such use of said medicinal preparation may produce nausea, severe vomiting, muscular debility, gastrointestinal irritation, diarrhea, serious bowel trouble, raised temperature, irregular pulse, collapse, headaches, muscular and articular pains, vertigo, insomnia, physical exhaustion, tremor, and tachycardia.

The use of said preparation, as aforesaid may also result in chronic poisoning, thyroid toxicosis, permanent injury to tissues, organic functions and the entire body mechanism, and irreparable injury to the heart muscle and auricular fibrillation.

PAR. 8. In addition to the representations hereinabove set forth the respondents have 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 Faid, otherwise known as Daintee, 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.

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 January 31, 1940, issued and on February 1, 1940, served its complaint in this proceeding upon the respondents, The Chapman Health Products Co., a corporation, and John W. Chapman and Nellie C. Chapman, individually and as

officers of The Chapman Health Products Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 1, 1940, 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

PARAGRAPHS 1. The Chapman Health Products Co. is a corporation created, organized, and existing under and by virtue of the laws of the State of Ohio, with its office and principal place of business at 4618 Euclid Avenue, Cleveland, Ohio. John W. Chapman and Nellie C. Chapman are individuals and are, respectively, president and treasurer, and vice president and secretary, of The Chapman Health Products Co., with their office and principal place of business at the same address as said corporate respondent.

Respondents, John W. Chapman and Nellie C. Chapman, as individuals and as officers of said corporate respondent, formulate, control and direct the policies, acts, and practices thereof. All of the respondents have acted together and in cooperation with each other in performing the acts and practices hereinafter alleged.

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, including two formulae designated as N. A. R. Tablets, recommended as a treatment for rheumatism, neuritis and arthritis, and Faid, otherwise known as Daintee, recommended as a treatment for obesity.

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 Ohio to 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 of N. A. R. Tablets disseminated and caused to be disseminated, as aforesaid, are the following:

Rheumatism!  
Neuritis!  
Arthritis!

The torturing pangs from any of these ailments not only may be quickly relieved by taking a few N. A. R. Tablets, but continued use should eliminate the acids causing these troubles.

#### N. A. R. TABLETS

Among and typical of the false representations contained in the advertisements of Faid, otherwise known as Daintee, disseminated and caused to be disseminated, as aforesaid, are the following:

Don't worry about fat, take Faid reducing tablets.

In order to get best results, Faid must be taken at regular intervals.

For ordinary cases, take one tablet after each meal and one at bedtime. While this is not intended to bring about rapid effects, it should under ordinary conditions show results. Should more rapid action be desired, take two tablets after each meal omitting the one at bedtime.

No set dosage can be made for all users for this is governed a great deal by individuals and their habits. However, the dosage described will, we believe, fit the average individual.

You are taking Faid to obtain certain results so be very careful not to miss a single dose or the accumulative effect started may be lost which would necessitate starting all over again.

As to how long the Faid tablets should be taken, no definite period can be fixed in advance of their actual use and the reaction of the particular individual to them. Much will depend upon the circumstances of each case and the

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response of each individual to the treatment. It therefore is expected that each person will use his or her own sound judgment as to when and how long to use the tablets \* \* \* in privacy under your own control.

The Faid Method, used according to directions, should do all that is claimed for it. The directions are important and should be followed carefully if best results are to be obtained.

Distributed by  
The Chapman Health Products Co.  
Cleveland, Ohio.

Some Good Selling Points By  
The Chapman Health Products Co.  
Cleveland, Ohio.

Faid is a scientific prescription to assist in taking off surplus fat. Should they fear the thyroid ingredient it can be said that an inactive thyroid gland is usually the cause of fat accumulation. One half grain is only sufficient to stimulate thyroid activity. Many doctors prescribe this drug in doses several times this amount.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents represent that their medicinal preparation, known and designated as N. A. R. Tablets, is a cure or remedy for rheumatism, neuritis and arthritis and possesses therapeutic value in the treatment therefor.

PAR. 5. In truth and in fact, the medicinal preparation sold and distributed by the respondents as aforesaid, known as N. A. R. Tablets, is not a cure or remedy for rheumatism, neuritis or arthritis. Said preparation does not possess any therapeutic value in the treatment of any of said ailments, except in so far as the analgesic properties of said preparation may afford temporary relief from the pains caused by said ailments.

PAR. 6. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondents also represent that their medicinal preparation designated as Faid, otherwise known as Daintee is a cure or remedy for obesity and a competent, safe and scientific treatment therefor, and that its use will have no ill effect upon the human body.

PAR. 7. In truth and in fact, the medicinal preparation sold and distributed by the respondents as aforesaid, designated as Faid, otherwise known as Daintee, is not a cure or remedy for obesity and does not constitute a competent, safe or scientific treatment therefor. Said preparation will not accomplish the results claimed by the respondents. Furthermore, said preparation is not safe and harmless in that said preparation contains powdered extract phytolacca berries, sodium bitorate, berberine hydrochloride, apocynoid, and desiccated thyroid.

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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.

Such use of said medicinal preparation may produce nausea, severe vomiting, muscular debility, gastrointestinal irritation, diarrhea, serious bowel trouble, raised temperature, irregular pulse, collapse, headaches, muscular and articular pains, vertigo, insomnia, physical exhaustion, tremor, and tachycardia.

The use of said preparation, as aforesaid may also result in chronic poisoning, thyroid toxicosis, permanent injury to tissues, organic functions and the entire body mechanism, and irreparable injury to the heart muscle and auricular fibrillation.

PAR. 8. In addition to the representations hereinabove set forth the respondents have 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 Faid, otherwise known as Daintee, 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 induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparations.

## 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, The Chapman Health Products Co., a corporation, and its officers, and John W. Chapman and Nellie C. Chapman, individually and as officers of The Chapman Health Products Co., and their respective 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 the medicinal preparations designated as "N. A. R. Tablets" and as "Faid" (otherwise known as "Daintee"), 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 advertisements, by any 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, which advertisements, when referring to the product "Faid," fail to reveal that the use of said preparation "Faid" may result in serious and irreparable injury to health, or which advertisements represent, directly or through implication:

1. That said preparation designated as "N. A. R. Tablets," is a cure or remedy for rheumatism, neuritis or arthritis, or that said preparation possesses any therapeutic value in the treatment of any of said ailments, other than to afford temporary relief from the pains caused by said ailments.

2. That said preparation designated as "Faid," otherwise known as "Daintee," is a cure or remedy for obesity or is a competent, safe or scientific treatment for obesity.

*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.

## Syllabus

IN THE MATTER OF  
ANHEUSER-BUSCH, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SUBSEC. (a) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY SEC. 1 OF AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 2987. Complaint, Nov. 21, 1936—Decision, May 11, 1940*

Where a corporation engaged in manufacture, sale and distribution of yeast in commerce to its customers in the several States other than States of origin and shipment, in substantial competition with others engaged in sale and distribution of yeast in commerce between and among the various States;

In selling its bakers' yeast under price lists and schedules pursuant to which purchasers of 50,000 pounds and more of such 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 thereby in price between different purchasers of its said product of like grade and quality, through giving and allowing certain purchasers of bakers' yeast, when used in the manufacture of bread and allied products, different prices, as aforesaid, than given or allowed other of its said purchasers competitively engaged one with the other in the sale and distribution of bread and allied products within the United States;
- (b) Discriminated in price between different purchasers by deviating from schedule aforesaid, through practice of applying such schedule on basis of respective customers' monthly requirements, irrespective of whether or not such requirements were purchased of it, (1) between customers, on the one hand, who purchased all of their requirements of yeast from it, and those who 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 it, but with larger monthly requirement, and would pay, also, same amount as still other customer with same requirement, but purchasing less, and (2) between customers, on the one hand, who purchased some, but not all, of their requirements from it, and other customers who also purchased some, but not all, of their requirements, so that, under given circumstances, customer purchasing given quantity, but with larger requirement, might pay less than customer purchasing of its similar quantity, but with smaller requirement;
- (c) Discriminated in price between different purchasers of its said yeast by deviating from said schedule, through selling at prices based on respective purchasers' total consumption or purchases, irrespective of the number or quantity of the individual deliveries, so that independent dealers operating single plant were obligated to pay a great deal more for yeast than large chains operating several bakeries which, with plant in same area as independent, might receive same quantity at particular branch as received by

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independent, by reason of method aforesaid of basing price not upon particular quantity delivered, but upon total delivered to all of large customer's branches; and

- (d) Discriminated in price between different purchasers of its said yeast by deviating from said schedule, through selling to some of certain customers, within definite quantity bracket, its said product at so-called "off-scale" prices, or prices lower than those favored customer should pay for quantity involved according to scale, in event of his purchasing of it his entire requirements;

With result that, through sale of its bakers' yeast as aforesaid set forth, according to said price scale, and through deviating therefrom as above described, large bakeries and chains made large and substantial savings which might be reflected in many different ways in lessening or injuring competition, and were available for periodic reductions in price and increase of sales effort and sales appeal, to the disadvantage of customers against whom discriminations aforesaid were employed, and effect thereof 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 it and its favored customers, receiving benefit of such discriminatory prices, were engaged, and to injure, destroy and prevent competition with such customers thus benefited:

*Held*, That acts and practices aforesaid of such corporation, under the circumstances set forth, were in violation of Sec. 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

*Mr. James I. Rooney* for the Commission.

*Nagel, Kirby, Orrick & Shepley*, of St. Louis, Mo., for respondent.

## COMPLAINT

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 Anheuser-Busch, Inc., stating the charges in that respect as follows:

PARAGRAPH 1. Respondent Anheuser-Busch, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri with its office and principal place of business in the city of St. Louis, in the State of Missouri.

Respondent manufactures, sells and distributes yeast in commerce to its customers located in the several States of the United States, causing said yeast, when sold, to be shipped from its 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 its business as aforesaid, respondent is now, and for many years has been, in substantial competition with other corporations, partnerships, firms, and individuals

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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 its business as described in paragraphs 1 and 2 hereof, respondent, since June 19, 1936, has been, and is now, discriminating in price between different purchasers of its 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 its 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 is brought about by the respondent selling said bakers' yeast to its customers upon the following terms:

	<i>Cents per pound</i>
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. 4. The effect of said discrimination in price made by respondent, as set forth in paragraph 3 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 respondent in the distribution of said products in the United States.

PAR. 5. The foregoing alleged acts of said respondent 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, sec. 13), and for other purposes."

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 monop-

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olies and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by section 1 of an act entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes,' approved October 15, 1914, as amended (U. S. C. Title 15, sec. 13) and for other purposes" approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission on November 21, 1936, issued and served its complaint in this proceeding upon the respondent Anheuser-Busch, Inc., a corporation, charging it with discriminating in price between different purchasers of bakers' yeast in violation of subsection (a) of section 2 of said act as amended.

After the issuance and service of said complaint an answer was filed by the respondent Anheuser-Busch, Inc. Respondent made motion for leave to withdraw the answer filed and file with the Commission in lieu thereof an answer admitting all the material allegations of fact as set forth in said complaint to be true and waiving all intervening procedure and further hearing, all of which appears in the record herein. Subsequently the Commission, by order entered herein, granted respondent's motion for leave to withdraw said answer and to substitute therefor an answer admitting all the material allegations of the complaint and waiving all intervening procedure which substitute answer was duly filed in the office of the Commission.

Thereafter this proceeding regularly came on for final hearings before the Commission on said complaint, substitute answer and a stipulation wherein it was agreed that certain testimony and other evidence taken in the proceeding before the Commission styled in the matter of Standard Brands, Incorporated, et al, Docket No. 2986, was thereby made additional testimony and evidence in support of the allegations of the complaint in this proceeding; briefs and oral arguments of counsel having been waived, and the Commission having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

## FINDINGS AS TO THE FACTS

**PARAGRAPH 1.** Respondent Anheuser-Busch, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri, with its office and principal place of business in the city of St. Louis, in the State of Missouri.

Respondent manufactures, sells and distributes yeast in commerce to its customers located in the several States of the United States, causing said yeast, when sold, to be shipped from its 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. There has been at all times a continuous current of trade in commerce in said product across State lines between respondent's manufacturing plants and the purchasers of said product.

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

PAR. 4. For many years prior to and since June 19, 1936, respondent, as a general practice and except as otherwise shown hereafter, has been and is now selling bakers' yeast as aforesaid to its customers at different prices as set forth in the following schedule:

	<i>Cents per pound</i>
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

The prices at which respondent sells bakers' yeast according to the foregoing schedule are prices which do not necessarily depend upon the quantities actually purchased from the respondent 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 respondent, would pay, according to scale, 20 cents per pound; however, if the customer purchased only part of his requirements from the respondent he would

still pay 20 cents per pound, regardless of what portion of his requirements he so purchased.

PAR. 5. By selling bakers' yeast, as the respondent does, it is discriminating in prices 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 respondent and those who purchase some but not all of their requirements of yeast from the respondent.

(b) Between customers who purchase some but not all of their requirements of yeast from respondent and other customers who purchase some but not all of their requirements of yeast from the respondent.

(c) Between customers who purchase any or all of their requirements of yeast from respondent and others who also purchase any or all of their requirements of yeast from the respondent, 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 respondent and those who purchase part of their requirements of yeast from the respondent, for example, a customer whose requirement of yeast is 4,500 pounds a month and who purchase this entire amount from respondent, pays, according to scale, 18 cents per pound, whereas, another customer whose requirements of yeast are 7,500 pounds per month and purchases 4,500 pounds from the respondent 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 respondent. Such customer, because of monthly requirements of yeast of 4,500 pounds, would pay the respondent only 18 cents per pound for the 500 pounds purchased from it.

As to (b), that is, between customers who purchase some but not all of their requirements of yeast from the respondent and other customers who purchase some but not all of their requirements of yeast from the respondent 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 respondent, pays, according to the scale, for that 500 pounds 18 cents a pound; another customer whose requirements are 1,000 pounds per month and who purchases from the respondent only 500 pounds pays the respond-

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ent 20 cents per pound for the 500 pounds because his requirements are only 1,000 pounds per month.

As to (c), respondent discriminates between certain customers within a definite quantity bracket by selling to some customers at so-called "off-scale" prices, that is, if the customer took all his requirements of yeast from the respondent and should pay, according to said scale, a certain price, respondent sells him that quantity at a lower price.

As to (d), discrimination is brought about by respondent selling its customers on the basis of total consumption or purchases irrespective of the number or quantity of the individual deliveries. 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 plant in the same area as the independent, may receive the same quantity of yeast at that particular branch as the independent dealer receives. Different prices for the same quantities of yeast are paid by the respective customers in this instance because the price is not based upon the quantity delivered to the particular branch of the large customer but upon the total quantity delivered to all the branches of the large customer.

PAR. 6. By selling bakers' yeast, as the respondent does, according to the price scale, as set forth in paragraph 4 hereof, and by deviating from said prices in the manner set forth in paragraph 5 hereof, large bakeries and chains make large and substantial savings, which savings may be reflected in many different ways in lessening or injuring competition. Inasmuch as these savings can be used for periodic reductions in price in the sale of bread and allied products, sales effort and sales appeal are increased, all of which operate to the disadvantage of the customers against whom these discriminations are employed. The effect of said discriminations in price so made by the respondent as heretofore set forth is and may be substantially to lessen competition and tend to create monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which respondent and its 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.

## CONCLUSION

Under the facts and circumstances set forth in the foregoing findings of fact, the Commission concludes that the aforesaid acts and practices of respondent Anheuser-Busch, Inc., are in violation of sec-

tion 2 (a) of said 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the answer filed herein on April 30, 1940, by respondent, admitting all the material allegations of the complaint to be true, and waiving the taking of evidence and all other intervening procedure, and the stipulation whereby certain testimony and other evidence taken in the proceeding before the Commission styled *In the Matter of Standard Brands, Inc., et al.*, Docket No. 2986, was made additional testimony and evidence in support of the allegations of the complaint in this proceeding, and the Commission being of the opinion that said respondent has 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 respondent, Anheuser-Busch, Inc., its 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 paragraph 4 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 respondent 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 respondent or any of its customers are engaged, or to injure, destroy or prevent competition with respondent or any of its customers, except where said differentials in price, based upon the quantities or volume purchased from the respondent during such period of time by said respective purchasers, make only due allow-

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ance 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 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 respondent or from any other source) during a period of time by such purchaser, irrespective of the quantities or volume delivered by the respondent 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 respondent or any of its customers is engaged, or to injure, destroy or prevent competition with respondent or any of its 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 5 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 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

RAY RENNISON AND MARTHA A. RENNISON, DOING  
BUSINESS AS RAYSON SERVICE BUREAU

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

*Docket 3452. Complaint, June 8, 1938—Decision, May 11, 1940*

Where two individuals engaged in sale and distribution of courses of study and instruction to prepare students for examinations for United States Civil Service positions, and of a correspondence course also of study and instruction in forestry, to purchases in various other States, in substantial competition with others engaged in sale and distribution in commerce among the various States and in the District of Columbia of correspondence courses of study and instruction having the same object and of other such courses of other kinds, including many who, in connection with the sale of their respective courses, do not in any manner misrepresent the same or matters pertaining thereto—

- (a) Made use of word "Bureau" in the trade name under which they conducted their said business and featured same in their advertising matter in periodicals of general circulation and on their stationery and advertising matter distributed to prospective students, and in numerous pieces of advertising matter disseminated by them described the building in which they carried on such business as "United States National Building"; and
- (b) Described and referred to one of said individuals, who more recently continued to carry on such business, in advertising matter above referred to, as "Director" of said school, and set forth in their advertising that he had been employed in the service of the United States Government and had had forestry experience and a vast knowledge of wildlife, through such representations, among others, as "\* \* \* the director of the Bureau \* \* \* has personally worked in the mail service \* \* \*," "\* \* \* The director has personally worked in Government service \* \* \*" and "The director \* \* \* has forestry experience and a vast knowledge of wildlife."

Facts being individual in question was not a graduate of any school of forestry or any college, and was not an expert in such subject and had not had long practical experience therein or in wildlife, and his employment by the Government had been limited to a temporary appointment for 3 or 4 weeks in a Post Office substation located in a department store in a western city, and was not such as to give him any appreciable experience in Government work or qualify him as an expert in civil service matters or make him familiar therewith, and school in question was not an agency of and had no connection with the United States Government or Civil Service Commission and did not give instruction by authority thereof, as suggested by use of word "Bureau" as aforesaid, used by many Government agencies, and by erroneous description of the United States Bank Building in which they carried on business as aforesaid as "United States National Building," they had no jobs at their disposal and could in no way influence or control appointments to United States classified civil service, nor be of assistance to prospective appointees, except by instructing them so that they might be better pre-

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pared for the necessary examinations, and, like other similar schools, they had no advance information regarding such examinations or appointments except as given to the public at large; and

- (c) Made the statements, in some of their advertisements inviting correspondence, "Forest jobs available \$125—\$175 month," and implied and created the impression among students and prospective students, through their said advertising matter, that their course in forestry was intended for and adapted to preparing students thereof for examinations in positions in the Forestry Service of various States and of the United States Government, through such statements as "Many opportunities are presenting themselves in forestry activities throughout the entire Nation. Forestry problems are by no means limited to Federal owned forests. Greater opportunities present themselves in State \* \* \* forestry, \* \* \*. The demand for qualified workers in this larger field has steadily increased, and it is to assist men in qualifying for such positions that our course in forestry has been especially designed," and "We wish particularly to call your attention to our forestry course, which we believe to be the best of its kind available. It is with the view of aiding men to acquire the practical training to assist them in passing the examination for forestry positions, that these instructions have been prepared. \* \* \*;"

Notwithstanding fact that only graduates with a degree in forestry from recognized educational institutions with full 4-year courses therein are eligible to appointment to positions in the Forestry Service of the various States that maintain such services, and requirements are similar to qualify for examination for and appointment to positions of Junior Forester under the United States Government, and they sold their courses in forestry to all who would buy, regardless of whether or not they were otherwise qualified to receive State or Federal appointment in the respective Forestry Services, without informing purchasers that to be eligible for appointment it would be necessary for such person to have a degree in forestry from a recognized educational institution or other qualifications of education or experience not given or furnished by them, without which such persons could not qualify simply by taking their course;

With the result that persons were induced to purchase one or more of their courses of instruction by such claims and misrepresentations in their advertisements and advertising matter to the effect that individual in question, director of the school conducted by them, had been in the service of the United States and had had forestry experience, and with the further result that members of the public also were induced to purchase such courses in the belief that such individuals would be able to place them in positions under the United States Civil Service Commission; and

- (d) Included in their enrollment blank so-called money-back offer, which provided, in effect, that tuition paid by student would be refunded in event he failed to pass examination or did not secure an appointment at the time the next succeeding examination was held;

Facts being they did not disclose, in aforesaid connection, as respects United States civil service positions, that no examination might be held by Civil Service Commission for several years in a number of subjects, and that it might be months, and sometimes years, before a person, after usual lapse of several months for examination and grading of papers, placed on a register was appointed, that proportion of those examined who passed was small, and proportion of those appointed from number passing, smaller still, and,

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as aforesaid noted with respect to forestry positions, students of their said courses could not thereby alone qualify either for examination or positions involved, and said offer, under conditions aforesaid, was definitely misleading and meaningless for all practical purposes;

With capacity and tendency to confuse, mislead, and deceive members of public into the erroneous belief that such representations were true, and to induce them to purchase their said courses of study and instruction because of such beliefs, engendered as above set forth, and to divert trade to them from competitors engaged in the sale in commerce of home study correspondence courses in similar and also in other lines of study, and including among their said competitors those who do not make the misleading representations made by them as herein set forth, and do not otherwise misrepresent their respective courses, but truthfully and accurately represent the same and all matters pertaining thereto, and with effect of diverting business to them from their said competitors; to their injury and prejudice:

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

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

*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 Ray Rennison and Martha A. Rennison, individually, and doing business under the name and style of Rayson Service Bureau, 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. Said respondents, Ray Rennison and Martha A. Rennison, are now, and have been for more than 2 years last past, engaged, under the name and style of Rayson Service Bureau, 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, and also, of a course of study and instruction in the subject of forestry, which said courses of study and instruction are pursued by correspondence through the medium of the United States mail. Respondents' place of business is and has been located at 418 United States National Bank Building, in the city of Denver, State of Colorado. Respondents, in the course and conduct of said business during the time afore-

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said, caused and do now cause their said courses of study and instruction to be transported from their said place of business in Colorado to the purchasers thereof located in the several States of the United States other than the State of Colorado and in the District of Columbia.

PAR. 2. 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 of other kinds, 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. There are among the competitors of respondents many who, in connection with the sale of their respective courses of study and instruction, do not in any manner misrepresent the same or matters pertaining thereto.

PAR. 3. Respondents, in soliciting the sale of and in selling their said courses of study and instruction have made numerous misrepresentations in advertising matter published in newspapers and magazines circulated among the general public in various States of the United States, and in printed matter circulated by respondents by mail or otherwise to prospective students in various States of the United States. Among such misrepresentations are statements and phrases which import or imply that the school conducted by respondents is an agency of or is connected with or gives instruction by authority of the United States Government or the United States Civil Service Commission; that respondent, Ray Rennison, the director of said school, has been employed by the United States Government and that he has worked in the United States mail service; that said respondent, Ray Rennison, is an expert in forestry and has had long practical experience therein as well as in wildlife; and that the forestry course offered and used by respondents is giving instruction in forestry is of such extent, nature, and character as to prepare and qualify students who pursue the same for forestry positions under the jurisdiction of the various States of the United States, as well as for examinations for such positions.

PAR. 4. Respondents use the phrases "U. S. National Building" and "United States National Building," in connection with the word

"Bureau" in the name under which said school is conducted, on their printed matter circulated among prospective students in the promotion of the sale of courses of instruction intended for preparing students thereof for examinations conducted by the United States Civil Service Commission. Said phrases in such connection import and imply that said school is connected with or authorized by the United States Government or said Civil Service Commission. The correct and full name of the building where the offices of respondents are located is "United States National Bank Building." The word "Bureau" is often used as the official description of a Government agency and is widely used by the public in designating Government bodies and agencies.

PAR. 5. Among the representations, made by respondents, as aforesaid, which import or imply that respondent, Ray Rennison, has been employed by the United States Government and that he has worked in the United States mail service are the following:

This course is designed and prepared by the Director of the Bureau, \* \* \* who has personally worked in the mail service \* \* \*  
\* \* \* The Director has personally worked in Government service \* \* \*

Among the representations, made by respondents, as aforesaid, which import or imply that respondent, Ray Rennison, is an expert in forestry and has had long practical experience therein as well as in wildlife, are the following:

The Rayson Service Bureau welcomes the opportunity to analyze forestry and conservation problems \* \* \*

The director \* \* \* has forestry experience and a vast knowledge of wildlife.

Among the representations made by respondents, as aforesaid, which import or imply that respondents' forestry course is of such extent, nature and character as to prepare and qualify students who pursue the same for forestry positions under the jurisdiction of the various States of the United States, as well as for examinations for such positions, are the following:

Many opportunities are presenting themselves in forestry activities throughout the entire nation. Forestry problems are by no means limited to federal owned forests. Greater opportunities present themselves in state \* \* \* forestry, \* \* \* The demand for qualified workers in this larger field has steadily increased, and it is to meet this requirement and to assist men in qualifying for such positions that our course in forestry has been carefully and especially designed.

We wish particularly to call your attention to our forestry course, which we believe to be the best of its kind available. It is with the view of aiding men to acquire the practical training to assist them in passing the examinations for forestry positions, that these instructions have been prepared. \* \* \*

PAR. 6. In truth and in fact the school conducted by respondents is not an agency of nor is it connected with the United States Government or the United States Civil Service Commission, nor does it give instruction by authority thereof. Respondent, Ray Rennison, has not been employed by the United States Government in the mail service or in any other branch of the Government service. Respondent, Ray Rennison, is not an expert in forestry and he has not had long practical experience therein or in wildlife. His business is and has been for many years past that of operating a multigraph business under the name of Rayson Multigraph Service and also in connection therewith, operating the correspondence school herein described and as herein set forth. The forestry course offered and used by respondents in giving instruction in forestry is not of such extent or nature or character as to prepare and qualify students who pursue the same for forestry positions under the jurisdiction of the various States of the United States, generally speaking, or for examinations for such positions. All or practically all such forestry positions requiring a technical or scientific knowledge of forestry are open only to persons having a much more extended training and education than offered by respondents or to those having extended practical experience not given by respondents, or both. In cases where examinations are held for such positions, it is generally true that those only are eligible to take the same who have had more training or experience, or both, than that given or furnished by respondents.

PAR. 7. Respondents, in the sale of their said courses of study and instruction as aforesaid, through use of a "Money Back" agreement, and otherwise, represent to students and prospective students that money paid for instruction will be refunded if such students completing the respective courses subscribed for fail to pass an examination or examinations for which they have prepared or if they are not offered appointments to positions after passing an examination by the time the next examination is held. Said "Money Back" agreement used by respondents reads as follows:

My entire tuition will be immediately refunded if I fail to pass examinations, or if I pass and am not offered an appointment at the time the next succeeding examination is held. (Note: Students enrolling for combined courses will be made refunds on the basis of one-third for each course)

An example of a similar representation used by respondents in their advertising matter, as aforesaid, is the following:

If you do not receive an appointment to the position of your choice, your tuition fee will be returned to you as stated by your Enrollment Blank.

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The implications of said agreement and of the above-quoted representation are that an examination or examinations will be available to be taken by students who take and complete respondents' courses within a reasonable time after completion of the same; that a position is then assured immediately or within a reasonable time thereafter; and that the conditions upon which refunds depend are reasonably determinable and within a reasonable time.

In truth and in fact said agreement and the representation above quoted are *misleading* in that said agreement for all practical purposes is meaningless and inoperative in a large majority of cases in that at certain times and in regard to certain examinations for which respondents offer courses of study and instruments, no examinations are held for long periods of time, and as to other examinations none or practically none are held at all. As to forestry positions and examinations therefor, said agreement is misleading because it is inoperative in practically all cases, not only because of the infrequency or entire absence of examinations for such positions, but because of the fact that certain prerequisites as to education or experience, or both, that are not met or furnished by the instruction given by respondents are required both for such examinations and for such positions.

PAR. 8. The foregoing acts and practices used by respondents in connection with the offering for sale and sale of their said courses 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 and implications, as herein alleged, are true, and to induce them to purchase such courses of study and instruction on account thereof. Thereby substantial trade is diverted unfairly 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 civil service examinations as well as from those so engaged in such sale in other lines of study. 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. 9. 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 June 8, 1938, issued its complaint in this proceeding and caused the same to be served upon respondents, Ray Rennison and Martha A. Rennison, individually and doing business under the name and style of Rayson Service Bureau, 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 thereto by the respondent, Ray Rennison, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Pencke, an attorney for the Commission, before Miles J. Furnas and William C. Reeves, examiners of the Commission theretofore duly designated by it, and such 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 or tendered in opposition to the allegations of the complaint by or in behalf of either of said respondents. Thereafter said proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto by the respondent, Ray Rennison individually and doing business under the name and style of Rayson Service Bureau, testimony and other evidence, and the brief of counsel for the Commission in support of the complaint, respondents not having filed briefs 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, Ray Rennison, at the time of issuance of the complaint herein on June 8, 1938, and for about 2 years immediately prior thereto, was engaged, under the name and style of Rayson Service Bureau, 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, and also of a course of study and instruction in the subject of forestry, which said courses of instruction were pursued by correspondence through the medium of the United States mail. Until about 2 years prior to the issuance of the complaint

herein, for a number of years, the same business was likewise conducted under the said trade name by the respondents, the said Ray Rennison and Martha A. Rennison. The place of business of respondents in the conduct of said business as aforesaid was at 418 United States National Bank Building, in the city of Denver, State of Colorado. In the course and conduct of said business, during the time aforesaid, and as previously stated, respondents caused the lesson material used in said courses of study and instruction to be transported as aforesaid from their said place of business in Colorado through and into various other States of the United States to the respective 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 were 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 of other kinds, 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. There are among the competitors of respondents many who, in connection with the sale of their respective courses of study and instruction, do not in any manner misrepresent the same or matters pertaining thereto.

PAR. 3. Respondents in the course of their said business and as a means of contacting members of the public for the purpose of selling to them the said courses of instruction, caused advertisements to be published in magazines and other periodicals having general circulation in various States of the United States. Some of such advertisements contained the statement "Forest jobs available \$125-\$175 month" and the request that interested persons qualify immediately and write to respondents for details. In numerous pieces of advertising matter disseminated by respondents the building in which respondents carried on business was described as the "United States National Building" although the correct name of such building is "United States National Bank Building." Respondent, Ray Rennison, was described and referred to in said advertising matter as the director of said school and the statements were made that respondent had been employed in the service of the United States Government, that he had had forestry experience and had a vast knowledge of wildlife. The name "Rayson Service Bureau" was prominently featured on

respondents' stationery, in advertisements, and on advertising matter sent to prospective students. In said advertising matter so distributed, respondents represented that the forestry course offered would quality students who pursued the same as foresters and for positions in that line as well as for examinations therefore with particular reference to "various States, counties, and organized forestry service."

PAR. 4. Among such representations as aforesaid are the following:

\* \* \* the Director of the Bureau, \* \* \* has personally worked in the mail service \* \* \*

\* \* \* The Director has personally worked in Government service \* \* \*

The Rayson Service Bureau welcomes the opportunity to analyze forestry and conservation problems, \* \* \*

The director \* \* \* has forestry experience and a vast knowledge of wild life.

Many opportunities are presenting themselves in forestry activities throughout the entire nation. Forestry problems are by no means limited to federal owned forests. Greater opportunities present themselves in State \* \* \* forestry, \* \* \* The demand for qualified workers in this larger field has steadily increased, and it is to assist men in qualifying for such positions that our course in forestry has been especially designed.

We wish particularly to call your attention to our forestry course, which we believe to be the best of its kind available. It is with the view of aiding men to acquire the practical training to assist them in passing the examination for forestry positions, that these instructions have been prepared. \* \* \*

Respondents, in their advertising matter aforesaid, implied and created the impression among students and prospective students that their course in Forestry was intended for and adapted to preparing students thereof for examinations and positions in the Forestry Service of various States of the United States and of the United States Government.

PAR. 5. Only graduates with a degree in forestry from recognized educational institutions which have full 4-year courses in forestry are eligible to appointment to positions in the Forestry Service of the various States of the United States that maintain such service. Such requirement is also made in order to qualify for the examination for and appointment to the position of Junior Forester under the United States Government. All technical positions in the United States Forestry Service are now filled from the eligible lists created by the Junior Forester examination. A minor classification in said service, known as Assistant to Technician, has the requirement of 2 years of college work or 2 years field experience, or a combination of the two, in order to qualify. Respondents have sold their courses in forestry to all who would buy the same whether or not they were otherwise qualified to receive appointments in the Forestry Service of the United States or of the various States. Respondents did not inform persons purchasing such courses of the fact that to be eligible to appointment to such posi-

tions it would be necessary for them to have a degree in forestry from a recognized educational institution or qualifications of education or experience not given or furnished by respondents. Persons who are not graduates of a recognized school of forestry or who have not had other education or experience not furnished by respondents could not qualify for positions in the Forestry Service of the United States or of the various States maintaining such service, simply by taking the course sold by respondents.

PAR. 6. The respondent, Ray Rennison, is not a graduate of any school of forestry or any college and his employment by the United States Government has been limited to a temporary appointment for 3 or 4 weeks in a post office substation located in a department store in Denver, Colo. This was not such an employment as to give him any appreciable experience in Government work or to qualify him as an expert in civil service matters or to make him familiar therewith. Persons were induced to purchase one or more of the courses of instruction offered for sale by respondents by the claims and representations in respondents' advertisements and advertising matter, to the effect that the respondent Ray Rennison, the director of the school conducted by respondents, had been in the service of the United States and had had forestry experience; also members of the public were induced to purchase such courses of instructions in the belief that respondents would be able to place them in positions under the Civil Service Commission of the United States. The word "Bureau" in the trade name under which respondents carried on business is one used by many agencies of the United States Government and is suggestive of such connection, and additional ground for this assumption was afforded by the erroneous description of the building in which respondents carried on business as the "United States National Building." Said school is not an agency of, nor has it any connection with the United States Government or the United States Civil Service Commission, nor has it given instruction by authority thereof. Respondent, Ray Rennison, is not an expert in forestry and he has not had long practical experience in forestry or in wildlife.

PAR. 7. The enrollment blank used by respondents in the course of their business contained a so-called money-back offer which provided in effect that the tuition paid by a student would be refunded if he failed to pass the examination or did not secure an appointment at the time the next succeeding examination was held. No mention was made in such money-back offer of several important conditions which pertain to the taking of civil service examinations and appointment to positions in the classified civil service of the United States Government. Subscribers were not advised by respondents that no ex-

aminations may be held by the United States Civil Service Commission for several years in a number of subjects; that usually it is several months before examination papers are examined and the grades published; that it may be months and sometimes years before a person who has been placed on a register of eligibles is appointed to a position; that the proportion of those examined who pass the examination is small and the appointments from that number smaller still. In regard to forestry positions, students of respondents' forestry course, as previously shown, cannot by such course alone qualify either for examination or the positions involved. When these conditions are considered the money-back offer is definitely misleading and meaningless for all practical purposes.

PAR. 8. 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 of eligibles from which appointments may be made to positions in the classified civil service of the United States. The school conducted by 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. 9. The representations of respondents as aforesaid are misleading and deceptive and have had the capacity and tendency to confuse, mislead and deceive members of the public into the erroneous belief that such representations are true and to induce them to purchase respondents' courses of study and instruction because of the erroneous belief engendered as above set forth and to divert trade 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 home study courses pursued by correspondence in similar lines as well as in other lines of study. There were and are among the competitors of respondents those who do not make the misleading representations made by respondents, as herein set-out, and who do not otherwise misrepresent their respective courses, but who truthfully and accurately represent the same and all matters pertaining

thereto. Respondents' said acts and practices have the capacity and tendency to divert, and have diverted, business to respondents from their said competitors to the substantial injury and prejudice of such competitors.

#### CONCLUSION

The acts and practices of respondents as herein set-out are all to the 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 the respondent, Ray Rennison, testimony and other evidence taken before Miles J. Furnas and William C. Reeves, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint, brief filed by William L. Pencke, counsel for the Commission, respondents not having introduced testimony or other evidence or 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, Ray Rennison and Martha A. Rennison, individually and doing business under the name and style of Rayson Service Bureau, 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 and distribution of courses of study and instruction by correspondence in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Bureau" in the name under which such business is conducted.

2. Representing, through the use of the word "Bureau" in the name used to designate the correspondence school conducted by them in connection with courses designed to prepare students for civil service examinations, or otherwise, that such school is connected with or is an agency of the United States Government.

3. Using the expression "United States National Building" instead of the correct name "United States National Bank Building," to designate the building in which their office is located.

4. Representing that respondent, Ray Rennison, is an expert in civil service matters by reason of his employment in the United

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States Mail Service or by reason of any other employment by the United States Government.

5. Representing that respondent, Ray Rennison, is an expert in forestry or in wildlife.

6. Representing, through the use of a money-back agreement or otherwise, that United States Civil Service positions or examinations therefor are available, immediately or within a reasonable time.

7. Representing that the forestry course offered by the respondents is of such extent, nature and character as adequately to prepare and qualify students for examinations for positions in the Forest Service of the various States of the United States having such departments, or for such positions with the United States Government.

*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  
RESEARCH ASSOCIATES, INC., AND DERMAGELL, INC.

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

*Docket 3651. Complaint, Nov. 19, 1938—Decision, May 11, 1940*

Where a corporation engaged in sale and distribution of organic soap compound as cleansing cream, under designation "Dermagell," to purchasers at their respective points of location in various other States and in the District of Columbia, in competition with others engaged in sale or distribution of soaps, cleansing creams, and other products designed, intended, and used for cleansing skin and hair; and a concern which, at time herein involved, owned substantial majority of outstanding stock thereof and controlled and directed its business policies, practices, and activities; in advertisements of its said "Dermagell" which, then controlled as above set forth, said corporation caused to be disseminated through newspapers and other publications circulating among the various States and in the District of Columbia—

Represented that said preparation was the "discovery of the century," which soothed and healed, and penetrated innermost recesses of the pores of the skin, and that use thereof would leave skin and scalp youthfully fresh and invigorated and give any woman a soft, clear, smooth complexion or beautiful hair, and that the benefits obtained from its use were distinct and lasting, and that it actually protected the skin and prevented or cured skin disorders;

Facts being said product was not substantially different from other products or soap designed for similar use, and was not the "discovery of the century," but ingredients thereof were well known and had been used for many years in preparation of soaps and similar products, and, while its fatty acids, stearic acid, myristic acid, and carbitol, and its mild basic alkali, triethanolamine, were a little different from usual sodium or potassium soaps, it was essentially the same as any other soap, and possessed no special soothing or healing properties and would not penetrate the innermost recesses of the skin, use of said product would not leave skin and scalp youthfully fresh and invigorated nor give any woman a soft, clear, smooth complexion and beautiful hair, and benefits obtained from such use were not distinct and lasting, and use thereof would not prevent or cure skin disorders or diseases;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true and that their said product possessed properties claimed and represented and would accomplish results indicated, and to cause substantial portion of such public, because of erroneous and mistaken belief thus engendered, to purchase their said compound and with result that trade was diverted unfairly to them from their competitors in commerce between and among the several States and in the District of Columbia who truthfully advertise the effectiveness in use of their respective products:

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*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. Randolph E. Preston*, trial examiner.

*Mr. B. G. Wilson* for the Commission.

*Mr. Ralph E. Parker*, of Potter, Pierce & Scheffler, 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 Research Associates, Inc., a corporation, and Dermagell, 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, Research Associates, Inc., 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 at 3400 Nebraska Avenue NW., in the city of Washington, District of Columbia. Respondent, Dermagell, Inc., 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 formerly at 3400 Nebraska Avenue NW., and now at 52 O Street NW., in the city of Washington, District of Columbia. Respondent, Research Associates, Inc., owns a substantial portion of the outstanding shares of stock of respondent, Dermagell, Inc. Said corporate respondents act together and in cooperation with each other in carrying out the sales activities, practices, and policies herein set forth.

PAR. 2. The respondents are now, and have been for more than 1 year last past, engaged in the business of selling and distributing an organic soap compound which is a cleansing cream and is designated as "Dermagell." Respondents cause the said product, when sold by them, to be transported from their aforesaid places of business in the District of Columbia, 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 such shipment 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 among and

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between the various States of the United States and in the District of Columbia.

PAR. 3. Respondents are engaged in 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 soaps, cleansing creams, and other products designed, intended, and used for the cleansing of the skin and hair. Among such competitors in said commerce are many who do not in any manner misrepresent the properties or the efficacy of their respective soaps and other products.

PAR. 4. In the course and conduct of their said business, and for the purpose of inducing the purchase of their said product, respondents have caused false advertisements, containing representations and claims with respect to the properties of their said product and the results that may be expected to be obtained from the use thereof, to be disseminated by advertisements inserted in newspapers and other publications having a circulation among and between the various States of the United States and in the District of Columbia, and by continuities broadcast from radio stations which convey the programs emanating therefrom to the listeners thereto located in various States of the United States and in the District of Columbia. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

Dermagell is a 3-purpose Cleansing Cream and Shampoo—so efficient—so utterly different from anything heretofore obtainable that authorities proclaim it “the discovery of the century.”

Dermagell soothes and heals as it penetrates the innermost recesses of the tender pores without unpleasant reaction.

Dermagell vanishes instantly—like magic when rinsed in hot or cold water, leaving the skin and scalp youthfully fresh and invigorated.

Dermagell is not expensive. It is within easy reach of the most modest budget, meaning that no woman interested in a soft, clear, smooth complexion and beautiful hair need deny herself its distinct and lasting benefits.

At last Science comes to the aid of beauty. That is the welcome news you will find in next Sunday's Herald. For the first time Washington will learn of Dermagell \* \* \* the marvelous new three-purpose skin cleanser and shampoo. Dermagell looks much like ordinary cleansers \* \* \* yet the moment you place it on your face you'll see a swift and dramatic change. Here is an aid to beauty the like of which you've never seen before.

Dermagell cannot irritate the most sensitive skin for it is scientifically balanced to correspond to the base range of your own blood. No other skin cleanser can say this. Dermagell not only cleanses thoroughly and gently \* \* \* it actually protects your skin. Dermagell prevents and cures many skin disorders.

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' product and its effectiveness in use, the respondents have represented, among other things, that said product is different from any other product designed for similar usage and is "the discovery of the century"; that said product possesses soothing and healing properties; that it penetrates the innermost recesses of the pores of the skin; that the use of said product leaves the skin and scalp youthfully fresh and invigorated; that any woman interested in a soft, clear, smooth complexion and beautiful hair will obtain distinct and lasting benefits from the use of such product; and that the use of such product prevents and cures many skin disorders.

PAR. 6. The aforesaid representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue. In truth and in fact, such product is not substantially different from other products designed for similar usage and is not the discovery of the century. The ingredients contained in such product are well known and have been used for many years in the preparation of soaps and similar products. Said product possesses no soothing or healing properties and will not penetrate the innermost recesses of the pores of the skin. The use of such product will not leave the skin and scalp youthfully fresh and invigorated, nor will the use thereof give any woman a soft, clear, smooth complexion and beautiful hair. The benefits obtained from such use are not distinct and lasting. The use of such product will not prevent or cure skin disorders.

PAR. 7. The use by respondents of the foregoing false and misleading statements, representations, and advertisements with respect to said product 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 that respondents' said product 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 respondents' said product. As a result, trade has been diverted unfairly to the respondents from their competitors in similar commerce who truthfully advertise the effectiveness in use of their respective soaps, cleansing creams, and other 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. 8. 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 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 November 1938, issued its complaint in this proceeding and caused same to be served on the respondents Research Associates, Inc., and Dermagell, Inc., charging them with the use of unfair methods of competition in commerce in violation of said act. After the issuance of said complaint, neither of the respondents having filed answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by B. G. Wilson, attorney for the Commission, before Randolph E. Preston, 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. Neither of said respondents offered any testimony or other evidence at said hearing, but both of the respondents were represented, the respondent Research Associates, Inc., appearing by Ralph E. Parker, its attorney, and respondent Dermagell, Inc., appearing by C. G. Gilbert in the capacity of its president. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence and brief of counsel for the Commission in support of the allegations of said complaint, no brief having been filed in opposition to the allegations of the complaint or request for oral argument having been made; 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 Research Associates, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its offices and principal place of business at 3400 Nebraska Avenue NW., in the city of Washington, District of Columbia.

Respondent Dermagell, Inc., 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 at 52 O Street, NW., in the city of Washington, District of Columbia. Respondent Research Associates, Inc., at the time of the circulation of the advertisements hereinafter set out and referred to, owned a substantial majority of the outstanding shares of stock of Dermagell, Inc., and controlled and directed the business policies, practices, and activities of respondent Dermagell, Inc.

Respondent Research Associates, Inc., on or about May 11, 1938, divested itself of a goodly part of the stock of Dermagell, Inc., by the sale thereof to parties not named as respondents in this proceeding, and since about May 11, 1938, has not held a controlling interest in respondent Dermagell, Inc., and at the present time owns no stock at all in said respondent Dermagell, Inc., and does not control or direct its business policies, practices, and activities.

PAR. 2. Respondent Dermagell, Inc., prior to and during the year 1938, was engaged in the business of selling and distributing an organic soap compound which is a cleansing cream and is designated as "Dermagell." It caused the said product, when sold, to be transported from its aforesaid place of business in the District of Columbia, 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 such shipment, and in the District of Columbia. Respondent Dermagell, Inc., maintained, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Respondent Dermagell, Inc., has been engaged in 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 soaps, cleansing creams, and other products designed, intended, and used for the cleansing of the skin and hair.

PAR. 4. In the course and conduct of its said business and for the purpose of inducing the purchase of said product, respondent Dermagell, Inc., in 1937 and during the time when its policies, practices, and activities were controlled by respondent Research Associates Inc., caused false advertisements, containing representations and claims with respect to the properties of said product and the results that may be expected to be obtained from the use thereof, to be disseminated by means of newspapers and other publications 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 so used and disseminated as aforesaid are the following:

Dermagell is a 3-purpose Cleansing Cream and Shampoo—so efficient—so utterly different from anything heretofore obtainable that authorities proclaim it “the discovery of the century.”

Dermagell soothes and heals as it penetrates the innermost recesses of the tender pores without unpleasant reaction.

Dermagell vanishes instantly—like magic when rinsed in hot or cold water, leaving the skin and scalp youthfully fresh and invigorated.

Dermagell is not expensive. It is within easy reach of the most modest budget, meaning that no woman interested in a soft, clear smooth complexion and beautiful hair need deny herself its distinct and lasting benefits.

At last Science comes to the aid of beauty. That is the welcome news you will find in next Sunday's Herald. For the first time Washington will learn of Dermagell \* \* \* the marvelous new three-purpose skin cleanser and shampoo. Dermagell looks much like ordinary cleansers \* \* \* yet the moment you place it on your face you'll see a swift and dramatic change. Here is an aid to beauty the like of which you've never seen before.

Dermagell cannot irritate the most sensitive skin for it is scientifically balanced to correspond to the base range of your own blood. No other skin cleanser can say this. Dermagell not only cleanses thoroughly and gently \* \* \* it actually protects your skin. Dermagell prevents and cures many skin disorders.

PAR. 5. The product “Dermagell” is not substantially different from other products or soaps designed for a similar use. It is not “the discovery of the century.” Its ingredients are well known and have been known and used for many years in the preparation of soaps and similar products. Soap is a sodium or potassium salt of fat, and fats are esters—chemical compounds of fatty acid and glycerol; the important property of soap being that it can break down in water with the liberation of mild alkali, having cleansing properties in the removal of grease and dirt.

The ingredients contained in the product “Dermagell,” which is a semisolid preparation, consist of roughly 42 percent water; 21 percent myristic acid; nearly 7 percent stearic acid; an insignificant amount of lanolin; 11 percent carbitol, which is a substitute for glycerol though chemically a little different from the ordinary glycerine; 16 percent triethanolamine, which is a mild alkali; and a little perfume. Its fatty acid, stearic acid, myristic acid, and carbitol, and its mild basic alkali, triethanolamine, are a little different from the usual sodium or potassium soaps, but essentially it is the same as any other soap.

“Dermagell” possesses no special soothing or healing properties and will not penetrate the innermost recesses of the skin; the use of said product will not leave the skin and scalp youthfully fresh and invigorated, nor will its use give any woman a soft, clear, smooth

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complexion and beautiful hair; the benefits obtained from such use are not distinct and lasting, and the use of such product will not prevent or cure skin disorders or diseases.

PAR. 6. The publication and use by said respondents Dermagell, Inc., and Research Associates, Inc., of the foregoing false and misleading statements, representations, and advertisements with respect to said product, disseminated as aforesaid, have had, and now have, the capacity and tendency to 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 respondents' said product possesses the properties claimed and represented, and will accomplish the results indicated, and to cause a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said product. As a result, trade has been diverted unfairly to the respondents from their competitors in commerce between and among the several States of the United States and in the District of Columbia, who truthfully advertise the effectiveness in use of their respective soaps, cleansing creams, and other products.

## CONCLUSION

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

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, testimony and other evidence taken before Randolph E. Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, no evidence having been offered by respondents, brief filed herein by counsel for the Commission, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, Research Associates, Inc., and Dermagell, 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 an organic soap compound formerly known as "Dermagell," or any other preparation or compound composed of similar ingredients or possessing similar proper-

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ties, whether sold under that name or any other name, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

That said preparation is the discovery of the century; that respondents' preparation soothes and heals or that it penetrates the innermost recesses of the pores of the skin; that its use will leave the skin and scalp youthfully fresh and invigorated; that its use will give any woman a soft, clear, smooth complexion or beautiful hair; that the benefits obtained from its use are distinct and lasting; that it actually protects the skin; or that it prevents or cures skin disorders.

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

## Syllabus

IN THE MATTER OF  
DR. VAN VLECK COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3988. Complaint, Jan. 4, 1940—Decision, May 13, 1940*

Where a corporation engaged in sale and distribution of its "Dr. Van Vleck's Ointment," "Dr. Van Vleck's Muco Cones," and "Dr. Van Vleck's Pills" for piles, to purchasers in various other States and in the District of Columbia; in advertisements thereof which it disseminated and caused to be disseminated through the mails, insertion in newspapers and periodicals of general circulation, and circulars and other printed or written matter distributed in commerce among the various States, and otherwise, and also through letters sent to potential customers or those who had already purchased, designed to induce such persons to buy its said products or purchase same in larger quantities, and through pamphlets and circulars containing purported testimonials from diverse and sundry persons designed to induce potential customers to purchase same or buy larger quantities thereof, and which advertisements were intended and likely to induce purchase of its said products—

Represented that its said preparations, used conjointly, were an effective and scientific cure and remedy for, and a competent and effective treatment of, piles, and that application thereof conjointly constituted an "Absorption Treatment" which removed piles without surgical aid, and that their use insured immediate and lasting relief with no return of suffering, and would remove or correct the cause of such condition;

Facts being such preparations, whether used conjointly or separately, were not cures or remedies for said condition, and did not constitute competent or effective treatment therefor, other than to give some small degree of relief by means of their analgesic qualities, and prevention of constipation, and, when used conjointly, did not remove piles, bring immediate or lasting relief, nor remove or correct cause of said condition, in that such treatment would not absorb, remove, or completely eradicate protruding external or internal hemorrhoidal protuberances;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive, and misleading statements, representations, and advertisements were true, and of inducing portion of said public, because of such erroneous and mistaken belief, to purchase its said drug-containing medical 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. W. M. King* for the Commission.

*Bisbee, McKone, Badgley & Kendall*, of Jackson, Mich., for respondent.

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## 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 Dr. Van Vleck 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 as follows:

PARAGRAP<sup>H</sup> 1. Respondent, Dr. Van Vleck Co., is a corporation, organized, existing, and doing business under the laws of the State of Michigan, with its principal office and place of business located at 168 West Michigan Avenue, in the city of Jackson, State of Michigan.

PAR. 2. Said respondent is now and for many years last past has been engaged in the sale and distribution of certain medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia. Said preparations are known as "Dr. Van Vleck's Ointment," "Dr. Van Vleck's Muco Cones," and "Dr. Van Vleck's Pills," and represented to be remedies for piles. Respondent causes said preparations, when sold, to be shipped from its place of business in the State of Michigan 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, between and among the various States of the United States and 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 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 preparations, 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 false statements and representations contained in the said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

It is truly amazing how so many people say they have been lifted from a miserable existence and brought speedily back to the comfort of living by using Dr. Van Vleck Direct Treatment.

Dr. Van Vleck's Treatment has relieved thousands of their pain and suffering.

There is no doubt that Dr. Van Vleck's Ointment and Muco Cones will usually relieve the acute pain of piles without any further Treatment, but Dr. Van Vleck was not satisfied with what many would call real relief. He believed it was his duty to bring about a substantial relief and for that purpose included in his Treatment his pills. These are taken internally. The result is that Dr. Van Vleck has indeed brought immeasurable happiness into a suffering world.

In addition to the foregoing advertisements, respondent is and has been disseminating false advertisements in the same manner as hereinabove set out, by means of letters sent to potential customers or to persons who had already made a purchase, designed to induce said persons to purchase respondent's products, or to purchase the same in larger quantities. Among and typical of these false statements and representations disseminated, as aforesaid, by the use of such letters are the following:

How many things you may have tried, or how many have failed you, does not matter now. This we sent you is the Direct medication that we always rely on to bring reasonably quick results in such conditions as are only reached and relieved by a direct method of Treatment.

Promise yourself now that you will stop at nothing short of all the lasting ease and comfort that a good and helpful Treatment can bring you.

Even as the most distressing symptoms are yielding to the soothing action of the Treatment—it would be a serious mistake to allow a break or interruption in the good work before making these benefits lasting and durable—Keep it up, keep it up, until you have made sure of real relief, and continued comfort.

Vast numbers of people who were once the unhappy victims of this cruel affliction have stayed with this Treatment until they obtained the Lasting Relief they longed for.

**PAR. 4.** In addition to the foregoing advertisements and letters, respondent is and has been disseminating false advertisements in the same manner as hereinabove set out by means of pamphlets and circulars containing purported testimonials from diverse and sundry persons designed to induce potential customers to purchase its products, or to induce persons who had already purchased, to purchase a larger quantity thereof.

Among and typical of these statements and representations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

I have not been bothered for a long time and all due to your Treatment.

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I am thankful to say that it has done the work. I do not feel a pain or soreness at all since using the Treatment.

Since taking your Treatment I never will get through rejoicing and have never suffered from piles since.—I have no pains at all.

About 35 years ago my husband used your Treatment and has never had a return of his suffering since.

I am so thankful to say that I am getting on just fine and feel I owe my life to you for relieving me of those cruel piles.

I got very good results from your Treatment. In my case relief was almost immediate. However, I continued it for several weeks and now there is no sign of any pile suffering.

When I first wrote you I was not able to do any walking and could not ride. I had suffered with piles for 15 years. But now I am at my work and feel as if I never had the piles.

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 respondent's preparations, respondent represents that said preparations used conjointly are an effective and scientific cure and remedy for, and a competent and effective treatment of, piles; that the application of said preparations conjointly constitutes an "Absorption Treatment" which removes piles without surgical aid; that their use insures immediate and lasting relief with no return or suffering, and will remove or correct the cause of piles.

PAR. 6. 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, respondent's preparations whether used conjointly or separately are not cures or remedies for piles and do not constitute a competent or effective treatment therefor other than to give some small degree of relief by means of the analgesic properties thereof and the prevention of constipation. Said preparations when used conjointly do not remove piles, do not bring immediate or lasting relief, and do not remove or correct the cause of piles in that said treatment will not absorb, remove, or completely eradicate protruding external or internal hemorrhoidal protuberances.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to its 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 a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase such medicinal preparations containing drugs.

PAR. 8. 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 the fourth day of January 1940, issued, and on the fifth day of January 1940, served its complaint in this proceeding upon the respondent, Dr. Van Vleck Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On February 19, 1940, 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 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, Dr. Van Vleck Co., is a corporation organized, existing, and doing business under the laws of the State of Michigan, with its principal office and place of business located at 168 West Michigan Avenue, in the city of Jackson, State of Michigan.

PAR. 2. Said respondent is now and for many years last past has been engaged in the sale and distribution of certain medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia. Said preparations are known as "Dr. Van Vleck's Ointment," "Dr. Van Vleck's Muco Cones," and "Dr. Van Vleck's Pills," and represented to be remedies for piles. Respondent causes said preparations, when sold, to be shipped from its place of business in the State of Michigan 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, between and among the various States of the United States and 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 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 preparations, 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 false statements and representations contained in the said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

It is truly amazing how so many people say they have been lifted from a miserable existence and brought speedily back to the comfort of living by using Dr. Van Vleck direct Treatment.

Dr. Van Vleck's Treatment has relieved thousands of their pain and suffering. There is no doubt that Dr. Van Vleck's Ointment and Muco Cones will usually relieve the acute pain of piles without any further Treatment, but Dr. Van Vleck was not satisfied with what many would call real relief. He believed it was his duty to bring about a substantial relief and for that purpose included in his Treatment his pills. These are taken internally. The result is that Dr. Van Vleck has indeed brought immeasurable happiness into a suffering world.

In addition to the foregoing advertisements, respondent is and has been disseminating false advertisements in the same manner as hereinabove set out, by means of letters sent to potential customers or to persons who had already made a purchase, designed to induce said persons to purchase respondent's products, or to purchase the same in larger quantities. Among and typical of these false statements and representations disseminated, as aforesaid, by the use of such letters are the following:

How many things you may have tried, or how many have failed you, does not matter now. This we sent you is the Direct medication that we always rely on to bring reasonably quick results in such conditions as are only reached and relieved by a direct method of Treatment.

Promise yourself now that you will stop at nothing short of all the lasting ease and comfort that a good and helpful Treatment can bring you.

Even as the most distressing symptoms are yielding to the soothing action of the Treatment—it would be a serious mistake to allow a break or interrup-

tion in the good work before making these benefits lasting and durable—Keep it up, keep it up, until you have made sure of real relief and continued comfort.

Vast numbers of people who were once the unhappy victims of this cruel affliction have stayed with this Treatment until they obtained the Lasting Relief they longed for.

PAR. 4. In addition to the foregoing advertisements and letters, respondent is and has been disseminating false advertisements in the same manner as hereinabove set out by means of pamphlets and circulars containing purported testimonials from diverse and sundry persons designed to induce potential customers to purchase its products, or to induce persons who had already purchased, to purchase a larger quantity thereof.

Among and typical of these statements and representations contained in said advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

I have not been bothered for a long time and all due to your Treatment.

I am thankful to say that it has done the work. I do not feel a pain or soreness at all since using the Treatment.

Since taking your Treatment I never will get through rejoicing and have never suffered from piles since.—I have no pains at all.

About 35 years ago my husband used your Treatment and has never had a return of his suffering since.

I am so thankful to say that I am getting on just fine and feel that I owe my life to you for relieving me of those cruel piles.

I got very good results from your Treatment. In my case relief was almost immediate. However, I continued it for several weeks and now there is no sign of any pile suffering.

When I first wrote you, I was not able to do any walking and could not ride. I had suffered with piles for 15 years. But now I am at my work and feel as if I never had the piles.

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 respondent's preparations, respondent represents that said preparations used conjointly are an effective and scientific cure and remedy for, and a competent and effective treatment of, piles, that the application of said preparations conjointly constitutes an "Absorption Treatment" which removes piles without surgical aid; that their use insures immediate and lasting relief with no return of suffering, and will remove or correct the cause of piles.

PAR. 6. 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, respondent's preparations whether used conjointly or separately are not cures or remedies for piles and do not constitute a competent or effec-

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tive treatment therefor other than to give some small degree of relief by means of the analgesic properties thereof and the prevention of constipation. Said preparations when used conjointly do not remove piles, do not bring immediate or lasting relief, and do not remove or correct the cause of piles in that said treatment will not absorb, remove, or completely eradicate protruding external or internal hemorrhoidal protuberances.

**PAB. 7.** The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid, with respect to its 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 a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase such medical preparations containing drugs.

## CONCLUSION

The aforesaid acts and practices of respondent, as found herein, 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Dr. Van Vleck 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 the medicinal preparations known as "Dr. Van Vleck's Ointment," "Dr. Van Vleck's Muco-Cones," "Dr. Van Vleck's Pills," or any other medicinal preparations possessing substantially similar

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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 advertisements, 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, which advertisements represent, directly or through implication:

1. That respondent's preparations, whether used separately or jointly, are cures or remedies for piles or that said preparations constitute competent or effective treatments therefor, or that said preparations have any therapeutic value in the treatment of piles in excess of the relief obtained through the prevention of constipation and the use of a mild analgesic.

2. That respondent's preparations, whether used separately or jointly, will bring immediate or lasting relief from piles; or will correct or remove the cause of piles; or will absorb, remove, or eradicate protruding external or internal hemorrhoidal protuberances without surgical aid.

*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  
THEODORE RADIN, INC.

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

*Docket 3992. Complaint, Jan. 12, 1940—Decision, May 13, 1940*

Where a corporation engaged in sale and distribution of certain medicinal preparations designated "Glycirenan," "Glycirenan-Forte," "Jodirenan," "Inhaledrin-Compositum" and "Aerizon," recommended as treatments for asthma, hay fever, sinus discomfort and bronchial irritations, and of a device called "Atmozon Aerifier" for administering said preparations, sold as aforesaid to purchasers in various other States and in the District of Columbia; in advertisements thereof which it disseminated and caused to be disseminated through the mails and insertion in newspapers and periodicals of general circulation, and pamphlets, circulars, and other printed or written matter distributed in commerce, and by other means, and through testimonial letters, circulars and form letters urging purchasers to try its aforesaid preparations for purposes above indicated—

Represented, directly and indirectly, that aforesaid preparations were cures or remedies for asthma, hay fever, sinus discomfort, bronchial asthma, and other bronchial ailments, and constituted competent and effective treatments therefor, and were absolutely harmless no matter how often used, and that use thereof would prevent attacks of asthma and hay fever, or the recurrence thereof, and would relieve the suffering incident thereto;

Facts being said products were not cures or remedies for said various conditions and ailments and did not constitute competent and effective treatments therefor, in excess of furnishing temporary symptomatic relief from the paroxysms of asthma, attacks of hay fever, bronchial irritations and sinus discomfort, and, by virtue of epinephrine and ephedrine therein contained, were not harmless, no matter how often used, but, used over long period of time, might produce such prolonged vasoconstriction as to cause tissue damage from anoxemia, with secondary inflammatory reactions;

With capacity and tendency to mislead substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive and misleading statements, representations and advertisements were true, and to induce portion of such public to purchase said drug containing medicinal preparations 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. M. C. Pearce* for the Commission.

*Mr. Irving M. Radin*, 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 Theodore Radin, 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, Theodore Radin, Inc., is a corporation duly chartered, organized and existing under and by virtue of the laws of the State of New York with its principal office and place of business located at 18-20 East Forty-first Street, in the city of New York, State of New York.

Respondent, Theodore Radin, Inc., is now and for more than 1 year last past has been engaged in the sale and distribution of certain medicinal preparations designated "Glycirenán," "Glycirenán-Forte," "Jodirenán," "Inhaledrin-Compositum," and "Aerizon" recommended as treatments for asthma, hay fever, sinus discomfort, and bronchial irritations. Respondent in connection therewith also sells and distributes a device designated "Atmozon Aerifier" for administering said medicinal preparations.

Said medicinal preparations, when sold, are transported from respondent's 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 maintained, a course of trade in said medicinal preparations in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In furtherance of the sale and distribution of its medicinal preparations, the respondent, Theodore Radin, Inc., has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said medicinal preparations by the United States mails, by insertion in newspapers and periodicals having a general circulation and also in pamphlets, 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 medicinal preparations, and has disseminated and is

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now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning the said medicinal preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal 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:

For Quick and Effective Relief of Asthma Use "Atmozon" Aerifler with "Silbe" medications. One user writes: "It is the most wonderful treatment I have found after 15 years of suffering." Proven successful for over 30 years.

## Asthma

\* \* \* \* \*

Immediate relief given in the most obstinate cases regardless of age of sufferer.

## Proven Method for

## Quick and Effective Relief for

## Asthma

## Hay Fever.

The phenomenal results obtained by the use of "Glyciren" in cases of asthma, is founded upon its composition justified by the capacity for resorption of the aerified medicaments by the mucous membrane of the bronchi.

If the Bronchitis is accompanied by an Asthmatic condition (Bronchial Asthma), the best results may be obtained by using "Glyciren" in the medicated air form.

When your case is properly diagnosed by your doctor as sinus (and no complications are visible) you can obtain almost immediate relief with an "Atmozon" and medication "Aerizon" by inhaling same in dry cold air form (medicated air).

The action of the "Silbe" medicaments, Jodirenan, and Glyciren, on the musculature of the bronchi is spasmolytic. This spasmolytic action causes the dyspnoea to disappear and allows the sufferer to be comfortable. The first medicament cuts through the mucous clogged passages so that the heaviness is eliminated and the second medicament takes away the wheeze and rale. These medications have been proven by many years of use to be the sovereign remedies in not only relieving, but also preventing attacks.

Our medications comply with regulations governing products of this character. They do not contain narcotics, are not habit-forming and are absolutely harmless regardless of the age of the user.

While the "Atmozon" constitutes the best relief obtainable—is absolutely harmless no matter how often used—\* \* \*

PAR. 3. In addition to the foregoing advertisements, the respondent has disseminated false advertisements in the same manner as hereinabove set out by means of testimonial letters, circulars and form letters urging potential purchasers to try said preparations for the treatment of asthma, hay fever, sinus discomfort, and bronchial irritations.

Among and typical of the false statements and representations disseminated as aforesaid by the respondent through the use of said

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circular and testimonial letters, urging the purchase of said preparations, are the following:

We will sell you an "Atmozon" Pocket "Aerifier" \* \* \* and a bottle of Dr. Silten's latest discovery, a new inhalant which has proven the greatest advancement in recent years, for the relief of asthma—Glycirenan-Forte.

"\* \* \* the medication \* \* \* is keeping me entirely free from hay fever."

The machine was delivered to me at the hospital where they had taken me a few days before, having an acute attack of asthma. \* \* \* I have received as many as twenty hypodermics in one nite. Well, the machine arrived at the hospital, and, as soon as I started to use it, I was through with the hypodermics. No matter how severe the attack was, the machine forced enough air, mixed with glyciereenan, so that I was at ease almost instantly.

For the past fourteen years I have been a victim of both Rose Fever and Hay Fever. It was not until January, 1932 when I first used your medication that I obtained relief. Now I use the Inhaledrin-Compositum Spring, Summer and Fall, as without it I would lose many a days work. Further, it enables me to sleep and breathe in comfort at night.

PAR. 4. 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 the preparations sold and distributed by it, the respondent, Theodore Radin, Inc., has represented and does now represent, directly and indirectly, that the preparations "Glycirenan," "Glycirenan-Forte," "Jodirenan," "Inhaledrin-Compositum," and "Aerizon" are cures or remedies for asthma, hay fever, sinus discomfort, bronchial asthma, and other bronchial ailments and that they constitute competent and effective treatments therefor; that said preparations are absolutely harmless no matter how often used; that the use of said preparations will prevent attacks of asthma and hay fever, or the recurrence thereof and will relieve the suffering incident thereto.

PAR. 5. 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, the medicinal preparations sold and distributed by respondent, Theodore Radin, Inc., are not cures or remedies for asthma, hay fever, sinus discomfort, bronchial asthma, and other bronchial ailments, and do not constitute competent and effective treatments therefor in excess of furnishing temporary symptomatic relief from the paroxysms of asthma, attacks of hay fever, bronchial irritations, and sinus discomfort. Said preparations are not absolutely harmless no matter how often used by reason of the existence of epinephrine and ephedrine in said preparations and the use of said preparations over a long period of time is likely to produce such prolonged vasoconstriction as to

cause tissue damage from anoxemia, with secondary inflammatory reactions.

PAR. 6. 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 under the conditions prescribed in said advertisements or under such conditions as are customary or usual may in some cases be injurious to health.

PAR. 7. 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 a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true, and also has a tendency and capacity to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase such medicinal preparations containing drugs.

PAR. 8. 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 January 12, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Theodore Radin, Inc., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondent subsequently filed its answer in which answer it admitted all the material allegations of fact set forth in said complaint, with the exception of the allegations of paragraph 6 thereof, 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, Theodore Radin, Inc., is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 18-20 East Forty-first Street, in the city of New York, State of New York.

Respondent, Theodore Radin, Inc., is now and for more than 1 year last past has been engaged in the sale and distribution of certain medicinal preparations designated "Glycirenan," "Glycirenan-Forte," "Jodirenan," "Inhaledrin-Compositum," and "Aerizon" recommended as treatments for asthma, hay fever, sinus discomfort, and bronchial irritations. Respondent in connection therewith also sells and distributes a device designated "Atmozon Aerifier" for administering said medicinal preparations.

Said medicinal preparations, when sold, are transported from respondent's 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 maintained, a course of trade in said medicinal preparations in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. In furtherance of the sale and distribution of its medicinal preparations, the respondent, Theodore Radin, Inc., has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said medicinal preparations by the United States mails, by insertion in newspapers and periodicals having a general circulation and also in pamphlets, 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 medicinal preparations, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning the said medicinal preparations by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act.

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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 Quick and Effective Relief of Asthma Use "Atmozon" Aerifier with "Silbe" medications. One user writes: "It is the most wonderful treatment I have found after 15 years of suffering." Proven successful for over 30 years.

## Asthma

\* \* \* \* \*

Immediate relief given in the most obstinate cases regardless of age of sufferer

Proven Method for  
Quick and Effective Relief for  
Asthma  
Hay Fever.

The phenomenal results obtained by the use of "Glycirenan" in cases of asthma, is founded upon its composition justified by the capacity for resorption of the aerified medicaments by the mucous membrane of the bronchi.

If the Bronchitis is accompanied by an Asthmatic condition (Bronchial Asthma), the best results may be obtained by using "Glycirenan" in medicated air form.

When your case is properly diagnosed by your doctor as sinus (and no complications are visible) you can obtain almost immediate relief with an "Atmozon" and medication "Aerizon" by inhaling same in dry cold air form (medicated air).

The action of the "Silbe" medicaments, Jodirenan, and Glycirenan, on the musculature of the bronchi is spasmolytic. This spasmolytic action causes the dyspnoea to disappear and allows the sufferer to be comfortable. The first medicament cuts through the mucous clogged passages so that the heaviness is eliminated and the second medicament takes away the wheeze and rale. These medications have been proven by many years of use to be the sovereign remedies in not only relieving, but also preventing attacks.

Our medications comply with regulations governing products of this character. They do not contain narcotics, are not habit-forming and are absolutely harmless regardless of the age of the user.

While the "Atmozon" constitutes the best relief obtainable—is absolutely harmless no matter how often used— \* \* \*

PAR. 3. In addition to the foregoing advertisements, the respondent has disseminated false advertisements in the same manner as hereinabove set out by means of testimonial letters, circulars and form letters, urging potential purchasers to try said preparations for the treatment of asthma, hay fever, sinus discomfort and bronchial irritations.

Among and typical of the false statements and representations disseminated as aforesaid by the respondent through the use of said circular and testimonial letters, urging the purchase of said preparations, are the following:

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We will sell you an "Atmozon" Pocket "Aerifier" \* \* \* and a bottle of Dr. Silten's latest discovery, a new inhalant which has proven the greatest advancement in recent years, for the relief of asthma—Glycirenan-Forte.

\* \* \* the medication \* \* \* is keeping me entirely free from hay fever.

The machine was delivered to me at the hospital where they had taken me a few days before, having an acute attack of asthma. \* \* \* I have received as many as twenty hypodermics in one nite. Well, the machine arrived at the hospital, and, as soon as I started to use it, I was through with the hypodermics. No matter how severe the attack was, the machine forced enough air, mixed with glycirenan, so that I was at ease almost instantly.

For the past fourteen years I have been a victim of both Rose Fever and Hay Fever. It was not until January, 1932 when I first used your medication that I obtained relief. Now I use the Inhaledrin-Compositum Spring, Summer and Fall, as without it I would lose many a days work. Further, it enables me to sleep and breathe in comfort at night.

PAR. 4. 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 the preparations sold and distributed by it, the respondent, Theodore Radin, Inc., has represented and does now represent, directly and indirectly, that the preparations "Glycirenan," and "Glycirenan-Forte," "Jodirenan," "Inhaledrin-Compositum," and "Aerizon" are cures or remedies for asthma, hay fever, sinus discomfort, bronchial asthma, and other bronchial ailments and that they constitute competent and effective treatments therefor; that said preparations are absolutely harmless no matter how often used; that the use of said preparations will prevent attacks of asthma and hay fever, or the recurrence thereof and will relieve the suffering incident thereto.

PAR. 5. The aforesaid representations and claims used and disseminated by the respondent as hereinabove designated are grossly exaggerated, misleading, and untrue. In truth and in fact, the medicinal preparations sold and distributed by respondent, Theodore Radin, Inc., are not cures or remedies for asthma, hay fever, sinus discomfort, bronchial asthma, and other bronchial ailments, and do not constitute competent symptomatic relief from the paroxysms of asthma, attacks of hay fever, bronchila, irritations, and sinus discomfort. Said preparations are not absolutely harmless no matter how often used by reason of the existence of epinephrine and ephedrine in said preparations and the use of said preparations over a long period of time may produce such prolonged vasoconstriction as to cause tissue damage from anoxemia, with secondary inflammatory reactions.

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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 preparations, has the capacity and tendency to mislead 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 portion of the purchasing public to purchase such medicinal preparations containing drugs because of such 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 answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint with one exception therein specified, 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 respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondent, Theodore Radin, Inc., its 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 "Glycirenán," "Glycirenán-Forte," "Jodirenán," "Inhaledrin-Compositum," and "Aerizon," 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 preparations, which advertisements represent directly or through implication that

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said medicinal preparations "Glycirenan," "Glycirenan-Forte," "Jodirenan," "Inhaledrin-Compositum," and "Aerizon" are cures or remedies for asthma, hay fever, sinus discomfort, bronchial asthma, and other bronchial ailments, or that they constitute competent and effective treatments therefor in excess of furnishing temporary symptomatic relief from the paroxysms of asthma, attacks of hay fever, bronchial irritations, and sinus discomforts; that said preparations are absolutely harmless no matter how often used; that the use of said preparations will prevent attacks of asthma and hay fever or the recurrence 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

## LOUIS GOLDMAN, TRADING AS GLOBE RUMMAGE MART

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

*Docket 4016. Complaint, Feb. 5, 1940—Decision, May 13, 1940*

Where an individual engaged in purchase of second-hand clothing and other merchandise which he bought on the open market from other second-hand dealers, junk dealers, and at rummage sales, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia; in offering and describing through catalogs distributed by him through the mails and in other ways to purchasers and prospective purchasers in the various States and in said District, and through circulars, form letters, and other advertising literature which he disseminated, his said second-hand and reclaimed wearing apparel—

- (a) Represented that such apparel purchased by him as aforesaid was seasonable and salable merchandise of the latest or currently popular style, facts being it was old and out of style;
- (b) Represented that said apparel was salable merchandise in good condition and was only slightly used, facts being it was old, dirty, badly worn, and generally unsalable and frequently packages thereof, when shipped to customers, contained goods that were old, out of style, dirty, worn-out, unsalable, valueless, and of different size, color, age, quality, style, and condition from that ordered by customers;
- (c) Represented that he had complete assortments of wearing apparel available, facts being he did not have complete assortment of sizes available; and
- (d) Represented that any merchandise which was not entirely satisfactory might be returned for replacement, facts being he did not generally, as advertised by him, make satisfactory replacements or refunds where merchandise was not satisfactory;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such false statements and representations were true and into purchase of said merchandise by reason 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. R. A. McOuat* 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 Louis Goldman, an individual trading as Globe Rummage Mart, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in that respect would be

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

PARAGRAPH 1. Respondent, Louis Goldman, is an individual doing business under the name of Globe Rummage Mart, and having his office and principal place of business located at 3238 South State Street in the city of Chicago, State of Illinois. During the past year, and prior thereto, respondent has been engaged in the sale and distribution of second-hand clothing and other merchandise. Respondent causes said merchandise 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 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 his aforesaid business and for the purpose of inducing the purchase of second-hand and reclaimed wearing apparel sold and distributed by him, the respondent publishes a catalog listing and describing the various articles of merchandise sold and distributed by him. Respondent distributes this catalog by United States mail and by other means to purchasers and prospective purchasers located in the various States of the United States and the District of Columbia. In addition to the catalogs distributed by the respondent, the respondent also disseminates advertising by means of circulars, form letters, and other means for the purpose of inducing the purchase of his various articles of merchandise.

In said catalogs and other means of advertising, the respondent has engaged in the practice of falsely representing that the merchandise sold by him is only slightly used merchandise; that all articles listed in his catalog are reclaimed or slightly used but are in good salable condition; that such articles are reasonable merchandise and are the most popular styles and the latest creations; that complete assortments are available, and that any merchandise not entirely satisfactory may be returned for replacements.

PAR. 3. In truth and in fact, all of the said representations, together with others not specifically set out herein are exaggerated, false, and misleading. In fact, the merchandise sold and distributed by the respondent is not only slightly used, and is not seasonable and salable merchandise of the latest style. The respondent buys his stock of merchandise on the open market from other second-hand dealers and junk dealers, and at rummage sales. When an order is shipped to a customer the package frequently contains mer-

chandise that is old, out of style, dirty, worn out, unsaleable, valueless, and of different size, color, age, quality, style, and condition from the merchandise ordered by the respondent's customers. The respondent does not have a complete assortment of sizes available and does not generally make satisfactory replacements or refunds where merchandise has not been satisfactory, as advertised by him.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said merchandise, 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 belief that such false statements and representations are true and into the purchase of respondent's merchandise 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 February 5, 1940, issued, and on February 6, 1940, served, its complaint in this proceeding upon respondent, Louis Goldman, an individual trading as Globe Rummage Mart, 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 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 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, Louis Goldman, is an individual doing business under the name of Globe Rummage Mart, and having his

office and principal place of business located at 3238 South State Street in the city of Chicago, State of Illinois. During the past year, and prior thereto, respondent has been engaged in the sale and distribution of second-hand clothing and other merchandise. Respondent causes said merchandise 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 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 his aforesaid business and for the purpose of inducing the purchase of second-hand and reclaimed wearing apparel sold and distributed by him, the respondent publishes a catalog listing and describing the various articles of merchandise sold and distributed by him. Respondent distributes this catalog by United States mails and by other means to purchasers and prospective purchasers located in the various States of the United States and the District of Columbia. In addition to the catalogs distributed by the respondent, the respondent also disseminates advertising matter in the form of circulars, form letters, and other literature for the purpose of inducing the purchase of his various articles of merchandise.

In said catalogs and other means of advertising, the respondent has engaged in the practice of falsely representing that the merchandise sold by him is only slightly used merchandise; that all articles listed in his catalog are reclaimed or slightly used but are in good salable condition; that such articles are seasonable merchandise and are the most popular styles and the latest creations; that complete assortments are available, and that any merchandise not entirely satisfactory may be returned for replacements.

PAR. 3. In truth and in fact, all of the said representations, together with others not specifically set out herein are exaggerated, false, and misleading. In fact, the merchandise sold and distributed by the respondent is not slightly used second-hand merchandise, and is not seasonable and salable merchandise of the latest style. The respondent buys his stock of merchandise on the open market from other second-hand dealers and junk dealers, and at rummage sales. When an order is shipped to a customer the package frequently contains merchandise that is old, out of style, dirty, worn out, unsalable, valueless, and of different size, color, age, quality, style, and condition from the merchandise ordered by the respondent's customers. The

respondent does not have a complete assortment of sizes available and does not generally make satisfactory replacements or refunds where merchandise has not been satisfactory, as advertised by him.

PAR. 4. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said merchandise, 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 belief that such false statements and representations are true and into the purchase of respondent's merchandise 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, Louis Goldman, individually and trading as Globe Rummage Mart, or under any other name or names, and his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of second-hand wearing apparel in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or indirectly, that wearing apparel purchased from junk or other second-hand dealers, which is old or out of style is seasonable and salable merchandise of the latest or currently popular style.
2. Representing, directly or indirectly, that wearing apparel purchased from junk or other second-hand dealers, which is old, dirty, badly worn, or generally unsalable, is salable merchandise in good condition or is only slightly used merchandise.

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## Order

3. Representing that respondent has complete assortments of wearing apparel available.

4. Representing that respondent will make replacements or refunds when merchandise is not satisfactory, when such is not the fact.

*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

## HOWARD L. BREWER AND ALBERT L. TRIBBETT, TRADING AS B &amp; T 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 4057. Complaint, Mar. 12, 1940—Decision, May 13, 1940*

Where two individuals engaged, under trade name and with only address post office box in certain city, in sale and distribution therefrom, to purchasers in various other States and in the District of Columbia, of their "Menstru-Eze" medicinal preparation; in advertisements thereof which they disseminated and caused to be disseminated through the mails, by insertions in magazines and periodicals of general circulation, and in circulars and other printed matter distributed in commerce, and by other means, and which were intended or likely to induce, directly or indirectly, purchase of their said preparation—

Represented that their said medicinal preparation designated as "MENSTRU-EZE" possessed curative and remedial properties which made it beneficial for use in treating cases of delayed, difficult, painful, and irregular menstruation, and for use in the menopause, and in relieving pain incident to such disorders or conditions;

Facts being their said product possessed no properties which were of any therapeutic value in treatment of disorders and conditions above set forth, and was of no therapeutic value for use in the menopause or in relieving any pains incident to such disorders or conditions, and representations above set forth were grossly exaggerated, false, and misleading; 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, because of such erroneous and mistaken belief, portion of such public to purchase their said medicinal preparation:

*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 Howard L. Brewer, and Albert L. Tribbett, individually, and trading as B & T Sales 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 issued its complaint, stating its charges in that respect as follows:

1266

## Complaint

PARAGRAPH 1. Respondents, Howard L. Brewer and Albert L. Tribbett are individuals trading as B & T Sales Co. The address of respondent Howard L. Brewer is 4421 East Washington Street, Indianapolis, Ind., and of respondent Albert L. Tribbett is 967 Bolton Avenue, Indianapolis, Ind. The only address of the said B & T Sales Co. is Post Office Box 334, Indianapolis, Ind.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in selling, distributing, and transporting from the city of Indianapolis in the State of Indiana 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 designated as "Menstru-Eze." Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation 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 preparation, by United States mails, by insertions in magazines and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce between and among the various States of the United States and in the District of Columbia, 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 preparation, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their said medicinal preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their 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 the advertisements disseminated and caused to be disseminated as aforesaid are the following:

## WOMEN

## Delayed

Why worry when it is possible to get a reliable remedy which has proved to be so successful over a long period? \* \* \* we are offering this remarkable remedy to suffering women in general.

This is not an experiment, it is tried and we believe has a larger percentage of success than any other medicine we know of offered for this purpose. Use

Complaint

30 F. T. C.

Menstru-Eze for speedy results in many unusual, overdue, difficult, abnormal delays, without pain or inconvenience.

#### MENSTRU-EZE FOR PERIOD SUFFERERS

By the use of Menstru-Eze it is possible to not only get relief from period suffering quickly, but to get permanent relief by using this remedy for a short period as per directions; this is not a pain relief medicine but effects the parts which cause the suffering; \* \* \* prepared to relieve the cause. It is positively safe.

Many women report the success of Menstru-Eze when other remedies have failed; no need of staying home from work or going to bed when taking Menstru-Eze, it works quickly and with great success, \* \* \*.

When ordering Menstru-Eze at \$5.00 per bottle, you are ordering all that is needed; you will not be asked to purchase a larger supply to get results, or some other remedy to take with this, as one bottle is all that is required, and we have no other associate package to go with Menstru-Eze, none is needed. If your druggist cannot supply you, send direct to P. O. Box 334, B & T SALES CO., Indianapolis, Ind., Dept. No. D. A.

MENSTRU-EZE is not a narcotic or sedative to relieve the pain in these cases, but a treatment to relieve the cause. It is a mild treatment and requires a little time to function. Considerable relief can be expected the first month if taken according to directions; this is in hourly doses starting two days before the expected period and continued until a good flow has been secured. This treatment should be repeated the second and third month. Its use can be stopped for twelve months, and in many cases will never again be necessary.

MENSTRU-EZE is an excellent aid for relieving the discomfort of pain caused by Amenorrhea, Dysmenorrhea and irregularity of menstruation, when due to cold, exposure, or other temporary conditions.

If menstruation is customarily painful or of scant flow, MENSTRU-EZE should be begun two days before the expected period and taken according to the directions. If used in this manner for three successive periods it may produce permanent relief.

MENSTRU-EZE is extremely helpful to women in their change of life period. There is nothing in this treatment that will produce any harmful results. It has been proved in actual use for over twenty years.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent that their medicinal preparation designated as "Menstru-Eze" possesses curative and remedial properties which make such product beneficial for use in treating cases of delayed, difficult, painful, and irregular menstruation, and for use in the menopause, and for use in relieving pain incident to such disorders or conditions.

The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation possesses no properties which are of any therapeutic value in the treatment of delayed, or difficult, or painful, or irregular menstruation. Said

preparation is without any therapeutic value for use in the menopause, or for use in relieving any pains incident to such disorders or conditions.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said medicinal 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 induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

PAR. 6. 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 March 12, 1940, issued, and on March 14, 1940, served its complaint in this proceeding upon the respondents, Howard L. Brewer and Albert L. Tribbett, individually and trading as B & T Sales Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. The respondents filed 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. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and answer, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Howard L. Brewer and Albert L. Tribbett are individuals trading as B & T Sales Co. The address of respondent Howard L. Brewer is 4421 East Washington Street, Indianapolis, Ind., and of respondent Albert L. Tribbett is 967 Bolton Avenue, Indianapolis, Ind. The only address of the said B & T Sales Co. is Post Office Box 334, Indianapolis, Ind.

PAR. 2. The respondents are now, and for more than 1 year last past have been, engaged in selling, distributing, and transporting from

the city of Indianapolis, in the State of Indiana 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 designated as "Menstru-Eze." Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said medicinal preparation 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 preparation, by United States mails, by insertions in magazines and periodicals having a general circulation and also in circulars and other printed matter, all of which are distributed in commerce between and among the various States of the United States and in the District of Columbia, 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 preparation, 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 preparation in commerce as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements and representations contained in the advertisements disseminated and caused to be disseminated as aforesaid are the following:

#### WOMEN

##### Delayed

Why worry when it is possible to get a reliable remedy which has proved to be so successful over a long period? \* \* \* we are offering this remarkable remedy to suffering women in general.

This is not an experiment, it is tried and we believe has a larger percentage of success than any other medicine we know of offered for this purpose. Use Menstru-Eze for speedy results in many unusual, overdue, difficult, abnormal delays, without pain or inconvenience.

#### MENSTRU-EZE FOR PERIOD SUFFERERS

By the use of Menstru-Eze it is possible to not only get relief from period suffering quickly, but to get permanent relief by using this remedy for a short period as per directions; this is not a pain relief medicine but affects the parts which cause the suffering; \* \* \* prepared to relieve the cause. It is positively safe.

1266

## Findings

Many women report the success of Menstru-Eze when other remedies have failed; no need of staying home from work or going to bed when taking Menstru-Eze, it works quickly and with great success, \* \* \*.

When ordering Menstru-Eze at \$5.00 per bottle, you are ordering all that is needed; you will not be asked to purchase a larger supply to get results, or some other remedy to take with this, as one bottle is all that is required, and we have no other associate package to go with Menstru-Eze, none is needed. If your druggist cannot supply you, send direct to P. O. Box 334, B & T Sales Co., Indianapolis, Ind., Dept. No. D. A.

Menstru-Eze is not a narcotic or sedative to relieve the pain in these cases, but a treatment to relieve the cause. It is a mild treatment and requires a little time to function. Considerable relief can be expected the first month if taken according to directions; this is in hourly doses starting two days before the expected period and continued until a good flow has been secured. This treatment should be repeated the second and third month. Its use can be stopped for twelve months, and in many cases will never again be necessary.

Menstru-Eze is an excellent aid for relieving the discomfort of pain caused by Amenorrhea, Dysmenorrhea and irregularity of menstruation, when due to cold, exposure, or other temporary conditions.

If menstruation is customarily painful or of scant flow, Menstru-Eze should be begun two days before the expected period and taken according to the directions. If used in this manner for three successive periods it may produce permanent relief.

Menstru-Eze is extremely helpful to women in their change of life period. There is nothing in this treatment that will produce any harmful results. It has been proved in actual use for over twenty years.

PAR. 4. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, the respondents represent that their medicinal preparation designated as "Menstru-Eze" possesses curative and remedial properties which make such product beneficial for use in treating cases of delayed, difficult, painful, and irregular menstruation, and for use in the menopause, and for use in relieving pain incident to such disorders or conditions.

The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation possesses no properties which are of any therapeutic value in the treatment of delayed, or difficult, or painful, or irregular menstruation. Said preparation is without any therapeutic value for use in the menopause, or for use in relieving any pains incident to such disorders or conditions.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their said medicinal 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 induces a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

Order

30 F. T. C.

## 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, Howard L. Brewer and Albert L. Tribbett, individually, and trading as B & T Sales Co., 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 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 designated as "Menstru-Eze," 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 advertisement represents, directly or through implication, that said medicinal preparation is a cure or remedy for delayed, difficult, painful, or irregular menstruation or that it has any therapeutic value in the treatment of such conditions or in relieving the pain which may be incident thereto, or that said preparation is of any therapeutic or beneficial value to women during the menopause period.

*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.

## Syllabus

## IN THE MATTER OF

## S. M. LABORATORIES COMPANY

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

*Docket 4062. Complaint, Mar. 12, 1940—Decision, May 13, 1940*

Where a corporation engaged in compounding, selling and distributing medicinal and therapeutic preparations, including its "Neofem Liquid," "Neofem Capsules," and "Cerene," to purchasers in various other States and in the District of Columbia, in advertisements thereof which it disseminated and caused to be disseminated through the mails, by insertion in newspapers and periodicals having general circulation, and in circulars and other printed or written matter distributed in commerce, and by various means and otherwise, and which were intended and likely to induce, directly or indirectly, purchase of its said products—

(a) Represented, directly and by implication, that its said "Neofem Capsules," "Neofem Liquid," and "Cerene" were cures or remedies for painful and delayed menstruation, and constituted competent and effective treatments therefor, and that their use constituted safe, sane ways of self-medication and relief from such condition, and that said "Neofem Capsules" were designed to give relief from painful menstruation or slight delay, that said "Neofem Liquid" provided a potent, direct and positive relief for cases of delayed menstruation that were past the first stages, and that said "Cerene" would give relief for stubborn cases of such condition and was dependable where other medicines had been tried and had failed;

Facts being said various preparations were not cures or remedies for said condition, and did not constitute competent and effective treatments therefor, and would not accomplish results which it claimed for them, and were not safe and harmless, by virtue of ergot, oil of savin, and aloin therein contained 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 might result in gastrointestinal disturbances such as catharsis, nausea, vomiting with pelvic congestion of the uterus leading to excessive uterine hemorrhage and, in those cases where either of said preparations is used to interfere with normal course of pregnancy, might result in uterine infection with extension to pelvic and abdominal structures and even to the bloodstream, causing condition known as septicemia or blood poisoning; and

(b) Failed to reveal, in aforesaid advertisements, facts material with respect to consequences which might result from use of said preparations under conditions prescribed or under such conditions as are customary or usual;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said statements, representations and advertisements were true, and to induce portion of such public to purchase said preparations containing drugs because of such erroneous and mistaken belief:

Complaint

30 F. T. C.

*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. A. E. Lipscomb* for the Commission.

*Allen, Froude & Hilen*, of Seattle, Wash., 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 S. M. Laboratories 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, S. M. Laboratories Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 2013 Fourth Avenue, Seattle, Wash.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of compounding, manufacturing, selling, and distributing medicinal and therapeutical preparations. Among such preparations are preparations designated as Neofem Liquid, Neofem Capsules, and Cerene. Respondent causes said preparations, when sold by it, to be transported from its aforesaid place of business in the State of Washington 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 preparations 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 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 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 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:

#### RELIEF FROM DELAYED MENSTRUATION PERIODS

Nothing causes more distress to mental outlook and physical well-being than painful menstruation and that functional disorder, the uncertain period. Although physicians have found it impossible at times to account for the failure of normal menstruation, there seems to be an agreement that such periods may be due to anemia, unsuitability of employment, change of environment, severe colds, nervous shock, etc.

Neofem Capsules, Neofem Liquid, and Cerene are three reliable products that represent a safe, sane way of self-medication used successfully by thousands of women. To help you choose the one best suited to your particular case the following brief guide is given:

**Neofem Capsules.** If your problem is primarily a question of painful menstruation or slight delay, Neofem Capsules will give best results with a minimum amount of inconvenience. They are small capsules, just as easy to take as any tablet. They are packed in a small box ready for use and can be carried about in the handbag.

**Neofem Liquid.** Packaged in a small 3-ounce bottle, it is always ready for instant use and may also be conveniently carried about. In a liquid form, to be taken internally, it has obvious advantages, providing a potent, direct, positive action. We recommend it for use in cases that are past the first stage.

**Cerene.** For stubborn cases, where other medication has been tried and failed, we recommend Cerene. This is a combination treatment of capsules and a medicated douche. Both powder and capsules are packed together with a special applicator in one package with complete directions for use. Cerene is best described by the word "dependable."

PAR. 4. By the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, the respondent represents directly and by implication that its preparations designated "Neofem Capsules," "Neofem Liquid," and "Cerene" are cures or remedies for painful and delayed menstruation and competent and effective treatments therefor and their use constitute safe, sane ways of self-medication and relief of delayed menstruation; that Neofem Capsules are designed to give relief from painful menstruation or slight delay that Neofem Liquid provides a potent, direct and positive relief for cases of delayed menstruation that are past the first stage; that Cerene will give relief for stubborn cases of delayed menstruation and is dependable where other medicines have been tried and have failed.

PAR. 5. The aforesaid statements, claims, and representations used and disseminated by the respondent, in the manner above described are grossly exaggerated, misleading, and untrue. In truth and in fact the preparations sold and distributed by the respondent as aforesaid, designated "Neofem Capsules," "Neofem Liquid," and "Cerene" are not cures or remedies for painful and delayed menstruation and do not constitute competent or effective treatments therefor. Said preparations will not accomplish the results claimed for them by the respondent. Furthermore, said preparations are not safe and harmless in that said preparations contain ergot, oil of savin, and aloin.

The aforesaid drugs are present in said preparations in quantities sufficient to cause serious and irreparable injury to health if used under the conditions prescribed in said advertisement or under such conditions as are customary or usual. Such use of said preparations may result in gastrointestinal disturbances such as catharsis, nausea, 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 the pelvic and abdominal structures and even to the bloodstream causing the condition known as septicemia or blood poisoning.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated fail to reveal facts, material with respect to consequences which may result from the use of said preparations under the conditions prescribed in said advertisements, or under such conditions as are customary or usual.

PAR. 7. The use by the respondent of the foregoing false and deceptive 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 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 preparations 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 March 12, 1940, issued and subsequently served, its complaint in this proceeding upon respondent, S. M. Laboratories 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 March 28, 1940, the respondent filed its answer, in which it admitted, as to its past acts and practices, all of the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts, and stated that it is not now and for some time last past has not been engaged in the acts and practices charged. 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 S. M. Laboratories Company, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its principal office and place of business located at 2013 Fourth Avenue, Seattle, Wash.

PAR. 2. Respondent has been for more than 1 year prior to March 12, 1940, engaged in compounding and in selling and distributing medicinal and therapeutic preparations. Among such preparations were certain preparations designated as "Neofem Liquid," "Neofem Capsules," and "Cerene." Respondent caused said preparations, when sold by it, to be transported from its aforesaid place of business in the State of Washington to the 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 preparations 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 aforesaid business, the respondent disseminated, and caused the dissemination of false advertisements concerning its said products by United States mails, by insertion of advertisements in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which have been distributed in commerce among and between the various States in 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 its said products, and also disseminated, and caused the dissemination of false advertisements, concerning its said products by various means, for the purpose of inducing and which were 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:

#### RELIEF FROM DELAYED MENSTRUATION PERIODS

Nothing causes more distress to mental outlook and physical well-being than painful menstruation and that functional disorder, the uncertain period. Although physicians have found it impossible at times to account for the failure of normal menstruation, there seems to be an agreement that such periods may be due to anemia, unsuitability of employment, change of environment, severe colds, nervous shock, etc.

Neofem Capsules, Neofem Liquid and Cerene are three reliable products that represent a safe, sane way of self-medication used successfully by thousands of women. To help you choose the one best suited to your particular case the following brief guide is given:

**Neofem Capsules.** If your problem is primarily a question of painful menstruation or slight delay, Neofem Capsules will give best results with a minimum amount of inconvenience. They are small capsules, just as easy to take as any tablet. They are packed in a small box ready for use and can be carried about in the handbag.

**Neofem Liquid.** Packaged in a small three-ounce bottle, it is always ready for instant use and may also be conveniently carried about. In a liquid form, to be taken internally, it has obvious advantages, providing a potent, direct, positive action. We recommend it for use in cases that are past the first stage.

**Cerene.** For stubborn cases, where other medication has been tried and failed, we recommend Cerene. This is a combination treatment of capsules and a medicated douche. Both powder and capsules are packed together with a special applicator in one package with complete directions for use. Cerene is best described by the word "dependable."

**PAR. 4.** By the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent, prior to March 28, 1940, represented directly, and by implication that its preparations designated "Neofem Capsules," "Neofem Liquid," and "Cerene" are cures or remedies for painful and delayed menstruation, and constitute competent and effective treatments therefor, and that their use constitutes safe, sane ways of self-medication and relief from delayed menstruation; that Neofem Capsules are designed to give relief from painful menstruation or slight delay; that Neofem Liquid provides a potent, direct

and positive relief for cases of delayed menstruation that are past the first stages; that Cerene will give relief for stubborn cases of delayed menstruation and is dependable where other medicines have been tried and have failed.

PAR. 5. The aforesaid statements, claims and representations used and disseminated by the respondent, in the manner above described are grossly exaggerated, misleading, and untrue. In truth and in fact the preparations sold and distributed by the respondent as aforesaid, designated "Neofem Capsules," "Neofem Liquid," and "Cerene" are not cures or remedies for painful and delayed menstruation and do not constitute competent, effective treatments therefor. Said preparations will not accomplish the results which the respondent has claimed for them. Furthermore, said preparations are not safe and harmless in that said preparations contain ergot, oil of savin, and aloin.

The aforesaid drugs are present in said 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. Such use of said preparations may result in gastro-intestinal disturbances such as catharsis, nausea, 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 the pelvic and abdominal structures and even to the bloodstream causing the condition known as septicemia or blood poisoning.

PAR. 6. In addition to the representations hereinabove set forth the respondent also engaged in the dissemination of false advertisements in the manner above set forth in that said advertisements so disseminated failed to reveal facts material with respect to consequences which may result from the use of said preparations under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

PAR. 7. The use by the respondent of the foregoing false and deceptive statements and representations with respect to its preparations 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, representations and advertisements are true and to induce a portion of the purchasing public to purchase respondent's preparations containing drugs because of such erroneous and mistaken belief.

Order

30 F. T. C.

## 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 the respondent, in which answer respondent admits, as to its past acts and practices, 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, S. M. Laboratories Co., a corporation, 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 preparations containing drugs now designated by the names of "Neofem Capsules," "Neofem Liquid," and "Cerene," or any other preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparations, which advertisements represent, directly or through implication, that said preparations, "Neofem Capsules," "Neofem Liquid," and "Cerene" are cures or remedies for painful or delayed menstruation or constitute safe, competent, or effective treatments therefor or that their use provides safe or sane ways of self-medication in securing relief from delayed menstruation; that Neofem Liquid provides a potent, direct, and positive relief for cases of delayed menstruation; that Cerene will give relief for stubborn cases of delayed menstruation or that it is de-

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pendable for such use; 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 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

MISSISSIPPI SALES COMPANY, INC., JOBBERS PRODUCE  
COMPANY, INC., AND S. O. SCOTT, INDIVIDUALLY, AND  
AS PRESIDENT, DIRECTOR, AND MAJORITY STOCK-  
HOLDER OF SAID CORPORATIONS, ET AL.

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 AN ACT OF CONGRESS APPROVED JUNE 19, 1936

*Docket 3511. Complaint, July 27, 1938—Decision, May 15, 1940*

DISCRIMINATING IN PRICE—CLAYTON ACT, SECTION 2 (c)—BROKERAGE AND COM-  
MISSION PROVISIONS—SELLER TO BUYER PAYMENTS—INTERMEDIARIES—BUYER  
CONTROLLED BROKERS—BROKERAGE PAYMENTS TO AND RECEIPT BY, ON BUYER  
PURCHASES.

The payment of brokerage to, and the receipt thereof by, a broker upon  
the purchases of a buyer possessing the power of control over such broker or  
in whose behalf such broker acts is a practice which Congress deemed to be  
an inherently unfair trade practice and specifically and unconditionally  
prescribed by said paragraph of said act.

DISCRIMINATING IN PRICE—CLAYTON ACT, SECTION 2 (c)—BROKERAGE AND COM-  
MISSION PROVISIONS—SELLER TO BUYER PAYMENTS—INTERMEDIARIES—CORPORATE  
ENTITIES—WHERE BROKER INTERMEDIARY AND BUYER DISTINCT, BUT SAME CON-  
TROL AND OWNERSHIP COMMON TO BOTH.

The payment of brokerage to, and the receipt thereof by, buyers on their  
own purchases, whether the same is paid directly to the buyers or trans-  
mitted to them through intermediaries, is a practice which Congress deemed  
to be an inherently unfair trade practice and specifically and uncondition-  
ally prescribed by said paragraph of said act, and while corporate broker "M"  
and corporate buyer "J" may be considered legal entities distinct from the  
members who compose them, such distinction is a fiction of the law which  
is disregarded when it is urged to an intent and purpose which is not con-  
sonant with the reason and policy of the law, and where the principal party  
at interest in both broker "M" and buyer "J" was "S," who was president,  
director, active manager, and owner of 98 percent of the stock of each,  
payment of brokerage fees or commissions to and receipt thereof by "M"  
upon the purchases of "J" was in fact and in law payment of brokerage fees  
or commissions to and receipt thereof by buyer "J" within the meaning of the  
paragraph in question of the act.

DISCRIMINATING IN PRICE—CLAYTON ACT, SECTION 2 (c)—BROKERAGE AND COM-  
MISSION PROVISIONS—SELLER TO BUYER PAYMENTS—"SERVICES RENDERED"  
CLAUSE.

The "services rendered" clause of said paragraph of said act does not  
set up conditions upon which brokerage may be paid by sellers either to  
buyers or to their intermediaries, agents or representatives, upon the buyers'  
own purchases. (*The Great Atlantic & Pacific Tea Company v. Federal  
Trade Commission*, 106 F. (2d) 667 (C. C. A. 3d, 1939), 29 F. T. C. 1591;

*Oliver Brothers v. Federal Trade Commission*, 102 F. (2d) 763, 770, 771 (C. C. A. 4, 1939), 28 F. T. C. 1926, 1937, 1938; *Biddle Purchasing Co. v. Federal Trade Commission*, 76 F. (2d) 687 (C. C. A. 2d, 1938), 26 F. T. C. 1511; *Webb-Crawford Co. v. Federal Trade Commission*, 109 F. (2d) 268 (C. C. A. 5th, 1940), 30 F. T. C. 1630).

DISCRIMINATING IN PRICE—CLAYTON ACT, SECTION 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS—INTERMEDIARIES—CORPORATE ENTITIES—WHERE BROKER INTERMEDIARY AND BUYER DISTINCT, BUT SAME CONTROL AND OWNERSHIP COMMON TO BOTH—RECEIPT BROKERAGE OR COMMISSION PAYMENTS AS DIVIDENDS OR PROFITS BY BROKER'S AND BY BUYER'S COMMON PRESIDENT AND MAJORITY STOCKHOLDER.

Where three corporations engaged in different parts of the country in the sale and distribution of commodities to customers residing in the various States, and fairly representative of a large group of sellers engaged in selling and shipping commodities in interstate commerce to a corporate produce jobber on orders placed by latter through corporate general merchandise broker, as below more fully set forth, and in active competition, in the case of each, with other sellers of competitive commodities in endeavoring to sell its products to produce jobber aforesaid and to other purchasers—

Paid, in common with other sellers above referred to, on all such transactions of purchase and sale in interstate commerce, certain agreed percentages of the amount of each purchase as brokerage fees or commissions to said general merchandise broker, president, director, active manager, and majority stockholder of which served in similar capacity and similarly controlled said produce jobber, and business of which was conducted from same offices and by identical personnel as served said produce jobber, orders of which, upon which such brokerage fees or commissions, were thus paid, were made through such brokerage concern; and

Where said brokerage concern and said produce jobber, which was in active competition with other produce jobbers who purchased commodities in interstate commerce for resale to same customers to whom it endeavored to resell commodities purchased by it as above set forth, and said individual, who owned, managed, and was in control of both, as aforesaid—

Received and accepted such brokerage fees or commissions from sellers as above set forth, upon purchases made through said brokerage concern, and in connection with which said concern acted for and in behalf and subject to control of said produce jobber, and in connection with which no brokerage or selling services whatsoever, or any other form of services in connection with purchases of commodities by or sale thereof to said produce jobber, were rendered to sellers by said brokerage concern or its said president or any employee of either, and in connection with which individual aforesaid, who served and controlled said produce jobber and said brokerage concern as above set forth and to whom were periodically distributed net profits of such brokerage concern resulting from receipt of brokerage fees or commissions paid to it by sellers upon purchases of such produce jobber as above indicated, had no knowledge or information with regard to customer or consumer demand or merchandise requirements or obligations of said produce jobber to sellers involved, in his capacity as president and active manager of said produce company, which was not equally well known to him in his capacity as president and active manager of said brokerage concern;

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*Held*, That such payments of brokerage or commissions on transactions aforesaid, and under the circumstances set forth, by such sellers to said brokerage concern, produce jobber and individual aforesaid, upon the purchases of said produce jobber in interstate commerce, and such receipt and acceptance, whether directly or indirectly, by said brokerage concern, produce jobber and individual aforesaid, of such brokerage fees or commissions upon such purchases, constituted violation of provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

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

*Mr. John Darsey* for the Commission.

*Wilbourn, Miller & Wilbourn*, of Meridian, Miss., for Mississippi Sales Co., Inc., Jobbers Produce Co., Inc., S. O. Scott, The Penny Stores, Inc. and Buckley-Young Co.

*Mr. Harry S. Dunmire*, of Philadelphia, Pa., for American Fruit Growers, Inc.

*Patterson & Patterson*, of Seattle, Wash., for Pacific Fruit and Produce Co.

## 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 section 2 (c) of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the act of Congress entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), hereby issues this its complaint against said parties respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent, Mississippi Sales Co., Inc., is a corporation organized and existing by virtue of the laws of the State of Mississippi, having an office and principal place of business located at 2500 A Street, in the city of Meridian, Miss. It also maintains branch offices in the cities of Columbus, Miss., Greenwood, Miss., and Jackson, Miss. The officers of said respondent, Mississippi Sales Co., Inc., are as follows:

S. O. Scott, president,  
M. C. Fridge, vice president,  
T. J. Roth, secretary-treasurer.

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The majority of the outstanding stock of said respondent, Mississippi Sales Company, Inc., is owned by respondent S. O. Scott, the president of said respondent corporation.

The business of the said respondent, Mississippi Sales Co., Inc., is that of a general merchandise broker, and as such it acts as intermediary in transactions of sale and purchase of commodities, principally foodstuffs, between numerous sellers, among whom are the "seller respondents" hereinafter named and divers buyers, among whom are the "buyer respondents" hereinafter designated.

PAR. 2. Respondent, Jobbers Produce Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Mississippi, having an office and principal place of business located at 2500 A Street in the city of Meridian, Miss. It also maintains branch offices in the cities of Columbus, Miss., Greenwood, Miss., and Jackson, Miss. The officers of said respondent, Jobbers Produce Co., Inc., are as follows:

S. O. Scott, president,  
M. C. Fridge, vice president,  
T. J. Roth, secretary-treasurer.

The majority of the outstanding stock of respondent, Jobbers Produce Co., Inc., is owned by respondent, S. O. Scott, the president of said respondent corporation.

The business of the said respondent, Jobbers Produce Co., Inc., is that of a produce jobber. In the conduct of its said business produce is purchased by it from sellers residing in States other than the State of Mississippi, among whom are the "seller respondents" hereinafter named, pursuant to which purchases produce is shipped by such sellers from the respective States in which such sellers are located into and through various States of the United States to respondents, Jobbers Produce Co., Inc., and the produce so purchased is re-sold by said respondent, Jobbers Produce Co., Inc., to jobbers and wholesalers located in the various States of the United States, pursuant to which sales such produce is shipped and transported by said respondent, Jobbers Produce Co., Inc., into and through various States of the United States to its wholesaler and jobber customers.

PAR. 3. Respondent, S. O. Scott, is an individual residing in the city of Meridian, Miss., and having an office and place of business located at 2500 A Street, in said city and State.

PAR. 4. Respondent, The Penny Stores, Inc., is a corporation organized and existing by virtue of the laws of the State of Mississippi, having an office and principal place of business located in the city of Meridian, Miss.

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The majority of outstanding stock of said respondent, The Penny Stores, Inc., is owned by R. M. Snowden, who is president of said respondent corporation, and S. O. Scott.

Respondent, The Penny Stores, Inc., is engaged in the business of operating a chain of cash and carry grocery stores. In the conduct of such business commodities, particularly food products, are purchased by it from sellers residing in States other than the State of Mississippi, among whom are the "seller respondents" hereinafter named, pursuant to which purchases products are shipped by such sellers from the respective States in which such sellers are located into and through various States of the United States to the respondent, The Penny Stores, Inc.

PAR. 5. Respondent, Buckley-Young Co., is a corporation organized and existing under and by virtue of the laws of the State of Alabama, having an office and principal place of business located in the city of York, Ala.

The majority of the outstanding stock of said respondent, Buckley-Young Co., is owned by R. M. Snowden, who is vice president of said respondent corporation, and S. O. Scott.

Respondent, Buckley-Young Co., is engaged in selling groceries and allied products at wholesale. In the conduct of such business commodities, particularly food products, are purchased by it from sellers residing in States other than the State of Alabama, among whom are the "seller respondents" hereinafter named, pursuant to which purchases products are shipped by such sellers from the respective States in which such sellers are located into and through various States of the United States to the respondent, Buckley-Young Co.

PAR. 6. Respondent, American Fruit Growers, Inc., is a corporation organized and existing by virtue of the laws of the State of Delaware, having an office and principal place of business located at 2100 Penn Avenue in the city of Pittsburgh, Pa.

Respondent, Pacific Fruit & Produce Co., is a corporation organized and existing by virtue of the laws of the State of Delaware, having an office and principal place of business located at Occidental and King Streets, in the city of Seattle, Wash.

Respondent, Dow Fruit Co., is a corporation organized and existing by virtue of the laws of the State of Washington, having an office and principal place of business located in the city of Wenatchee, Wash.

Respondent, E. O. Muir Co., is a corporation organized and existing by virtue of the laws of the State of Utah, having an office and principal place of business located at 158 Pacific Avenue, in the city of Salt Lake City, Utah.

Respondents, William Henderson, Hunt Henderson, Christ Gamble, and Fred Gamble, are individuals doing business under the firm name and style of William Henderson Sugar Refinery, having an office and principal place of business located at 749 South Peters Street in the city of New Orleans, La.

The respondents named in this paragraph will be hereinafter referred to as "seller respondents."

Each of the "seller respondents" named in this paragraph is engaged in the sale of commodities to customers residing in States other than the respective States in which said "seller respondents" are located, pursuant to which sales commodities are shipped and 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, processors, and producers, engaged in the common practice of selling some of their commodities, in interstate commerce as aforesaid, through respondent, Mississippi Sales Co., Inc., to the respondents, Jobbers Produce Co., Inc., The Penny Stores, Inc., and Buckley-Young Co. Said group or class of said sellers comprise a large number of such manufacturers, processors, and producers, too numerous to be separately named herein or to be brought before the Commission in this proceeding without manifest inconvenience and delay.

PAR. 7. Respondent, Jobbers Produce Co., Inc., places orders for a substantial portion (probably 85 percent), of the products by it required in the ordinary course and conduct of its business with, and purchases the same from, the "seller respondents," and others, through the agency of the respondent, Mississippi Sales Co., Inc., and upon receipt of such orders each of said "seller respondents," and others, ships the products so ordered from the respective States in which said sellers are located into and through various other States of the United States to the respondent, Jobbers Produce Co., Inc.

In the course of the buying and selling transactions herein above referred to, resulting in the delivery of products from the "seller respondents," and others, to the respondent, Jobbers Produce Co., Inc., said "seller respondents" and others, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay and deliver to the respondents, Mississippi Sales Co., Inc., Jobbers Produce Co., Inc., and S. O. Scott, so-called brokerage fees or commissions, the same being certain percentages of the quoted sales prices agreed upon by said "seller respondents," and others, and the respondents, Mississippi Sales Co., Inc., Jobbers Produce Co., Inc., and S. O. Scott, and the respondents, Mississippi Sales Co., Inc., Jobbers Produce Co., Inc.,

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and S. O. Scott, since June 19, 1936, have received and accepted and are receiving and accepting such so-called brokerage fees or commissions while the ownership, management, and control of respondent, Mississippi Sales Co., Inc., is identified and affiliated with the ownership, management, and control of the respondent, Jobbers Produce Co., Inc., through the person and active management of respondent, S. O. Scott, who is president, director, and majority stockholder of both said respondent corporations, Mississippi Sales Co., Inc., and Jobbers Produce Co., Inc., and also through other mutual officers, directors, and employees.

In all of the buying and selling transactions hereinabove referred to, the so-called brokerage fees or commissions are paid and transmitted by said "seller respondents," and others, and accepted and received by said respondents, Mississippi Sales Co., Inc., Jobbers Produce Co., Inc., and S. O. Scott, while the respondent, Mississippi Sales Co., Inc., is acting in fact for and in behalf, and subject to the control, of respondent, Jobbers Produce Co., Inc., for which said so-called brokerage fees or commissions no services whatsoever in connection with such purchases have been rendered or are now being rendered to, for or on behalf of the said "seller respondents," and others, by the respondents, Mississippi Sales Co., Inc., Jobbers Produce Co., Inc., or S. O. Scott.

PAR. 8. Respondent, The Penny Stores, Inc., places orders for a substantial portion of the products by it required in the ordinary conduct of its business with, and purchases the same from, one or more of the "seller respondents," and others, through the agency of the respondent, Mississippi Sales Co., Inc., and upon receipt of such orders each of such sellers, ships the products so ordered from the respective States in which such sellers are located into and through various other States of the United States to the respondent, The Penny Stores, Inc.

In the course of the buying and selling transactions hereinabove referred to resulting in the delivery of products from said sellers to the respondent, The Penny Stores, Inc., said sellers, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay and deliver to the respondent, Mississippi Sales Co., Inc., so-called brokerage fees or commissions, the same being certain percentages of the quoted sales prices agreed upon by said sellers and the respondents, Mississippi Sales Co., Inc., and The Penny Stores, Inc., and the respondent, Mississippi Sales Co., Inc., since June 19, 1936, has received and accepted, and is receiving and accepting, such so-called brokerage fees or commissions while the ownership, management, and control of said respondent, Mississippi Sales Co., Inc., is identified and

affiliated with the ownership, management, and control of respondent, The Penny Stores, Inc., through respondent, S. O. Scott, who is president, director, and majority stockholder of respondent, Mississippi Sales Co., Inc., and who is also a stockholder in respondent, The Penny Stores, Inc., and also through the mutual stockholder interests of R. M. Snowden, who is president of respondent, The Penny Stores, Inc., and respondent, S. O. Scott, who together own the majority stock of respondent, The Penny Stores, Inc., and who also together own the majority stock of respondent, Buckley-Young Co., and other corporations not named herein.

In all of the said buying and selling transactions hereinabove referred to, the so-called brokerage fees or commissions are paid and transmitted by the said sellers to, and accepted and received by, the respondent, Mississippi Sales Co., Inc., while the said respondent, Mississippi Sales Co., Inc., is acting in fact for and in behalf, and subject to the control, of respondent, The Penny Stores, Inc., for which said so-called brokerage fees or commissions no services whatsoever in connection with such purchases have been rendered or are now being rendered to, for or on behalf of the said sellers by the respondent, Mississippi Sales Co., Inc.

PAR. 9. Respondent, Buckley-Young Co., places orders for a substantial portion of the products by it required in the ordinary conduct of its business with, and purchases the same from, one or more of the "seller respondents," and others, through the agency of the respondent, Mississippi Sales Co., Inc., and upon receipt of such orders each of such sellers, ships the products so ordered from the respective States in which they are located into and through various other States of the United States to the respondent, Buckley-Young Co.

In the course of the buying and selling transactions hereinabove referred to, resulting in the delivery of products from said sellers to the respondent, Buckley-Young Co., said sellers, since June 19, 1936, have transmitted, paid and delivered, and do transmit, pay, and deliver to the respondent, Mississippi Sales Co., Inc., so-called brokerage fees or commissions, the same being certain percentages of the quoted sales prices agreed upon by the said sellers and the respondents, Mississippi Sales Co., Inc., and Buckley-Young Co., and the respondent, Mississippi Sales Co., Inc., since June 19, 1936, has received and accepted, and is receiving and accepting, such so-called brokerage fees or commissions while the ownership, management, and control of said respondent, Mississippi Sales Co., Inc., is identified and affiliated with the ownership, management, and control of respondent, Buckley-Young Co., through respondent, S. O. Scott, who is president, director, and majority stockholder of respondent, Missis-

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ssippi Sales Co., Inc., and who is also a stockholder in respondent, Buckley-Young Co., and also through the mutual stockholder interests of R. M. Snowden, who is vice president of respondent, Buckley-Young Co., and respondent, S. O. Scott, who together own the majority stock of respondent, Buckley-Young Co., and who also together own the majority stock of respondent, The Penny Stores, Inc., and other corporations not named herein.

In all of the buying and selling transactions hereinabove referred to, the so-called brokerage fees or commissions are paid and transmitted by the said sellers to, and accepted and received by, the respondent, Mississippi Sales Co., Inc., while the said respondent, Mississippi Sales Co., Inc., is acting in fact and in behalf, and subject to the control of respondent, Buckley-Young Co., for which said so-called brokerage fees or commissions no services whatsoever in connection with such purchases have been rendered or are now being rendered to, for, or on behalf of the said sellers by the respondent, Mississippi Sales Co., Inc.

PAR. 10. The transmission and payment of said so-called brokerage fees or commissions by the "seller respondent," and others, to, and the receipt and acceptance thereof by, the respondents, Mississippi Sales Co., Inc., Jobbers Produce Co., Inc., and S. O. Scott, upon the purchases of the respondent, Jobbers Produce Co., Inc., and the transmission and payment of said so-called brokerage fees or commissions by the "seller respondents," and others, to, and the receipt and acceptance thereof by, the respondent, Mississippi Sales Co., Inc., upon the purchases of the respondents, The Penny Stores, Inc., and Buckley-Young 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 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 13, 1936 (the Robinson-Patman Act).

**REPORT, FINDINGS AS TO THE FACTS, AND ORDER**

Pursuant to the provisions of the act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clay-

ton Act), as amended by section 1 of the act of Congress entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on July 27, 1938, 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 of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John Darsey, attorney for the Commission, before Robert S. Hall, an examiner for the Commission, theretofore duly designated by it, and in opposition to the allegations of the complaint by R. E. Wilbourn, attorney for the said respondents, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, answers, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the oral arguments of the said John Darsey for the Commission, and the said R. E. Wilbourn for the respondents, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Mississippi Sales Co., Inc., is a corporation organized and existing under the laws of the State of Mississippi. It maintains its principal office and place of business at 2500 A Street, in the city of Meridian, Miss., and branch offices in the cities of Columbus, Greenwood, and Jackson, Miss.

Mississippi Sales Co., Inc., has outstanding 100 shares of stock, 98 shares of which are owned by S. O. Scott, who is president of the corporation.

Mississippi Sales Co., Inc., is engaged in the general merchandise brokerage business. In the conduct of its said business it acts as intermediary in transactions of sale and purchase of commodities between numerous sellers and buyers.

PAR. 2. The respondent, Jobbers Produce Co., Inc., is a corporation organized and existing under the laws of the State of Mississippi. It maintains its principal office and place of business at 2500 A Street,

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in the city of Meridian, Miss., and branch offices at the cities of Columbus, Greenwood, and Jackson, Miss.

The jobbers Produce Co., Inc., has outstanding 100 shares of stock, 98 shares of which are owned by S. O. Scott, who is president of the corporation.

The business of the Jobbers Produce Co., Inc., is that of a produce jobber. In the conduct of its said business produce is purchased for resale by it from sellers located in States other than the State of Mississippi, pursuant to which purchases produce is shipped by such sellers from the respective States in which said sellers are located across State lines to the respondent, Jobbers Produce Co., Inc.

The business engaged in by each of the respondents, Mississippi Sales Co., Inc., and Jobbers Produce Co., Inc., in Meridian, Miss., and in each of their respective branch offices, is conducted in each office by the identical personnel from the same quarters under the direct and active supervision of the respondent, S. O. Scott.

PAR. 3. The respondent, S. O. Scott, is an individual residing in the city of Meridian, Miss., and having an office at 2500 A Street in said city and State. At all times hereinafter referred to the respondent S. O. Scott has been president, director, and active manager of each of the respondents Mississippi Sales Co., Inc., and Jobbers Produce Co., Inc., and has owned 98 percent of the outstanding capital stock of each of said corporations.

PAR. 4. The respondent American Fruit Growers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with an office and principal place of business at 1400 Chamber of Commerce Building, Pittsburgh, Pa.

The respondent, Dow Fruit Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with an office and principal place of business in the city of Wenatchee, Wash.

The respondent, E. O. Muir Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Utah, with an office and principal place of business located at 158 Pacific Avenue in the city of Salt Lake City, Utah.

Each of the respondents, hereinabove named in this paragraph, is engaged in the sale and distribution of commodities to customers residing in the various States of the United States.

The respondents named in this paragraph will hereinafter be referred to as seller respondents. These seller respondents are fairly representative of a large group of sellers engaged in selling and shipping commodities in interstate commerce to the respondent,

Jobbers Produce Co., Inc., and to other purchasers thereof. Each of the seller respondents actively competes with other sellers of competitive commodities in endeavoring to sell its products to the respondent, Jobbers Produce Co., Inc., and to other purchasers thereof.

PAR. 5. In the course and conduct of its said business, since June 19, 1936, the respondent, Jobbers Produce Co., Inc., has placed orders for a substantial quantity of commodities with the seller respondents and other sellers through the medium of the respondent, Mississippi Sales Co., Inc., pursuant to which orders commodities have been sold and shipped in interstate commerce by the seller respondents and other sellers to the respondent, Jobbers Produce Co., Inc. On all such transactions of purchase and sale in interstate commerce between the respondent, Jobbers Produce Co., Inc., and the seller respondents and other sellers, prior to the service of the complaint herein, the seller respondents and other sellers paid and transmitted to the respondent, Mississippi Sales Co., Inc., brokerage fees or commissions on the basis of an agreed percentage (usually 3 to 5 percent) of the amount of each purchase.

During the period from July 1, 1936, to July 1, 1938, the seller respondents and other sellers paid and transmitted approximately \$11,000 to the respondent, Mississippi Sales Co., Inc., as brokerage fees or commissions upon those purchases of the respondent, Jobbers Produce Co. Inc., which were invoiced directly to the respondent, Jobbers Produce Co., Inc. In addition, within the same period, an undetermined and substantial amount of brokerage fees or commissions were paid by said sellers to the respondent, Mississippi Sales Co., Inc., upon the purchases made by respondent, Jobbers Produce Co., Inc., from said sellers through the respondent, Mississippi Sales Co., Inc., in pool cars which were invoiced to other customers of said sellers.

PAR. 6. The net profits of the respondent, Mississippi Sales Co., Inc., resulting from the receipt of brokerage fees or commissions paid to it by the seller respondents and other sellers upon the purchases of the respondent, Jobbers Produce Co., Inc., as aforesaid, and upon the purchases of other customers, are periodically distributed to the respondent, S. O. Scott.

PAR. 7. The function of, and the services performed by, brokers representing sellers in connection with the sale of commodities is to find customers for sellers and, acting under and subject to the control of sellers, to sell commodities to those customers for and on behalf of sellers and as the agents of said sellers; the brokers'

function in such cases is a selling function, and the service rendered by them is a selling service rendered to sellers.

PAR. 8. In all of the transactions of purchase and sale of commodities, as set forth in paragraph 5 hereof, wherein the respondent, Jobbers Produce Co., Inc., purchased commodities from sellers through the respondent, Mississippi Sales Co., Inc., the following circumstances and conditions existed:

The respondent, S. O. Scott, was president and director of each of the respondents, Mississippi Sales Co., Inc., and Jobbers Produce Co., Inc., and owned 98 percent of the outstanding capital stock of each of said corporations.

The business engaged in by each of the respondents, Mississippi Sales Co., Inc., and Jobbers Produce Co., Inc., was conducted from the same offices by the identical personnel under the direct and active supervision of the respondent, S. O. Scott; and

There was no knowledge or information with regard to customer or consumer demand, merchandise requirements of the respondent, Jobbers Produce Co., Inc., or obligations of the respondent, Jobbers Produce Co., Inc., to the seller respondents or other sellers, available to the respondent, S. O. Scott, in his capacity as president and active manager of the respondent, Jobbers Produce Co., Inc., which was not equally as well known to the respondent, S. O. Scott, in his capacity as president and active manager of the respondent Mississippi Sales Co., Inc.

PAR. 9. In all of the transactions of sale and purchase, hereinabove described, wherein the respondent, Jobbers Produce Co., Inc., purchased commodities from the seller respondents and other sellers through the respondent, Mississippi Sales Co., Inc., the respondent, Mississippi Sales Co., Inc., acted for and in behalf, and subject to the direct control, of the respondent, Jobbers Produce Co., Inc.

PAR. 10. No brokerage or selling services whatsoever, or any other form of services in connection with the purchase of commodities by, or the sale thereof to, the respondent, Jobbers Produce Co., Inc., as hereinafter described, were rendered to sellers by the respondent, Mississippi Sales Co., Inc., or the respondent, S. O. Scott, or any employee of either of said respondents.

PAR. 11. At all times hereinabove referred to, the respondent, Jobbers Produce Co., Inc., has been in active competition with other produce jobbers who purchase commodities in interstate commerce for resale to the same customers to whom the respondent, Jobbers Produce Co., Inc., endeavors to resell commodities purchased by it, as aforesaid.

PAR. 12. With respect to the allegations of the complaint concerning the payment of brokerage to, and the receipt thereof by, the respond-

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## Conclusion

ent, Mississippi Sales Co., Inc., upon the purchases of the respondents, The Penny Stores, Inc., and Buckley-Young Co., the Commission finds that in connection with such purchases the respondent, Mississippi Sales Co., Inc., did not act for or in behalf, or subject to the control, of either of the respondents, The Penny Stores, Inc., or Buckley-Young Co.

William Henderson, Hunt Henderson, Christ Gamble, and Fred Gamble, individuals doing business under the firm name and style of William Henderson Sugar Refinery and Pacific Fruit & Produce Co., were also named as seller respondents herein. In the case of the former it does not appear that any payments of brokerage have been made by the four named individuals doing business as William Henderson Sugar Refinery, to the respondent Mississippi Sales Co., Inc. In the case of the latter there was no answer filed or any appearance entered on behalf of this respondent, and the record does not contain any evidence of its corporate identity.

## CONCLUSION

The Commission concludes as follows with regard to the application of paragraph (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, to the facts heretofore found:

The payment of brokerage to, and the receipt thereof by, a broker upon the purchases of a buyer possessing the power of control over such broker or in whose behalf such broker acts is a practice which Congress deemed to be an inherently unfair trade practice and specifically and unconditionally proscribed by said paragraph of said act.

The respondent Mississippi Sales Co., Inc., is a buyer-controlled intermediary within the meaning of said paragraph of said act, and in all transactions wherein it purchases commodities for the respondent, Jobbers Produce Co., Inc., or negotiates or deals with sellers in connection with the purchase of commodities by, or the sale thereof to, the latter, it acts for and in behalf, and subject to the direct control, of the respondent Jobbers Produce Co., Inc., within the meaning of said paragraph of said act.

Since June 19, 1936, the seller respondents and other sellers have paid and transmitted brokerage fees or commissions in substantial amounts to, and the same have been accepted and received by, the respondent Mississippi Sales Co., Inc., upon the purchases of the respondent Jobbers Produce Co., Inc.

The payment of brokerage to, and the receipt thereof by, buyers on their own purchases, whether the same is paid directly to the buyers or transmitted to them through intermediaries, likewise is a practice which Congress deemed to be an inherently unfair trade practice and

specifically and unconditionally proscribed by said paragraph of said act.

The respondents, Mississippi Sales Co., Inc., and Jobbers Produce Co., Inc., are corporations and for some purposes they may be considered legal entities distinct from the members who compose them. But that distinction is a fiction of the law which is disregarded when it is urged to an intent and purpose which is not consonant with the reason and policy of the law.

The payment of the brokerage fees or commissions to, and the receipt thereof by, the respondent Mississippi Sales Co., Inc., upon the purchases of the respondent Jobbers Produce Co., Inc., when the principal party at interest in each of the said respondents, Mississippi Sales Co., Inc., and Jobbers Produce Co., Inc., is the respondent, S. O. Scott, who is president, director, active manager, and owner of 98 percent of the capital stock, of each of said corporations, is in fact and in law payment of brokerage fees or commissions to, and receipt thereof by, the respondent, Jobbers Produce Co., Inc., within the meaning of said paragraph of said act.

The "services rendered" clause of said paragraph of said act does not set up conditions upon which brokerage may be paid by sellers either to buyers or to their intermediaries, agents, or representatives, upon the buyers' own purchases. (*The Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 106 F. (2d) 667 (C. C. A. 3d, 1939), 29 F. T. C. 1591; *Oliver Brothers v. Federal Trade Commission*, 102 F. (2d) 763, 770, 771 (C. C. A. 4, 1939), 28 F. T. C. 1926, 1936-1938; *Biddle Purchasing Co. v. Federal Trade Commission*, 96 F. (2d) 687 (C. C. A. 2d, 1938), 26 F. T. C. 1511; *Webb-Crawford Co. v. Federal Trade Commission*, 109 F. (2d) 268 (C. C. A. 5th, 1940), see post, p. 1630.

No selling services whatsoever were in fact, or could be in law, rendered to sellers in connection with the purchases of the respondent, Jobbers Produce Co., Inc., by either the respondent, Mississippi Sales Co., Inc., or the respondent, Jobbers Produce Co., Inc., or by any agent, representative, or employee of either said respondents within the meaning of said paragraph of said act.

Since June 19, 1936, the seller respondents and other sellers have paid and transmitted brokerage fees or commissions in substantial amounts to, and the same have been received by, the respondents, Mississippi Sales Co., Inc., Jobbers Produce Co., Inc., and S. O. Scott, upon the purchases of the respondent, Jobbers Produce Co., Inc., in interstate commerce, in violation of paragraph (c) of section 2 of an act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" as amended by an act of Congress approved June

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Order

19, 1936, entitled "An Act to amend section 2 of the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13) and for other purposes."

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the parties respondent named in the caption hereof, testimony and other evidence, taken before Robert S. Hall, 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 John Darsey, counsel for the Commission and R. E. Wilbourn, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion with respect to the violation of 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 the respondents, American Fruit Growers, Inc., a corporation, Dow Fruit Co., a corporation, and E. O. Muir Co., a corporation, and their respective officers, representatives, agents, and employees, in connection with the sale of commodities in interstate commerce to the respondent, Jobbers Produce Co., Inc., do forthwith cease and desist from paying or granting to any of the respondents, Mississippi Sales Co., Inc., Jobbers Produce Co., Inc., or S. O. Scott, or any officer, representative, agent, or employee of any of the latter named respondents, any brokerage fee or commission, or any allowance or discount in lieu thereof.

*It is further ordered*, That each of the respondents, Mississippi Sales Co., Inc., and Jobbers Produce Co., Inc., and the respective officers, representatives, agents, and employees of each of said respondents, in connection with the purchase of commodities in interstate commerce by the respondent, Jobbers Produce Co., Inc., do forthwith cease and desist from the practice of receiving or accepting, either directly or indirectly, from sellers any brokerage fees or commissions, or any allowance or discount in lieu thereof.

Order

30 F. T. C.

*It is further ordered,* That the respondent, S. O. Scott, do forthwith cease and desist from the practice of receiving or accepting brokerage fees or commissions, or any allowance or discount in lieu thereof, either directly or indirectly, as stock dividends or distribution of profits, or otherwise, in connection with the purchase of commodities in interstate commerce by the respondent, Jobbers Produce Co., Inc.

*It is further ordered,* That the charges of the complaint herein with respect to the respondents, The Penny Stores, Inc., Buckley-Young Co., Pacific Fruit & Produce Co., and William Henderson, Hunt Henderson, Christ Gamble, and Fred Gamble, individuals doing business under the firm name and style of William Henderson Sugar Refinery, be, and the same hereby are, dismissed for the reasons set forth with respect to each of said respondents in paragraph 12 of the findings as to the facts herein.

*It is further ordered,* That the respondents who are subject to the provisions of this order shall, within 30 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

## Order

IN THE MATTER OF  
SWEETS COMPANY OF AMERICA, INC.

## MODIFIED CEASE AND DESIST ORDER

*Docket 2959. Order, May 25, 1940*

Modified order, pursuant to provisions of Section 5 (1) of Federal Trade Commission Act, in proceeding in question, in which original order issued on December 7, 1938, 27 F. T. C. 1190, and in which Court of Appeals for the Second Circuit on January 29, 1940, in *Sweets Company of America, Inc. v. Federal Trade Commission*, 109 F. (2d) 296, 30 F. T. C. 1625, made and entered its written opinion directing that said order be modified by substitution of words "are likely to be made" for "may be made" in subdivision 1 thereof, by substitution of words "are likely to be used" for "may be used" in subdivision 2 thereof, and by substitution of words "are likely to be given" for "may be given" in subdivision 3 thereof, and on February 19, 1940, entered its decree modifying Commission's order as aforesaid directed, and, as so modified, affirmed said order and directed respondent to comply therewith—

Requiring respondent, its officers, etc., in connection with offer, etc., of candy in interstate commerce or in the District of Columbia, forthwith to cease and desist from (1) selling, etc., candy so packed, etc., that sales thereof to the general public are to be made or are likely to be made by means of a lottery, etc., (2) supplying, etc., dealers with packages, etc., of candy which are used, or which are likely to be used, to conduct a lottery, etc., in sale, etc., of candy therein contained to public, or (3) supplying, etc., dealers, for sale to public, with packages, etc., of candy composed of individually wrapped pieces of candy of uniform size and shape and of different colors, together with larger pieces of candy or any other merchandise, which said larger pieces of candy or other merchandise are to be or likely to be given as prizes to the purchasers procuring pieces of said candy of a particular color, as in said order below set forth.

Before *Mr. Miles J. Furnas* and *Mr. William C. Reeves*, trial examiners.

*Mr. D. C. Daniel* for the Commission.

*Mr. Louis H. Solomon*, of New York City, for respondent.

## MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and other evidence, and briefs and oral arguments for the respective parties; and the Commission having on December 7, 1938, made its findings as to the facts and conclusion that the respondent Sweets Co. of America, Inc., had violated the provisions of the Federal Trade Commission Act; and having on December 7, 1938, issued and subsequently served, upon the respondent, its order to cease and desist from said violations; and the respondent Sweets

Co. of America, Inc., having thereafter petitioned the United States Circuit Court of Appeals for the Second Circuit to review and set aside said order to cease and desist; and said Court, on January 29, 1940, having made and entered its written opinion directing that said order to cease and desist be modified by the substitution of the words "are likely to be made" for "may be made" in subdivision 1 thereof, by the substitution of the words "are likely to be used" for "may be used" in subdivision 2 thereof, and by the substitution of the words "are likely to be given" for "may be given" in subdivision 3 thereof, and that, as so modified, the said order be affirmed; and the Court, on February 19, 1940, having entered its decree modifying the Commission's order as directed in its opinion, and, as so modified, affirming it and directing the respondent to comply therewith; and the Court, having, in its decree, directed the Commission to modify its said order to cease and desist as set forth in said decree—

*Now, therefore,* Pursuant to the mandate in said decree, and to the provisions of subsection (i) of section 5 of the Federal Trade Commission Act, the Commission issues this its modified order to cease and desist in conformity with said decree:

*It is ordered,* That the respondent Sweets Co. of America, Inc., it 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 in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Selling and distributing candy so packed and assembled that sales of such candy to the general public are to be made or are likely to be made by means of a lottery, gambling device, or gift enterprise.

2. Supplying to or placing in the hands of dealers, packages or assortments of candy which are used or which are likely to be used to conduct a lottery, gambling device, or gift enterprise in the sale or distribution of said candy contained in the said packages or assortments to the public.

3. Supplying to or placing in the hands of dealers for sale to the public packages or assortments of candy composed of individually wrapped pieces of candy of uniform size and shape and of different colors, together with larger pieces of candy or any other merchandise, which said larger pieces of candy or other merchandise are to be or are likely to be given as prizes to the purchasers procuring pieces of said candy of a particular color.

*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

MANHATTAN HAT CO., INC., AND HARRY SAMNICK,  
JACOB SAMNICK, AND LOUIS REINKEN, INDIVID-  
UALLY AND AS OFFICERS OF MANHATTAN HAT 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 1898. Complaint, Dec. 15, 1939<sup>1</sup>—Decision, May 28, 1940*

Where a corporation and three individuals, who were president, secretary, and treasurer thereof, and managed, controlled and dominated its affairs and activity, engaged in manufacture and sale of men's felt hats and caps from old, worn and previously-used hat bodies which they purchased and which, after being cleaned, steamed, ironed, and shaped by them, and in some instances fitted with new trimmings, sweatbands, linings, and size labels, had the appearance of new hats and caps; acting in conjunction and cooperation with each other in acts, practices and methods below set forth and in substantial competition with others also engaged in sale and distribution of such products in commerce among the various States and in the District of Columbia—

Sold said hats and caps, with appearance aforesaid, and with no marking or designation stamped thereon to indicate to purchasing public that they were made from old, worn and previously used hat bodies and other materials, to wholesale jobbers and retailers, who resold such articles to purchasing public without disclosing facts aforesaid and under such circumstances as to indicate that said hats and caps were in fact new, and failed, through use of words "Made Over" in inconspicuous and illegible type and in connection with and in proximity to such legends as "DeLuxe Quality" stamped or imprinted on said hats and caps, to apprise prospective purchasers that said articles were made from old, worn, and previously used hat bodies rather than from shop-worn hats which had never been worn or used, as made by various manufacturers from shop-worn new hats reclaimed from merchants' shelves and never used or worn, and cleaned, steamed and renovated by manufacturers in practically same manner as with hats made from old and previously used hat bodies;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that said hats and caps were made from new and unused materials or from hat bodies which were merely shop-worn and which had not been previously used, and with result, as consequence of such belief, that purchasing public was induced to, and did, purchase substantial quantities of their said hats and caps, and trade was thereby diverted unfairly to them from their competitors, many of whom do not misrepresent their products; to the substantial injury of competition in commerce:

<sup>1</sup> Amended and supplemental.

## Complaint

30 F. T. C.

*Held*, That such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and of their competitors, and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

*Mr. Robert Mathis, Jr.* for the Commission.

*Mr. Samuel L. Miller*, of New York City, for Manhattan Hat Co., Inc.

## 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 Manhattan Hat Co., Inc., a corporation, and Harry Samnick, Jacob Samnick, and Louis Reinken, individually and as officers of said Manhattan Hat 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 in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Manhattan Hat Co., Inc., is now and has been at all times mentioned herein a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondents Harry Samnick, Jacob Samnick, and Louis Reinken, are individuals and are president, secretary, and treasurer, respectively, of respondent Manhattan Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of the respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices, and methods, hereinafter alleged. All have their offices and principal place of business at 124 Wooster Street in the city of New York, State of New York.

Respondents are now, and for some time last past have been, engaged in the manufacture, sale, and distribution of men's felt hats and caps of the character hereinafter set forth. Respondents cause their said products when sold to be transported from their 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. 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. In the course and conduct of their said business respondents are now and have been at all times referred to herein, in substantial competition with other corporations and individuals, and

with firms and partnerships, also engaged in the sale and distribution of men's hats and caps 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 said business, respondents buy old, worn, and previously used hat bodies, which are cleaned, steamed, ironed, and shaped by respondents and in some instances fitted with new trimmings, sweat bands, linings, and size labels. Such hats are then sold by respondents to wholesalers, jobbers and retailers who in turn sell said products to the purchasing public.

PAR. 4. The aforesaid old, worn and previously used hat bodies, after having been reconditioned and refitted as aforesaid, have the appearance of new hats and caps, and said hats and caps are sold by respondents to wholesalers, jobbers, and retail dealers without any marking or designation stamped thereon to indicate to the purchasing public that said hats and caps were manufactured from old, worn, and previously used hat bodies and other materials. Said hats and caps are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats and caps are manufactured from old felt hat bodies and other materials which have been previously worn, and under such circumstances as to indicate that said hats and caps are in fact new hats and caps.

Respondents also cause to be stamped or imprinted in said hats and caps the legend "DeLuxe Quality" and other legends of similar import, and in connection with and in proximity to such legends, the respondents also cause to be placed in said hats and caps in inconspicuous and illegible type the further legend "Made Over."

It is the practice of various manufacturers of hats and caps to manufacture finished hats and caps from perviously used hat bodies and from felt hat bodies obtained from new but shop-worn hats, as well as from newly manufactured materials. Shop-worn hats are new hats which have been reclaimed from merchants' shelves by said hat and cap manufacturers and which have never been used or worn. Said shop-worn hats are cleaned, steamed and renovated by said hat manufacturers in practically the same manner as hats made from old previously used hat bodies.

The use by respondents of the mere term, "Made Over," to designate their said hats and caps, is wholly insufficient to apprise prospective purchasers of the fact that such hats and caps are made from old, worn, and previously used hat bodies, rather than from shop-worn hats which have never been worn or used.

PAR. 5. 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 members of the purchasing public into the erroneous and mistaken belief that said hats and caps are manufactured from new and unused materials or from hat bodies which are merely shopworn and which have not been previously used. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' products.

In consequence thereof trade has been diverted unfairly to respondents from their competitors, many of whom do not misrepresent their products, and thereby substantial injury has been done 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. 6. The aforesaid acts and practices of the respondents, as herein alleged, 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.

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 15th day of December 1939, issued and thereafter served its amended and supplemental complaint in this proceeding upon the respondents, Manhattan Hat Co., Inc., a corporation, and Harry Samnick, Jacob Samnick, and Louis Reinken, individually and as officers of Manhattan Hat Co., Inc., 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. On April 5, 1940, the respondents filed their answer, in which answer respondents 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 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 Manhattan Hat Co., Inc., is now and has been at all times mentioned herein a corporation organized, existing, and doing business under and by virtue of the laws of the State of

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## Findings

New York. Respondents Harry Samnick, Jacob Samnick, and Louis Reinken, are individuals and are president, secretary, and treasurer, respectively, of respondent Manhattan Hat Co., Inc., and as such manage, control, and dominate its corporate affairs and activities. All of the respondents have acted in conjunction and cooperation with each other in carrying out the acts, practices and methods hereinafter alleged. All have their offices and principal place of business at 124 Wooster Street in the city of New York, State of New York.

Respondents are now, and for some time last past have been, engaged in the manufacture, sale and distribution of men's felt hats and caps of the character hereinafter set forth. Respondents cause their said products, when sold, to be transported from their 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. 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. In the course and conduct of their said business respondents are now and have been at all times referred to herein, in substantial competition with other corporations and individuals, and with firms and partnerships, also engaged in the sale and distribution of men's hats and caps 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 said business, respondents buy old, worn, and previously used hat bodies, which are cleaned, steamed, ironed, and shaped by respondents and in some instances fitted with new trimmings, sweat bands, linings, and size labels. Such hats are then sold by respondents to wholesalers, jobbers, and retailers who in turn sell said products to the purchasing public.

PAR. 4. The aforesaid old, worn and previously used hat bodies, after having been reconditioned and refitted as aforesaid, have the appearance of new hats and caps, and said hats and caps are sold by respondents to wholesalers, jobbers and retail dealers without any marking or designation stamped thereon to indicate to the purchasing public that said hats and caps were manufactured from old, worn, and previously used hat bodies and other materials. Said hats and caps are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats and caps are manufactured from old felt hat bodies and other materials which have been previously worn, and under such circumstances as to indicate that said hats and caps are in fact new hats and caps.

Respondents also cause to be stamped or imprinted in said hats and caps the legend "DeLuxe Quality" and other legends of similar import, and in connection with and in proximity to such legends, the respondents also cause to be placed in said hats and caps in inconspicuous and illegible type the further legend "Made Over."

It is the practice of various manufacturers of hats and caps to manufacture finished hats and caps from previously used hat bodies and from felt hat bodies obtained from new but shop-worn hats, as well as from newly manufactured materials. Shop-worn hats are new hats which have been reclaimed from merchants' shelves by said hat and cap manufacturers and which have never been used or worn. Said shop-worn hats are cleaned, steamed, and renovated by said hat manufacturers in practically the same manner as hats made from old, previously used, hat bodies.

The use by respondents of the mere term, "Made Over," to designate their said hats and caps, is wholly insufficient to apprise prospective purchasers of the fact that such hats and caps are made from old, worn, and previously used hat bodies, rather than from shop-worn hats which have never been worn or used.

PAR. 5. 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 members of the purchasing public into the erroneous and mistaken belief that said hats and caps are manufactured from new and unused materials or from hat bodies which are merely shop-worn and which have not been previously used. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' products.

In consequence thereof trade has been diverted unfairly to respondents from their competitors, many of whom do not misrepresent their products, and thereby substantial injury has been done 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 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.

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## Order

## 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 respondents, in which answer respondents admit all the material allegations of fact set forth in said amended and supplemental 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 respondents, Manhattan Hat Co., Inc., a corporation, its officers, and Harry Samnick, Jacob Samnick, and Louis Reinken, individually and as officers of said corporation, respondents' 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  
CRETE MILLS

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

*Docket 3408. Complaint, May 6, 1938—Decision, May 28, 1940*

Where a corporation engaged in milling and selling feed for animals, including its "Victor Chick Pellets" chicken feed, to purchasers in various other States, in substantial competition with others engaged in sale and distribution of similar products in commerce among the various States and in the District of Columbia, and including those who make, sell, and distribute similar products in commerce as aforesaid and do not in any way misrepresent the quality or character of their respective goods—

(a) Represented, through advertisements in newspapers, farm papers, and by radio broadcasts that its said pellets would grow chicks faster, healthier, and cheaper with less likelihood of disease or death than any other feed, regardless of price, and that chicks fed therewith reached the egg-laying period in 4 weeks' less time than those fed mash feed and lay invariably at the age of 5 months, and that said pellets cost less and excel all other feeds, regardless of price;

Facts being that use of such pellets, compared with those of other feeds of same general formula, kind, and quality, would not grow chicks faster, healthier, or more cheaply than other feeds, and use thereof, compared with other comparable feeds, as aforesaid, would not reduce costs substantially nor lessen mortality rate, and said pellets, subject to aforesaid qualification, did not exceed all other feeds nor assure one of greater poultry profits, and they were not the only feed which was properly digested by chicks, and said pellets would not cause chickens to produce eggs within any definite time or period earlier than chicks fed other feeds of similar composition; and

(b) Represented, as aforesaid, that any other feed that did not contain kiln-dried corn was dangerous to the health and life of chicks, and that said pellets would keep indefinitely, and that there was no possibility of any ingredient therein getting rancid or moldy and causing chick deaths;

Facts being corn other than kiln-dried is not dangerous and does not, absent an excess of moisture, become moldy, and said pellets would not keep indefinitely under all conditions or be free from rancidity or mold;

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 belief, that number of consuming public purchased substantial volume of its product, and trade was diverted unfairly to it from its competitors engaged in sale and distribution in commerce of products intended and used for purpose for which it recommended its said feed, and who truthfully represent the effectiveness 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 its competitors, and constituted unfair methods of competition in commerce.

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## Complaint

Before *Mr. Miles J. Furnas* and *Mr. Arthur F. Thomas*, trial examiners.

*Mr. R. A. McOuat* for the Commission.

*Perry, Van Pelt & Marti*, of Lincoln, Nebr., 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 Crete Mills, 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 this respect as follows:

PARAGRAPH 1. Respondent, Crete Mills, is a corporation organized under the laws of the State of Nebraska, with its principal office at Crete, Nebr.

Respondent is engaged in the business of milling and selling feed for animals, including a chicken feed manufactured and sold under the trade name of "Victor Chick Pellets." Respondent causes said products when sold to be shipped or transported from its aforesaid place of business in the State of Nebraska to purchasers thereof at their various places of location in States of the United States other than the State of Nebraska and in the District of Columbia. Respondent maintains, and during all the times herein mentioned has maintained, a course of trade in said products so sold by it in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is, and at all times herein mentioned has been, in substantial competition with other corporations, and with persons, firms, and partnerships likewise engaged in the sale and distribution of chick feeds and other milling products similar to those sold by the respondent in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course of its said business, as hereinabove described, and for the purpose of inducing the purchase of its products, respondent has made extravagant, deceptive, false, and misleading statements concerning the efficacy and effect of its products and the results that are achieved by using it as chick feed, by means of advertisements inserted in newspapers and magazines, and by printed pamphlets, letters, testimonials, and radio programs broadcast over the air. The following are examples of the many representations that are false and misleading:

Victor Chick Pellets will grow your chicks faster, healthier, and cheaper, than any other feed, regardless of price.

This year any feed that does not contain kiln dried corn, that is, artificially dried corn, and corn products, may kill your chicks, since last year's corn crop contained moisture in excess of the amount that it can carry safely in baby chick feeds.

Chicks fed Victor Chick Pellets reach the egg-laying stage in four weeks less time than those fed mash feed.

You save over 20% in your feed costs, lower your mortality rate and bring your pullets to the laying stage in four weeks less time by feeding the modern, economical feed—Victor Chick Pellets.

Why not use the feed that will shorten the period to profits from your poultry by four weeks and feed Victor Chick Pellets? From every angle, increased growth, cleanliness, economy, lower mortality, less disease, Victor Chick Pellets excel all other feeds regardless of price.

One of the many advantages of the modern chick feed—Victor Chick Pellets—is that chick feed in pellet form will keep indefinitely. There is no possibility of any ingredient in the feed getting rancid, or mouldy, causing chick deaths, nor will any of the ingredients lose their feeding value through deterioration.

Victor Chick Pellets will invariably insure eggs in 5 months—and you'll get more eggs and better quality eggs. That's because Victor Chick Pellets contain the 19 ingredients vital to chick health, growth and vitality.

19 prescribed ingredients that will insure eggs in 5 months.

All of said statements, together with similar statements appearing in the respondent's advertising literature and in broadcasts of its radio programs, purport to be descriptive of respondent's product and of its efficacy in use as a chick feed. In all of its advertising literature, its radio broadcasts, and through other means, respondent represents through the statements and representations herein set out and other statements of similar import and effect (1) that Victor Chick Pellets will grow chicks faster, healthier, cheaper, with less liability to disease or death than any other feed regardless of price; (2) that any other feed that does not contain kiln-dried corn is dangerous to health and life of chicks; (3) that chicks which are fed Victor Chick Pellets reach the egg-laying period in 4 weeks' less time than those fed mash feed; (4) that Victor Chick Pellets will keep indefinitely; (5) that there is no possibility of any ingredient in the feed getting rancid or moldy, causing chick deaths; (6) that pullets fed upon respondent's product will invariably lay eggs at the age of 5 months; (7) that Victor Chick Pellets cost less and excel all other feeds regardless of price.

PAR. 4. The representations made by the respondent with respect to the efficacy and effect of its product are false, deceptive, misleading, and grossly exaggerated.

In truth and in fact Victor Chick Pellets will not grow chicks faster, healthier, or cheaper nor with less liability to disease or death

than any other feed regardless of price. Chicks which are fed Victor Chick Pellets do not reach the egg-laying period in 4 weeks' less time than those chicks fed mash feed, nor will they invariably lay eggs at the age of 5 months. Other feeds which do not contain kiln-dried corn are not necessarily dangerous to chicks. Respondent's product will not keep indefinitely. It will get rancid and moldy under precisely the same conditions which would cause any chick feed in pellet form to become rancid and moldy. Many other types of chick feed are as good as respondent's product and cost no more.

PAR. 5. The false and misleading representations used by the respondent, as set forth herein, in connection with the sale of its product, have the capacity to and tendency to, and do, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that said representations are true and that said product will accomplish the results claimed. As a direct consequence of the false, deceptive, and misleading representations of the respondent and the erroneous and mistaken beliefs induced thereby, as herein set out, the purchasing public has purchased a substantial quantity of respondent's product, with the result that trade has been diverted unfairly from competitors engaged in the business of distributing or selling other products designed for similar use, who truthfully advertise and represent the efficacy and effect of their respective products and the result that may be expected to obtain from the use thereof. As a result thereof, injury has been done and is now being done by the respondent to competition in commerce between and among 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 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.

#### 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 subsequently served, its complaint in this proceeding upon respondent, Crete Mills, 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 were introduced by R. A. McOuat, attorney for the Commission, and in opposition to the allegations of the complaint by Robert Van Pelt, attorney for the respondent, before Miles J. Furnas and Arthur F. Thomas, examiners of the Commission, theretofore

## Findings

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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 or 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. The respondent, Crete Mills, is a corporation organized and existing under the laws of the State of Nebraska, with its office and principal place of business located at Crete, Nebr., and is now and for more than 2 years last past has been engaged in the business of milling and selling feed for animals, including chicken feed manufactured and sold under the trade name of "Victor Chick Pellets," and has caused its said product when sold to be transported from its place of business in the city of Crete, State of Nebraska, to purchasers located in various States of the United States other than the State of Nebraska. It maintains a course of trade in commerce in said products among and between the various States of the United States and in the District of Columbia. Respondent is now and for several years last past has been in substantial competition with other corporations, firms, and individuals likewise 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. There are competitors of the respondent who manufacture, sell, and distribute products similar to those of respondent among and between the various States of the United States and in the District of Columbia who do not in any way misrepresent the quality or character of their respective products.

PAR. 2. In the course and conduct of its business as set out in paragraph 1 hereof, and for the purpose of inducing members of the public to purchase its said product, respondent has caused and causes advertising to be published in newspapers, farm papers, and by radio broadcasts, in which it represents that:

(a) Victor Chick Pellets will grow chicks faster, healthier, and cheaper with less likelihood of disease or death than any other feed regardless of price;

(b) Any other feed that does not contain kiln-dried corn is dangerous to the health and life of chicks;

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## Conclusion

- (c) Chicks which are fed Victor Chick Pellets reach the egg-laying period in 4 weeks' less time than those fed mash feed;
- (d) Victor Chick Pellets will keep indefinitely;
- (e) There is no possibility of any ingredient in the feed getting rancid or moldy, causing chick deaths;
- (f) Pullets fed upon respondent's product will invariably lay eggs at the age of 5 months;
- (g) Victor Chick Pellets cost less and excel all other feeds, regardless of price.

PAR. 3. The Commission finds that the use of Victor Chick Pellets, when compared with pellets of other feeds of the same general formula, kind, and quality, will not grow chicks faster, healthier, or cheaper than other feeds; other than kiln-dried corn is not dangerous and does not become moldy unless it contains an excess of moisture; as compared with other feeds of the same general formula, kind, and quality, the use of Victor Chick Pellets will not reduce feeds costs substantially nor lessen the mortality rate of chicks; as compared with other feeds of the same general formula, kind, and quality, Victor Chick Pellets do not excel all other feeds nor is one assured of greater poultry profits by feeding same; Victor Chick Pellets will not keep indefinitely under all conditions or be free from rancidity or mold; Victor Chick Pellets is not the only feed which is properly digested by chicks nor will it cause chickens to produce eggs within any definite time or period earlier than chicks fed other feeds of similar composition.

PAR. 4. The Commission further finds that the statements and representations made by the respondent in its advertising matter and radio broadcasts concerning the benefits to be derived from respondent's product, Victor Chick Pellets, as herein set forth, 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 all said representations are true. As a result of this erroneous belief, a number of the consuming public has purchased a substantial volume of respondent's product, with the result that trade has been diverted unfairly to the respondent from its competitors engaged in the business of selling and distributing in commerce among and between the various States of the United States products intended and used for the purpose for which respondent recommends its said product, and who truthfully represent the effectiveness of their respective products.

## CONCLUSION

The aforesaid acts and practices 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 Miles J. Furnas and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, brief on behalf of the Commission filed herein (respondent not having filed brief or 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, Crete Mills, 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 chicken feed now known as "Victor Chick Pellets," or any other chicken feed containing substantially similar ingredients, 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 representing, directly or by inference, that:

1. Said product will grow chicks faster, healthier, cheaper, and with less likelihood of disease or death than any other feed, regardless of price.
2. Any feed containing corn other than kiln-dried is dangerous to the health and life of chicks.
3. Chicks which are fed said product reach the egg-laying period in less time than those fed mash feed.
4. Said product will keep indefinitely.
5. There is no possibility of any ingredient in the feed getting rancid or moldy and causing chick deaths.
6. Pullets fed upon respondent's product will invariably lay eggs within any definite time or period earlier than chickens fed upon feeds of similar composition.
7. Said product costs less than other similar feeds, or that respondent's product excels all other feeds, regardless of price.

*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  
MCDONNELL & SONS, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3907. Complaint, Oct. 4, 1939—Decision, May 28, 1940*

Where a corporation engaged in sale of grave markers, monuments, memorials, and mausoleums, and in installation thereof in cemeteries, and in thus selling its said products direct to owners of cemetery lots in various other States of the United States and in the District of Columbia, in active competition with others engaged in sale of similar products in commerce, as aforesaid, among practically all the States—

Represented, through catalogs and advertising matter to which it gave wide distribution in various States, that sales of such markers, monuments, memorials, and mausoleums were made by it direct from quarry to cemetery and that it designed, manufactured, and erected memorials in any cemetery in the United States, and was one of the few erectors of monuments and memorials which owned quarries and a manufacturing plant at Barre, Vt., and made sales direct to cemetery lot owners, and that it was operating its quarry and finishing plant and that all work turned out by it was manufactured and finished by craftsmen in the plant and shops which it operated, and that its quarrying and manufacturing facilities placed it in a position to execute the highest grade of memorial work at the lowest possible cost, and illustrated its catalog and advertising with apparent pictures of the plant in active operation and men at work in its quarry;

Facts being that, while business in question had been established over 80 years ago by grandfather of president of said corporation, and continuously carried on in family since that time, and said corporation did own a granite quarry and fully equipped plant at Barre, suitable for the finishing of granite parts for grave markers, and maintained an office in the plant building, in charge of the corporate vice president and treasurer, under whose direct supervision work produced for it as below set forth was gotten out, no granite had been produced from said quarry nor the finishing plant operated for some 5 or 6 years or more last past, and granite parts for grave markers, monuments, memorials, and mausoleums sold by it were produced for it by proprietors of finishing plants other than that owned by it, as aforesaid, and from another quarry, or quarries, and, while catalogs and other advertising aforesaid were gotten out when it was producing granite from its own quarries and operating its factory and finishing plant at Barre, it continued to distribute from supply thereof remaining, after discontinuance of operation, such catalogs and advertising to prospective customers in the various States, and reprints thereof after exhaustion of original supply;

With capacity and tendency to mislead and deceive purchasing public, through representations that it was selling direct from quarry to cemetery and was prepared to render complete service in sale of its said grave markers, monuments, memorials, and mausoleums, many purchasers of which products have preference for buying same directly from the quarry and the

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manufacturer as securing them an advantage in lower prices and benefit of services not available in making such purchases through middlemen or wholesalers, and to cause members of public to purchase said various products from it in the mistaken belief that such grave markers, monuments, memorials, and mausoleums had been made from granite quarry operated by it and finished in a plant which it operated, and with result that trade was diverted unfairly to it from its competitors in commerce: Held, That said acts and practices, and statements and representations, under the circumstances as above set forth, were all to the prejudice and injury of the public and competitors, and constituted unfair and deceptive acts and practices in commerce.

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

*Mr. William L. Pencke* for the Commission.

*Burke & Desmond*, of Buffalo, N. Y., 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 McDonnell & Sons, 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, McDonnell & Sons, Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal office and place of business at 858-860 Main Street, Buffalo, N. Y.

PAR. 2. Said respondent is now, and for many years last past has been, engaged in the sale and distribution of grave markers, monuments, memorials, and mausoleums in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes said products, when sold, to be shipped 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.

Respondent maintains and at all times mentioned herein has maintained a course of trade in said grave markers, monuments, memorials, and mausoleums in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The respondent, McDonnell & Sons, Inc., in connection with the sale and distribution of said grave markers, monuments, memorials, and mausoleums, and for the purpose of inducing the purchase thereof, makes certain representations in its catalogs, pamphlets,

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## Complaint

advertising literature, and otherwise, of which the following are typical examples;

Direct from Quarry to Cemetery.

We design, manufacture and erect memorials complete in any cemetery in the United States. \* \* \*

In one of its pamphlets appear illustrations of respondent's marble quarry and finishing plant situated at Barre, Vt., which illustrations create the impression of said quarry and finishing plant being in active operation. Other representations made in said advertising literature are to the effect that—

McDonnell & Sons are one of the few erectors of monuments and memorials owning quarries and a manufacturing plant at Barre, Vt. and selling direct to the cemetery lot owner. All work is finished in the firm's plant at Barre, Vt., and shipped direct to all parts of the United States. \* \* \*

Manufactured by craftsmen at the McDonnell finishing plant and shops \* \* \*. All work is finished in the firm's plant at Barre, Vt.

Our quarrying and manufacturing facilities place us in a position to execute the highest grade of memorial work at the lowest possible cost, and our setters are men of ability and experience. \* \* \*

PAR. 4. All of said statements, together with similar statements appearing in respondent's advertising literature, purport to represent to the purchasing public that the material used in respondent's grave markers, monuments, memorials, and mausoleums is secured from the quarry owned by respondent; that all monuments or memorials are sold direct from respondent's quarry to the ultimate consumer; that the completing and finishing of all work is performed in respondent's own finishing plant at Barre, Vt., and shipped direct from said plant to the purchasers thereof. Respondent further represents and implies that all of the several steps in the manufacture of monuments and memorials from the time the marble is quarried from respondent's quarry until the delivery of the finished product to the ultimate purchaser are taken exclusively in respondent's own quarry and finishing plant.

PAR. 5. In truth and in fact, said statements and representations were and are false and misleading. While it is true that the respondent owns a quarry and a finishing plant at Barre, Vt., said quarry has not been in operation since the year 1928 and said finishing plant has not been in operation since the year 1932. In truth and in fact, all of respondent's supply of marble is purchased from other quarries and all work is finished by other independent manufacturers and finishing plants.

PAR. 6. Many purchasers of grave markers, monuments, memorials, and mausoleums show a preference for products which may be pur-

chased directly from the quarrier and manufacturer in the belief that in so purchasing they may have the advantage of cheaper prices and the benefit of services which would not be available if said purchases would have to be made through middlemen or wholesalers. The respondent by representing to the purchasing public that it is selling its products direct from quarry to cemetery and rendering one complete service leads the purchasing public into the mistaken belief that it in fact furnished the material for said products from its own quarry and completes the manufacture in its own finishing plant.

PAR. 7. The use by the respondent of the foregoing false, misleading, and deceptive statements and representations hereinabove set forth in selling said grave markers, monuments, memorials, and mausoleums had, and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into buying said grave markers, monuments, memorials, and mausoleums in the erroneous beliefs that such representations are true and that respondent is in fact using marble from its own quarry and manufacturing and finishing its products in its own finishing plant.

PAR. 8. 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 October 4, 1939, issued its complaint in the above-entitled proceeding and caused same to be served upon the respondent, McDonnell & Sons, Inc., a corporation, charging it 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 an answer thereto by said respondent, William C. Reeves, an examiner for said Commission, was designated and appointed to take testimony and to receive evidence in said proceeding, and, pursuant thereto, a hearing was held at Buffalo, N. Y., on November 13, 1939, at which hearing testimony was introduced and evidence received in support of the charges stated in the complaint at the instance of William L. Pencke, counsel for the Commission, and in opposition thereto by Thomas C. Burke, and Charles S. Desmond, of the firm of Burke & Desmond, of Buffalo, N. Y., which 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, briefs by counsel for the Commission and counsel for the respondent and the oral argument of the respective counsel 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, McDonnell & Sons, Inc., is a corporation organized under the laws of the State of New York, with principal places of business at Buffalo in said State and at Barre, in the State of Vermont. It is engaged in the business of the sale of grave markers, monuments, memorials, and mausoleums, and the installation of same, in cemeteries in various States of the United States. Such sales are made by respondent direct to owners of lots in cemeteries. Respondent causes the markers, monuments, memorials, and mausoleums sold by it to be transported, when sold, from Barre in the State of Vermont, or from Buffalo, in the State of New York, through and into various other States of the United States and into the District of Columbia 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 similar grave markers, monuments, memorials, and mausoleums in commerce among practically all of the States of the United States.

PAR. 2. The business conducted by the respondent was established about 82 years ago by the grandfather of the president of the respondent, and at all times since it was established, such business has been carried on first by the original proprietor and since his death by his descendants, and all the capital stock of the respondent has been owned by descendants of such original proprietor, except that the widow of one of such descendants was active in the business as an officer and stockholder for a number of years after the death of her husband. The main sales office of the respondent is located at Buffalo, N. Y. It owns a granite quarry, consisting of a 40-acre tract of land at Barre, Vt. It also owns a fully equipped plant located on a 4-acre tract of land at Barre, Vt., which plant is suitable for the finishing of granite parts of grave markers. No granite has been produced from such quarry since about 1931, and the finishing plant has not been operated since 1932, but respondent maintains an office in the

plant building, which office is in charge of the vice president and treasurer of respondent. Since 1932 granite parts for grave markers monuments, memorials, and mausoleums sold by respondent have been produced for respondent by proprietors of finishing plants other than that owned by respondent and from granite taken from the quarry operated by the firm of Wetmore & Morse, at Barre, Vt., except in a small number of instances in which the customer specified that the granite from another quarry be used, but in all instances the work produced for respondent by others has been gotten out under the direct supervision of the vice president and treasurer of respondent, located at its office at Barre, Vt.

PAR. 3. The respondent, in the course and conduct of its business, as set out in paragraphs 1 and 2 hereof, for the purpose of inducing members of the public to purchase the grave markers, monuments, memorials, and mausoleums, offered for sale and sold by it made use of catalogs and advertising matter which it gave wide distribution in various States which catalogs and advertising matter contained representations to the effect that sales of such markers, monuments, memorials, and mausoleums were made by respondent direct from quarry to cemetery; that respondent designed, manufactured, and erected memorials in any cemetery in the United States; that respondent was one of the few erectors of monuments and memorials which owned quarries and a manufacturing plant at Barre, Vt., and made sales direct to the cemetery lot owners; that respondent was operating its quarry and finishing plant and that all work turned out by it was manufactured and finished by craftsmen in the plant and shops operated by respondent; that the quarrying and manufacturing facilities of respondent placed it in a position to execute the highest grade of memorial work at the lowest possible cost. The catalogs and advertising were illustrated by what would appear to be pictures of the plant in active operation and with men at work at its quarry. At the time the original of these catalogs and pieces of advertising matter was gotten out by respondent, it was then producing granite from its own quarries and was operating its factory and finishing plant at Barre, Vt., but when such operations were discontinued by respondent it had on hand a supply of such catalogs and advertising matter which it continued to distribute to prospective customers in various States of the United States and when that supply was exhausted it had made reprints of same and continued their distribution.

PAR. 4. Many purchasers of grave markers, monuments, memorials, and mausoleums have a preference for such grave markers,

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## Order

monuments, memorials, and mausoleums which may be purchased directly from the quarrier and manufacturer in the belief that in so purchasing they may have an advantage of lower prices and the benefit of services which would not be available when purchases are made through middlemen or wholesalers. The representations made by respondent to the purchasing public to the effect that it has been selling grave markers, monuments, memorials, and mausoleums direct from quarry to cemetery and was prepared to render one complete service, have the capacity and tendency to mislead and deceive the purchasing public and to cause members of the public to purchase grave markers, monuments, memorials, and mausoleums from respondent in the mistaken belief that such grave markers, monuments, memorials, and mausoleums had been made from granite produced from a quarry operated by respondent and had been finished in a plant operated by respondent, and as a result trade has been diverted unfairly to respondent from its competitors in commerce between and among various States of the United States.

## CONCLUSION

The acts and practices of the respondent, and the statements and representations made by it, as herein set forth, have been, and are, all to the prejudice and injury of the public and to the competitors of respondent 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 respondent, testimony and other evidence taken before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by William L. Pencke, counsel for the Commission, and by Thomas C. Burke, counsel for the respondent, and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, McDonnell & Sons, 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 granite grave markers, monuments, memorials, and mausoleums in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

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Representing that products which are not made from granite obtained from a quarry owned by the respondent, are sold direct from the quarry to the ultimate purchaser; or that the granite from which such products are made is produced in a quarry owned and operated by the respondent; or that products which are not manufactured and finished in a plant owned, operated, or controlled by the respondent, are made or manufactured by the respondent.

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

## Complaint

IN THE MATTER OF  
THE HYDROSAL COMPANY

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

*Docket 4049. Complaint, Mar. 6, 1940—Decision, May 28, 1940*

Where a corporation engaged in sale and distribution of its "Hydrosal Liquid" and "Hydrosal Ointment," to purchasers in various other States and in the District of Columbia; in advertisements thereof which it disseminated and caused to be disseminated through the mails, by insertion in newspapers and periodicals having general circulation, and in circulars and other printed or written matter distributed in commerce, and by other means, and which were intended or likely to induce purchase of its said products—  
Represented, directly and by implication, that said products possessed remedial, curative, or healing properties with respect to eczema, piles, athlete's foot, and poison ivy, and with respect to those disorders characterized by or associated with pimples and with skin rashes, outbreaks, and itches, including foot and toe itches and skin itches generally, and that they possessed therapeutic properties of value in the treatment of said various ailments and conditions, in excess of temporary relief from itching symptom associated therewith, and were adopted by and used in many hospitals and also by many doctors;

Facts being they did not possess any remedial, curative, or healing properties for aforesaid ailments and conditions, nor possess any therapeutic properties of beneficial value in the treatment thereof in excess of affording temporary relief from the symptom of itching usually associated with or accompanying said diseases or disorders, by virtue of the emollient and astringent properties which they possessed and which might serve, at most, as palliatives for such temporary relief, and they had not been adopted by hospitals or doctors generally, and were not generally thus used, and representations used and disseminated by it as above set forth were grossly exaggerated, misleading, and untrue, and constituted false advertisements;

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 its said medicinal preparations as result of such statements, representations, and advertisements;

*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.

## 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 Hydrosal Co., a corporation, hereinafter referred to as respondent, has violated

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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 Hydrosal 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 located at 333 East Eighth Street, Cincinnati, Ohio. The respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing two medicinal preparations known as "Hydrosal Liquid" and "Hydrosal Ointment." In the course and conduct of its business, respondent causes said medicinal preparations, when sold, to be transported 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 herein mentioned 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 its aforesaid business, the respondent had 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 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 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:

Hydrosal has now become the favorite aid of thousands who formerly suffered from the itching and burning of eczema, dry, itching skin, piles, cracked, itching toes, surface pimples and other externally caused irritations.

Promotes healing.

First adopted by many doctors in hospitals.

It has aided thousands who formerly suffered from itching, burning eczema, itching skin and other externally caused skin irritations.

**SURFACE PIMPLES.** Thousands now clearing them with the aluminum ointment.

Tests in many hospitals show its remarkable power in clearing surface pimples and other externally caused skin irritations.

If you suffer from eczema, rash and other externally caused skin irritations, try the ointment used by many doctors and hospitals.

Thousands say Hydrosal brings amazingly fast, thorough relief.

Romance faded because her face was disfigured with ugly pimples. When they disappeared after applying Hydrosal, she knew they were only external.

Itching stops quickly. (Accompanied by illustrations of face, hand and foot, and the phrase, "Skin outbreaks, rashes \* \* \* eczema, foot itch \* \* \*")

Hydrosal a veritable blessing for relief of rashes, eczema, athlete's foot, pimples, poison ivy. Itching stops quickly, smarting, burning disappear, angry redness vanishes.

**STOPS ITCHING FACE.** (Accompanied by illustration upon which is superimposed the phrase "Skin outbreaks, rashes, eczema.")

**PAR. 3.** Through the use of the statements and representations hereinabove set forth and through the use of other statements and representations similar thereto but not specifically set forth herein, the respondent represents, directly and by implication, that the preparations designated "Hydrosal Liquid" and "Hydrosal Ointment" possess remedial, curative, or healing properties with respect to eczema, piles, athlete's foot, and poison ivy and with respect to those disorders characterized by or associated with pimples and with skin rashes, outbreaks, and itches, including foot and toe itches and skin itches generally; that said preparations possess therapeutic properties of value in the treatment of eczema, piles, athlete's foot, and poison ivy, and of those disorders characterized by or associated with pimples and with skin rashes, outbreaks, and itches, including foot and toe itches and skin itches generally, in excess of temporarily relieving the itching symptom associated therewith, and that said preparations were adopted by and used in many hospitals and also by many doctors.

The representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertisements. The preparations designated as "Hydrosal Liquid" and "Hydrosal Ointment" do not possess any remedial, curative, or healing properties with respect to eczema, piles, athlete's foot, or poison ivy, or for those disorders characterized by or associated with pimples or with skin rashes, outbreaks, or itches. Said preparations do not possess any therapeutic properties of beneficial value in the treatment of such diseases or disorders and possess no therapeutic value in connection therewith

in excess of affording temporary relief from the symptom of itching usually associated with or accompanying said diseases or disorders. Said preparations possess emollient and astringent properties which may serve at most as palliatives to temporarily relieve itching but possess no other therapeutic value. Respondent's said preparations have not been adopted by hospitals or doctors generally and are not generally used in hospitals or by doctors.

PAR. 4. The use by the respondent of the foregoing deceptive and misleading statements and representations and false 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 respondent's medicinal preparations as a result of such statements, representations and advertisements.

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 March 6, 1940, issued and thereafter served its complaint in this proceeding upon respondent, The Hydrosal 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 April 11, 1940, the 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 now being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

#### FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Hydrosal 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 located at 333 East Eighth Street, Cincinnati, Ohio. The respondent is now, and for more than 2 years last past has been, engaged in the business of selling and distributing two medicinal preparations known as "Hydrosal Liquid" and "Hydrosal Ointment." In the course and conduct of

its business, respondent causes said medicinal preparations, when sold, to be transported 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 herein mentioned 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 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 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 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:

Hydrosal has now become the favorite aid of thousands who formerly suffered from the itching and burning of eczema, dry, itching skin, piles, cracked, itching toes, surface pimples and other externally caused irritations.

Promotes healing.

First adopted by many doctors in hospitals.

It has aided thousands who formerly suffered from itching, burning eczema, itching skin and other externally caused skin irritations.

Surface pimples. Thousands now clearing them with the aluminum ointment.

Tests in many hospitals show its remarkable power in clearing surface pimples and other externally caused skin irritations.

If you suffer from eczema, rash and other externally caused skin irritations, try the ointment used by many doctors and hospitals.

Thousands say Hydrosal brings amazingly fast, thorough relief.

Romance faded because her face was disfigured with ugly pimples. When they disappeared after applying Hydrosal, she knew they were only external.

Itching stops quickly. (Accompanied by illustrations of face, hand and foot, and the phrase, "Skin outbreaks, rashes \* \* \* eczema, foot itch \* \* \*").

Hydrosal a veritable blessing for relief of rashes, eczema, athlete's foot, pimples, poison ivy. Itching stops quickly, smarting, burning disappear, angry redness vanishes.

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Stops Itching Face. (Accompanied by illustration upon which is superimposed the phrase "Skin outbreaks, rashes, eczema.")

PAR. 3. Through the use of the statements and representations hereinabove set forth and through the use of other statements and representations similar thereto but not specifically set forth herein, the respondent represents, directly and by implication, that the preparations designated "Hydrosal Liquid" and "Hydrosal Ointment" possess remedial, curative, or healing properties with respect to eczema, piles, athlete's foot, and poison ivy and with respect to those disorders characterized by or associated with pimples and with skin rashes, outbreaks, and itches, including foot and toe itches and skin itches generally; that said preparations possess therapeutic properties of value in the treatment of eczema, piles, athlete's foot, and poison ivy, and of those disorders characterized by or associated with pimples and with skin rashes, outbreaks, and itches, including foot and toe itches and skin itches generally, in excess of temporarily relieving the itching symptom associated therewith, and that said preparations were adopted by and used in many hospitals and also by many doctors.

The representations used and disseminated by the respondent in the manner above described are grossly exaggerated, misleading, and untrue, and constitute false advertisements. The preparations designated as "Hydrosal Liquid" and "Hydrosal Ointment" do not possess any remedial, curative, or healing properties with respect to eczema, piles, athlete's foot, or poison ivy, or for those disorders characterized by or associated with pimples or with skin rashes, outbreaks, or itches. Said preparations do not possess any therapeutic properties of beneficial value in the treatments of such diseases or disorders and possess no therapeutic value in connection therewith in excess of affording temporary relief from the symptom of itching usually associated with or accompanying said diseases or disorders. Said preparations possess emollient and astringent properties which may serve at most as palliatives to temporarily relieve itching but possess no other therapeutic value. Respondent's said preparations have not been adopted by hospitals or doctors generally and are not generally used in hospitals or by doctors.

PAR. 4. The use by the respondent of the foregoing deceptive and misleading statements and representations and false 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 respondent's medicinal preparations as a result of such statements, representations, and advertisements.

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## Order

## 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 the respondent, in which answer respondent admits all of 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

*It is ordered*, That the respondent, The Hydrosal 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 respondent's medicinal preparations now designated "Hydrosal Liquid" and "Hydrosal Ointment," or any other 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 preparations, which advertisements represent, directly or through implication, that respondent's said preparations possess any remedial, curative, or healing properties with respect to eczema, piles, athlete's foot, poison ivy, or disorders characterized by or associated with pimples, skin outbreaks, or itches; or that said preparations possess any therapeutic value in the treatment of such conditions in excess of affording temporary relief from the symptom of itching usually accompanying or associated with such disorders; or that said preparations are in general use by the medical profession or hospitals.

*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  
NEW YORK DIESEL INSTITUTION, INC., HENRY M. KRAM-  
RATH, JOHN L. SNIDER, EVERETT K. PANGBURN, RICH-  
ARD B. CORNELL, AND FRANK F. HAYWARD, INDIVID-  
UALLY AND AS OFFICERS THEREOF

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

*Docket 3785. Complaint, May 9, 1939—Decision, May 29, 1940*

Where a corporation, engaged along with an affiliate, in sale and distribution in commerce among the various States and in the District of Columbia of courses of study and instruction concerning Diesel engines and other trade subjects, conducted in whole or in part by correspondence, to various purchasers in other States and in said District, in active and substantial competition with others engaged in sale and distribution of similar courses of study and of courses of study and instruction intended for preparing students for various positions, employments, trades, callings, and professions and conducted in whole or in part by correspondence—

- (a) Represented to prospective and potential students that it would make available employment with good pay to those students who completed its courses, through such statements in advertisements as "Wanted: Diesel Operators—Installation, Sales, Service, Trouble Shooters, Engineering, All Departments, to Train Immediately for Jobs," and "Become a Diesel Expert—Mechanically minded men of good character to prepare for service in this vast new industry. Our aim—a job for every graduate. Day, evening and home study, with practical shop work at one of our completely equipped institutes. Many students now in splendid, well paying positions," and through sales representatives, and in effect that courses of study offered by it, if diligently pursued by student of average ability, were such that they would enable such student, without other experience or training, to become qualified as a Diesel engine expert, operator, or skilled workman on Diesel engines;

Facts being it merely had instructions courses for sale, had no regular full- or part-time work to offer to prospective students or students who completed its courses, did not obtain employment for any student who was a graduate of its school but failed, in many instances, to be of any assistance to its graduates when requested to do so, and its said courses were not such as would qualify a student of average ability, as aforesaid, and without other experience or training, as a Diesel engineer, etc.;

- (b) Represented, through its advertisements and sales representatives, that its offer of training was made only to a limited number of students in any given territory and to persons having special qualifications for carrying on courses of study offered by it, facts being its offers were made to general public and all students who could pay the price of the course or installments thereon were accepted; and
- (c) Represented, through its advertisements and sales representatives, that classes including shop training with Diesel engines and machinery installed in its buildings, would be held in various localities other than that in which

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## Complaint

it had its principal office and place of business and under competent instructors, facts being that no such training was offered at other points and such instruction as was advertised at said point was of little value and not given by instructors of competence;

With result that a substantial number of prospective students believed said representations to be true and in reliance thereon, were thereby induced to purchase its said courses of instruction, and many competitors in interstate commerce in educational field of instruction in Diesel engineering and who do not make use of unfair representations in aforesaid and other trade subjects, and of methods of advertising similar to those employed by it, were injured by unfair method thus employed by it, and substantial number of students, believing said representations to be true and in reliance thereon, enrolled for said courses, with effect of thereby diverting business unfairly to it from competitors 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. Randolph Preston*, trial examiner.

*Mr. Curtis Shears* for the Commission.

*Mr. Bernard A. Green*, of Jersey City, N. J., for New York Diesel Institution, Inc.

## 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 New York Diesel Institution, Inc., a corporation, and Henry M. Kramrath, John L. Snider, Everett K. Pangburn, Richard B. Cornell, Frank F. Hayward, individually and as officers of said corporation, hereinafter referred to as respondents, have been and are violating 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, New York Diesel Institution, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 47 Rector Street, city of Newark, State of New Jersey. Respondent Henry M. Kramrath is the president of said corporation, said John L. Snider is its vice president, said Everett K. Pangburn is its treasurer, said Richard B. Cornell is its national sales manager, and said Frank F. Hayward is manager 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.

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PAR. 2. Respondent New York Diesel Institution, Inc., is now, and has been for several years last past, 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 concerning Diesel engines, air-conditioning and other trade subjects, which said courses of study and instruction are pursued in whole or in part by correspondence through the medium of the United States mails. Said respondent corporation operates and has for some time past operated resident and correspondence schools at Newark, N. J., and Albany, N. Y., for which it solicits students through agents and advertisements in various States of the United States and in the District of Columbia. Said respondent corporation in the course and conduct of its said business caused and now causes its said courses of study and instruction to be transported from its said place of business in Newark, N. J., to, into and through States of the United States other than New Jersey to various purchasers thereof in such other States and in the District of Columbia. During the time mentioned herein, the respondent New York Diesel Institution, Inc., has been in active and substantial competition with other corporations and with firms and individuals located in various States of the United States 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 concerning Diesel engines, air-conditioning 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 in whole or in part by correspondence.

PAR. 3. Respondents 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. One such representation has been made by the use of advertisements under the heading: "Wanted: Diesel Operators" 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, give 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 said respondent corporation is the following:

**WANTED: DIESEL OPERATORS**

Installation, Sales, Service, Trouble Shooters, Engineering, All Departments,  
to Train Immediately for Jobs.

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## BECOME A DIESEL EXPERT

Mechanically minded men of good character, to prepare for service in this vast new industry. Our aim—a job for every graduate. Day, evening and home study, with practical shop work at one of our completely equipped institutes. Many students now in splendid, well paying positions. Low tuition with small monthly payments. Vocational advisor in Calais for one week only to select a limited number of men for this work. Write immediately for complete information to H. S. Sutton, care Calais Advertiser.

## NEW YORK DIESEL INST., INC.

Albany, N. Y., Newark, N. J., and Boston, Mass.

Respondent, through its sales representatives, further represents that employment is available with good pay and promises and has promised for some time last past to secure and aid in securing said employment for its graduates. That a job is offered the prospective student at the completion of his training is further implied by the information requested on a questionnaire used by respondent for enrolling students, much of which has no special bearing upon the applicant's specifications to take the courses offered. Among the inquiries made in said questionnaire are the following:

Are you willing to accept work in a foreign country?

Have you ever handled crews?

If you qualify for this enrollment are you willing to allow this institution to use your name as a representation in your district when you are employed in the Diesel Industry?

In truth and in fact, respondents merely have instruction courses for sale and have no regular full or part-time work to offer to prospective students or to students who complete their courses.

PAR. 4. Respondents, by use of said advertisements and by other statements of like effect in advertisements, or by salesmen, represent that their offers to enroll students for training are made to a limited number from a community or to persons having special qualifications, or that such offers are otherwise limited to students capable of carrying on the training successfully to the end that graduates will be a credit to the industry. Examples of statements to this effect are the following:

For the protection of the Institution and the student the Institution reserves the right to request the return of all lessons, binders, or any school materials in his possession and to refund all moneys, less entrance fee, to the student if the school decides that the student is not capable of carrying on this training successfully. It is the purpose of the Institution to graduate only those who will be a credit to the industry.

In truth and in fact, respondents' offers are not made only to a limited number and no special selection of students is made by respondents. Solicitation and acceptance of students are limited generally speaking only by the number of prospects available.

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PAR. 5. Respondents, through advertising matter concerning their courses of instruction and through their sales representatives in selling said courses, make and have made for some time last past many exaggerated and misleading statements and representations in regard to their schools to the effect that classes, including shop training with Diesel machinery installed for this purpose, would be held locally under competent instructors, thus enabling students to finish the entire course locally. Among such representations is the following: That respondents had already opened a school in Providence, R. I., and that the school would be fully equipped with appropriate machinery and able Diesel teachers.

In truth and in fact, the representations referred to are misleading in that they are greatly exaggerated and not accurate statements of the facts involved. Respondents do not hold classes locally, including shop training with Diesel machinery installed for this purpose, so as to enable students to finish their entire course locally. Respondents had not and have not opened a school, fully equipped with appropriate machinery and able Diesel teachers, at Providence, R. I.

PAR. 6. 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 in commerce as herein set out, has had and now has the tendency and capacity to and does mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations as set out in paragraphs 3 to 5, inclusive, 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 positions, employments, trades, callings, and professions, including courses of the same general kind as those offered by respondents.

There are among 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 and in the District of Columbia.

PAR. 7. The above acts and practices 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 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 9th day of May 1939, issued its complaint against respondents New York Diesel Institution, Inc., a corporation, and Henry M. Kamrath, John L. Snider, Everett K. Pangburn, Richard B. Cornell, and Frank F. Hayward, individually and as officers of said corporation, charging them with the use of 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, and thereafter served its complaint upon the respondent New York Diesel Institution, Inc., a corporation. Complaint was not served upon the individual respondents and their whereabouts are to the Commission unknown.

After the issuance of said complaint and the filing of answer on May 19, 1939, by respondent, New York Diesel Institution, Inc., testimony and other evidence in support of the allegations of said complaint were introduced by Curtis Shears, attorney for the Commission, and in opposition to the allegations of the complaint by Bernard A. Green, attorney for the respondent, New York Diesel Institution, Inc., before Randolph Preston, a duly appointed trial examiner of said Commission, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

On July 31, 1939, with the permission of the Commission, the answer first filed was withdrawn and an answer admitting all the material allegations of the complaint was filed by respondent, New York Diesel Institution, Inc. No answers were filed or appearances entered on behalf of the individual respondents herein.

Thereafter the proceeding regularly came on for final hearing before the Commission as to the respondent, New York Diesel Institution, Inc., on the said complaint, the answer thereto, testimony and other evidence and brief in support of the complaint (said 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, New York Diesel Institution, 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 New Jersey with its principal office and place of business located at 47 Rector Street, in the city of Newark, State of New Jersey.

PAR. 2. Said respondent is now and for several years last past has been engaged in the sale and distribution in commerce between and among various States of the United States and in the District of Columbia of courses of study and instructions concerning Diesel engines and other trade subjects, which said courses of study and instruction are conducted in whole or in part by correspondence through the medium of the United States Mails. Said respondent has had as an affiliate, for some time past, a similar school the New York Diesel Institution of Albany, N. Y., a separate corporation, which in July 1937, transferred its sales staff and student contracts to said respondent.

Prior to July 20, 1938, Henry M. Kramrath, John L. Snider, Everett K. Pangburn, Richard B. Cornell, and Frank F. Hayward were in active control of the management of said respondent but on November 10, 1938, Mr. W. D. Dawson, who is now president of respondent corporation, was placed in full charge of its affairs and continued in full charge up to date of the hearings in this proceeding.

Said respondent corporation, in the course and conduct of its business, has for some years past caused and now causes its courses of study and instruction to be transported from its place of business in Newark, N. J., to and through various States of the United States other than the State of New Jersey, to various purchasers thereof in such other States and in the District of Columbia.

PAR. 3. During the times mentioned herein, the respondent has been in active and substantial competition with other corporations and with firms and individuals located in various States of the United States and in the District of Columbia engaged in the sale and distribution of courses of study concerning Diesel engines and other trade subjects, and also of courses of study and instruction intended for preparing students for various positions, employments, trades, callings and professions, all of which are conducted in whole or in part by correspondence.

PAR. 4. Respondent, in the soliciting of students to enroll in its said courses, has made many misleading representations to the general effect that it will procure jobs for students in addition to giving

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## Findings

courses of instruction as aforesaid. Among such representations used by respondent in its advertisements to the public are the following:

**WANTED: DIESEL OPERATORS**

Installations, Sales, Service, Trouble Shooters, Engineering, All Departments, to Train Immediately for Jobs.

**BECOME A DIESEL EXPERT**

Mechanically minded men of good character to prepare for service in this vast new industry. Our aim—a job for every graduate. Day, evening and home study, with practical shop work at one of our completely equipped institutes. Many students now in splendid, well paying positions. Low tuition with small monthly payments. Vocational advisor in Calais for one week only to select a limited number of men for this work. Write immediately for complete information to H. S. Sutton, care Calais Advertiser.

**NEW YORK DIESEL INSTITUTE, INC.**

Albany, N. Y.

Newark, N. J.

Boston, Mass.

Respondent has never conducted any such school in Boston, Mass.

Said respondent, through the above advertisements and others of similar character and import, and also through its sales representatives, has represented to prospective and potential students that it will make available employment with good pay to those students who complete its courses. Respondents merely have instruction courses for sale, and have no regular full or part time work to offer to prospective students or to students who complete said courses, and respondent did not obtain employment for any student who was a graduate of its school, but failed in many instances to be of any assistance to its graduates when requested to do so.

PAR. 5. In addition to the misrepresentations made to prospective students by the respondent as aforesaid, the respondent represented through its advertisements and its sales representatives that its offer of training was made only to a limited number of students in any given territory, and to persons having special qualifications for carrying on the courses of study offered by respondent; whereas, in truth and in fact, respondent's offers were made to the general public, and all students who could pay the price of the course, or installments thereon, were accepted.

Respondent further represented through its advertisements and by its sales representatives, that classes including shop training with Diesel engines and machinery installed in its buildings would be held in various localities other than Newark, N. J., under competent instructors; whereas, in truth and in fact, no such training was offered other than at Newark, N. J., and the said instruction so

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afforded at this point was of little value and was not given by competent instructors.

PAR. 6. The courses of study offered by said respondent, if intelligently pursued by a student of average ability, are not such as will qualify said student, without other experience or training, as a Diesel engineer, expert operator or skilled workman on Diesel engines, in a Diesel factory or in the operation of a Diesel engine.

PAR. 7. A substantial number of prospective students believed the representations set out herein to be true and in reliance thereon were thereby induced to purchase said respondents' courses of instruction.

PAR. 8. Said respondent has had many competitors in interstate commerce in the educational field of instruction in Diesel engineering, who do not make use of unfair representations in Diesel engines and other trade subjects and methods of advertising similar to those employed by the respondent, and such competitors were and are injured by the unfair methods thus employed by said respondent and a substantial number of students, believing the aforesaid representations to be true and in reliance on said representations, have enrolled for said courses and business has thereby been unfairly diverted from said competitors to said respondent.

## 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 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 testimony and other evidence in support of the allegations of the complaint and in opposition thereto, and the answer of respondent, New York Diesel Institution, Inc., a corporation, in which answer said 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, New York Diesel Institution, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with

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the offering for sale, sale and distribution of courses of study concerning Diesel engines and other trade subjects and other courses of study and instruction intended to prepare students for various positions, employments, trades, callings, and professions, which are conducted in whole or in part by correspondence, in interstate commerce or in the District of Columbia, do forthwith cease and desist:

1. From representing directly, indirectly or by inference that employment is available with good pay to any student who completes one of its courses and that respondent will procure or aid in the procuring of said employment for students taking one of its courses of instruction.

2. From representing directly, indirectly or by inference to prospective students that its offer of training is made only to a limited number of students in any given territory and to persons having special qualifications for carrying on the courses of study offered by respondent.

3. From representing directly, indirectly or by inference that classes including ship training with Diesel engines and machinery installed in its buildings will be held in various localities other than Newark, N. J., under competent instructors.

4. From representing directly, indirectly or by inference that the courses of study offered by it, if diligently pursued by a student of average ability, are such that they will enable such student, without other experience or training, to become qualified as a Diesel engineer, expert, operator, or skilled workman on Diesel engines.

*It is further ordered,* That the complaint herein be, and the same hereby is, dismissed as to Henry M. Kramrath, John L. Snider, Everett K. Pangburn, Richard B. Cornell and Frank F. Hayward, for the reason that the complaint and notice of hearings were not served upon said individual respondents because their whereabouts were unknown.

*It is further ordered,* That the respondent New York Diesel Institution, Inc., shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF  
UNITED STATES BUSINESS CARD COMPANY, UNITED  
STATES STATIONERY CORPORATION, LEWIS WEIS-  
MAN, INDIVIDUALLY AND TRADING AS INCOME  
RECORD PUBLISHING COMPANY

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

*Docket 3784. Complaint, May 6, 1939—Decision, May 31, 1940*

Where two corporations, and an individual who was president and treasurer thereof and majority stockholders and director, and controlled sales policy and acts and practices of corporation still active as below set forth, engaged for a number of years in sale of stationery and business forms to buyers in the District of Columbia and in other States, in substantial competition with others engaged in sale and distribution of similar products for similar purposes in commerce as aforesaid, and who neither misrepresent their goods as approved by the United States Government nor themselves as the world's largest manufacturers of business cards exclusively—

- (a) Represented that certain of their business forms were approved by the United States Government through placing thereon the phrase "U. S. Approved," facts being none of the forms sold by them was ever approved by or made according to the specifications of the Government or any agency thereof, and they were not sellers of merchandise approved by the United States Government, purchase of which many buyers prefer; and

Where one of said corporations which, as aforesaid, subsequently became inactive—

- (b) Represented that it was the world's largest manufacturer of business cards exclusively, facts being neither it nor its successor made such cards exclusively during period of time concerned, and corporation in question was not world's largest manufacturer of such products during entire period of time involved;

With capacity and tendency to mislead and deceive a substantial portion of purchasing public into erroneous and false belief that such representations were true and to induce number of said public to buy substantial quantity of said stationery and business forms which, lacking such belief, they would not purchase, and with result, as direct consequence of such belief, induced by representations as aforesaid, that number of said public were caused to buy substantial quantities of said products, and trade was diverted unfairly to them from their competitors aforesaid, who truthfully advertise their stationery and forms:

*Held*, That such acts and representations were to the prejudice and injury of the public and competitors, and constituted unfair methods of competition in commerce and unfair and deceptive practices therein.

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

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

*Mr. R. Robert Hochman*, of New York City, for respondents.

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Complaint

## 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 United States Business Card Co., a corporation, United States Stationery Corporation, a corporation, and Lewis Weisman, individually and trading as Income Record Publishing 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. Respondent United States Business Card Co. is a corporation organized and existing under and by virtue of the laws of the State of New York and having its principal office and place of business in the city of New York, State of New York. Respondent United States Stationery Corporation is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and having its office and principal place of business in the city of Elizabeth, State of New Jersey. Respondent Lewis Weisman is president and treasurer of both of said corporate respondents and directs and controls the sales policies and other acts and practices herein described of said corporate respondents. Respondent Lewis Weisman also does business under the firm name and style of Income Record Publishing Co., having his office and principal place of business in the city of Elizabeth, in the State of New Jersey. Respondents are now, and have been for a number of years last past, engaged in the business of selling and distributing stationery and business forms in commerce among and between the various States of the United States and in the District of Columbia. Respondents cause and have caused said stationery and business forms, when sold, to be transported from their aforesaid places of business to the purchasers thereof at their respective points of location in various States of the United States, other than the State of the origin of the shipment thereof, and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said stationery and business forms among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondents are now, and during all the times mentioned herein have been, 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 individuals and

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with firms and partnerships engaged in the sale and distribution of similar merchandise. Among said competitors are many who truthfully advertise and represent their merchandise and who do not make any false and misleading statements and representations in connection with the sale and distribution of their merchandise.

PAR. 3. In the course and conduct of their business as aforesaid, respondents, in soliciting the sale of and selling their merchandise, have caused pamphlets, business forms, and other printed matter to be distributed among and between the various States of the United States and in the District of Columbia. On certain of said business forms and other printed matter, respondents place or cause to be placed the term "U. S. Approved." The use of this term by the respondents in the matter aforesaid serves as a representation by respondents that their said business forms have been approved by the United States Government or an agency thereof. In truth and in fact said business forms of the respondents have not been approved by the United States Government or any agency thereof.

PAR. 4. There is now, and has been during all the times mentioned herein, a preference on the part of a substantial number of the purchasing public situated in various States of the United States and in the District of Columbia for merchandise, including business forms, which has been approved by the United States Government or an agency thereof because of their belief that such merchandise has been examined by representatives of the United States Government and has been found to be of good quality and material and desirable for use.

PAR. 5. In the course and conduct of its business as aforesaid, respondent, United States Business Card Co., has distributed pamphlets and other printed matter among and between the various States of the United States and the District of Columbia on which was printed the statement "World's Largest Manufacturers of Business Cards Exclusively." The use of this statement by said respondent in the manner aforesaid serves as a representation that said respondent is and was the world's largest manufacturer engaged exclusively in the manufacture of business cards. In truth and in fact the said respondent is not and was not the world's largest manufacturer engaged exclusively in the manufacture of business cards.

PAR. 6. The use by the respondents of the aforesaid false and misleading statements and representations, in the manner aforesaid, has the capacity and tendency to, and does, mislead and deceive members of the purchasing public situated in various States of the United States and in the District of Columbia into the erroneous and mistaken belief that the aforesaid statements and representations are true and into the purchase of respondents' merchandise because of said erroneous

and mistaken belief. As a direct result thereof, trade in commerce, as commerce is defined in the Federal Trade Commission Act, has been diverted unfairly to the respondents from their competitors who do not falsely represent their respective merchandise. 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. 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 6th day of May 1939, issued and served its complaint in this proceeding upon respondents United States Business Card Co., a corporation, United States Stationery Corporation, a corporation, and Lewis Weisman, individually and trading as Income Record Publishing Co., 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 thereto, testimony and other evidence in support of the allegations of the complaint were introduced by L. E. Creel, Jr., attorney for the Commission, and in opposition thereto by R. Robert Hochman, 233 Broadway, New York, N. Y., attorney for the respondents, before John W. Addison, an examiner of the Commission duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, oral argument not having been requested; and the Commission, having duly considered the 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

PARAGRAPHS 1. Respondent, Lewis Weisman, is an individual trading under the firm name and style of Income Record Publishing Co.

with office and principal place of business at Elizabeth, N. J. He is also president and treasurer of respondents' United States Business Card Co. and United States Stationery Corporation. The former of these is a New York Corporation, inactive since sometime in 1937, with office and principal place of business in the State and city of New York; the latter is a New Jersey corporation, successor to said New York corporation, with office and principal place of business at Elizabeth, N. J. Said Weisman, besides being president and treasurer of each corporation, owns a majority of its stock and directs and controls its sales policy and other acts and practices herein described.

PAR. 2. Respondents, excepting that the United States Business Card Co. became inactive in 1937, as aforesaid are, and have been for several years last past, engaged in the business of selling stationery and business forms to buyers in the District of Columbia and in States of the United States other than the States of New York and New Jersey, and of shipping and transporting the goods so sold from their said places of business into and through other States and said District and there delivering them to the buyers.

PAR. 3. Respondents are in substantial competition with other corporations, partnerships, and individuals engaged in the sale and distribution of similar products used for similar purposes in commerce between and among the various States of the United States who neither misrepresent their goods as approved by the United States Government nor themselves to be "world's largest manufacturers of business cards exclusively."

PAR. 4. Respondents, in promoting the sale of goods in commerce as aforesaid, did, for several years prior to the early part of 1939, represent that certain of their business forms were approved by the United States Government by placing on said forms the phrase "U. S. Approved." The respondent United States Business Card Co. also represented that it was the world's largest manufacturer of business cards exclusively.

PAR. 5. In truth and in fact, none of the business forms sold by the respondents was ever approved by or made according to the specifications of the United States Government or any agency thereof. Neither the United States Business Card Co. nor its successor manufactured business cards exclusively during all the period of time in which it represented that it did manufacture business cards exclusively. The United States Business Card Co. was not the world's largest manufacturer of business cards during the entire period of time it represented that it was the world's largest manufacturer of such cards.

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PAR. 6. Many buyers prefer merchandise that has been approved by the United States Government.

PAR. 7. The false and misleading representations made by respondents, 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 stationery and business forms 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 false belief, induced by the representations of respondents as aforesaid, to cause a number of the purchasing public to buy substantial quantities of said stationery and business forms, with the result that trade has been diverted unfairly to respondents from their said competitors who truthfully advertise and represent their stationery and business forms.

#### CONCLUSION

Said acts and representations of respondents Lewis Weisman, United States Business Card Co., and United States Stationery Corporation have been and are to the prejudice and injury of the public and of respondents' competitors, and constitute unfair methods of competition in commerce and unfair and deceptive 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 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 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 States Business Card Co., a corporation; United States Stationery Corporation, a corporation; their officers, representatives, agents, and employees; and Lewis Weisman, individually and trading as Income Record Publishing 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 stationery and business forms in commerce, as

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“commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From representing that said products are approved by, or manufactured according to specifications of, the United States Government or any agency thereof.

*It is further ordered,* That the respondent United States Business Card 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 printed business cards in commerce, as “commerce” is defined in the Federal Trade Commission Act, do forthwith cease and desist:

From representing that it is the world’s largest manufacturer of business cards.

From representing that it is the world’s largest manufacturer which is engaged solely in the manufacture of business cards.

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

## Syllabus

IN THE MATTER OF  
SOUTHERN VITRIFIED PIPE ASSOCIATION ET AL.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION  
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3863. Complaint, Aug. 8, 1939<sup>1</sup>—Decision, May 31, 1940*

Where nine corporations engaged in the manufacture and sale of vitrified clay sewer pipe, and members of an association which included most of the manufacturers of said product located in that part of the United States lying east of the Mississippi and south of the Ohio and Potomac Rivers, and who (1) sold product in question, important item in modern construction, sanitation, and community development and frequently bought and used by municipalities and by State and Federal governments for improvement of their own properties and by governmental emergency relief agencies, such as the Works Progress Administration of the United States Government, and other agencies dealing with the relief of unemployment and other results of the depression, direct to municipalities, counties, States and the Federal Government, and to dealers at the same prices, terms, and conditions of sale, and direct to large contractors, (2) had control of a large, valuable, and continuous trade and commerce among the several States in such product, large quantities of which they sold and shipped and caused to be transported and delivered to purchasers across State lines, and (3) were in a position, to the extent that they acted concertedly and cooperatively in the production and price of their products, both to dominate and manipulate the market in which Governmental agencies and unorganized consumers must buy such products in territory in which said manufacturers did business;

Acting concertedly and by agreements among themselves, and through their said association, as the case might be, and continuing, pursuant to agreement, understanding, and cooperation among themselves, acts, practices, and agreements which were in effect, mostly, during the period covered by the Code for the Industry under the National Industrial Recovery Act, and with intent of substantially suppressing and restricting competition as to price and otherwise in sale of vitrified clay sewer pipe in commerce among the several States where they did business—

- (a) Fixed and agreed among themselves on prices, terms, and conditions of sale to be quoted and collected for their products, and caused such prices, etc., to be filed with their said association and to be compiled and distributed among themselves and their customers, and agreed to and did adhere to such prices, etc., pending the filing of changes therein with association aforesaid;
- (b) Agreed among themselves that quotations and sales should be made upon a delivered basis only, with freight equalized from members' respective shipping points, so that cost of their products to any given buyer when delivered from any point was identical at any given destination, regardless of variations in freight from different places of production and shipment, and

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<sup>1</sup> Amended.

entered into agreement or understanding among themselves by which, despite differences in actual weights of vitrified clay sewer pipe, as produced and shipped by the various manufacturers, the weights to be used in the calculation of freight charges, freight equalizations, delivered price, and discounts, were made uniform, and agreed upon higher prices for delivery of their products by truck than when delivered by railroad, with intent and effect of discouraging truck delivery and preventing reductions below level of identical delivered prices calculated on a rail freight basis;

- (c) Refused, by united policy, to quote and sell to aforesaid Government purchasing agencies on an f. o. b. mill basis, and therein and thereby tended to and did deprive the Federal Government of opportunity to benefit from land grant and other special railroad rates to which it was lawfully entitled, and, in advance of submission and opening of sealed bids on Federal, State, and municipal projects requiring product aforesaid, exchanged among themselves prices which they intended to quote and prevented, in prices quoted, any divergence, and agreed with respective dealer customers as to prices to be quoted by latter in bidding on pipe for Works Progress Administration and other projects financed by the Government, with intent and effect of causing submission of identical bids by dealers aforesaid;
- (d) Made complaints to officers of their association to whom, along with committees and employees, they had delegated function of preventing deviation from price and other agreements herein concerned restricting competition among the members involved, of suspected deviations from the prices and terms agreed upon, and caused investigations to be made of such complaints, including examination of books and records of suspected offenders, and entered into discussions among themselves and with manufacturers suspected or charged with such deviations, with intent and effect of obtaining renewed adherence to agreements on prices and related matters, and made use of meetings of their association as occasion for discussing, making, amending, and renewing such agreements, and maintained committee thereof with intent and effect of preventing deviation from agreed prices by threats, argument, and propaganda, to the effect that such deviations would constitute violation of Federal laws against price discrimination and subject such deviators to corrective action by the Commission;
- (e) Agreed among themselves as to differentials in price to be charged on sales to dealers, as compared with those to building contractors, and thus agreed as to what concerns should be recognized as dealers and entitled to purchase at dealers' prices, terms and discounts;
- (f) Attempted, by interchange of information among themselves, to restrict production of vitrified clay sewer pipe to an amount that could be sold and shipped at the prices established and maintained by their aforesaid agreements, and, acting directly and in cooperation with their association, its officers and directors, collaborated with other trade associations of manufacturers of said product in other sections of the United States, with intent and effect of restraining price competition between member manufacturers concerned, selling into territory covered by some other association, and manufacturers in said territory selling into that covered by their own association; and
- (g) Employed certain organization, of which two general officers of their own association were part owners, as agency for putting into effect and carrying out above policy, rules, practices, and methods of competition;

With effect, as incident to and a necessary result of their agreed policy of making delivered prices only and of equalizing their agreed delivered prices by equalizing freight from various shipping points to any given destination, that they, manufacturers aforesaid, habitually and systematically demanded, charged, accepted, and received larger sums of money per unit of product from their customers located near their respective plants than from their customers located at greater distances, thereby forced nearby customers to pay more, while more distant customers were allowed to pay less to respective manufacturers herein involved, deprived their nearby customers of any price advantage by reason of their proximity to the place of production, and thereby habitually and systematically discriminated in price among their respective customers in bad faith in order to suppress competition in price among themselves, and with result that, by means of the agreements, rules, policies, practices, and cooperative methods of competition adopted and carried out by concerted action and agreement as aforesaid, they, the manufacturers herein concerned, deprived purchasers and consumers of vitrified clay sewer pipe of the advantages of normal competition that would otherwise exist among such manufacturers, compelled unorganized purchasers, thereby, to buy at prices and terms determined collectively and collusively by themselves, and artificially enhanced the amounts exacted from such purchasers above the amounts obtainable had there been no such collusive action:

*Held*, That such acts and practices of said manufacturers, their association, and officers and directors thereof as above set forth, were all to the prejudice of the public and had a dangerous tendency to and actually hindered and prevented price competition between and among themselves in their sale of vitrified clay sewer pipe in commerce; and placed in themselves the power to control and enhance prices; and created in such manufacturers a monopoly in the sale of vitrified clay sewer pipe in commerce in aforesaid part of the United States; and unreasonably restrained such commerce in said products in said territory; and constituted unfair methods of competition in commerce.

Before *Mr. Randolph Preston*, trial examiner.

*Mr. Curtis C. Shears* for the Commission.

*Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., and *Carter, Ledyard & Milburn*, of New York City, for Southern Vitrified Pipe Association, *W. Clement Boren, Jr., D. M. Strickland, John M. Byrne, Pomona Terra Cotta Co., Pine Hall Brick and Pipe Co., The Columbia Clay Co., Georgia Vitrified Brick and Clay Co., Cannelton Sewer Pipe Co., Owensboro Sewer Pipe Co.*, and also, along with

*Mr. Clifford Histed*, of Kansas City, Mo., for *Cliff B. Beasley and W. S. Dickey Clay Manufacturing Co.*;

*Mr. Harry Boulton and Mr. William T. Davis*, of Clearfield, Pa., for *Lee Clay Products Co.*; and

*Miller & Lowrey*, of Macon, Ga., for *Oconee Clay Products Co.*

*Woodward, Dawson & Hobson*, of Louisville, Ky., for Trustee in Bankruptcy of *P. Bannon Pipe Co.*

## 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 the respondents named and represented in the caption hereof 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 amended complaint stating its charges in that respect as follows:

PARAGRAPH 1. The Commission names and includes as respondents in this proceeding the Southern Vitrified Pipe Association, Cliff B. Beasley, president of said Association, W. Clement Boren, Jr., its vice president, D. M. Strickland, its secretary-manager and John M. Byrne, its treasurer. It joins these individuals both separately and as representatives of all the members of respondent Association. The Commission also includes as respondents in this proceeding the members of the board of directors of said respondent Association both individually and as representatives of the members, but the names of such Board are not at present known to the Commission. The Commission also names and includes as respondents in this proceeding both separately and as representatives of the entire membership the following members: W. S. Dickey Clay Manufacturing Co., Lee Clay Products Co., Pomona Terra Cotta Co., Pine Hall Brick & Pipe Co., The Columbia Clay Co., Georgia Vitrified Brick & Clay Co., Oconee Clay Products Co., Cannelton Sewer Pipe Co., Owensboro Sewer Pipe Co., and P. Bannon Pipe Co.

PAR. 2. The Southern Vitrified Pipe Association is a voluntary unincorporated trade association with its office and principal place of business at Cincinnati, Ohio. The membership of respondent Association comprises all or practically all of the manufacturers of vitrified clay sewer pipe located in that part of the United States lying east of the Mississippi and south of the Ohio and Potomac Rivers.

Respondent, W. S. Dickey Clay Manufacturing Co., is a corporation organized and existing under the laws of the State of Delaware and has its general office and principal place of business at Kansas City, Mo. It does the largest volume of business of any of respondent manufacturers and has producing plants in Alabama and Tennessee, as well as pipe producing plants in States outside the territory represented by respondent Association.

Respondent, Lee Clay Products Co., is a corporation organized and existing under the laws of the State of Kentucky, with offices and producing plant located at Clearfield, Ky.

Respondent, Pomona Terra Cotta Co., is a corporation organized and existing under the laws of the State of North Carolina with offices and producing plant located at Pomona in that State.

Respondent, Pine Hall Brick & Pipe Co., is a corporation organized and existing under the laws of the State of North Carolina, with offices at Winston-Salem and producing plant at Ceramic in that State.

Respondent, The Columbia Clay Co., is a corporation organized and existing under the laws of the State of South Carolina with offices and producing plant located near Columbia in that State.

Respondent, Georgia Vitrified Brick & Clay Co., is a corporation organized and existing under the laws of the State of Georgia with office and principal place of business at Augusta, Ga., and producing plant at Cambria, Ga.

Respondent, Oconee Clay Products Co., is a corporation organized and existing under the laws of the State of Georgia, with office, principal place of business, and producing plant at Milledgeville, in that State.

Cannelton Sewer Pipe Co. is a corporation organized and existing under the laws of the States of Indiana with office and principal place of business at Cannelton in that State.

Respondent, Owensboro Sewer Pipe Co. is a corporation organized and existing under the laws of the State of Kentucky with office and principal place of business at Owensboro, Ky.

Respondent, P. Bannon Pipe Co. is a corporation organized and existing under the laws of the State of Kentucky with office and producing plant at Louisville in that State.

PAR. 3. The vitrified clay sewer pipe with which this proceeding is concerned is an important item in modern construction, sanitation, and community development. It is frequently bought and used by municipalities, State, and Federal governments for the improvement of their own properties and also by Governmental emergency relief agencies, such as the Works Progress Administration of the United States Government, and other agencies dealing with the relief of unemployment and other results of the depression.

PAR. 4. Respondent manufacturers sell their products direct to municipalities, counties, States, and the Federal Government, and to dealers, at the same prices, terms, and conditions of sale. Their products are also sold direct to large contractors and to jobbers. Respondent manufacturers have control of a large, valuable, and continuous trade in commerce among the several States in the commodity with which this proceeding deals, and in the course of such trade and commerce sell and ship and cause to be transported and delivered, large quantities of material and finished products across State lines. To

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the extent that respondent manufacturers act collusively and collectively in the production and pricing of their goods they are in a position both to dominate and manipulate the market in which Governmental agencies and unorganized consumers must buy such goods in the territory where respondent manufacturers do business.

PAR. 5. For more than 5 years last past respondent Association, its officers, directors, and members, and respondent manufacturers have engaged in a wrongful, and unlawful combination and conspiracy among themselves, for the purpose and with the effect of substantially suppressing and frustrating competition as to price and otherwise in the sale of vitrified clay sewer pipe in commerce among the several States where respondent manufacturers do business. To that end respondents, by concerted action and agreement among themselves, and with others not joined herein as respondents, have adopted and carried out the following policies, rules, practices, and methods of competition:

(a) Respondents have agreed among themselves as to the prices, terms, and conditions of sale to be quoted and collected for their products, have caused such prices, terms, and conditions of sale to be filed with respondent Association and to be compiled and distributed among themselves and their customers, and have agreed to adhere to such prices, terms, and conditions of sale pending the filing of changes therein with respondent Association.

(b) Pursuant to the agreement above alleged, respondent manufacturers have adhered to such prices, terms, and conditions of sale in the making of price quotations and in the making of actual sales.

(c) Respondent manufacturers have agreed among themselves that quotations and sales should be made upon a delivered basis only, with freight equalized from their respective shipping points, so that the cost of their products to any given buyer when delivered from any point, would be identical at any given destination regardless of the variations in freight from different places of production and shipment.

(d) By concerted action respondent manufacturers have reached an agreement or understanding among themselves by which, despite differences in the actual weights of vitrified clay sewer pipe as produced and shipped by the various manufacturers, the weights to be used in the calculation of freight charges, freight equalizations, delivered prices and discounts were made uniform.

(e) By a united policy of refusing to quote and sell to the aforesaid Government purchasing agencies on an f. o. b. mill basis, respondents have entered into an agreement that tends to deprive and has deprived the Federal Government of the opportunity to benefit from

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land grant and other special railroad rates to which it is lawfully entitled.

(f) In advance of the submission and opening of sealed bids on Federal, State, and municipal projects requiring vitrified clay sewer pipe, respondent manufacturers have exchanged among themselves the prices which they intended to quote in such bids and thereby prevented any divergence in the prices quoted.

(g) Respondent manufacturers have agreed with their respective dealer customers as to the prices to be quoted by such dealers when bidding on pipe for the Works Progress Administration and other projects financed by the Government, for the purpose and with the effect of causing such dealers to submit identical bids.

(h) The members of respondent Association have selected its officers, committees, and employees and have delegated to them the function of preventing deviation from the price agreements and other agreements herein alleged restricting competition among the respondent manufacturers. Respondent manufacturers have made complaints to their Association officers of suspected deviation from the prices and terms agreed upon and have caused investigations to be made of such complaints, including examination of the books and records of the suspected offenders. Respondent officers and manufacturers have discussed such complaints among themselves and with manufacturers suspected or charged with such deviations, for the purpose and with the effect of obtaining renewed adherence to the alleged agreements on prices and related matters. Meetings of respondent Association have been used by respondent manufacturers as the occasion for discussing, making, amending, and renewing such agreements.

(i) Respondent manufacturers have maintained a committee of their Association for the purpose and with the effect of preventing deviation from their agreed prices by threats, argument, and propaganda to the effect that such deviation would constitute a violation of Federal laws against discrimination in price and would subject such deviators to corrective action by the Federal Trade Commission.

(j) Respondent manufacturers have agreed upon higher prices for delivery of their products by truck than when delivered by railroad, for the purpose and with the effect of discouraging truck delivery and of preventing reductions below the level of identical delivered prices calculated on a rail freight basis.

(k) Respondent manufacturers have agreed among themselves as to the differentials in price to be charged on sales to dealers as compared to building contractors.

(l) Respondent manufacturers have agreed among themselves as to what concerns should be recognized as dealers and entitled to purchase at dealers' prices, terms, and discounts.

(m) Respondent manufacturers have attempted by interchange of information among themselves to restrict the production of vitrified clay sewer pipe to an amount that could be sold and shipped at the prices established and maintained by the agreements among respondents heretofore alleged.

(n) Most of the acts, practices, and agreements referred to above were in effect during the period covered by the code for the industry under the National Industrial Recovery Act, and have continued in effect pursuant to agreement, understanding, and cooperation among respondents.

(o) Respondent Association, officers, and manufacturers have collaborated with other trade associations composed of other manufacturers of vitrified clay sewer pipe located in other sections of the United States for the purpose and with the effect of restraining price competition between respondent manufacturers who sell into territory covered by some other association and manufacturers in such territory who sell into the territory covered by respondent Association.

(p) Respondent manufacturers have employed "The Byrne Organization" of which respondents Strickland and Byrne are part owners, as an agency for putting into effect and carrying out the above policies, rules, practices, and methods of competition.

PAR. 6. As an incident to and a necessary result of their agreed policy of making delivered prices only and of equalizing their agreed delivered prices by equalizing freight from various shipping points to any given destination, the respective respondent manufacturers have habitually and systematically demanded, charged, accepted, and received larger sums of money per unit of product from their customers located near their respective plants than from their customers located at greater distances, have thereby forced nearby customers to pay more in order that more distant ones might pay less to the respective respondent manufacturers, have deprived their nearby customers of any price advantage by reason of their proximity to the place of production, and have thereby habitually and systematically discriminated in price among their respective customers in bad faith in order to suppress competition in price among respondent manufacturers.

PAR. 7. By means of the aforesaid agreements, understandings, rules, policies, practices, and cooperative methods of competition, respondents have deprived purchasers and consumers of vitrified clay sewer pipe of the advantages of normal competition that would oth-

erwise exist among respondent manufacturers. Respondents have thereby compelled unorganized purchasers to buy at prices and terms determined collectively and collusively by respondents and have artificially enhanced the amounts exacted from such purchasers above the amounts obtainable had there been no such determination. The amounts exacted from public purchasing agencies constitute part of the financial obligations of Government payable either with or without interest out of tax receipts.

PAR. 8. The above-alleged acts and things done by respondents are all to the injury and prejudice of the public engaged in the purchase and resale of vitrified clay sewer pipe, of competitors engaged in the production and sale thereof, and of consumers of such commodity, and constitute unfair methods of competition and unfair or deceptive acts and practices 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."

#### REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 8, 1939, issued, and on August 9, 1939, served, its complaint in this proceeding upon respondents Southern Vitrified Pipe Association, Cliff B. Beasley, president, W. Clement Boren, Jr., vice president, D. M. Strickland, secretary-manager, and John M. Byrne, Treasurer, and W. S. Dickey Clay Manufacturing Co., Lee Clay Products Co., Pomona Terra Cotta Co., Pine Hall Brick & Pipe Co., The Columbia Clay Co., Georgia Vitrified Brick & Clay Co., Oconee Clay Products Co., Cannelton Sewer Pipe Co., Owensboro Sewer Pipe Co., and P. Bannon Pipe 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 the respondents' answers, the Commission, by order entered herein, granted motion of all the respondents, except P. Bannon Pipe Co., for permission to withdraw said answers and to substitute therefor answers 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 answers were duly filed in the office of the Commission. Thereafter, by stipulation between counsel for the Commission and counsel for the respondents, the Commission on April 23, 1940, entered its order amending *nunc pro tunc* its complaint and respondents waived notice of hearing, oral argument, and written briefs

before the Commission on this amendment, and further waived service of an amended answer to said amended complaint, and it was agreed and ordered that the substitute admission answers to the original complaint be considered the answers to said amended complaint. Thereafter this proceeding regularly came on for final hearing before the Commission on the said amended complaint, and answer of P. Bannon Pipe Co. and substitute answers of all the other 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. The Southern Vitrified Pipe Association is a voluntary unincorporated trade association with its office and principal place of business at Cincinnati, Ohio. The membership of respondent Association comprises most of the manufacturers of vitrified clay sewer pipe located in that part of the United States lying east of the Mississippi and south of the Ohio and Potomac Rivers.

Respondent, W. S. Dickey Clay Manufacturing Co., is a corporation organized and existing under the laws of the State of Delaware, and has its general office and principal place of business at Kansas City, Mo. It does the largest volume of business of any of respondent manufacturers and has producing plants in Alabama and Tennessee, as well as pipe-producing plants in States outside the territory served by members of respondent Association.

Respondent, Lee Clay Products Co., is a corporation organized and existing under the laws of the State of Kentucky, with offices and producing plant located at Clearfield, Ky.

Respondent, Pomona Terra Cotta Co., is a corporation organized and existing under the laws of the State of North Carolina, with offices and producing plant located at Pomona in that State.

Respondent, Pine Hall Brick & Pipe Co., is a corporation organized and existing under the laws of the State of North Carolina, with offices at Winston-Salem and producing plant at Ceramic in that State.

Respondent, The Columbia Clay Co., is a corporation organized and existing under the laws of the State of South Carolina, with offices and producing plant located near Columbia in that State.

Respondent, Georgia Vitrified Brick & Clay Co., is a corporation organized and existing under the laws of the State of Georgia, with office and principal place of business at Augusta, Ga., and producing plant at Cambria, Ga.

Respondent, Oconee Clay Products Co., is a corporation organized and existing under the laws of the State of Georgia, with office, principal place of business, and producing plant at Milledgeville, in that State. Said Oconee Clay Products Co., resigned as a member of respondent Association in 1937.

Respondent, Cannelton Sewer Pipe Co., is a corporation organized and existing under the laws of the State of Indiana, with office and principal place of business at Cannelton in that State.

Respondent, Owensboro Sewer Pipe Co., is a corporation organized and existing under the laws of the State of Kentucky, with office and principal place of business at Owensboro, Ky.

Respondent, P. Bannon Pipe Co., a corporation organized under the laws of the State of Kentucky, filed a petition in bankruptcy on April 12, 1932, and on April 13, 1932, was duly adjudicated a bankrupt by the United States District Court for the Western District of Kentucky. Thereafter, on June 27, 1932, one Maxwell S. Barker was duly elected Trustee in Bankruptcy for the said P. Bannon Pipe Co., and thereafter and until December 19, 1938, operated the sewer pipe manufacturing plant of the P. Bannon Pipe Co. under authority of orders entered in the District Court of the United States for the Western District of Kentucky. On or about December 19, 1938, the said Maxwell S. Barker as trustee of the said P. Bannon Pipe Co., bankrupt, pursuant to the proper orders of the court aforesaid, sold all the assets of the said P. Bannon Pipe Co. and since that time has distributed to the creditors of the said P. Bannon Pipe Co. all of the funds coming into his hands as trustee for that estate. On or about September 10, 1939, the said Maxwell S. Barker died, and no other trustee has been selected as the estate has been fully administered.

PAR. 2. The vitrified clay sewer pipe with which this proceeding is concerned is an important item in modern construction, sanitation, and community development. It is frequently bought and used by municipalities, State and Federal governments for the improvement of their own properties and also by governmental emergency relief agencies, such as the Works Progress Administration of the United States Government, and other agencies dealing with the relief of unemployment and other results of the depression.

PAR. 3. Respondent manufacturers sell vitrified clay sewer pipe direct to municipalities, counties, States, and the Federal Government and to dealers at the same prices, terms, and conditions of sale. They also sell their products direct to large contractors. Respondent manufacturers have control of a large, valuable and continuous trade and commerce among the several States in vitrified

clay sewer pipe, and in the course of such trade and commerce sell and ship, and cause to be transported and delivered to the purchasers thereof, large quantities of vitrified clay sewer pipe across State lines. To the extent that respondent manufacturers act concertedly and cooperatively in the production and pricing of their products as hereinafter set forth, they are in a position both to dominate and manipulate the market in which governmental agencies and unorganized consumers must buy such products in the territory where respondent manufacturers do business.

PAR. 4. For more than 5 years last past, respondent Association, its officers, directors, and members, and the respondent manufacturers, for the purpose of substantially suppressing and restricting competition as to price and otherwise in the sale of vitrified clay sewer pipe in commerce among the several States where respondent manufacturers do business, by concerted action and agreement among themselves have adopted and put into effect the following policies, rules, practices, and methods of competition:

(a) Respondent manufacturers have agreed among themselves as to the prices, terms, and conditions of sale to be quoted and collected for their products, have caused such prices, terms, and conditions of sale to be filed with respondent Association and to be compiled and distributed among themselves and their customers, and have agreed to adhere to such prices, terms, and conditions of sale pending the filing of changes therein with respondent Association.

(b) Pursuant to the foregoing agreement, respondent manufacturers have adhered to such prices, terms, and conditions of sale in the making of price quotations and in the making of actual sales.

(c) Respondent manufacturers have agreed among themselves that quotations and sales should be made upon a delivered basis only, with freight equalized from their respective shipping points, so that the cost of their products to any given buyer when delivered from any point is identical at any given destination regardless of the variations in freight from different places of production and shipment.

(d) Respondent manufacturers entered into an agreement or understanding among themselves by which, despite differences in the actual weights of vitrified clay sewer pipe as produced and shipped by the various manufacturers, the weights to be used in the calculation of freight charges, freight equalizations, delivered prices, and discounts were and are made uniform.

(e) By a united policy of refusing to quote and sell to the aforesaid Government purchasing agencies on an f. o. b. mill basis, respondent manufacturers have entered into an agreement that tends to deprive and has deprived the Federal Government of the opportunity

to benefit from land grant and other special railroad rates to which it is lawfully entitled.

(f) In advance of the submission and opening of sealed bids on Federal, State, and municipal projects requiring vitrified clay sewer pipe, respondent manufacturers have exchanged among themselves the prices which they intended to quote in such bids and prevented any divergence in the prices quoted.

(g) Respondent manufacturers have agreed with their respective dealer customers as to the prices to be quoted by such dealers when bidding on pipe for the Works Progress Administration and other projects financed by the Government, for the purpose and with the effect of causing such dealers to submit identical bids.

(h) The respondent manufacturers, members of respondent Association, have selected its officers, committees, and employees and have delegated to them the function of preventing deviation from the price agreements and other agreements herein alleged restricting competition among the respondent manufacturers. Respondent manufacturers have made complaints to said Association officers of suspected deviations from the prices and terms agreed upon and have caused investigations to be made of such complaints, including examination of the books and records of the suspected offenders. Respondent officers and manufacturers have discussed such complaints among themselves and with manufacturers suspected or charged with such deviations, for the purpose and with the effect of obtaining renewed adherence to the said agreements on prices and related matters. Meetings of respondent Association have been used by respondent manufacturers as the occasion for discussing, making, amending, and renewing such agreements.

(i) Respondent manufacturers have maintained a committee of said Association for the purpose and with the effect of preventing deviation from their agreed prices by threats, argument, and propaganda to the effect that such deviation would constitute a violation of Federal laws against discrimination in price and would subject such deviators to corrective action by the Federal Trade Commission.

(j) Respondent manufacturers have agreed upon higher prices for delivery of their products by truck than when delivered by railroad, for the purpose and with the effect of discouraging truck delivery and of preventing reductions below the level of identical delivered prices calculated on a rail freight basis.

(k) Respondent manufacturers have agreed among themselves as to the differentials in price to be charged on sales to dealers as compared to building contractors.

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(l) Respondent manufacturers have agreed among themselves as to what concerns should be recognized as dealers and entitled to purchase at dealers' prices, terms, and discounts.

(m) Respondent manufacturers have attempted by interchange of information among themselves to restrict the production of vitrified clay sewer pipe to an amount that could be sold and shipped at the prices established and maintained by the agreements among respondents heretofore set forth.

(n) Most of the acts, practices, and agreements referred to above were in effect during the period covered by the Code for the Industry under the National Industrial Recovery Act, and have continued in effect pursuant to agreement, understanding, and cooperation among respondents.

(o) Respondent manufacturers, through and in cooperation with respondent Association, its officers, and directors, have collaborated with other trade associations composed of other manufacturers of vitrified clay sewer pipe located in other sections of the United States for the purpose and with the effect of restraining price competition between respondent manufacturers who sell into territory covered by some other association and manufacturers in such territory who sell into the territory covered by respondent Association.

(p) Respondents have employed "The Byrne Organization," of which respondents Strickland and Byrne are part owners, as an agency for putting into effect and carrying out the above policies, rules, practices, and methods of competition.

PAR. 5. As an incident to and a necessary result of their agreed policy of making delivered prices only and of equalizing their agreed delivered prices by equalizing freight from various shipping points to any given destination, the respective respondent manufacturers have habitually and systematically demanded, charged, accepted, and received larger sums of money per unit of product from their customers located near their respective plants than from their customers located at greater distances; have thereby forced nearby customers to pay more, and more distant customers were allowed to pay less to the respective respondent manufacturers; have deprived their nearby customers of any price advantage by reason of their proximity to the place of production; and have thereby habitually and systematically discriminated in price among their respective customers in bad faith in order to suppress competition in price among respondent manufacturers.

PAR. 6. By means of the agreements, rules, policies, practices, and cooperative methods of competition adopted and carried out by concerted action and agreement as aforesaid, respondents have deprived

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purchasers and consumers of vitrified clay sewer pipe of the advantages of normal competition that would otherwise exist among respondent manufacturers; and have thereby compelled unorganized purchasers to buy at prices and terms determined collectively and collusively by respondents and have artificially enhanced the amounts exacted from such purchasers above the amounts obtainable had there been no such collusive action.

## CONCLUSION

The acts and practices of the respondents as herein set forth are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of vitrified clay sewer pipe 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 created in the respondent manufacturers a monopoly in the sale of vitrified clay sewer pipe in such commerce in that part of the United States lying east of the Mississippi River and south of the Ohio and Potomac Rivers; have unreasonably restrained such commerce in said products in said territory; and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

## ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answers of respondents, in which answers all of the respondents except P. Bannon Pipe Co., admit all the material allegations of fact set forth in said amended 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, except P. Bannon Pipe Co., have violated the provisions of the Federal Trade Commission Act.

*It is ordered,* That the respondents, W. S. Dickey Clay Manufacturing Co., Lee Clay Products Co., Pomona Terra Cotta Co., Pine Hall Brick & Pipe Co., The Columbia Clay Co., Georgia Vitrified Brick & Clay Co., Oconee Clay Products Co., Cannelton Sewer Pipe Co., Owensboro Sewer Pipe Co., and their officers, representatives, agents, and employees, directly or through respondent Southern Vitrified Pipe Association, or through respondents Cliff B. Beasley, W. Clement Boren, Jr., D. M. Strickland, or John M. Byrne, or through any corporate or other device, do forthwith cease and desist, in connection

with the offering for sale or sale and distribution of vitrified clay sewer pipe in interstate commerce or in the District of Columbia, from doing and performing by concerted action, agreement or understanding between any two or more of them, the following acts and things:

1. Fixing or establishing prices, terms, and conditions of sale at which they will sell vitrified clay sewer pipe products to the purchasing public.

2. Entering into, participating in, or carrying on, through the respondent Association or under its auspices or through any other central agency, meetings, or otherwise, discussions and exchanges of information concerning proposed or future prices, terms, and conditions of sale at which they will sell vitrified clay sewer pipe products to the purchasing public.

3. Promising to adhere to filed prices, terms, and conditions of sale for their said products pending the filing of changes therein with respondent Southern Vitrified Pipe Association.

4. Pursuant to any promise or assurance, adhering to filed prices, terms, and conditions of sale in the making of quotations or sales of their said products.

5. Making quotations and sales of their said products upon a delivered basis only, with freight equalized from their respective shipping points, so that the cost of their said products to any given buyer, when delivered from any point, will be identical at any given destination, regardless of variations in freight from different places of production and shipment.

6. Fixing arbitrary weights to be used in the calculation of freight charges and freight equalizations so that delivered prices and discounts are made uniform.

7. Refusing to quote and sell to Government purchasing agencies on an f. o. b. mill basis.

8. Exchanging among themselves, in advance of the submission and opening of sealed bids on Federal, State, and municipal projects requiring vitrified clay sewer pipe, the prices which they propose to quote in such bids.

9. Fixing and establishing differentials in price to be charged on sales to dealers as compared with sales to building contractors.

10. Agreeing with their respective dealer customers as to the prices to be quoted by such dealers on the resale of vitrified clay sewer pipe.

11. Determining what concerns shall be recognized as dealers and entitled to purchase at dealers' prices, terms, and discounts.

12. Restricting the quantity of vitrified clay sewer pipe to be produced by the respondent manufacturers or any of them.

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13. Collaborating with trade associations composed of manufacturers of vitrified clay sewer pipe located in other sections of the United States, but who sell vitrified clay sewer pipe in the territory served by said respondent manufacturers east of the Mississippi River and south of the Ohio and Potomac Rivers, for the purpose and with the effect of restricting and restraining competition as to prices, terms, and conditions of sale of said products in said territory.

14. Obtaining adherence to prices, terms, and conditions of sale of their said products filed by said manufacturers with the respondent Association or any other central agency, by exchanging information at meetings held under the auspices of said Association, or otherwise, as to prices, terms, and conditions of sale at which said products have been sold by respondent manufacturers; by making and investigating complaints of alleged deviations in prices, terms, and conditions of sale by said manufacturers; by the examination of books and records of the suspected offenders and by threats of legal action against such offenders.

15. Employing "The Byrne Organization," of which respondents D. M. Strickland and John M. Byrne are part owners, or any other person, partnership, or corporation, to act as an agency for putting into effect or carrying out, directly or indirectly, any of the policies, rules, practices, or methods of competition prohibited by this order.

*It is further ordered,* That the amended complaint herein be, and the same hereby is, dismissed as to P. Bannon Pipe Co.

*It is further ordered,* That all of the respondents, except P. Bannon Pipe Co., 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  
LADY ESTHER, LTD.

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

*Docket 3917. Complaint, Oct. 6, 1939—Decision, May 31, 1940*

Where a corporation, engaged in sale and distribution of cosmetics and other toilet preparations, including its Lady Esther Face Cream, to wholesale and retail purchasers in other states and to members of the public direct, in substantial competition with others engaged in the distribution and sale of face creams, cosmetics, and other toilet preparations adapted to and used for the same general purposes as its said Lady Esther Face Cream in commerce among the various States; in its advertisements of its said face cream in newspapers and other periodicals of general circulation and in the various States and in said District, and in circulars and other printed or written matter distributed in commerce, and through broadcasts from radio stations of extra-state audience, and in statements and other advertisements which it disseminated and which were intended and likely to induce purchase of its aforesaid face cream in commerce—

- (a) Represented, directly or through implication, that its said Lady Esther Face Cream penetrated the skin and to the bottom of the pores thereof and removed dirt from the outside which had gotten into or under the skin and filled said pores, through its action in sinking into the pores and then flushing out waste matter therein, and that the method of cleaning the skin of the face by the use of its said cream was different from that of other skin-cleaning preparations in that, unlike the others, it cleaned more than the exterior openings of the pores.

Facts being, it did not thus penetrate the skin or have any unique or unusual or active penetrative properties in relation thereto, outside dirt does not get into or under the skin or become imbedded therein, etc., as above set forth by it, its said cream will not remove such dirt, if so located, or cleanse the pores below the exterior openings thereof, and principal effect of its said product is to cleanse outer surface of skin and exterior openings of pores, as do many other skin cleaners, and its said method was no different in such general respect from that of such others, and any absorptive and lubricating effect as distinguished from penetrative action of said product is of temporary duration, determined by such factors as length of time lubricating ingredients remain on skin and amount of absorption of such ingredients.

- (b) Represented that its said product would overcome, correct or cure dry skin and was as efficacious on an oily skin as on a dry one, and that cause of an oily skin was same as that of a dry one, and that soap and water were injurious to the skin and dried it, and that a dry skin was an old one and the cause of all wrinkles, which tiny lines became, and that use of said product supplied a dry skin with what it needed to overcome or cure such condition;

Facts being that its said product would not overcome, correct or cure a dry skin or do more in correcting it than furnish, as aforesaid, temporary supply of lubrication which was not identical with secretions supplied by the skin and

required constant renewal of applications, if such lubrication were to be maintained, and, while its said product might be used on an oily skin and would clean such a skin at least to same extent as a dry one, it was not otherwise as efficacious on the former as on the latter, and cause of two was not the same, soap and water are not injurious to skin and do not dry it except temporarily, and its said product does not supply dry skin with what it needs to overcome or cure such condition, and dry skin is not an old one nor such a skin the cause of all wrinkles, nor is it true, as set forth by it, that all tiny lines become wrinkles, and dry skin, lines and wrinkles may be due to causes such as advancing age, disease, worry and conditions of the muscles and tissues underlying the skin and other causes upon which its product would have no effect.

- (c) Represented, as aforesaid, that blackheads are imbedded dirt and that its said product would remove blackheads and correct the cause thereof, facts being, blackheads are waxy skin secretions, exterior surfaces of which are discolored by exterior dirt, and said preparation will not remove them as distinguished from removing superficial dirt from the outside surfaces thereof, nor correct their cause.
- (d) Represented, as aforesaid, that said product would prevent or remove wrinkles or lines of the face and that use thereof would refine the pores of the skin and correct or remove cause of enlarged pores and remove from the skin blemishes or rough spots, and that users of said cream were free from a rough skin, and that its use refreshed tired cells and brought new life thereto and safeguarded beauty glands and brought them back to activity;

Facts being that while its said product might remove superficial accumulations of dirt from pore openings, help nature refine the pores and, to the extent that superficial pore enlargements might be due to such accumulations, serve to reduce the same, it would not refine the pores or correct or remove the cause of enlarged pores nor remove from the skin blemishes or rough spots other than those due solely to dryness thereof, and it would not banish roughness permanently, not all users of its cream are free from rough skin, and it did not refresh tired cells or bring new life thereto nor safeguard so-called beauty glands, if such there be, nor bring same back to activity, and would not affect the skin advantageously otherwise than as herein set forth, many unfavorable conditions of which are result of internal conditions such as dietary excesses or deficiency, nervous disorders, drug rashes, glandular disturbances or other conditions in regard to which its said product would have no appreciable effect and which can be effectively treated only by removing the cause thereof, on which its said product is without effect;

- (e) Represented that its said cream was a solvent of dust, soot, dirt, dead skin cells or various forms of dirt and waste matter that soil the skin;

Facts being said product was not a solvent of dust, dead skin cells or other various forms of dirt and waste matter that soil the skin; and

- (f) Falsely represented that results from use of its said cream were guaranteed; With tendency and capacity to mislead purchasers and prospective purchasers of its said product into the erroneous and mistaken belief that such representations were true, as hereinabove set forth, and to induce them to purchase said cream by reason thereof, and with the result that trade was thereby diverted unfairly to it from competitors engaged in the sale in commerce of face creams, soaps and cosmetics of various kinds, including those who, in the sale of their said preparations and products, do not similarly or in any

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manner misrepresent the same or matters pertaining thereto; to their substantial injury 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.

*Mr. Donovan R. Divet* for the Commission.

*Rogers, Ramsay & Hoge*, 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 Lady Esther, Ltd., 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, Lady Esther, Ltd., 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 7171 West 65th Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 3 years last past engaged in the sale and distribution in commerce between and among the various States of the United States of cosmetics and other toilet preparations. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause its said cosmetics and other toilet preparations to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to the purchasers thereof in such other States. The usual course of dealing of respondent in its business as aforesaid is to sell its products to wholesale and retail stores through which they are eventually sold to members of the public. Respondent also sells its products as aforesaid direct to members of the public. Among the products so sold as aforesaid is a face cream known and described as Lady Esther Face Cream.

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 Dis-

trict of Columbia of face creams, cosmetics, and other toilet preparations adapted to and used for the same general purposes as respondent's said Lady Esther Face Cream. Respondent 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 Lady Esther Face Cream with such other individuals, firms, and corporations.

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 Lady Esther Face Cream, 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 its said face cream; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements and false and misleading statements concerning its said face cream, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said face cream in commerce, as commerce is defined in the Federal Trade Commission Act. Among, and typical of the false and misleading statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

1. What you want is *deep* cleansing! Many methods only "clean off" the skin. They do not clean it *out*! \* \* \* What you want is a cream that does more than "grease" the surface of your skin. You want a cream that *penetrates the pores*! Such a cream, distinctly, is Lady Esther Face Cream. It is a cream that gets below the surface—into the pores. \* \* \*

2. There is one sure way to remove that underneath dirt and that is to use a cream that penetrates the pores. \* \* \*

3. \* \* \* Many methods are merely surface methods. They take off only the top dirt and leave the imbedded dirt untouched. What you want is deep-reaching action—a cleansing out of the stubborn, buried dirt. \* \* \*

4. \* \* \* Demand a cleanser that goes below the surface. Insist upon a cleanser that gets into the pores, *deeply into the pores*! Lady Esther Face Cream is a pore-deep cleanser. \* \* \*

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5. \* \* \* It cleanses deeply, to the very bottom of the pores. It doesn't clean just the surface of your skin—it goes below the surface and removes hidden dirt which ordinary cleansing methods fail to reach. \* \* \*

6. \* \* \* it's a penetrating cream, which gets *into* your skin. \* \* \*

7. I say that my cream will remove that deeply imbedded dirt that is the cause of large pores and black-speck blemishes. \* \* \*

8. Those little black specks that keep showing up in your skin—do you know what they really are, \* \* \* They're imbedded dirt—dirt that has found its way deeply into your pores \* \* \* When your pores are completely cleansed of the plugging matter, blackheads automatically disappear. Also your pores automatically come down in size. Responding to Nature, they reduce themselves to their original, invisible smallness.

9. \* \* \* Lady Esther Face Cream loosens blackheads, floats out the stubborn dirt that laughs at your surface cleanser \* \* \*

10. \* \* \* It removes the cause of enlarged pores and blackheads \* \* \*

11. \* \* \* At the same time as Lady Esther Face Cream is unburdening your pores, it is *also* lubricating your skin. It is resupplying it with a fine oil that combats dryness and keeps the skin youthfully soft and smooth \* \* \*

12. \* \* \* Keep up this soothing Cleansing—(with Lady Esther Face Cream)—and you'll see those faint lines fade away—because your sebaceous glands will be back on the job—then you can say goodbye forever to dry skin.

13. \* \* \* Lady Esther Cream contains a fine oil that overcomes dryness and roughness \* \* \*

14. \* \* \* "Don't you believe dry skin isn't serious! It's the dry skin that invites the tiny lines that may grow into wrinkles \* \* \*" \* \* \* Lady Esther Cream \* \* \* brings back that soft dewy-fresh look which proves that the dry parched skin is smooth and pliant once more \* \* \*

15. A dry skin is an old skin.

16. Lady Esther Face Cream is an excellent corrective of dry skin \* \* \*

17. \* \* \* Supplies Dry Skin with What It Needs \* \* \*

18. \* \* \* You see, dryness and oiliness are just different symptoms of the *same* trouble. And they are both easy to overcome with Lady Esther Cream \* \* \*

19. \* \* \* Lady Esther Cream, \* \* \* counter-acts the very cause of dryness \* \* \*

20. \* \* \* Dry patches and tiny lines will start to disappear \* \* \*

21. \* \* \* easily changes a dry, dingy skin into a smooth one \* \* \*

22. \* \* \* "It's the dry skin that invites the tiny lines that may grow into wrinkles \* \* \*" \* \* \* Lady Esther Cream \* \* \* brings back that soft dewy-like look which proves the dry parched skin is smooth and pliant once more \* \* \*

23. \* \* \* Remember a dry skin wrinkles \* \* \*

24. \* \* \* If you want to banish dry skin write me tonight and I will send you a tube of Lady Esther Face Cream \* \* \*

25. \* \* \* Lady Esther Cream \* \* \* helps nature refine your pores \* \* \*

26. \* \* \* Lady Esther guarantees results \* \* \*

27. \* \* \* Cleansing the pores as thoroughly as it does, it allows them to function freely again—to open and close—as Nature intended. This automatically permits the pores to reduce themselves to their normal, invisible size \* \* \*

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28. \* \* \* it keeps the glands in condition to do their health-building work.

29. \* \* \* blotches and large pores which cause such untold suffering to young girls—very often yield to the penetrating action of Lady Esther Face Cream \* \* \*

30. \* \* \* it supplies the tissues with a delicate softening oil \* \* \*

31. \* \* \* Lady Esther Cream \* \* \* sinks into the dry tissues, and brings new life to your skin \* \* \*

32. \* \* \* It penetrates each tiny pore, flushes out old accumulations of waste which made your skin bumpy \* \* \*

33. \* \* \* As soon as it touches your skin, it sinks into your pores, and dissolves that buried waste, just like sunshine melting snow. It floats it all to the surface for you to wipe away \* \* \*

34. \* \* \* my cream cleanses your skin, \* \* \* smooths out those rough spots, refreshes its tired cells \* \* \*

35. \* \* \* brings new life to the dry cells \* \* \*

36. \* \* \* it goes to work on the imbedded dirt—that stiff waxy matter that is a combination of waste from the body, dust, soot and dead skin cells. It softens and dissolves this waxy matter \* \* \*

PAR. 5. Respondent makes and has made the foregoing statements in its advertising matter, as well as many others of similar import, which are misleading in that they represent or imply:

1. That Respondent's said face cream penetrates the skin; that it penetrates to the bottom of the pores of the skin; that it penetrates into and below the skin; and that it has unique, unusual and active penetrative properties in relation to the skin.

2. That dirt from the outside gets into and under the skin, is imbedded therein and fills the pores to the bottom and that respondent's face cream will remove the same.

3. That respondent's cream dissolves dirt and waste matter in the pores of the skin.

4. That respondent's cream sinks into the pores of the skin and then by reverse action flushes out the waste matter therein.

5. That the method of cleaning the skin of the face by the use of respondent's cream is different from that of other skin cleaning preparations in that it cleans more than the surface of the skin, while other preparations clean only the surface.

6. That blackheads are imbedded dirt.

7. That respondent's cream will correct, overcome or banish a dry skin.

8. That respondent's cream is equally efficacious on an oily skin as on a dry skin and that the cause of both conditions is the same.

9. That the use of respondent's cream will prevent and remove wrinkles and lines in the face.

10. That respondent's cream will remove blackheads as distinguished from removing superficial dirt from the outside surface thereof.

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11. That respondent's cream will refine the pores of the skin and correct enlarged pores.

12. That respondent's cream will remove rough spots and blemishes from the skin.

13. That soap and water are injurious to the skin and that they dry the skin.

14. That respondent's cream supplies dry skin with what it needs to overcome and cure such condition.

15. That users of respondent's cream never suffer from rough skin and that it will banish roughness.

16. That respondent's cream refreshes tired cells and brings new life to the cells and to the skin.

17. That respondent's cream safeguards beauty glands and brings them back to activity.

18. That dry skin is an old skin.

19. That dry skin is the cause of wrinkles and that tiny lines become wrinkles.

20. That results are guaranteed.

21. That respondent's cream removes and corrects the cause of enlarged pores and blackheads.

22. That respondent's cream is a solvent of and dissolves the various forms of dirt and waste matter that soil the skin.

**PAR. 6.** In truth and in fact respondent's face cream does not penetrate the skin or penetrate to the bottom of the pores of the skin or into and below the skin; respondent's cream does not have any unique or unusual or active penetrative property in relation to the skin; dirt from the outside does not get into or under the skin or become imbedded therein or fill the pores to the bottom and respondent's cream will not remove dirt if so located; respondent's cream will not dissolve dirt or waste matter in the pores of the skin; skin cleansers generally, including respondent's said cream, clean the surface of the skin, including the minute exterior openings of the pores, and respondent's cream is no different in this general respect from other skin cleansing preparations; blackheads are not imbedded dirt but are waxy skin secretions the exterior surfaces of which are discolored by exterior dirt; respondent's cream will not overcome, correct, or banish a dry skin but merely furnishes a temporary supply of lubrication, respondent's cream is not equally efficacious on oily skin as on a dry skin; the cause of an oily skin is not the same as the cause of a dry skin; respondent's cream will not prevent or remove wrinkles or lines in the face, it will not remove blackheads as distinguished from removing superficial dirt from the outside surfaces thereof; it will not refine the pores of the skin or correct enlarged pores; it will not remove rough spots or

blemishes from the skin; soap and water are not injurious to the skin and do not dry the skin; respondent's cream does not supply dry skin with what it needs to overcome or cure the condition; it is not true that all users of respondent's cream do not suffer from a rough skin or that said cream will banish roughness since any lubricating effect it may have is only temporary and superficial; respondent's cream does not refresh tired cells or bring new life to the cells or to the skin; respondents' cream does not safeguard so-called beauty glands or bring them back to activity if, in fact, such glands exist; it is not true that a dry skin is an old skin; a dry skin is not the cause of wrinkles nor is it true that tiny lines become wrinkles; respondent does not in fact guarantee the results claimed for the use of its cream; respondent's cream does not remove and correct the cause of enlarged pores and blackheads; generally speaking, respondent's cream is not a solvent of and does not dissolve the various forms of dirt and waste matter that soil the skin.

PAR. 7. The principal effect of respondent's said cream is to cleanse the outer surface of the skin. It also serves as a lubricant but such lubricating effect is of temporary duration and lasts only as long as the lubricating ingredients remain on the skin. This necessitates constant renewal of applications of the cream if such lubrication is to be maintained. Such treatment merely supplements the oil supplied by the skin itself but the lubrication supplied by respondent's cream is not identical with the secretions of the skin. Respondent's cream does not stimulate the action of the oil glands in the skin and has no effect of correcting the cause of the deficiency in secretion of the glands of the skin. Many unfavorable skin conditions are the result of internal conditions of the body such as excesses or deficiencies of dietary intake, unbalanced diet, too great or too little consumption of certain kinds of food, faulty or upset metabolism, nervous disorders, glandular disturbances and other conditions in regard to which respondent's face cream will have little, if any, effect on the resulting skin conditions. Such skin conditions can be effectively treated only by removing the causes thereof. Respondent's cream has no effect on these causes. A dry skin, lines in the face and wrinkles are due to causes such as advancing age, disease, worry, anxiety, overwork, conditions of the muscles and tissues underlying the skin and other causes upon which respondent's face cream will not have any effect. A cream of the general nature of respondent's does not penetrate the skin but may, to a limited extent, be absorbed by the skin. Such absorption, however, is not equivalent to or synonymous with penetration. Respondent's cream is not a solvent of dust, soot or dead skin cells or of various kinds of

organic and inorganic matter which may and do soil the skin of the face.

PAR. 8. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of its said face cream have had, and now have, the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations, as herein alleged, are true, and to induce them to purchase said face cream on account thereof. Thereby trade is unfairly diverted to respondent 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 face creams, soaps, and cosmetics of various kinds. There are among the competitors of respondent those who in the sale of their preparations and products do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of respondent's said practices, as herein set forth, 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.

PAR. 9. 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 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 6th day of October 1939, issued and served its complaint in this proceeding upon said respondent, Lady Esther, Ltd., 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 27th day of February 1940, 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, Rogers, Ramsay & 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 arguments 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

PARAGRAPHS 1. Respondent, Lady Esther, Ltd., is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its office and principal place of business at 7171 W. 65th Street, in the city of Chicago, State of Illinois.

PAR. 2. Respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of cosmetics and other toilet preparations in commerce between and among the various States of the United States. In the course and conduct of said business during the time aforesaid, respondent has caused, and does now cause, its said cosmetics and other toilet preparations, when sold, to be transported from its said place of business in Illinois to, into and through States of the United States other than Illinois to the purchasers thereof in such other States. The usual course of dealing of respondent in its said business as aforesaid is to sell its products to wholesale and retail stores through which they are eventually sold to members of the public. Respondent also sells its products, as aforesaid, directly to members of the public. Among the products so sold as aforesaid is a face cream known and described as Lady Esther Face Cream.

PAR. 3. In the course and conduct of its said business, respondent now is, and has been during the time above mentioned, in substantial competition with other corporations and with firms and individuals also engaged in the business of distributing and selling face creams, cosmetics, and other toilet preparations adapted to and used for the same general purposes as respondent's said Lady Esther Face Cream, in commerce among and between the various States of the United States.

PAR. 4. In the course and conduct of its aforesaid business in commerce as herein described respondent, for the purpose of inducing the purchase of said product, Lady Esther Face Cream, has caused advertisements to be placed in newspapers and other periodicals having a general circulation in the various States of the United

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States and in the District of Columbia, and has also published and circulated circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States. Respondent has also broadcast advertising 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 States in which said broadcasts originated. These advertisements, circulars, and radio broadcasts contain certain statements concerning the efficacy of the product, Lady Esther Face Cream, and the results which may be expected to be obtained from the use thereof. Similar advertising statements are made in other advertisements disseminated for the purpose of inducing, and which are likely to induce, directly or indirectly, purchases of said face cream in commerce as commerce is defined in the Federal Trade Commission Act. Prior to the issuance of the complaint herein, respondent, in said newspaper, periodical, radio, and circular advertisements, made, among others, the following representations:

1. What you want is deep cleansing! Many methods only "clean off" the skin. They do not clean it *out!* \* \* \* What you want is a cream that does more than "grease" the surface of your skin. You want a cream that *penetrates the pores!* Such a cream, distinctly, is Lady Esther Face Cream. It is a cream that gets below the surface—into the pores. \* \* \*
2. There is one sure way to remove that underneath dirt and that is to use a cream that penetrates the pores \* \* \*
3. \* \* \* Many methods are merely surface methods. They take off only the top dirt and leave the imbedded dirt untouched. What you want is deep-reaching action—a cleansing out of the stubborn, buried dirt \* \* \*
4. \* \* \* Demand a cleanser that goes below the surface. Insist upon a cleanser that gets into the pores, *deeply into the pores!* Lady Esther Face Cream is a pore-deep cleanser.
5. \* \* \* It cleanses deeply, to the very bottom of the pores. It doesn't clean just the surface of the skin—it goes below the surface and removes hidden dirt which ordinary cleansing methods fail to reach \* \* \*
6. \* \* \* It's a penetrating cream, which gets *into* your skin \* \* \*
7. I say that my cream will remove that deeply imbedded dirt that is the cause of large pores and black-speck blemishes \* \* \*
8. Those little black specks that keep showing up in your skin—do you know what they really are. \* \* \* They're imbedded dirt—dirt that has found its way deeply into your pores \* \* \* When your pores are completely cleansed of the plugging matter, blackheads automatically disappear. Also your pores automatically come down in size. Responding to Nature, they reduce themselves to their original, invisible smallness.
9. \* \* \* Lady Esther Face Cream loosens blackheads, floats out the stubborn dirt that laughs at your surface cleanser \* \* \*
10. \* \* \* It removes the cause of enlarged pores and blackheads \* \* \*

11. \* \* \* At the same time as Lady Esther Face Cream is unburdening your pores, it is *also* lubricating your skin. It is resupplying it with a fine oil that combats dryness and keeps the skin youthfully soft and smooth \* \* \*

12. \* \* \* Keep up this soothing Cleansing—(with Lady Esther Face Cream)—and you'll see those faint lines fade away—because your sebaceous glands will be back on the job—then you can say goodbye forever to dry skin.

13. \* \* \* Lady Esther Cream contains a fine oil that overcomes dryness and roughness \* \* \*

14. \* \* \* "Don't you believe dry skin isn't serious. It's the dry skin that invites the tiny lines that may grow into wrinkles \* \* \*" \* \* \* Lady Esther Cream \* \* \* brings back that soft dewey-fresh look which proves that the dry parched skin is smooth and pliant once more \* \* \*

15. A dry skin is an old skin.

16. Lady Esther Face Cream is an excellent corrective of dry skin \* \* \*

17. \* \* \* Supplies Dry Skin with What It Needs \* \* \*

18. \* \* \* You see, dryness and oiliness are just different symptoms of the *same* trouble. And they are both easy to overcome with Lady Esther Cream \* \* \*

19. \* \* \* Lady Esther Cream, \* \* \* counteracts the very cause of dryness \* \* \*

20. \* \* \* Dry patches and tiny lines will start to disappear \* \* \*

21. \* \* \* easily changes a dry, dingy skin into a smooth one \* \* \*

22. \* \* \* "It's the dry skin that invites the tiny lines that may grow into wrinkles \* \* \*" \* \* \* Lady Esther Cream \* \* \* brings back that soft dewey-like look which proves the dry parched skin is smooth and pliant once more \* \* \*

23. \* \* \* Remember a dry skin wrinkles \* \* \*

24. \* \* \* If you want to banish dry skin write me tonight and I will send you a tube of Lady Esther Face Cream \* \* \*

25. \* \* \* Lady Esther Cream \* \* \* helps nature refine your pores \* \* \*

26. \* \* \* Lady Esther guarantees results \* \* \*

27. \* \* \* Cleansing the pores as thoroughly as it does, it allows them to function freely again—to open and close—as Nature intended. This automatically permits the pores to reduce themselves to their normal, invisible size \* \* \*

28. \* \* \* It keeps the glands in condition to do their health-building work.

29. \* \* \* blotches and large pores which cause such untold suffering to young girls—very often yield to the penetrating action of Lady Esther Face Cream \* \* \*

30. \* \* \* it supplies the tissues with a delicate softening oil \* \* \*

31. \* \* \* Lady Esther Cream \* \* \* sinks into the dry tissues, and brings new life to your skin \* \* \*

32. \* \* \* It penetrates each tiny pore, flushes out old accumulations of waste which made your skin bumpy \* \* \*

33. \* \* \* As soon as it touches your skin, it sinks into your pores, and dissolves that buried waste, just like sunshine melting snow. It floats it all to the surface for you to wipe away \* \* \*

34. \* \* \* my cream cleanses your skin \* \* \* smooths out those rough spots, refreshes its tired cells \* \* \*

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35. \* \* \* brings new life to the dry cells \* \* \*

36. \* \* \* it goes to work on the imbedded dirt—that stiff waxy matter that is a combination of waste from the body, dust, soot and dead skin cells. It softens and dissolves this waxy matter \* \* \*

PAR. 5. The use by the respondent of the foregoing statements, representations, and advertisements and others of similar import, not herein specifically set forth, disseminated as aforesaid, with respect to Lady Esther Face Cream, has the tendency and capacity to mislead a substantial portion of the purchasing public into the belief:

1. That respondent's said face cream penetrates the skin; that it penetrates to the bottom of the pores of the skin; that it penetrates into and below the skin; and that it has unique, unusual and active penetrative properties in relation to the skin.

2. That dirt from the outside gets into and under the skin, is imbedded therein and fills the pores to the bottom and that respondent's face cream will remove the same.

3. That respondent's cream dissolves dirt and waste matter in the pores of the skin.

4. That respondent's cream sinks into the pores of the skin and then by reverse action flushes out the waste matter therein.

5. That the method of cleaning the skin of the face by the use of respondent's cream is different from that of other skin cleaning preparations in that it cleans more than the surface of the skin, while other preparations clean only the surface.

6. That blackheads are imbedded dirt.

7. That respondent's cream will correct, overcome, or banish a dry skin.

8. That respondent's cream is equally efficacious on an oily skin as on a dry skin and that the cause of both conditions is the same.

9. That the use of respondent's cream will prevent and remove wrinkles and all lines in the face.

10. That respondent's cream will remove blackheads as distinguished from removing superficial dirt from the outside surface thereof.

11. That respondent's cream will remove all rough spots and blemishes from the skin.

12. That soap and water are injurious to the skin and that they dry the skin.

13. That respondent's cream supplies dry skin with what it needs to overcome and cure such condition.

14. That users of respondent's cream never suffer from rough skin and that it will banish roughness.

15. That respondent's cream refreshes tired cells and brings new life to the cells and to the skin.

16. That respondent's cream safeguards beauty glands and brings them back to activity.

17. That dry skin is an old skin.

18. That dry skin is the cause of wrinkles and that tiny lines become wrinkles.

19. That results are guaranteed.

20. That respondent's cream removes and corrects the cause of enlarged pores and blackheads.

21. That respondent's cream is a solvent of and dissolves the various forms of dirt and waste matter that soil the skin.

PAR. 6. Respondent's face cream does not penetrate the skin or penetrate to the bottom of the pores of the skin or into or below the skin. Respondent's cream does not have any unique or unusual or active penetrative properties in relation to the skin. Dirt from the outside does not get into or under the skin or become imbedded therein or fill the pores to the bottom, and respondent's said cream will not remove dirt if so located. Respondent's cream will not dissolve dirt or waste matter in the pores of the skin or cleanse the pores below the exterior openings of the pores. Respondent's said cream does not sink into the pores of the skin and then by reverse action or otherwise flush out the waste matter therein. Many skin cleaners, including respondent's said cream, clean the surface of the skin including the exterior openings of the pores and respondent's cream in its method of cleaning is no different in this general respect from such other skin preparations. Blackheads are not imbedded dirt, but are waxy skin secretions, the exterior surfaces of which are discolored by exterior dirt. Respondent's cream will not overcome, correct, or cure a dry skin, but merely furnishes a temporary supply of lubrication. Respondent's said cream may be used on an oily skin and will clean an oily skin, at least to the same extent as a dry skin, but otherwise is not as efficacious on an oily skin as on a dry skin. The cause of an oily skin is not the same as the cause of a dry skin. Respondent's cream will not prevent or remove wrinkles or lines in the face except such lines as may be caused by dryness of skin. It will not remove blackheads as distinguished from removing superficial dirt from the outside surfaces thereof. Respondent's face cream will not refine the pores of the skin or correct or remove the cause of enlarged pores. It may, however, remove superficial accumulations of dirt from the pore openings, help nature refine the pores, and to the extent that superficial pore enlargement may be due to such accumulations will serve to reduce pore openings. It will not remove from the skin blemishes or rough spots other than those due solely to dryness of the skin. Soap and water are not injurious to the skin and do not

dry the skin except temporarily. Respondent's cream does not supply dry skin with what it needs to overcome or cure that condition. It is not true that all users of respondent's cream do not suffer from a rough skin or that said cream will banish roughness permanently, since any lubricating effect it may have is only temporary. Respondent's cream does not refresh tired cells or bring new life to the cells of the skin. Respondent's cream does not safeguard so-called beauty glands or bring them back to activity if in fact such glands exist. It is not true that a dry skin is an old skin and a dry skin is not the cause of all wrinkles, nor is it true that all tiny lines become wrinkles. Respondent does not, in fact, guarantee the results claimed for the use of its cream. Respondent's cream does not remove or correct the cause of enlarged pores and blackheads. Generally speaking, respondent's cream is not a solvent of, and does not, dissolve dust, soot, dirt, dead skin cells or the various forms of dirt and waste matter that soil the skin. Respondent's said cream will not affect the pores of the skin advantageously otherwise than as stated in this findings as to the facts.

PAR. 7. The principal effect of respondent's said cream is to cleanse the outer surface of the skin and the exterior openings of the pores. The respondent's cream does not penetrate the skin but may, to a limited extent, be temporarily absorbed by the skin and in this way may have a lubricating effect; such absorption, however, is not the equivalent of or synonymous with penetration. Such lubricating effect is of temporary duration determined by such factors as the length of time that the lubricating ingredients remain on the skin and by the amount of the absorption of such ingredients. This necessitates constant renewal of applications to the skin if such lubrication is to be maintained. Such treatment merely supplements the oil supplied by the skin itself, but the lubrication supplied by respondent's cream is not identical with the secretions of the skin. Respondent's cream does not stimulate the action of the oil glands in the skin and has no effect in correcting the cause of the deficiency in the secretion of the glands of the skin. Many unfavorable skin conditions are the result of internal conditions of the body, such as excesses or deficiency of dietary intake, unbalanced diet, too great or too little consumption of certain kinds of food, faulty or upset metabolism, nervous disorders, drug rashes, glandular disturbances or other conditions in regard to which respondent's face cream will have no appreciable effect upon the resulting skin conditions. Such skin conditions can be effectively treated only by removing the causes thereof, and respondent's cream has no effect on these causes. A dry skin, lines in the face and wrinkles may be due to causes such as advancing age,

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disease, worry, anxiety, overwork, conditions of the muscles and tissues, underlying the skin, and other causes upon which respondent's face cream will not have any effect. Respondent's cream is not a solvent of dust, soot, dirt, dead skin cells or of various kinds of organic and inorganic matter which can and do soil the skin of the face.

PAR. 8. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of its said face cream have had the tendency and capacity to mislead purchasers and prospective purchasers thereof into the erroneous and mistaken belief that such representations made by respondent as herein detailed, are true, and to induce them to purchase said face cream on account thereof. Thereby, trade has been unfairly diverted to respondent 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 face creams, soaps, and cosmetics of various kinds. There are among the competitors of respondent those who in the sale of their preparations and products do not similarly or in any manner misrepresent the same or matters pertaining thereto. As a result of said respondent's said practices, as herein set forth, substantial injury has been done by respondent to competition in commerce between and among the various States of the United States.

#### CONCLUSION

The aforesaid acts and practices of the respondent are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce 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, Lady Esther, Ltd., a corporation, 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 a cosmetic preparation now designated as "Lady Esther Face Cream" or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or 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 preparation, which advertisements represent, directly or through implication:

1. That said Lady Esther Face Cream penetrates the skin or penetrates to the bottom of the pores of the skin or into or below the skin, or has any unique or unusual or active penetrative properties in relation to the skin.

2. That dirt from the outside gets into or under the skin or becomes imbedded therein or fills the pores of the skin to the bottom, or that respondent's cream will remove dirt if so located.

3. That said Lady Esther Face Cream will dissolve dirt or waste matter in the pores of the skin or cleanse them below their exterior openings.

4. That said cream sinks into the pores of the skin and then by reverse action or otherwise flushes out the waste matter therein.

5. That the method of cleaning the skin of the face by the use of respondent's said cream is different from that of other skin cleaning preparations in that it cleans more than the surface of the skin and the exterior openings of the pores, whereas other skin preparations clean only the surface and the exterior openings of the pores.

6. That blackheads are imbedded dirt or are anything other than waxy skin secretions, the exterior surfaces of which are discolored by exterior dirt.

7. That said cream will overcome, correct, or cure a dry skin or do more in affecting a dry skin than furnish a temporary supply of lubrication.

8. That said cream is as efficacious on an oily skin as on a dry skin except that it will clean an oily skin at least to the same extent as a dry skin.

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9. That the cause of an oily skin is the same as the cause of a dry skin.

10. That the use of said cream will prevent or remove wrinkles or lines in the face other than such lines as may be caused by dryness of the skin.

11. That the use of said cream will remove blackheads or any part or portion of blackheads except the superficial dirt on the outside surface thereof.

12. That the use of said cream will refine the pores of the skin or correct or remove the cause of enlarged pores or have any effect thereon except that its use may remove superficial accumulations of dirt from the pore openings and may help nature refine the pores, and to the extent that superficial pore enlargement may be due to such accumulations will serve to reduce pore openings.

13. That the use of said cream will remove from the skin blemishes or rough spots other than those due solely to dryness of the skin.

14. That soap and water are injurious to the skin or that they dry the skin except temporarily.

15. That the use of said cream supplies dry skin with what it needs to overcome or cure that condition.

16. That all users of said cream are free from a rough skin or that the use of said cream will banish roughness permanently or have any lubricating effect on the skin more than a temporary lubricating effect.

17. That the use of said cream refreshes tired cells of the skin or brings new life to such cells.

18. That the use of said cream safeguards beauty glands or brings them back to activity.

19. That dry skin is an old skin.

20. That a dry skin is the cause of all wrinkles or that it is the cause of any wrinkles without specifying such wrinkles as the kind of wrinkles that are caused by a dry skin; or that all tiny lines become wrinkles, or that any tiny lines become wrinkles without accompanying said statement with a truthful explanation as to the kind or kinds of tiny lines which may or do become wrinkles.

21. That the respondent guarantees its said cream or the results claimed by the use thereof, unless the nature and extent of such guarantee are clearly and adequately disclosed in immediate connection and conjunction with such guarantee and with equal prominence and emphasis.

22. That the use of said cream removes or corrects the cause of enlarged pores or blackheads.

Order

30 F. T. C.

23. That said cream is a solvent of or dissolves dust, soot, dirt, dead skin cells, or the various forms of dirt and waste matter that soil the skin.

24. That the use of said cream will affect the pores of the skin advantageously otherwise than as heretofore indicated in this order.

*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.

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MANHATTAN HAT Co., INC. Complaint, January 19, 1931. Original order, June 17, 1933. Docket 1898, 17 F. T. C. 378. Order setting aside, etc., December 14, 1939.

Charge: Misrepresenting product as to renovated or rebuilt being new; in connection with the manufacture and sale of made-over men's felt hats.

Cease and desist order in this case was set aside, issuance of amended complaint directed, and incorporation of testimony adduced at former hearings directed 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 insofar as material and competent in any findings as to the facts hereafter 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; 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 be issued and served forthwith against the corporate respondent Manhattan Hat Co., Inc., a corporation, and against the respondents Harry Samnick, Jacob Samnick, and Louis Reinken, individually and as officers of Manhattan Hat Co., Inc., a corporation.

*It is further ordered*, That all testimony and other evidence adduced at hearings heretofore held in this proceeding be received and considered, insofar as material and competent in any findings as to the facts hereafter 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, saving, however, to the respondents their right to rebut such testimony or other evidence by any proper means at such subsequent hearings as may be held herein.

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

*Mr. Robert Mathis, Jr.* for the Commission.

**PIEL BROTHERS STARCH Co.** Complaint, June 1, 1939. Order, December 15, 1939. (Docket 3799.)

Charge: Discriminating in price in violation of section 2 (a) of the Clayton Act; in connection with the manufacture and sale of corn products.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the motion of counsel for respondent, and it appearing that respondent, pursuant to action of its shareholders, commenced voluntary liquidation on August 24, 1937, and that said liquidation will be completed on or about December 31, 1939, and that its said business has been now wholly liquidated and that it is about to be dissolved as a corporation, 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.

*Mr. Frank Hier* and *Mr. Philip R. Layton* for the Commission.

*Baker, Daniels, Wallace & Seagle*, of Indianapolis, Ind., for respondent.

**PARKER-McCRORY MANUFACTURING Co.** Complaint, May 27, 1938. Order, December 19, 1939. (Docket 3446.)

Charge: Misrepresenting properties of product and holding out, falsely and misleadingly, product as free; in connection with the manufacture and sale of radio sets, radio parts, wind charger generators for operating radios, and other mechanical devices.

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, Parker-McCrory Manufacturing Co., has 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 facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

Before *Mr. Miles J. Furnas* and *Mr. Randolph Preston*, trial examiners.

*Mr. Carrel F. Rhodes* for the Commission.

*Mr. Alfred D. Hillman*, of Kansas City, Mo., for respondent.

NATIONAL COTTONSEED PRODUCTS ASS'N, ET AL. Complaint, May 31, 1934. Order, December 21, 1939. (Docket 2190.)

Charge: Combining and conspiring with intent and effect of unduly and unreasonably restricting, restraining, and obstructing competition in purchase and sale of cottonseed and cotton meal.

Dismissed, after answers, by the following order:

*Whereas*, The chief counsel of the Commission has recommended that this proceeding be dismissed because of the changed conditions and organization of the industry and because of the lack of persons now appearing to be injured, and the Commission being fully advised in the premises;

*Now, therefore, it is ordered*, That the complaint herein be, and hereby is, dismissed without prejudice to the Commission's right to reinstate and reopen the case upon good cause being shown.

*Mr. Walter B. Wooden* and *Mr. Edward L. Smith* for the Commission.

*Mr. Christie Benet*, of Columbia, S. C., for National Cottonseed Products Ass'n and its officers and directors.

*Fulbright, Crooker & Freeman*, of Houston, Tex., for Texas Cottonseed Crushers Ass'n and its officers and executive committee.

*Mr. Alger Melton*, of Chickasha, Okla., for Oklahoma Cottonseed Crushers Ass'n and its officers and directors.

MANUEL BLATTBERG, trading as MONARCH HOSIERY & NECKWEAR Co. Complaint, June 17, 1938. Order, December 27, 1939. (Docket 3463.)

Charge: Using lottery scheme in merchandising; in connection with the sale of hosiery, lingerie, dresses, shirts, ties, underwear, blankets, Christmas cards, and other articles of merchandise.

Record closed, 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 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 open the same and resume prosecution thereof in accordance with its regular procedure.

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

*Mr. D. C. Daniel* for the Commission.

*Mr. Abe Shefferman*, of Washington, D. C., for respondent.

C. C. JOHNSON, trading as SUPREME MANUFACTURING Co., ETC. Complaint, February 14, 1939. Original order, November 7, 1939. Docket 3712, 29 F. T. C. 1270. Order vacating, etc., December 29, 1939.

Charge: Misrepresenting product and misbranding or mislabeling as to qualities and dealer being manufacturer; in connection with the sale of a preservative or mending powder for silk hosiery and lingerie.

Findings as to the facts and order to cease and desist vacated and set aside by the following order:

This matter coming on to be heard by the Commission upon the respondent's request for a modification of the order to cease and desist issued herein, and it appearing that the findings as to the facts and order to cease and desist issued herein on November 7, 1939, should be modified in certain respects other than those requested, and that the case should be reopened, and the Commission having duly considered the matter, and being now fully advised in the premises;

*It is ordered*, That the findings as to the facts and order to cease and desist issued herein on November 7, 1939, be, and the same hereby are, vacated and set aside and that the case be, and it hereby is, reopened for such further proceedings as may be necessary.

Before *Mr. John J. Keenan*, trial examiner.

*Mr. John R. Phillips, Jr.* for the Commission.

*Morris, Kix Miller & Baar*, of Washington, D. C. and *Wright, Rogers & Margolin*, of Kansas City, Mo., for respondent.

B. GREEN & Co. ET AL.<sup>1</sup> Complaint, February 21, 1939. Order, December 29, 1939. (Docket 3720.)

Charge: Combining and conspiring to cut off competitors' sources of supply and restrict competition; in connection with conduct of wholesale grocery business in the Baltimore, Md., trade area and pooling of purchases in less than carload lots from producers and manufacturers for shipment in carload lots to respondents and to the consignee purchasers in area concerned.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission, the answer of respondents, the evidence, briefs, and oral arguments in support of and in opposition to the allegations of the complaint, and the Commission having duly considered the same and the record, and being now fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed.

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<sup>1</sup> Respondents joined in case as set forth in complaint were Benjamin Green and Harry L. Minch, trading as B. Green & Co.; Isador Rudo and Barnette H. Rudo, trading as The Atlantic Grocery Co.; Morris Kolker, Harry Mark, and Samuel Guttman, trading as The Maryland Grocery Co.; Michael Joffee and Reubin Joffee, trading as Joffee Bros.

Before *Mr. Lewis C. Russell*, trial examiner.  
*Mr. Fletcher G. Cohn* for the Commission.  
*Young & Crothers*, of Baltimore, Md., for respondents.

THE COMMONWEALTH MANUFACTURING CORPORATION. Complaint, March 24, 1939. Order, January 8, 1940. (Docket 3745.)

Charge: Advertising falsely or misleadingly as to qualities, guarantee and patent of product, and earnings or profits; in connection with manufacture and sale of certain metal welding machines or devices.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing to the Commission that the respondent corporation has been dissolved and that all assets have been disposed of to various parties, 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 the facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

*Mr. Randolph W. Branch* for the Commission.

*Freiberg & Simmonds*, of Cincinnati, Ohio, for respondent.

CHARLES E. HERCHENROEDER, trading as PREMIUM SALES SERVICE. Complaint, April 14, 1939. Order, January 24, 1940. (Docket 3763.)

Charge: Using lottery scheme in merchandising and misrepresenting value, and identity or source or origin of product; in connection with sale of clocks, electric dry shavers, pen and pencil sets, cameras, and other articles of merchandise.

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 moved from his last known address and could not be located after diligent search and inquiry, 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. L. P. Allen, Jr.* for the Commission.

SEA SLED CORPORATION, Docket 1734; LOUIS BOSSERT & SONS, INC., Docket 1735; PACIFIC DOOR & SASH CO., Docket 1737; CHICAGO WAREHOUSE LUMBER CO., Docket 1742. Complaints, December 14, 1929.

DART BOATS, INC., Docket 1768. Complaint, March 6, 1930. BOYD-MARTIN BOAT CO., Docket 1906. Complaint, January 23, 1931. Proceedings, originally dismissed November 7, 1931, 15 F. T. C. 443, reopened, October 29, 1937. Dismissal, January 25, 1940.

Charge: Misrepresenting product as to composition and advertising falsely or misleadingly in regard thereto; through misrepresenting lumber and other products in invoices, price lists, trade literature, etc., as being mahogany, Philippine mahogany, bataan mahogany, and other purported species and kinds of mahogany as the case may be.

Dismissed by the following order:

This matter coming before the Commission upon the motion of the chief counsel for the dismissal of these cases and it appearing that the respondents above captioned are no longer in the business of selling Philippine hardwoods under the term "Philippine Mahogany," the matter in controversy in these proceedings, and counsel for respondents having submitted proof from Dun & Bradstreet reports and other material by way of showing that the above-named respondents are no longer in business, and the Commission being fully advised in the premises;

*It is hereby ordered,* That the proceedings against the Sea Sled Corporation, Docket No. 1734; Louis Bossert & Sons, Inc., Docket No. 1735; Pacific Door & Sash Co., Docket No. 1737; Chicago Warehouse Lumber Co., Docket No. 1742; Dart Boats, Inc., Docket No. 1768; and Boyd-Martin Boat Co., Docket No. 1906, be, and the same hereby are dismissed. This action, however, is taken without prejudice to the reopening of these cases if any or all of said respondent parties should resume the business of selling Philippine hardwood as "Philippine Mahogany."

Before *Mr. William C. Reeves* and *Mr. Webster Ballinger*, trial examiners.

*Mr. Eugene W. Burr* for the Commission.

*Nims & Verdi*, of New York City, and *Mr. Daniel R. Forbes*, of Washington, D. C., for respondents.

*Lt. Col. F. Granville Munson*, of Washington, D. C., for Commonwealth of the Philippine Islands, intervenor.

THE SPERRY CORPORATION. Complaint, November 3, 1937. Order, February 12, 1940. (Docket 3259.)

Charge: Acquiring stock of competitors in violation of section 7 of the Clayton Act; in connection with the manufacture and sale of hydraulic pumps, transmissions, and allied products.

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 matter, and being now fully advised in the premises:

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed without prejudice.

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

*Mr. Everett F. Haycraft* for the Commission.

*Gardner, Morrison, Rogers & McGuire* and *Mr. Norman B. Frost*, of Washington, D. C., for respondent.

DISTILLERS PRODUCTS CORPORATION OF KENTUCKY, INC. Complaint, February 1, 1940. Order, February 15, 1940. (Docket 4010.)

Charge: Using misleading trade or corporate name, misbranding or mislabeling, and advertising falsely or misleadingly as to business status; in connection with the rectifying, bottling, and sale of whiskies, brandies, wines, gins, and other spirituous beverages.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record, and it appearing that the respondent, Distillers Products Corporation of Kentucky, Inc., has entered into a stipulation as to the facts and an agreement to cease and desist from certain enumerated practices, which stipulation and agreement was, on February 8, 1940, approved by the Commission, 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 issued on February 1, 1940, be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume prosecution thereof in accordance with its regular procedure.

*Mr. DeWitt T. Puckett* for the Commission.

*Mr. Stanley B. Mayer*, of Louisville, Ky., for respondent.

ARDELL RAZOR BLADE CORPORATION and FULLER BLADE Co., INC. Complaint, June 22, 1939. Order, February 20, 1940. (Docket 3831.)

Charge: Misbranding or mislabeling and advertising falsely or misleadingly as to maker or manufacturer; in connection with offer and sale of razor blades.

Record closed, after answer, by the following order:

This matter coming on for consideration by the Commission upon the record herein, 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. Wilbur N. Baughman* for the Commission.

COLONIAL ENTERPRISE Co., INC. Complaint, October 9, 1939. Order, March 13, 1940. (Docket 3920.)

Charge: Using and furnishing lottery schemes in merchandising; in connection with the sale of general merchandise.

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 was dissolved under the laws of the State of New York on February 14, 1940, 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.

*Myers & Sherwin*, of New York City, for respondent.

OFFENHEIM, COLLINS & Co., INC. Complaint, August 8, 1939. Order, April 2, 1940. (Docket 3869.)

Charge: Advertising falsely or misleadingly as to nature and composition of product; in connection with the sale of furs and fur garments.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record, briefs, and oral argument, and the Commission having duly considered the same and being now fully advised in the premises, and it appearing that the several practices alleged to have been engaged in by the respondent, which are the subject matter of the complaint, were discontinued by respondent before or about the time such practices became the subject matter of an investigation by the Commission, and that there is no reason to believe that such practices will be resumed, and that the advertising matter in question was changed some time prior to the promulgation of, and is in conformity with, the trade practice rules now in effect for the fur industry.

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed.

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

*Mr. Joseph C. Fehr* for the Commission.

*Chadbourne, Wallace, Parke & Whiteside*, of New York City, for respondent.

GORDON BAKING Co. Complaint, August 31, 1938. Order, April 6, 1940. (Docket 3570.)

Charge: Advertising falsely or misleadingly as to composition or quality of product; in connection with the baking and sale of bread.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint of the Commission, the answer of the respondent, stipulation as to the facts in the case, and oral arguments in support of, and in opposition to, the allegations of the complaint, and the Commission having duly considered the same and the record, and being now fully advised in the premises;

*It is ordered*, That the complaint herein be, and the same hereby is, dismissed.

*Mr. Fletcher G. Cohn* for the Commission.

*Battle, Levy, Fowler & Neaman*, of New York City, and *Gardner, Morrison, Rogers & McGuire*, of Washington, D. C., for respondent.

FLORAL ART CARD CO., INC. Complaint, November 4, 1938. Order, April 17, 1940. (Docket 3644.)

Charge: Misrepresenting product as to quality and terms and conditions; in connection with the manufacture and sale of greeting cards.

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 to the Commission that the respondent is out of business and that the corporation is 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.

Before *Mr. Arthur F. Thomas*, trial examiner.

*Mr. Merle P. Lyon* for the Commission.

*Buchdahl & Lempel*, of New York City, for respondent.

TANEN SHIRT CO., INC. Complaint, October 31, 1938. Order, April 20, 1940. (Docket 3641.)

Charge: Misbranding or mislabeling as to composition and qualities of product; in connection with the sale of men's shirts.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the respondent, Tanen Shirt Co., Inc., has discontinued the unfair practices charged in the complaint and has agreed to accept and abide by the rules of fair trade practice concerning Shrinkage of Woven Cotton Yard Goods promulgated by the Commission June 30, 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. Morton Nesmith* for the Commission.

*Mr. A. J. Halprin*, of New York City, for respondent.

PAUL S. HERVEY, trading as ALDINE DENTAL STATIONERS. Complaint, April 12, 1939. Order, April 23, 1940. (Docket 3758.)

Charge: Advertising falsely or misleadingly as to dealer being embossing company and nature of manufacture; in connection with the sale of stationery products.

Dismissed by the following order:

This proceeding having been heard by the Federal Trade Commission upon the complaint, the answer of respondent, testimony and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief of counsel for the Commission, 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 J. Keenan*, trial examiner.

*Mr. Merle P. Lyon* for the Commission.

*Mr. Harry F. Garrett*, of Corydon, Iowa, for respondent.

GOLDBLATT BROS., INC. Complaint, January 17, 1938. Order, May 17, 1940. (Docket 3301.)

Charge: Advertising falsely or misleadingly as to special offers and composition of product; in connection with the sale of sport garments or jodhpurs and breeches of whipcord.

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 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. Arthur F. Thomas*, trial examiners.

*Mr. Joseph C. Fehr* for the Commission.

*Pritzker & Pritzker*, of Chicago, Ill., for respondent.

UNITED DISTILLERS PRODUCTS CORPORATION. Complaint, June 26, 1936. Order, May 25, 1940. (Docket 2850.)

Charge: Using misleading trade or corporate name, misbranding or mislabeling, and advertising falsely or misleadingly as to business status; in connection with the purchasing, rectifying, blending, and sale of whiskies, gins, and other alcoholic beverages.

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 now owns and operates registered distillery No. 1, at Amston, Conn., under Distiller's Permit No. 841, issued to it by the Federal Alcohol Administration on August 18, 1937, and the Commission having duly considered the matter, and being now fully advised in the premises;

*It is ordered*, That the case growing out of the complaint 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. W. W. Sheppard*, trial examiner.

*Mr. DeWitt T. Puckett* for the Commission.

MAURICE M. GOLDBERG and TETRINE CHEMICAL SALES Co. Complaint, June 8, 1939. Order, May 25, 1940. (Docket 3814.)

Charge: Misrepresenting product as free, and as to value thereof and failing to carry out undertakings; in connection with the sale of fire extinguishers and chemical fluids for use therein.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration before the Commission and it appearing that the corporate respondent has been dissolved and that the acts and practices charged in the complaint have not been continued since the dissolution of the corporate respondent, 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 L. Hornor*, trial examiner.

*Mr. Donovan R. Divet* for the Commission.

*Mr. Samuel S. Goldberg*, of New York City, for respondents.

CONTINENTAL BAKING Co. Complaint, December 4, 1939. Order, May 31, 1940. (Docket 3962.)

Charge: Discriminating in price, in violation of subsection 2 (a) of section 1 of the Clayton Act as amended by the Robinson-Patman Act; in connection with the manufacture and sale of bread and allied products.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record herein and the Commission having duly considered the matter and being now fully advised in the premises;

*It is hereby ordered,* That the complaint herein be, and the same hereby is, dismissed without prejudice.

Before *Mr. John P. Bramhall*, trial examiner.

*Mr. Allen C. Phelps* for the Commission.

*Mr. George Faunce, Jr.* and *Mudge, Stern, Williams & Tucker*, of New York City, for respondent.

# STIPULATIONS <sup>1</sup>

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## DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST <sup>2</sup>

2494.<sup>3</sup> **Seafood—Nature.**—Hudgins Fish Co., a corporation, engaged in the sale and distribution of fish and crustacea 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.

The American lobster, also known as the northern 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, Rock Lobster, and southern Lobster. The term "Lobster" has long been associated in the minds of the consuming public with the genus *Homarus*.

Hudgins Fish 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 "Lobster" or the words "Lobster Meat" or "Lob. Meat" as descriptive of a species of food fish other than that properly known as "lobster," the macrurous crustacean of the genus *Homarus*, unless the said words "Lobster," "Lobster Meat," or "Lob. Meat," whenever so used, be accompanied, in equally conspicuous type and in direct connection therewith, by appropriate language identifying the species or locality of such product. (Mar. 7, 1940.)

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<sup>1</sup> For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 1547 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, December 1, 1939, to May 31, 1940, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 29 of the Commission's decisions.

<sup>2</sup> 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.

\* Modified.

2600. **Baby Chicks—Nature, Quality and Certified.**—Milton Johnson and Mark Johnson, copartners, trading as Trail's End Poultry Farm, engaged in the chick hatchery business and in the sale and distribution of chicks incubated at their place of business from eggs, certain of which were purchased by the said copartners from nearby farm flocks owned or controlled and operated by others, pursuant to contracts existing between such flock owners and the aforesaid copartners, 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.

Milton Johnson and Mark Johnson, in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use in advertising or printed matter of whatever kind or character, or in any other way, of the words "300-egg double pedigree White Leghorn breeding males" or of any other words of similar implication, either alone or in connection with the words "finest bred chicks," "finest breeding cockerels," or with any other words, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the chicks supplied by said copartners in filling orders therefor are or have been hatched from eggs laid by stock of the 300-egg or pedigreed type, when such is not the fact. Said copartners also individually agree to cease and desist from the use of the word "Certified" or of any other word of similar meaning as descriptive of their chick products, or in any other way, the effect of which is to import or imply or cause or tend to cause the belief by purchasers that the chicks sold by them have been authoritatively endorsed or guaranteed or attested as to quality, qualifications, and fitness thereof, when such is not the fact. (Dec. 7, 1939.)

2601. **Cartooning Courses of Instruction—Qualifications, Nature, Opportunities, Guarantee, Free, Commission Approval, Etc.**—Edward D. Muenchow, sole trader, doing business as Moon Gag-Cartoon School, engaged in conducting a correspondence school and in the sale of courses of instruction in cartooning 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.

Edward D. Muenchow, in connection with the sale and distribution of his courses of instruction in commerce as defined by said act, agreed to cease and desist from—

(a) Representing that he is an internationally known cartoonist when such is not a fact.

(b) Representing that the "Moon Gag-Cartoon School" correspondence course is written and illustrated by a cartoonist who is daily or regularly producing cartoons for more than 30 nationally circulated magazines and newspapers, or for any thereof, when such is not a fact.

(c) Representing that every trick of the trade that one needs to know to become a successful cartoonist is included in such course of instruction.

(d) Representing that students who have completed his course of instruction will or may, by reason thereof, be in a position to earn banker's wages, own a home, a car, and other luxuries; or in any other way making overstatements or misrepresentations as to the earning power or future security of his graduates and students.

(e) Representing either directly or indirectly that any person, without regard to his education, imagination, discernment, sense of humor, experience, or artistic talent can or may become a competent and successful cartoonist by taking his course of instruction.

(f) Representing that it is necessary for one to have had some of his work actually printed before most magazine editors will accept his cartoons.

(g) Stating that he has made arrangements with the editors of the Cartoon Book, or otherwise that he can assure the printing and publication of cartoons therein, without explaining that he is himself the publisher and editor of such book.

(h) The use of the word "guarantee" or other word or words of similar import in connection with money-back agreements or otherwise in such a manner as to mislead or deceive students, prospective students, or the public.

(i) Representing any commodity or service as "free" when in fact such commodity or service is regularly included as part of the course of instruction or service.

(j) Representing that statements made in his advertising media comply with the rules for advertising private home-study schools as promulgated by the Federal Trade Commission; using the name of the Federal Trade Commission in his advertising matter in any way the effect of which may be to convey the impression that his claims have been given either the express or the tacit approval of the Commission. (Dec. 1, 1939.)

2602. **Tooth Brushes—Sterilized.**—Takamine Corp., a corporation, engaged in the sale and distribution of a type of tooth brush called "Takamine" 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.

Takamine Corp., in connection with the offering for sale, sale, and distribution of its tooth brushes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the word "Sterilized" or of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that all germ life of whatever kind or description on said tooth brushes has been destroyed or removed, when such is not the fact. (Dec. 1, 1939.)

2603. **Tub and Shower Bath Glass Enclosures—Composition and Quality.**—Abram R. Finkel, an individual trading as Keystone Shower Door Co., engaged in the business of manufacturing glass enclosures for tub and shower baths, in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations 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.

Abram R. Finkel, in connection with the sale and distribution of his product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in his advertisements of whatever kind or character of the word "Plate" either alone or in connection with the word "Commercial" or with any other word or words as descriptive of the glass content of said products which is not "Plate" glass, and from the use of the said word "Plate" or the words "Commercial Plate" in any way the effect of which tends or may tend to convey the belief to purchasers that the glass portion of said product is what is known as "Plate" glass, when such is not the fact. (Dec. 2, 1939.)

2604. **Photographs or Photographic Enlargements—Association, Nature and Photographic Studio.**—E. J. Moak, sole trader as Acme Art Association, engaged in the sale and distribution of colored photographic enlargements by mail order and otherwise in interstate commerce in competition with other individuals and with firms, partnerships, and corporations 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.

E. J. Moak, in connection with the sale and distribution of photographs and photographic enlargements 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" 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) Representing directly or in any other manner that colored or tinted photographs or photographic enlargements are paintings or oil 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 either directly or inferentially that he owns, operates, or maintains a photographic studio of his own, when such is not the fact. (Dec. 2, 1939.)

2605. **Uniforms and House Dresses—Nature and Composition.**—G. H. Hess, Inc., a corporation, engaged in the manufacture of uniforms and house dresses 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.

G. H. Hess, 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, directly or indirectly, of the terms "shrunk," "pre-shrunk," or word, terms, mark, label, or representation of like effect, or similar import, as descriptive of its goods when the same are not in fact shrinkproof or nonshrinkable, or have not in fact been fully shrunk or preshrunk to the extent that no residual shrinkage is left remaining in such goods. If the term "shrunk" or the term "pre-shrunk" be used properly to indicate that such goods 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, then such term or word shall be accompanied, as an integral part thereof and in immediate conjunction therewith, by a truthful phrase, statement or assertion clearly and unequivocally setting forth in percentage or percentages the amount of residual shrinkage remaining in both the warp and the filling, or in the warp or the filling whichever has the greater residual shrinkage; for example, "Preshrunk (or shrunk)—will not shrink more than --% under Commercial Standard CS59-36".

(b) The use of the word "linene" or the term "lin" independently or in conjunction with any other word or words in trade indicia, adver-

tisements, or otherwise, to designate or describe products not made of the fiber of the flax plant; and from the use of such word "Linene" or such term "lin" 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 the fiber of the flax plant, when such is not the fact. (Dec. 2, 1939.)

2606. **Hosiery, Etc.—Cooperative Group Organization, Special Advantages, Etc.**—Thrift Buyers of America, a corporation, engaged in the retail sale and distribution of hosiery and other merchandise by United States mails and otherwise 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.

Thrift Buyers of America, in connection with its sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) The use, in its corporate or trade name, of words or terms such as "Thrift Hosiery Society" or "Thrift Buyers of America," as descriptive of its business; or the use in its trade-promotional representations of expressions such as "Thrift Associates," "Group Buying," "In Unity there is Strength," or of any words or statements of similar import, having the tendency or capacity to create the impression or convey the belief that such retail business engaged in for personal profit is a nonprofit, cooperative group organization conducted for the mutual benefit of its members.

(b) The issuance of "membership" certificates or the designation of its customers as "members" with the effect of conveying the belief that such customers thereby enjoy the advantage of mass buying and avoid paying a retailer's profit on the merchandise bought.

(c) Representing that its customers or prospective customers can, do, or may effect savings of 25 percent, 40 percent, or 25 to 50 cents on every pair of hosiery, or any other percentage or amount in excess of what actually has been realized by its customers in their purchase of its merchandise. (Dec. 2, 1939.)

2607. **Rug and Upholstery Cleaning Fluid—Qualities or Properties.**—Albert Isserson, an individual trading as Nu-Life Cleaner Manufacturing Co., engaged in compounding and packaging a rug and upholstery cleaning fluid and in the sale thereof under the trade name "Nu-Life Rug and Upholstery Cleaner" in commerce between and among various States of the United States, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Albert Isserson, in connection with the offering for sale, sale, and distribution of his product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist from the use in his advertisements and advertising matter or otherwise of any word, statement, or representation, the effect of which tends or may tend to convey the belief to purchasers that said product has sterilizing or germ-destroying or moth-proofing properties or qualities, or that, when used as directed, it will completely de-moth upholstery furniture or rid or banish from the same all moths, or that it will have any moth-elimination effect other than to act as a contact killer of such pests. (Dec. 2, 1939.)

2608. **Cartooning Courses of Instruction—Competitors' Conduct and Products, Personal Instruction, Copyright, Opportunities, Testimonials, Etc.**—Ralph A. Hershberger, sole trader, doing business as The National School of Cartooning, engaged in the business of conducting a correspondence school and in the sale of courses of instruction in cartooning, 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.

Ralph A. Hershberger, in connection with the sale and distribution of his courses of instruction in commerce as defined by said act, agreed to cease and desist from—

(a) The defamation of competitors by imputing to them dishonorable or questionable conduct, or the false disparagement of the character, nature, quality, value, or scope of their courses of instruction or educational services, or in any other material respect.

(b) Representing that personal instruction and criticism will be given by a correspondence school only when so specifically stated in an enrollment blank.

(c) Representing that a copyright has been granted by the United States Government for the "Circle System" or for any other system of drawing, or by implication or direct statements that the booklets or other material issued by the National School of Cartooning are the only cartooning publications for which a copyright has been granted within the past 20 years.

(d) Representing either directly or inferentially that students who have completed his course of instruction will or may by reason thereof step into good positions as cartoonists or comic artists, earn from \$30 to \$75 per week at the start, have rapid advancement beginning immediately, or "do the same" as certain outstanding cartoonists supposed to earn more than \$100,000 a year; or in any other way making over-

statements or misrepresentations as to the earning power or future security of his students and graduates.

(e) Representing either directly or indirectly that any person, without regard to his education, imagination, discernment, sense of humor, experience, or artistic talent, can or may become a competent and successful cartoonist or comic artist by taking his course of instruction.

(f) Publishing testimonial letters without indicating the dates when such letters were written. (Dec. 7, 1939.)

2609. **Ladies' Fur Garments, Buckskin Jackets, and Gloves—Tannery, Factory, Nature and Composition.**—Three Rivers Fur Tannery, engaged in the sale and distribution of ladies' fur garments or coats, buckskin jackets, and gloves made from cowhide and horsehide, and other merchandise, 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.

Three Rivers Fur Tannery, in connection with the sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist—

1. From the use of the word "Tannery" as part of the corporate or trade name used by it in the advertisement, sale, or distribution of products made from skins or hides not tanned by it; and from the use of the words "Tanning," "Tanners," or any similar word or words in connection with the advertisement, sale, or distribution of its products so as to import or imply that the said corporation actually owns and operates or directly and absolutely controls the place wherein the work of tanning said products is carried on, when such is not the fact.

2. From the use of the word "Manufacturing" or the word "factory" or of any other word or words of similar meaning, either alone or in connection or conjunction with any other word or words, pictorial or other representation, the effect of which tends or may tend to convey the belief to purchasers that the said corporation makes or manufactures the products advertised or sold by it under such representations, or any thereof, or that it actually owns and operates or directly and absolutely controls the factory or plant wherein said products are made or manufactured, when such is not the fact.

3. From the use in its advertising matter or otherwise of any word or words, such as "Hudson Seal," "Northern Seal," "Lapin," "American Broadtail," "Beaverette" or "Laskin Mouton," as descriptive of furs unless the same shall be immediately accompanied in equally conspicuous type of the correct name of the fur actually used so as

to form the last word of the description as, for example, "Hudson Seal—Dyed Muskrat," "Northern Seal—Dyed Rabbit or Coney," "Lapin Dyed—Rabbit or Coney," "American Broadtail—Processed Lamb," "Mouton Dyed—Lamb." (Dec. 7, 1939.)

2610. **Women's and Children's Wearing Apparel—Composition.**—The Eastern Isles Importing Co., Inc., a corporation, engaged under the trade name "Futura Fashions" in the manufacture and in the sale and distribution of women's and children's wearing apparel 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.

Silk fiber has long been woven into a variety of fabrics, and a number of distinctive terms have been applied to the fabrics resulting from the different types of weaving of silk fiber. Dress goods and other items of women's apparel designated, described, and referred to as "satin" and "crepe" have been for a long time, and at the present time still are, associated in the public mind with fabrics made from silk, the product of the cocoon of the silkworm.

The unqualified term "crepe" denoting silk, has been for a long time and still is associated in the minds of a substantial portion of the purchasing and consuming public with and as designating or meaning unweighted silk; that is to say, said word is understood by a substantial portion of the public to refer to silk that has not been subjected to a metallic bath resulting in metallic substance or substances impregnating the silk fiber.

The words "acetate" and "bemberg," when used either separately or in combination or conjunction with the word "satin," or other words or phrases of similar import or meaning, to designate or describe rayon, are not sufficiently well known and understood by the purchasing and consuming public to indicate to, or inform them that the merchandise so described, designated, or referred to is made in whole or in part of a material other than silk: to wit, rayon.

The Eastern Isles Importing 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) Using the word "Satin" or any other word of similar import or meaning, to describe or designate any fabric or product which is not composed wholly of silk, the product of the cocoon of the silkworm. If the word "Satin" or similar word is used properly as descriptive of the construction of a fabric or product containing fiber other than pure silk, then such word when so meant shall be accurately and nondeceptively qualified by using (in immediate conjunction therewith and in letters of at least equal size and conspicuousness) a

word or words clearly naming and disclosing the fiber, fibers, or materials of which said fabric or product is composed, stated in the order of their predominance by weight, beginning with the largest single constituent; such as, for example, "Silk and Rayon Satin" for fabric of satin construction and composed of a mixture of pure silk and rayon, each present in substantial proportion but with the silk predominant; or "Rayon Satin" when composed of rayon.

(b) Using the words "Acetate," "Bemberg," or other trade term, either alone or in combination with any other word or words, as descriptive of the rayon content of garments, fabrics, or material, unless such words are immediately accompanied by the word "Rayon" in letters of at least equal size and conspicuousness; as "Acetate Rayon," "Bemberg Rayon."

(c) Using the word "crepe," or any other word connoting pure silk, to designate or describe fabrics which are not composed wholly of unweighted silk, the product of the cocoon of the silkworm. In the event any such fabric or product contains any weighting, loading, or adulterating material, conspicuous and nondeceptive disclosure of the presence of such weighting, loading, or adulterating materials and the percentage or proportion thereof shall also be made in immediate conjunction with such word "crepe" or other pure-silk connoting word.

(d) Selling or offering for sale any product made of rayon without disclosure of the fact that the material of which said product is composed is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales-promotional descriptions, or representations thereof, however disseminated or published.

(e) 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 "silk and rayon" where the silk is predominant. (Dec. 7, 1939.)

2611. **Hosiery—Manufacturer.**—Joseph Thomas, an individual trading as Thomas Hosiery Manufacturing Co., engaged in the sale and distribution of hosiery, 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.

Joseph Thomas, 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 of the word "Manufacturing" as part of his trade name and from the use of the said word "Manufacturing" or of any other word or words of similar implication, the effect of which tends or may tend to convey the belief to purchasers that the said Joseph Thomas makes or manufactures the products offered for sale or sold by him, when such is not the fact. (Dec. 7, 1939.)

**2612. Candies—Lottery.**—Charles E. Carter, a sole trader as Atlanta Candy Co., engaged in the manufacture of candies and in the sale and distribution thereof together with punch boards in competition with other individuals and with firms, partnerships, and corporations 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.

Charles E. Carter, in connection with his sale and distribution of candy or other merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

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

(c) Supplying to, or placing in the hands of others, punchboards, 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.

(d) Mailing, shipping, or transporting to agents or to distributors or members of the public punchboards, push or pull cards, or other lottery devices so prepared or printed as to enable persons to sell or distribute any merchandise by the use thereof.

(e) Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards, or other lottery devices. (Dec. 7, 1939.)

**2613. Elastic Braids and Webbing, Etc.—Manufacturer.**—Charles Leitner, an individual trading as Crown Webbing Co., engaged in

the manufacture and sale of articles made from raw elastics and also in the sale and distribution of elastic braids and webbings 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.

Charles Leitner, in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from representing on his letterheads, in his trade literature or otherwise, that he is a manufacturer of elastic braids and webbings or other articles unless and until such be the fact; or representing in any way, either directly or inferentially, that the elastic braids and webbings sold by him are made or fabricated in a plant which he owns and operates or absolutely controls, when such is not the fact. (Dec. 8, 1939.)

2614. **Chrome Plated Professional Furniture and Equipment for Barber Shops and Beauty Parlors—Composition.**—Theo. A. Kochs Co., a corporation, engaged in the manufacture of chrome plated professional furniture and equipment for barber shops and beauty parlors, 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.

Chromium is a grayish-white metal, hard and brittle (as usually prepared), and resistant to corrosion. It is extensively used in chrome steel, nichrome, stellite, and other alloys and as a plating like nickel. An article made of steel or other metal and coated or covered with chromium and designated "Chrometal" is misbranded in that such designation imports or implies that the article is composed throughout either of chromium metal or of an alloy of chromium and other metal, such for example as chrome steel (steel and chromium).

Theo. A. Kochs Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from using, directly or indirectly, the word "Chrometal," or a word or words of similar import or meaning, alone or in connection with any other word or words, to brand, designate, or describe furniture or other equipment or merchandise sold or offered for sale by it, until and unless the metal of which such furniture or other article is made is composed throughout of chromium or of an alloy of chromium and other metal in proportions entitling it to be properly represented and referred to as chrome metal, as understood by industry, the trade, and the purchasing public. (Dec. 8, 1939.)

2616.<sup>1</sup> Toupees and Wigs—Unique Advantages.—John E. Jevnikar, sole trader, engaged in the manufacture of toupees and wigs 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.

John E. Jevnikar, in connection with his sale and distribution of toupees and wigs in commerce as defined by said act, agreed to cease and desist from representing that he is familiar with the individual needs of his prospective customers, or that he has all the necessary data on hand, and inferentially or otherwise that he has records of the prospective customer sufficient to enable him to repair, adjust or otherwise service his wig or toupee, when such are not the facts. (Dec. 29, 1939.)

2617. Photographs—Special or Limited Offers, Nature, Value, Quality, Guarantee, Etc.—Andrew M. Smith and Jack Lucas, copartners, trading as United Studios, engaged in the making and selling of photographs by mail order and otherwise, 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.

Andrew M. Smith and Jack Lucas, in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from—

(a) Representing in any way that their regular method of sale is a special advertising offer, or that the regular price charged is a special price; or stating or representing that the price charged for such enlargement is a "Special Christmas Offer" or any other special offer, so long as no reduction or other trade concession is made therewith; or, by the use of statements such as "Only one offer to a family," or otherwise, representing that the offer is limited as to the number of persons to whom it is available, when such is not the fact.

(b) Stating or representing that their photographic enlargements are "oil colored portraits" or from using any other designation for, or otherwise describing their colored photographs in a way which may import or imply or tend to cause the belief by purchasers, that such colored photographs are portraits in the ordinarily accepted meaning of a picture of a person drawn from life, particularly in oils.

(c) Stating or representing that certificates or coupons issued to purchasers are worth \$7.50 or \$5, or any other sum, when such is not the

<sup>1</sup> Stipulation 2615, accepted by the Commission on November 18, 1939, may be found in vol. 29, at p. 1510.

fact; or representing in any way that the value of a photograph called for by such certificate is greater than the price for which the certificate itself is sold.

(*d*) Representing that such tinted photographic enlargements introduced "Photography's latest creation", are of "superior quality"; or that "Hollywood Lightings" are used on all sittings—when such are not the facts.

(*e*) The use of 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 their 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. (Dec. 12, 1939.)

2618. **Automobile Seat Covers—Manufacturer.**—Charles A. Greenspan, sole trader, as Standard Auto Seat Cover Co., engaged in the sale and distribution of covers for automobile seats, 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.

Charles A. Greenspan, in connection with his sale and distribution of auto seat covers or other merchandise in commerce as defined by said act, agreed to cease and desist from representing in any way, directly or indirectly, by printed or spoken statements, picturizations, or otherwise that he is the manufacturer of the goods sold by him when he neither owns, operates, or controls the plant or factory in which such goods are made. (Dec. 13, 1939.)

2619. **Cartoon Courses of Instruction—Special or Limited Offers and Success.**—Corwin Landon, an individual trading as Landon School, engaged in continuing the conduct of a business started at Cleveland, Ohio, in 1909 by his father, C. N. Landon, now deceased, which business is that of a correspondence school for instruction in cartooning and includes the sale and distribution of lesson material 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.

Corwin Landon, in connection with the offering for sale, sale, and distribution of his course of instruction in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

(*a*) Stating or representing in advertisements or printed matter of whatever kind or description that the price for which said course of instruction is offered to students or prospective students is "special"

or is a "special reduced rate" or a "Fall offer" or "special anniversary rate," when in fact said price is the customary amount regularly charged for the course of instruction in the usual course of business and is without limitation as to time or occasion.

(b) Stating or representing that 2,000 or any other number of the students of said course of instruction are now successful comic artists or cartoonists or are now actually engaged in this type of work, when in truth, there are no available facts to substantiate such claim. (Dec. 14, 1939.)

**2620. Collection Agency Plans, Etc.—Indorsements or Approval, Profits, Free Product, Special Offers, Testimonials, Etc.—**Dorsey E. Wynkoop, individual, trading as "Key Systems" and as "National Credit Rating Bureau," engaged in the sale and distribution of mimeographed material, which purportedly describes plans for use by purchasers in the operation of collection agencies by mail, 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.

Dorsey E. Wynkoop, in connection with the sale and distribution of his mimeographed, printed, or other material or plans in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in advertisements or advertising matter of whatever kind or description 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—

1. That said plan or plans has or have the approval of business organizations, chambers of commerce, legislative bodies, or the like, when such is not the fact.

2. That profits from business based on such plan or plans ordinarily are from \$3,000 to \$5,000 per year, or that profits of from \$10,000 to \$25,000 per year are not unusual. The said individual also agrees to cease and desist from the use of any other statements or representations concerning profits that are exaggerated or much in excess of the profits that users of the said plan or plans can reasonably expect to realize therefrom.

3. That "Folios" or material and plans are given "free" or as a gratuity to each purchaser of Folio No. 1, when such is not the fact.

4. That each or any of the Key Folios numbered 2 to 15, inclusive, are prepared to sell for \$2, or any other price, when such is not the fact.

5. That the offer made by the said Dorsey E. Wynkoop, is a "special" offer or one the acceptance of which is limited to 10 days or any other designated period of time, when in fact, such offer is the

regular offer made by the said individual in the usual course of business without limitation as to time.

6. That firms or concerns, named or otherwise, have used or are using the plan or plans of said individual, when such is not the fact. Said Dorsey E. Wynkoop also agreed to cease and desist from the use, in his advertisements and advertising matter or in any other manner, whatever, of quotations purporting to be excerpts from so-called unsolicited, expressions of appreciation from persons who or concerns which have received or use Key Folios, when in fact such quoted excerpts are not such copies as properly convey the thought or meaning expressed in the original letters.

Said individual further agreed to cease and desist from the use in connection with the sale of his plans or material in commerce of the trade name "National Credit Rating Bureau" either alone or in connection or conjunction with the phrase "A National Organization" or in any other way, so as to import or imply that the said Dorsey E. Wynkoop is associated with or operates a Nation-wide organization or performs a credit rating service, national or otherwise. (Dec. 13, 1939.)

2621. **Drug Sundries—Manufacturer.**—Robert J. Pierce, Inc., a New York corporation, engaged in the sale and distribution of drug sundries 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.

Robert J. Pierce, Inc., in connection with its sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from representing in any way, either directly or indirectly, that it is the manufacturer of any product offered for sale and sold by it, when such is not the fact; or in any other way, representing that goods are of its own manufacture which are in fact produced in plants or factories which it neither owns, operates, nor controls. (Dec. 15, 1939.)

2622. **Hosiery—Mills and Branch Offices.**—David Carity and Morris Carity, copartners trading under the firm name and style of United Hosiery Mills, engaged in the business of selling hosiery in commerce between and among various States of the United States, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

David Carity and Morris Carity, in connection with the 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 of the word "Mills" as part of their trade name and from the use of the word "Mills" or of any other word or words of similar implication, the effect of which tends or may tend to convey the belief to purchasers that the said copartners knit or manufacture the products offered for sale or 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 stating or representing, as through the use of purported local addresses, that they have an office or place of business at each of the indicated locations, when such is not the fact. (Dec. 15, 1939.)

2623. **Air Cooling Device—Qualities.**—W. H. Fabry Manufacturing Co., Inc., engaged in the manufacture, among other things, of a device called "The Fabreeze Air Cooler," in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution in interstate commerce of devices designed to cool the air, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

W. H. Fabry Manufacturing Co. agreed to cease and desist from the use of the words "Air Cooler" either as part of the trade name or designation for the aforesaid device or in any other way as descriptive of the device offered for sale or sold by it in commerce, as commerce is defined by the Federal Trade Commission Act, the effect of which tends or may tend to convey the belief to customers or prospective customers that the action of said device on air passed therethrough produces a useful degree of cooling regardless of atmospheric conditions, or in those areas of the country where the relative humidity is high; provided that, if the said words are so used, they shall be accompanied by some other words or statement so as to indicate clearly and unequivocally that the action of said device will be effective as a cooling medium only under certain atmospheric conditions, as for example, in areas of normal low relative humidity. (Dec. 18, 1939.)

2624. **Shoes—Composition.**—Best & Co., Inc., a corporation, engaged in the sale and distribution of shoes, as retailer, among other types of 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.

Best & Co., Inc., in connection with the 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 or in any other way of the words "Alligator Calf" as descriptive of said products not made from the hide of an alligator, and from the use of the words "Alligator Calf" or the word "Alligator" in any way so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or consumers that the products to which said word or words refer are made from the hide of an alligator, when such is not the fact. (Dec. 15, 1939.)

**2625. Tires, Rope, Paint and Other Merchandise—Factory and Special Prices.**—Coast-to-Coast Stores (Central Organization, Inc.), hereinafter some times referred to as "Central Organization, Inc.," a corporation, engaged in purchasing and supplying the merchandise offered for sale and sold by some 235 stores operated by their individual owners and located in various Midwestern and Western States, and which stores it has developed into a chain, known as "Coast-to-Coast" Stores, and also engaged, pursuant to the terms of contracts existing between it and the said "chain" stores, in the sale and distribution in interstate commerce to and among said stores of merchandise purchased by it, 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.

Coast-to-Coast Stores (Central Organization, Inc.), in connection with the sale and distribution of its merchandise or advertising matter of whatever kind or description, in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist—

1. From the use of such advertising or from placing advertising in the hands of others for their use which contains statements such as "From Our Tire Factory," "From Our Rope Factory," "From Our Paint Factory," or any other similar statement or representation which imports or implies or the effect of which tends or may tend to convey the belief to purchasers that the designated products are made or manufactured by the said Central Organization, Inc., or by the locally owned and operated store or the merchant named in the advertising.

2. From the use in said advertising of statements such as "Annual Manufacturers Cooperative Sale," "Hundreds of Manufacturers' Cooperative Specials in Our Store," or of any other statement of similar implication, the effect of which tends or may tend to convey the belief to purchasers that all the various prices charged for the advertised products have been reduced or are special or are less than the prices cus-

tomarily charged for said products in the usual course of business, when such is not the fact. (Dec. 18, 1939.)

2626. **Fog Light or Lamp—Qualities.**—Fog King Lamp Co., a corporation, engaged in the sale and distribution of a fog light or lamp having a special type of reflector and amber colored lenses, 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.

Fog King Lamp 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 in its advertisements and advertising matter of whatever kind or description or in any other way of any statement or representation, the effect of which conveys, tends, or may tend to convey the belief to purchasers that the beam of light produced by said device will penetrate fog to any greater extent than ordinary white light or that it will successfully penetrate a dense or heavy fog or give any substantial visibility in such fog, when such is not the fact. (Dec. 19, 1939.)

2627. **Antifreeze Preparation—Laboratory and Qualities.**—Alfred Loveman, an individual, trading as Kantfreeze Chemical Co. and Kantfreeze Laboratory, engaged in the sale and distribution of crystals under the trade designation “Kantfreeze” for use in protecting automobile radiators from freezing temperatures, 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.

Alfred Loveman, in connection with the sale and distribution of his product in commerce, as defined by said act, agreed to cease and desist from—

(a) The use of the words “Kantfreeze Laboratory” as and for a trade name when in fact there is no such laboratory; and from the use of the word “laboratory” as part of or in connection with his trade name or in any other way so as to import or imply that he actually owns and operates or directly and absolutely controls a place devoted to experimental study in a branch or branches of natural science or the application of scientific principles in the preparation of his products or of any drugs or chemicals, when such is not a fact.

(b) Representing that Kantfreeze or any other product of similar composition will not corrode or cause rust or that it will “protect” one’s car against such conditions when used in the cooling system of an automobile. (Dec. 19, 1939.)

2628. **Rubber Typewriter Keys—Composition.**—J. Oliver Thorp, sole trader as Rubber Products Co., engaged in the sale and distribution of rubber typewriter keys 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.

Para rubber, as known to industry and trade, is a whole latex rubber prepared from the latex of wild Heavea trees in the Amazon district of South America. The output of this rubber is now small compared to that of plantation rubber. A product of a cultivated rubber plantation, designated and sold as "Para" rubber, is misbranded in that it conveys or tends to convey the impression that such product is from the wild rubber trees of the Amazon Valley.

J. Oliver Thorp, in connection with his sale and distribution of rubber products in commerce as defined by said act, agreed to cease and desist from the use of the words "Para Rubber" or the word "Para" as descriptive of any product not actually made of Para rubber, that is to say, rubber prepared from the latex of wild Heavea trees in the Amazon district of South America. (Dec. 21, 1939.)

2629. **Buttons—Composition.**—Rochester Button Co., a corporation, engaged in the manufacture of buttons, including a pattern or style designated "Technoid," which it sells 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.

Rochester Button 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 sample cards and invoices or in labeling or otherwise advertising said products of the word "Ocean" 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 are made of ocean pearl, when such is not the fact. (Dec. 19, 1939.)

2630. **Handkerchiefs—Converter and Manufacturer.**—Charles Wicenstowski, Sidney Wicenstowski, and David Feldman, copartners, trading as Charles Wicenstowski, engaged in the business of purchasing gray handkerchief goods, causing the same to be converted by the usual processes into the finished products and thereafter selling the same 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.

Charles Wicinstowski, Sidney Wicinstowski, and David Feldman in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use on their letterheads and printed matter or in any other way of the words "Converter and Manufacturer," or of either of said words, or the word "Factory" or of any other word or words of similar implication, the effect of which conveys, tends or may tend to convey the belief to purchasers that the said copartners are engaged in the converting and/or manufacturing of said products or that they actually own and operate or directly and absolutely control the factory or plant in which said products are converted and/or manufactured. The said copartners also agree to cease and desist from stating or representing that they have a factory or plant at Ellenville, N. Y., when such is not the fact. (Dec. 20, 1939.)

2631. **Women's Wearing Apparel—Composition.**—Benjamin Schlien and Harry Kramer, copartners operating under the firm name of Metropolis Co., engaged in the manufacture of women's wearing apparel and in the sale and distribution thereof in commerce between and among the various States of the United States, in competition with other firms and partnerships and with individuals and corporations 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.

Benjamin Schlien and Harry Kramer, in connection with the sale and distribution of their product in commerce as defined by said act, agreed to cease and desist from 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; for example, "cotton and rayon." (Dec. 26, 1939.)

2632. **Course of Instruction in Air Conditioning and Electric Refrigeration—Institute, Association, Employment, Free Product, Opportunities, Etc.**—Highland Technical Institute, Inc., engaged in sale and distribution, in commerce, between and among various States of the United States, of a correspondence course of instruction which it styles "Extension-Shop Training Course in Air Conditioning and Electric Refrigeration," in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar courses of

instruction, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Highland Technical Institute, Inc., in connection with the sale and distribution of its course of instruction in commerce as defined by said act, agreed to cease and desist from—

(a) The use of the word "Institute" either with or without the words "Highland" and "Technical" 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 the word "Institute" independently or in connection with any other words or expressions implying or suggesting that such trade school is an organization conducted for the promotion of learning, philosophy, art or science, and has equipment and faculty such as to entitle it to be designated an Institute.

(b) The use of any fictitious name, title, or expression importing the existence of an organization, or some relationship thereto, which does not in fact exist; and from the use of the word "Association" or the term "Training Department" in connection with the words "Western Trades" or any other word or words, the effect of which is to import or imply or convey the belief that said private business is that of, or is an adjunct to, an organization of the members of the western crafts or industries or any similar group, formed for the purpose of considering and solving their problems as such.

(c) The use of "Help Wanted" or other employment columns in newspapers or other publications in such manner as to deceive prospective students into the belief that jobs are offered.

(d) Representing that it pays students \$1.40 per day or any other sum or that it provides board and room during shop training period, unless in conjunction with each and every such representation or statement it definitely and clearly sets forth and explains that the \$1.40 per day or the cost of the board and room referred to is payable from funds previously collected from each student for that purpose.

(e) Representing any service or commodity as "free" when in fact such service or commodity is regularly included as part of the course of instruction or service for which the student has paid.

(f) Representing either directly or indirectly that Seymour Hardy Thompson or Patrick W. Denton or any other person or persons not actually on the staff or directly connected with said school are on such staff or associated therewith.

(g) Representing, either directly or indirectly that any person, though lacking in proper education, experience or aptitude can master its study course easily or otherwise.

(h) Making exaggerated or extravagant statements relative to the probability or possibility of prospective students' developing inventions which will lead to fortune and fame.

(i) Representing that the instruction and training offered "makes it possible for your dream to come true"; or enables one to cash in and begin earning money before finishing either the home work or the shop training; or will "easily pay you a profit of \$300 to \$400 a month" or other specified sum; or will capacitate or qualify one to "pick the job you want" in the manufacturing, engineering, contracting, merchandising, or transportation lines; or to obtain and/or fill positions such as master mechanic, foreman, superintendent, inspector, designer, executive, engineer, estimator, manager, technician, or consultant; or using in its advertising matter or in talks by its sales persons any other overstatements or representations as to the actual earning power or probable salaries, advancement, promotions, or future security or wealth of its graduates or students.

(j) Representing either directly or indirectly in its advertising or in talks by its sales representatives that as the result of any such training, the graduate may picture himself as, or reasonably anticipate that he will become a "trained engineer," a "consulting engineer," or a "factory distributor," or will possess wealth and luxuries, or have the "honor and dignity of a professional man."

(k) The use of the word "Personnel" in its advertising matter to designate any official, employee, or sales representative in such a manner as to infer or imply that such official, employee, or sales representative may be in a position or have the capacity to employ personnel, when such is not a fact.

(l) Referring to its shop as "our engineering shops," or using the word "engineering" or the word "engineer" in any way as descriptive of or as designating its equipment, its instruction or its graduates; or denominating any member of its faculty as an engineer who does not hold an engineering degree from some recognized college or university; or in any other way, representing that this trade school is an engineering concern or offers engineering instruction.

(m) The use of statements or representations either printed or spoken, importing or implying or tending to cause the belief that it is in position to offer employment to or place all its graduates or students, when such is not a fact. (Dec. 26, 1939.)

2633. **Furs—Nature.**—Gafco, Inc., a corporation, engaged in the business of selling furs at wholesale 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.

Gafco, Inc., in connection with the sale and distribution of its furs 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 of the word "Chinchillonette" or of any other word simulating the word "Chinchilla" as descriptive of a fur which is other than chinchilla fur; and from the use of the said word in any way, the effect of which tends or may tend to convey the belief to purchasers that the fur so referred to is that of a chinchilla, unless, when the said word is so used to designate a fur other than that of the chinchilla, then in that case, it shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said fur is not chinchilla fur and so as to clearly and unequivocally disclose the actual trade name or nature of the fur, as for example, "Chinchillonette—Dyed Coney." (Dec. 26, 1939.)

2634. **Canvas Boats—Qualities.**—Pauline S. Winans, an individual, trading as Kalamazoo Canvas Boat Co., engaged in the manufacture of portable folding canvas boats, 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.

Pauline S. Winans in connection with the sale and distribution of her products in commerce, as defined by said act, agreed to cease and desist from representing that the canvas boats offered for sale and sold by her are puncture-proof or have "no leaks, no repairs," or making claims or assertions of similar import or meaning with the capacity or tendency to create the impression or cause the belief by purchasers that such boats are impervious to penetration or piercing by sharp or pointed objects of whatsoever kind; or that no leaks will ever develop or that all repairs will or may be avoided, when such is not the fact. (Dec. 26, 1939.)

2635. **Course of Instruction—Qualities and Institute.**—Harry Kahne, an individual, trading as Kahnetic Mentalism Institute, and as Institute of Kahnetic Ability, engaged in the business of conducting a home study course of instruction, known as "Kahnetic Mentalism," consisting of 12 lessons prepared by the said Harry Kahne and which he sells and has sold 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.

Harry Kahne, in connection with the sale and distribution of his course of instruction 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 description of statements or representations which assert or the effect of which tends or may tend to convey the belief to purchasing students or to prospective students or others, that the said course of instruction is such as will develop the brain, or will enable all students thereof, regardless of age, sex, or congenial factors, to attain success or to realize the wishes and desires of life, or will provide the necessary qualifications or a formula for success or bring forth latent ability in all cases, or that the student, due to his or her increased brain power or mental ability thus acquired, can win or get any desired thing or accomplish any desired mental feat or can immediately grasp the entire situation of any business proposition which presents itself, or will become a mental giant, or will acquire an education equivalent to a college course. Said individual also agreed to cease and desist from the use, in connection with the offering for sale or sale of his course of instruction in interstate commerce, of any statement or representation which tends or may tend to convey the belief to purchasers that the mental exercise referred to in said course of instruction will be of benefit other than such as may result from the concentration or study required for their performance or from the possible development of new channels of thought which react upon those already established. The said individual further agreed to cease and desist from the use of the word "Institute" as part of the trade name or names under which he conducts his business, and from the use of the said word in any way so as to import or imply or which may tend to convey the belief to others that the business conducted by him is that of an institute or organization for the promotion of learning, philosophy, the arts or sciences. (Dec. 28, 1939.)

2636. **Electric Brooders—Savings Accomplished.**—Globe American Corp., corporation maintaining a division under the trade name "Makomb Steel Products Co." engaged in the manufacture of a full line of poultry equipment, 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.

Globe American Corp., in connection with the sale and distribution of its electric brooders or other poultry equipment in commerce as defined by said act, agreed to cease and desist from making claims

in its advertising matter or otherwise that its Elect-O-Stat Brooder or other brooder of similar construction cuts the current cost of electricity 30 percent to 40 percent or by any other proportion or extent in excess of that actually ascertained and proven by means of competent and acceptable scientific tests. (Dec. 28, 1939.)

**2637. Dog and other Animal Foods—Qualities, Composition, Nature of Manufacture, Guarantee, Etc.**—George A. Mighton, Stanley E. Mighton, and Kenneth G. Mighton, copartners, trading as S. E. Mighton Co., Ltd., engaged in the manufacture of canned dog and other animal foods 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.

George A. Mighton, Stanley E. Mighton, and Kenneth G. Mighton in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from—

(a) Representing that their dog or other animal foods are “balanced” foods for all breeds of dogs, cats, puppies, and foxes, or any thereof.

(b) Representing that such foods contain yeast or that yeast is added thereto, unless and until the quantity or percentage of yeast content is sufficient adequately to satisfy the yeast requirements of an average dog or other animal for which intended.

(c) Representing that such foods are “more nourishing,” or that the use thereof results in better bones and coat or better health, unless in connection with each and every such representation it be clearly stated that the benefits claimed will obtain only when there is a deficiency in the feed or ration ordinarily provided such animals.

(d) Representing as beef or as beef food products any of their brands of dog or other animal foods, the meat content of which consists wholly or in part of tongue trimmings, lungs or other parts or portions of beef animals which may be designated not as beef but as meat byproducts. Where descriptions of the meat content of foods containing both beef and meat byproducts are indicated on the labels or otherwise, such descriptions shall clearly and definitely indicate the proportion or quantity of such beef and of such meat byproducts.

(e) Representing that their dog or animal foods provide necessary vitamins in proper proportions with other food elements and minerals, unless and until such proper proportions are scientifically ascertained and are followed.

(f) Representing their products as “vitaminized,” “vitamin food,” or as containing vitamins, unless the vitamin content be sufficient to justify such claims; or making any other statements having the ca-

capacity or tendency to convey the belief that such products are rich in vitamins or are substantially supplemented with vitamins, when such is not the fact.

(g) Asserting without due qualification that vitamin A guards against infection or promotes growth and health or that vitamin D builds strong bones and muscles, prevents and cures rickets, strengthens bitches in whelp, or develops sturdier puppies; or stating the therapeutic property of any vitamin without explanation that it is effective only in case of such vitamin deficiency.

(h) Representing, inferentially or otherwise, either by brand names such as "Extra Liver," "Extra Beef," or "Extra Liver and Vegetables," or by descriptive matter on the labels or otherwise, that liver, beef, or other designated foods constitute the principal ingredient of certain brands of their dog or other animal foods, when such is not a fact; or that liver, beef or other designated foods constitute a greater proportion of their product than actually is a fact.

(i) Representing that their products contain ingredients other than those actually contained therein.

(j) Representing that their dog or other animal food products are prepared by or under the direction of an expert or experts when such is not a fact.

(k) The use of the words "Guarantee" or "Guaranteed" or any words of similar meaning, in connection with the advertising, sale, or offering for sale of their 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. (Dec. 20, 1939.)

2638. **Spectacle Frames, Mountings, Etc.—Qualities and Composition.**—John David Brock, an individual, trading under the names "Specialty Optical Co.," "Superior Optical Co.," and "K-C Wholesale Optical Co.," engaged in the sale and distribution of spectacle frames, mountings, and the like, 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.

John David Brock, in connection with the offering for sale, sale, and distribution of his rhodium plated products 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 description or in any other way of the words "Pink Finish" or "Tan Finish" either alone or in connection or conjunction with any other word or words, or in any other way, the

effect of which tends or may tend to convey the belief to purchasers that the pink or tan finish is an inherent quality of the rhodium used in plating said products, and therefore, will neither wear away nor change its color. Said individual also agreed to cease and desist from the use of the term "Semi-Precious" as descriptive of products made from so-called "Villadium" which is not composed, in part at least, of the precious metals, and from the use of the word "precious" either alone or in connection with the word "semi" or with any other word or words so as to import or imply that said products are made of an alloy which is composed of metals, one or more of which is "precious" metal as that term is understood and generally accepted to mean by the trade and purchasing public. (Jan. 2, 1940.)

**2639. Photographic Trade Journal—Unique Nature or Character and Mailing Cost.**—Charles J. Ver Halen and Charles J. Ver Halen, Jr., copartners, trading as Ver Halen Publications, engaged in the publication of a trade journal and in the sale thereof under the name "Photographic Dealer" 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 J. Ver Halen and Charles J. Ver Halen, Jr., in connection with the advertisement, sale, and distribution of their trade journal in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in their printed matter or on the said publication or in any other way of any statement or representation which directly asserts or the effect of which tends or may tend to convey the belief to readers or purchasers that the said trade journal or publication is either the first or the only trade journal in the photographic industry. The said copartners also agreed to cease and desist from the statement or claim that their said publication is the Official Buying Guide of the Photographic Industry, when such is not the fact. The said copartners further agreed to cease and desist from the use of any statement or representation concerning the alleged cost of mailing an issue of the said publication to subscribers thereof in the various zones of the United States which is not in all respects true. (Jan. 2, 1940.)

**2640. Diamonds and Jewelry—Importer and Direct Dealing.**—Silbermann, Kohn & Wallenstein, Inc., engaged in the business of importing diamonds and manufacturing jewelry and in the sale of such merchandise in 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.

Silbermann, Kohn & Wallenstein, Inc., agreed that it will cease and desist from the use of advertisements or from placing advertisements in the hands of others for their use, wherein there appears any statement or representation which directly asserts or the effect of which tends or may tend to convey the belief to purchasers that an individual, firm, or corporation named or otherwise referred to in said advertising is the importer of the displayed merchandise, when in fact such individual or concern is not the importer thereof. Said corporation also agrees to cease and desist from stating or representing in advertising matter or in any other way that prices charged for designated merchandise have been stripped of or do not include the profits of the middleman, broker or importer, or any thereof, when such is not the fact. (Jan. 2, 1940.)

2641. **Hosiery—Mills.**—Century Hosiery Mills, Inc., engaged in the sale and distribution of hosiery, 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.

Century Hosiery Mills, Inc., agreed to cease and desist from the use on its correspondence stationery or other printed matter of the word "Mills" as part of the corporate or trade name under which it conducts its business consisting of the sale and distribution in commerce, as defined by the said act, of products which are not knitted or manufactured by it; and from the use of the word "Mills" or of any other word or words of similar import in its advertising or in any manner whatsoever, the effect of which tends or may tend to convey the belief to purchasers that the products offered for sale or sold by it in interstate commerce are knitted or manufactured by it or that it actually owns and operates or directly and absolutely controls the mill or factory wherein said products are knitted or manufactured. when such is not the fact. (Jan. 2, 1940.)

2642. **Women's Shoes—"Cancellation,"**—David R. Schlossman, an individual, trading as "Clark's Cancellation Shoes," engaged in the sale of women's shoes in interstate commerce, in competition with other individuals and with corporations, firms, and partnerships 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.

David R. Schlossman, in connection with the offering for sale, sale and distribution of his shoes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the word "Cancellation" as part of his trade name and from the use of the said word or of any statement or representation involving the use of said word or of any other word or similar meaning in his advertisements and advertising matter of whatever kind or description, the effect of which tends or may tend to convey the belief to purchasers that the products sold by the said David R. Schlossman are of the cancelled-order class, when such is not the fact. (Jan. 2, 1940.)

2643. **Portable Dance Floor Mats and Theatrical Equipment—Exclusive Manufacturer.**—The G. L. Morris Corp., a corporation, engaged in the sale and distribution of theatrical equipment, including portable dance floor mats, 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.

The G. L. Morris Corp., in connection with its sale and distribution of portable dance floor mats or other equipment or merchandise in commerce as defined by said act, agreed to cease and desist from representing itself to be a "manufacturer" when it neither owns, operates, nor controls a manufacturing plant; from representing itself to be the "Exclusive" manufacturer, distributor, or vendor of portable dance floor mats or any other product when in fact there are similar products on the market made and sold by others; or from representing in any other way, either directly or inferentially that all products of a designated type or kind are those of The G. L. Morris Corp., when such is not a fact. (Jan. 3, 1940.)

2644. **Electrical Apparatus and Equipment—Reconditioned or Used Product as New, Special Prices, Etc.**—American Electrical Sales Co., Inc., a corporation, engaged in the sale and distribution of new and reconditioned electrical apparatus and equipment, 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.

American Electrical Sales 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) Advertising, offering for sale, or selling used or reconditioned equipment or merchandise without properly disclosing the fact, that said equipment or merchandise is used or reconditioned; and from

the use in any and all statements or representations in its advertising or otherwise, the effect of which is to import or imply that said equipment or merchandise is new and unused when in fact such is not the case.

(b) Quoting the price of new equipment as the "regular price" for used or reconditioned equipment which it offers for sale.

(c) Representing that a price charged for second-hand equipment or merchandise is "sensational" or "remarkable" in that the purchaser presumably is buying new equipment at a great bargain when in fact he is paying a second-hand price for second-hand equipment or merchandise.

(d) Representing that a price for goods offered for sale is "Special while they last," so long as the figure quoted is the only price for which such goods have been sold or offered for sale; or in any other way, either directly or inferentially representing that the advertised offer is special or unusual so long as no price reduction or other trade concession is made therewith. (Jan. 8, 1940.)

2645. **Celluloid and Metal Advertising Specialties—Manufacturers.**—N. G. Slater Corp., a corporation, engaged in the business of selling and distributing celluloid and metal advertising specialties, such as calendar cards, typewriter eraser shields, military insignia, campaign buttons, and the like, 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.

N. G. Slater 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 in its catalogs or advertising matter of whatever kind or description of the word "Manufacturers," either alone or in connection with any other word or words, so as to import or imply that it makes or manufactures the products referred to in said advertising matter, and from the use of the said word "Manufacturers" or of any other word or words of similar meaning, the effect of which tends or may tend to convey the belief to purchasers that the said corporation actually owns and operates or directly and absolutely controls the plant or factory in which the products offered for sale or sold under such representation are made or manufactured, when such is not the fact. (Jan. 8, 1940.)

2646. **Distilled Spirits—Distiller.**—Southwestern Distilled Products, Inc., a corporation, engaged in the rectifying, bottling, and sale of distilled spirits, 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.

Southwestern Distilled Products, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from holding itself out to be, or in any way designating itself as a distiller, in its advertising matter, trade literature, labels, or otherwise, when such is not a fact; or in any manner representing that the liquors offered for sale and sold by it have been distilled in its own plant when it neither owns, operates, nor controls the plant in which such distilled spirits are produced. (Jan. 8, 1940.)

**2647. Drugs and Sundries—Competitive Products.**—David H. Blanck, an individual, trading as David H. Blanck & Co. engaged in the sale and distribution of drugs and sundries, 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.

David H. Blanck, in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from simulating or imitating the wrappers or containers of a competitive product in any way by design, arrangement, wording or otherwise, with the capacity and tendency to confuse purchasers or delude them into the belief that the product so labeled is that of another concern. (Jan. 18, 1940.)

**2648. General Merchandise—Nature of Manufacture.**—Sears, Roebuck & Co., a corporation, engaged in the business of selling a general line of merchandise at retail across the counter and also by mail order, and in the distribution of 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.

Sears, Roebuck & Co., in connection with the offering for sale, sale, and distribution of its merchandise in commerce, agreed to cease and desist from the use in its advertisements and advertising matter of whatever kind or description or in any other way of the words or phrases "Hand-Made" and "Hand-Stitched" or of any other words or phrases of similar implication the effect of which tends or may tend to convey the belief to purchasers that said merchandise is made or stitched by hand, when such is not the fact. (Jan. 8, 1940.)

**2649. Medicinal Preparations—Qualities.**—Ciba Pharmaceutical Products, Inc., a corporation, engaged in the sale in interstate commerce of two certain medicinal preparations, one being designated "Agomensin" or "Agomensin 'Ciba,'" and the other "Sistomensin" or "Sistomensin 'Ciba,'" 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.

Ciba Pharmaceutical Products, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from stating or representing, directly or otherwise—

(a) That Agomensin "Ciba," in either of its forms, has the action, in all cases, of activating menstruation, stimulating ovarian function, or preventing hyperemia of the female sexual organs.

(b) That Agomensin "Ciba" is indicated as a proper and effective treatment or cure for functional amenorrhea, delayed or scanty menstruation, uterine hypoplasia, habitual abortion, etc., regardless of the cause.

(c) That the hormone content, estrin or progesterin, of Agomensin "Ciba" is present in such amounts as to be therapeutically effective except in cases where relatively low hormone potency is indicated.

(d) That the uniformity of Agomensin "Ciba" is assured by physiological assay.

(e) That Sistomensin "Ciba," in either of its forms, is a competent and effective treatment for the control of hemorrhage of puberty and of menopause, in all cases.

(f) That Sistomensin "Ciba" is indicated for all symptoms of hormone deficiency or for all types of climacteric disturbances.

(g) That the estrin content of Sistomensin "Ciba" is such that, when given as directed, it will be effective except in cases where relatively low hormone potency is indicated. (Jan. 3, 1940.)

2650. Knitted Sportswear—Mills.—Sidney Levy and Abe D. Kasen, copartners, operating under the firm name and style of Ascot Mills, engaged in the sale and distribution of knitted sportswear 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.

Sidney Levy and Abe D. Kasen, and each of them, agreed, in connection with their sale and distribution of knitted sportswear or other products in commerce as defined by said act, to cease and desist from the use of the word "Mills" as a part of their trade name or in anyway so as to import or imply or which may have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said copartners knit or manufacture the product sold by them or that they actually own and operate or directly and absolutely control the mills or factories in which the same are made, when such is not the fact. (Jan. 3, 1940.)

2651. **Theater Equipment and Supplies—Manufacturers, Distributors, Direct Dealing, Exporters, Size of Business, Used or Second-Hand as New, Special Prices, Guarantees, Etc.**—Consolidated Theatre Supply Corp., a corporation, engaged in the sale and distribution of theatre equipment, accessories, and supplies between and among various States of the United States, 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.

Consolidated Theatre Supply Corp., in connection with its sale and distribution of theatre equipment and supplies or other merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) Using the word “Manufacturers” or other word, term, or expression of similar import, as descriptive of its business, or the use of the word “manufacturers” in any way, except in referring to products it may actually manufacture.

(b) Describing its business as that of “Distributors” or in any other manner the effect of which is to import or imply or convey the impression that such jobbing concern is a duly constituted distributing agency for the producers of the goods which it sells.

(c) The use of the words “Buy Direct,” either independently or in connection with the word “Save” or any other words; or representing in any other manner whatsoever, either directly or indirectly, that the customer will, can, or may avoid paying a middleman’s profit by dealing with said corporation.

(d) Representing that it has an “Export Department” or maintains “An especially trained and highly efficient Foreign Department” when no such departments exist in fact; or describing its business as that of “Exporters” unless and until a substantial portion of its regular business is actually in the export trade.

(e) Representing itself to be the “Theatre Equipment Center of America,” or the “N. Y. Chair Headquarters,” or the “leaders” in sound equipment or in all qualities and types of theatre chairs, or in any other goods or merchandise.

(f) Asserting that detailed information as to its financial standing or reliability may be obtained from “Any bank or trust company in New York City”; or otherwise, by direct statement or by implication, representing that its commercial reputation is so outstanding that all New York financial institutions are fully informed thereof—or any such, except the one or ones with which it does business.

(g) The use of any and all assertions or representations, direct or implied, with the capacity, tendency or effect of conveying the im-

pression or belief that said corporation conducts a large and imposing business, or engages in mass-buying to such extent that its customers substantially profit thereby; and from the use of overstatements, exaggerations, or specious connotations regarding volume of business, numbers of customers or the magnitude of commercial transactions.

(h) Advertising, offering for sale or selling second-hand, used, rebuilt, or reconditioned equipment or merchandise without clearly and unequivocally disclosing, as to each item, that the same is second-hand, used, rebuilt, or reconditioned as the case may be; and from the use of any and all statements, picturizations or other representations in its advertising matter the effect of which is to import or imply that said equipment or merchandise is new and unused when in fact such is not the case.

(i) Quoting the price of new equipment as the "usual price" or in any other way representing that it is the standard price for second-hand, used, rebuilt, reconditioned or obsolete equipment which it offers for sale; or in any other way placing a fictitious or exaggerated valuation upon such articles of merchandise.

(j) Representing that the prices charged for goods offered for sale are either "Special," "Very Special," "Introductory," "Drastic Reductions," or "Lower Than Ever," or that they betoken a "Big Annual Event" or an "Annual Clearance Event" so long as the figures quoted are the only prices for which such goods have been sold or offered for sale by said corporation; or in any other way, either directly, or inferentially representing that the advertised offer is special or unusual so long as no price reduction or other trade concession is made therewith.

(k) Asserting or in any other way representing that "We avoid offering to customers job lot merchandise," when such is not the fact.

(l) Representing that the price and the quality of its goods are "guaranteed" or that every item is "fully guaranteed" to be new, fresh, or standard grade merchandise, when such is not a fact; and from the use of the word "guaranteed" or the word "guarantee" or any other word of similar meaning in connection with the advertising, sale, or offering for sale of its equipment or merchandise 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.

(m) Designating its method of merchandising as a "Triple Thrift Replacement Plan," or otherwise representing by the use of words such as "plan," "Thrift Plan," or "Thrift Allowance," that advantageous transactions are offered other than the usual prices and payment terms, when such is not the fact; or making statements or representations of any kind to the effect that the purchase and use

of its equipment or merchandise will cut the cost of upkeep by half, will stop costly repairs or will eliminate operating worries. (Jan. 9, 1940.)

2652. **Courses of Instruction in Apartment House and Hotel Management, Textbooks, Etc.—Employment, Free Reciprocal Service or Relations, Etc.**—Alvin Lovingood, an individual, conducting under the trade names “National Apartment House & Hotel Schools” or “National School of Instruction in Apartment House Management,” certain resident and correspondence school courses of instruction in apartment house and hotel management at his place of business, and engaged in the sale of said correspondence school courses of instruction and also textbooks dealing therewith in interstate commerce, in competition with other individuals, corporations, firms, and partnerships likewise engaged, and in addition to such activities, the said Alvin Lovingood sold and shipped so-called franchises to various persons authorizing the operation by them of similar schools under the name “National Apartment House & Hotel School”; he also sold and shipped the lesson papers and textbooks to be and which were used by such franchise purchasers in the conduct of their schools; in 1934, said respondent caused the Los Angeles National Apartment & Hotel School, Inc., to be incorporated under laws of the State of California and he became its president. Subsequent to its organization, said corporation undertook to conduct and did conduct a school similar to that operated by said Alvin Lovingood, and in the course and conduct of their business, said corporation and the said individual were at all times herein referred to in competition with other corporations, individuals, and firms likewise engaged, and entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Alvin Lovingood and Los Angeles National Apartment & Hotel School, Inc., in connection with the sale and distribution of correspondence school courses of instruction and the sale and allocation to others of franchises to operate similar schools in commerce as defined by said act, agreed to cease and desist from—

(a) The use of statements or representations, either printed or oral, the effect of which tends or may tend to convey the belief to students or prospective students that the said individual or the said corporation will undertake to obtain and will obtain employment for graduates of the said courses of instruction and that any services rendered by the said Alvin Lovingood or the said corporation, in the matter of obtaining employment for the graduate student, is “Free” when in fact an extra charge or fee is required therefor.

(b) Representing that he or it conducts or operates an “Employment Department” or “Employment Bureau” unless and until such

actually are facts, or making any other representations as to service purportedly to be rendered in connection with the obtainment or attempt to obtain employment for graduate students which are not in all respects fulfilled.

(c) Representing reciprocal service of any kind or description between his or its school or schools with schools in different named cities, when in fact no such service exists, or representing any existent reciprocal service, unless such representation be accompanied by a clear unequivocal statement indicating the nature of such service, and the cost or price thereof, if any.

(d) Representing, either directly or by implication, that the school or schools operated by him or it have reciprocal relations with franchise or other schools in any named city, when such is not the fact. (Jan. 12, 1940.)

2653. **Luggage—Composition.**—California Luggage & Leather Coat Co., Inc., a corporation, engaged in the business of manufacturing luggage and other products 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.

California Luggage & Leather Coat Co., Inc., 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 of the words "Genuine Leather" or "Genuine Cowhide" as a mark, stamp, brand, or label for products not manufactured from the top or grain cut of the leather; and from the use of the word "Leather" or the word "Cowhide" 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 may tend to convey the belief to purchasers that the products so designated are manufactured from the top or grain cut of the leather, when such is not the fact. If the products are composed of leather made from the inner or flesh cut of the hide, and the word "Leather" or the word "Cowhide" is used as descriptive thereof, then in that case, the word "Leather" or the word "Cowhide" shall be immediately accompanied by some other word or words, as "Split," printed in equally conspicuous type so as to indicate clearly that said products are not composed of leather made from the top or grain cut or layer of the cowhide. (Jan. 12, 1940.)

2654. **Carbon Paper, Typewriter Ribbons, Mimeographing Inks and Stencils—Manufacturers.**—Sol Neelman, an individual, who formerly conducted business as Quality Ink & Manifold Co., but who is now carrying on business as Quality Ink & Carbon Co., engaged in sale

and distribution of carbon papers and allied products, as typewriter ribbons, mimeographing inks and stencils, 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.

Sol Neelman, in connection with the offering for sale, sale, and distribution of any designated product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in his advertisements, advertising or printed matter whatever kind or description of the word "Manufacturers" or of any other word or words of similar implication, the effect of which tends or may tend to convey the belief to purchasers that the said Sol Neelman makes or manufactures the said designated product and absolutely controls the plant or factory in which said products are made or manufactured, when such is not the fact. (Jan 16, 1940.)

**2655. Courses of Instruction for Civil Service—Extension, Institute, Government Connection, Opportunities, Guarantee, Nature, Value, Etc.—**Wilbur O. Boren, sole trader, engaged as Service Extension Institute in the sale and distribution of correspondence school courses for home study intended to assist students thereof to pass United States civil service examinations, 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.

Wilbur O. Boren, in connection with the offering for sale, sale, and distribution of his correspondence courses of instruction in commerce as defined by said act, agreed to cease and desist from—

(a) The use of the word "Extension" or the word "Institute," either together or independently, in the trade name for his business or to designate or describe his correspondence school; or of any similar term, title or designation the effect of which is to import or imply or cause the belief that his correspondence course is an extramural service from a resident school extending its instructional advantages to persons unable to avail themselves in the regular way, or is an institution for the promotion of learning, philosophy, art, or science.

(b) Representing by direct statement or by reasonable inference either in his advertising media or by statements by himself or by his canvassing salesmen or agents, or otherwise—

1. That either he or his correspondence school has any connection with the United States Civil Service Commission or other governmental agency.

2. That he or any of his salesmen, agents, or employees are employed by or represent any governmental agency, or are charged with the responsibility of securing or selecting employees for the Government.

3. That students or graduates of the correspondence course sold by him will be accorded preferential treatment upon examination for civil service positions or when being considered for appointment.

4. That salaries paid governmental employees are amounts in excess of the salaries actually paid.

5. That the said correspondence school has been in existence for a longer period of time than is actually the fact.

(c) Exaggeration or overstatement of the number of civil service employees in the Government.

(d) Assertion that educational advantages or qualifications are not needed or required by applicants for positions within the classified civil service.

(e) Representing that Government employees have the guarantee of or receive pensions; or in any other way that all Government employees receive retirement pay or that such is "guaranteed" to civil service employees or is available to them until the prescribed age and service period have both been met.

(f) Listing as "exceptional" or "excellent" opportunities with "many vacancies," civil service positions for which examinations have not been held for years and for which the lists of qualified eligibles exceed the requirements.

(g) Representing that a railway clerkship or any other specified job in the civil service "often" leads to a higher position, or in any other way representing that promotions in the civil service are a matter of course or attainable generally.

(h) Making any incorrect or misleading statements as to the nature of any civil service examination or as to eligibility of an applicant therefor; or exaggerated or misleading representations as to the desirability of qualifying for specified positions.

(i) The use, directly or indirectly, of any so-called "money-back" agreement or similar guarantee, agreement, or contract with students conditioned upon the student's taking or passing, or having the opportunity to take or pass, a future Government or civil service examination or test, or conditioned upon the student's being placed upon a Government or other eligible list, or upon his securing or having the

opportunity to secure employment within the field of training pursued—with the capacity, tendency, or effect of misleading students or prospective students by reason of concealment of pertinent facts, or of other circumstances or conditions of its use.

(j) Making 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. (Jan. 15, 1940.)

2656. **Slate—Comparative Tests and Quality.**—Seba H. Hamm and John D. Hamm, copartners trading under the firm name of S. H. Hamm & Son, engaged in the sale and distribution of slate 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.

The quality of slate is determined by several tests—such as the modulus of rupture test, which determines the weight in pounds the slate will withstand before breaking; and another known as the absorption test, which determines the amount of water absorbed by the slate. A higher weight figure per square inch and a lower absorption percentage indicates a better quality of slate. Slate quarried in the Bangor District of Pennsylvania has for some time been known to the trade and sold as “Genuine Bangor Certificate Slate.” A nearby district where slate is quarried is that of Pen Argyl. The slate from both districts is used principally for roofing purposes and must meet certain specifications prior to acceptance by builders.

Seba H. Hamm and John D. Hamm, and each of them, in connection with their sale and distribution of slate in commerce as defined by said act, agreed to cease and desist from publishing comparative tests purporting to show that slate distributed by them is of higher quality than competitive products when, in fact, the figures given and the assertions made are not warranted by the weight of scientific evidence; or in any other way representing that such slate has greater strength, or greater resistance against absorption of moisture than specified competitive products when such is not the fact, or that it possesses any other superior quality not actually present. (Jan. 19, 1940.)

2657. **Miniature Adding Machine—Qualities and Special Price.**—Henry D. Mack, sole trader, trading as Tavella Sales Co. and also as Precision Instrument Co., engaged in the manufacture, among other calculating devices, of a miniature adding machine known as the “Tasco Pocket Arithmometer” which he sells and distributes 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 D. Mack, in connection with the sale and distribution of his adding machine and other equipment and devices in commerce as defined by said act, agreed to cease and desist from representing—

(a) That the Tasco Arithmometer or any similar device does the work of higher priced adding machines, or "exactly the same" work as more costly machines; or either directly or inferentially that such device is as accurate, fast, or dependable as more expensive machines used for the same purposes, unless and until such be the facts.

(b) Representing that the price charged for said Arithmometer or other article or device offered for sale is either "low" or "Special," so long as the figure quoted is the regular price or more than the regular price for which the same has been sold or offered for sale by him; or in any other way, either directly or inferentially representing that the advertised offer is special or unusual so long as no price reduction or other trade concession is made therewith. (Jan. 22, 1940.)

2658. **Varnishes—Composition and Qualities.**—George A. Morhard Co., a corporation, engaged in the manufacture of varnishes 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.

George A. Morhard Co., in connection with the sale and distribution of varnishes and similar merchandise in commerce as defined by said act, agreed to cease and desist from representing either directly or indirectly—

(a) That its Kauri-Congo Varnish or any similar preparation contains a high percentage of Kauri-Congo gum or of tung oil or either unless and until such be a fact; or in any other way overstating or misrepresenting the gum or tung oil content actually present in said product.

(b) That the oil length of said product is 30 gallons or any other amount or quantity in excess of the true measure thereof.

(c) That said product is water resistant, when such is not a fact.

(d) That said product has a low acid number or that it is non-reactive to zinc oxide, when such are not the facts.

(e) That said product can be used as an all-purpose spar varnish; or in any other way representing that it has the requisite qualities and properties of a spar varnish or is suitable for all the purposes for which spar varnish is used, when such are not facts. (Jan. 22, 1940.)

2659. **Mattresses—Exaggerated Fictitious Prices.**—Leon T. Clickner and Lawrence R. Clickner, copartners trading under the firm name of Watertown Mattress Co., engaged in the manufacture of bed mattresses in commerce between and among various States of the United States, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Leon T. Clickner and Lawrence R. Clickner, and each of them, in connection with the sale and distribution of their mattresses or other products in commerce as defined by said act, agreed they will cease and desist from selling, offering for sale, or supplying to their customers for resale, their products tagged, labeled, or otherwise marked with any false, fictitious, or misleading prices which are in excess of the prices for which said products are intended to be sold and usually are sold in the due course of trade. (Jan. 22, 1940.)

2660. **Upholstery Nails or Tacks—Imported as Domestic.**—E. H. Tate Co., a corporation, engaged in the sale and distribution of merchandise, including upholstery nails or tacks, 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.

E. H. Tate Co., in connection with the sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

1. The use of the words "Boston, Massachusetts" or the letters "U. S. A.," or of the said words and letters in connection or combination each with the other, or in any other way so as to indicate that said products are of domestic make or manufacture, when such is not the fact.

2. Causing the brands or marks on imported products, which indicate the foreign origin or manufacture of such products, to be omitted, removed, erased, or concealed so as to mislead or deceive purchasers or prospective purchasers with reference to the foreign origin or manufacture of said products. (Jan. 22, 1940.)

2661. **Shoulder Brace—Qualities.**—The Ohio Truss Co., a corporation, engaged in the manufacture of trusses, abdominal supporters, shoulder braces, and similar articles, 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.

The Ohio Truss Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from labeling, designating, or otherwise referring to a shoulder

brace or similar product which it offers for sale as "Long-Life Health Brace"; or representing in any other way that the user thereof may expect thereby to attain health, wealth, youth, or happiness; or that any such results are to be obtained through correct breathing or erect posture per se. (Jan. 23, 1940.)

2662. **Neckties—Composition.**—Franklin Knitting Mills, Inc., a corporation, engaged in the manufacture of neckties 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.

Franklin Knitting Mills, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from selling or offering for sale any silk or silk product which contains any metallic weighting without full and nondeceptive disclosure of the presence of such metallic weighting, together with the proportion or percentage thereof, made in the labels, tags, or brands attached to the merchandise and in the invoices and all advertising matter, sales promotional descriptions or representations however disseminated or published. (Jan. 26, 1940.)

2663. **Pens and Pencils and Other Office Supplies—Quality and Value.**—James R. Kaye, an individual trading as The Lo-Well Co, engaged in the business of selling office supplies, including pencils and carbon papers, by mail order and otherwise, in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations 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.

James R. Kaye agreed to cease and desist from the use in his advertisements and advertising matter of whatever kind or description—

1. Of statements or representations to the effect that the pen points of his fountain pens are tipped with iridium, when such is not the fact.

2. Of the phrases, "Fine Quality" or "First Quality" or of any other words or phrases as descriptive of pens or pencils or other products so as to import or imply that said products are of a grade or quality which is higher or better than actually is a fact.

3. Of pictorial or other representations of products which do not accurately and definitely depict the products offered for sale or distributed as premiums, or the effect of which representations tends or

may tend to convey the belief to purchasers or prospective purchasers that said products are of a value greater than represented or that they are identical or of equal quality with the products actually sold or distributed as premiums. (Jan. 26, 1940.)

2664. **Wrist Watches—Unique Nature.**—Gruen Watch Co., a corporation, engaged in the manufacture of wrist watches and in the sale of certain thereof under the name "Gruen Curvex" 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.

Gruen Watch Co., in connection with the advertisement, sale, and distribution of its Gruen Curvex wrist watches in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of any statement, pictorial, or other representation, the effect of which is to convey or which tends or may tend to convey the belief to purchasers that the principle involved in the said Gruen Curvex wrist watches is the only way ever found to put a full-sized movement in curved wrist watches or that the Gruen method of construction is the only way to make the movement big enough to give true pocket-watch accuracy in a wrist watch. (Jan. 29, 1940.)

2665. **Letterheads and Other Stationery—Manufacturer.**—Horace H. Nahm and Jack S. Heller, copartners trading under the firm name of Nahm Photogravure Co., engaged in the designing of letterheads for business stationery, 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.

Horace H. Nahm and Jack S. Heller, and each of them, agreed that in connection with their sale and distribution of letterheads and other stationery in commerce as defined by said act, they will cease and desist from representing that their business includes the manufacture of letterheads or other articles of commerce so long as they neither own, operate, nor control the plant or factory in which such letterheads or other articles are manufactured or made. (Jan. 29, 1940.)

2666. **Shoe Polish Pastes—Composition and Patented.**—George J. Kelly, Inc., a corporation, engaged in the business of manufacturing shoe polish pastes, liquids, and dyes, 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.

George J. Kelly, Inc., in connection with the offering for sale, sale and distribution of its paste product in commerce, as defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisements and advertising matter of whatever kind or description, 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—

(a) that said paste product is composed of Carnauba wax and turpentine, pure or otherwise, when such is not the fact. If said product is composed in substantial part of carnauba wax and turpentine and in part of an ingredient other than such wax and turpentine, and the words "Carnauba wax and turpentine" are used as descriptive of such wax and turpentine content, then in that case, the said words 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 such wax and turpentine, but is composed in part of other ingredients.

(b) that the self-service package or container offered or furnished by the said corporation to dealers who purchase its product, is patented, when in fact such is not the case. (Jan. 29, 1940.)

2667. **Sewing Needles—Imported Product as Domestic.**—Joseph Paty, individual, doing business as The Paty Co., engaged in the sale and distribution of sewing needles 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.

Joseph Paty, agreed to cease and desist from offering for sale or selling in commerce, as defined by said act, imported products not clearly and distinctly marked to show the country of origin of said products. The said individual also agreed to cease and desist from the use on the book or other containers of said products of the phrase "Printed in U. S. A." or the letters "U. S. A." either alone or in connection with any other word or words or in any way so as to import or imply that said products are of domestic origin, or the effect of which tends or may tend to confuse or mislead purchasers or prospective purchasers with respect to the identity of the country of origin of said products. (Jan. 30, 1940.)

2668. **Pictures, Photographs and Portraits—Quality, Free Product, Prompt Delivery, Refunds, Etc.**—George Edward Martin, an individual, trading as Martin Studios, engaged in the business of making photographs or pictures, especially of children and babies, and in the sale thereof in commerce, in competition with other individuals, 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.

George Edward Martin, in connection with the sale and distribution by him, under the trade name "Martin Studios" or otherwise, of pictures, photographs, portraits, or other related products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from stating or representing, directly or in any manner, that said products made by him or by the said Martin Studios, are of the highest quality and that they will compare favorably with samples displayed to the customer from whom an order for such products is obtained, when such is not the fact. The said George Edward Martin also agreed to cease and desist from the use of statements or representations, the effect of which tends or may tend to convey the belief to purchasers that a finished photograph, portrait, or picture of a particular person, subject, thing or object will be given free to each customer, or that the customer's order for products will be promptly filled and delivered on or before a specified date or occasion, as Christmas, or that the customer will not be required to pay postage or c. o. d. charges on the products, or that the customer's money will be refunded or suitable adjustment made, including a return to the customer of any picture or pictures furnished by the customer to the said Martin Studios, if the customer is dissatisfied with the delivered product, unless and until such promises, statements, or representations are bona fide and the promises made or implied thereby actually are fulfilled. (Jan. 26, 1940.)

2669. **Dog and Cat Food—Quality and Composition.**—J. S. Morgan and I. C. Morgan and I. H. Morgan, copartners trading as Morgan Packing Co., engaged in the packing of canned foods including dog and cat food, 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.

J. S. Morgan, I. C. Morgan, and I. H. Morgan, 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—

(a) Representing that their prepared dog and cat food is a "Balanced Ration" or otherwise that it is a balanced food suitable for dogs and cats of every breed and age.

(b) Representing any ingredients of such dog and cat food to be meat byproducts unless and until the same consists of meat byproducts properly so-called.

(c) Representing that such dog and cat food contains 50 percent protein meat and bone scraps or any percentage or proportion thereof in excess of the correct amount or ratio.

(d) Omitting any substantial ingredient such as the water content from the printed formula of said food, or continuing to list therein molasses, tomatoes or other ingredients which are no longer included in such products. (Feb. 1, 1940.)

2670. **Fog Lamp—Qualities.**—American Automatic Devices Co., a corporation, engaged in the business of manufacturing a so-called fog lamp for use as an auxiliary driving light for motor driven vehicles, and in the sale thereof under the trade designation "Hy-Power No. 19" 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.

American Automatic Devices Co., in connection with the offering for sale, sale, and distribution of its light or lamp device 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 of whatever kind or description or in any other way of any statement or representation, the effect of which tends or may tend to convey the belief to purchasers that the beam of light produced by said device is such that it will illuminate the road in a dense fog so as to assure safe driving for 1,100 feet ahead or that it will penetrate, go under or undermine such fog or give any substantial visibility in fog or thick mist. (Feb. 2, 1940.)

2671. **Fur Coats—Nature and Composition.**—David Borenstein and Samuel Mesgar, copartners, trading under the firm name of Roebing Fur Shop, engaged in the manufacture of fur coats and garments 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.

David Borenstein and Samuel Mesgar, and each of them, in connection with the sale and distribution of their fur coats in commerce as defined by said act, agreed to cease and desist from—

(a) The use, in advertisements or on labels, tags, brands, or otherwise, of any description, designation, or representation of any fur which deceptively conceals the true name or nature of the fur with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public.

(b) The use of any trade name such as "Sealine," "Beaverette," "Marmink," "Squirrelette," "Minkolette," or other trade designation in a manner which is calculated to or has the capacity to mislead or deceive purchasers, prospective purchasers or the consuming public as to the character, name, nature or geographical or zoological origin of any fur or fur product or a product made partly of fur, or in any other material respect.

(c) The use, falsely or deceptively, in advertisements, tags, labels, brands or other representations of furs, of any trade name or coined name such as "Cocoalette" or other name or words descriptive of the fur as being the fur of an animal which is in fact nonexistent.

(d) The sale or offering for sale, through advertisements or otherwise, of fur-trimmed garments the fur of which is composed of pieces and not of full skins, or of fur garments made in whole or in part of pieces, tails, paws, throats, heads or scraps, or of plate or mats composed of pieces and not of full skins, without fully disclosing such fact, and with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers or the consuming public. (Feb. 2, 1940.)

2672. **Metal Social Security Plates—Agents Earnings or Profits.**—Maurice Willens, an individual, trading as "U. S. Name-Plate Company" or "United States Name-Plate Company" and as "The Printwell Company," engaged in the sale of metal Social Security plates 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 Willens, in connection with the sale and distribution of his products in commerce as defined by said act, agreed to cease and desist from representing, directly or by implication—

1. That agents, dealers or others engaged in the sale or resale of said products make commissions of \$10 to \$25 every day or 400 percent profit;

2. That \$10 to \$25 per day or 400 percent profit are the earnings usually made or realized by agents, dealers or others engaged in the sale or resale of said products.

3. That agents, dealers, or others 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 his active full-time agents, dealers or others in the ordinary and usual course of business and under normal conditions and circumstances.

4. By the use of such words as "up to," "as high as," or any other words or terms of like import that prospective agents, dealers, or others

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 his agents, dealers, or others in the ordinary and usual course of business and under normal conditions and circumstances. (Feb. 5, 1940.)

**2673. Thumb Tacks—Foreign Product as Domestic.**—Waterbury Tack Co., Inc., a corporation, Shelton Tack Co., a corporation, and Holland Manufacturing Co., a corporation, engaged in the sale of thumb tacks 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.

Waterbury Tack Co., Inc., Shelton Tack Co., and Holland Manufacturing Co., in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use of the words "Made in U. S. A." as a mark, stamp, brand, or label for said products or to otherwise advertise the same 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 of domestic origin. If products of foreign origin or make are treated to improve their appearance or for other purpose in the United States of America and reference is made to such treatment, then in that case, a suitable word or words shall be used so as to indicate clearly that said products are merely treated or processed in the United States of America but are not manufactured therein. (Feb. 5, 1940.)

**2674. Soilless Plant Growing Chemical—Endorsement, Unique Nature, Qualities, Etc.**—Emil Bergman, sole trader under the name and style of Dagmar Plant Industries, engaged in the sale and distribution of a chemical product designated "Quik-Gro" for soilless plant growing, 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.

Emil Bergman, in connection with the sale and distribution of his product in commerce as defined by said act, agreed to cease and desist from representing either directly or inferentially—

(a) That his product "Quik-Gro" has been endorsed or approved by the National Resources Committee or any other authoritative body when such is not the fact; or that such group or body is authority for a claim that potatoes, tomatoes and/or much of the household food may be produced by the use thereof.

(b) That by the "Quik-Gro" method or any similar method one can have a beautiful flower or vegetable garden in the basement or

other place where sunlight is not available; or that fruits and vegetables grown by such soilless method will be free from insects or insecticides; or that "Quick-Gro" will speed up the growth of soil-grown plants.

(c) That reports from any agency of the Soviet Government indicate successful tests made with "Quick-Gro"; or that any such agency ever has tested "Quik-Gro."

(d) That the product has been endorsed or approved by Marshall, Reid & Company, Inc., or by any other nonexistent person, firm or corporation, or by any existing person or concern, when such is not the fact. (Feb. 7, 1940.)

**2675. Paper Products—Competitive Products.**—Scott Paper Co., a corporation, engaged in the business of manufacturing various paper products including bathroom tissue and in the sale thereof under the trade name "Waldorf Tissue" 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.

Scott Paper Co., in connection with the offering for sale, sale and distribution of its "Waldorf Brand" 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 of whatever kind or description or in any other way of statements or representations, the effect of which tends or may tend to convey the belief to purchasers that all products, regardless of their quality, which are offered for sale or sold in competition with the said "Waldorf Brand" contain splinters, rough or thin spots, dirt or other defects. The said corporation also agreed to cease and desist from the use of any statement or representation which in any way unwarrantably disparages the products of a competitor or competitors. The said corporation also agreed to cease and desist from the use of any statement or representation which imports or implies or which tends or may tend to convey the belief to purchasers that all the products, which are marked by others in competition with the "Waldorf Brand," have the aforesaid imperfections, or any thereof, or contain them to such an extent as to cause the said products of competitors to be harmful or unhealthy to users thereof. (Feb. 8, 1940.)

**2676. Oils—Refinery and Sealed.**—Bodie-Hoover Petroleum Corp., a corporation, engaged in the business of blending and canning oils bought in bulk from refiners and in selling the same under its own trade brands 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.

**Bodie-Hoover Petroleum Corp.** in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from representing itself to be a refiner of petroleum or that the products which it sells are refinery sealed or sealed at the refinery when in fact it neither owns, operates, nor controls a plant or plants in which the oil products sold by it are refined; or that the oils processed and sealed in its own plant are "Refinery Sealed" or "Sealed at Refinery" when such is not the fact. (Feb. 8, 1940.)

**2677. Liquors, Gins, Etc.—Distillers.**—Distillers Products Corp. of Kentucky, Inc., a corporation, engaged in the business of purchasing, rectifying, and bottling distilled liquors and in the production of gin through the redistillation of alcohol over juniper berries and other aromatics, 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.

Distillers Products Corp. of Kentucky, Inc., in connection with the 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 of the word "Distillers" as part of or in connection with its corporate or trade name; and from the use of the word "Distillers" or of any other word or words of similar meaning on its letterheads or printed matter or in its advertisements or advertising matter of whatever kind or description, in any way, the effect of which tends or may tend to convey the belief to purchasers that the said corporation is a distiller or that it actually owns and operates or directly and absolutely controls a distillery or distilleries or that the products which it sells and distributes in commerce are distilled by it, when such is not the fact. (Feb. 8, 1940.)

**2678. Molds or Forms and Supplies for Concrete Burial Vaults—Qualities or Results.**—Automatic Sealing Vault Co., a corporation, engaged in the business of selling molds or forms and other equipment and supplies for use in the manufacture of concrete burial vaults in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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.

Automatic Sealing Vault Co., in connection with the sale and distribution of its products in interstate commerce, as defined by said act, agreed to cease and desist from the use in its printed or advertising matter or in any other way of statements or representations

which directly assert or import or imply that concrete burial vaults manufactured in molds or forms and/or containing materials sold by the said corporation will afford or assure enduring or permanent protection to the caskets or bodies encased therein, or that said vaults are and will remain permanently waterproof, or that the application of its so-called waterproofing paints or other preparations to the vaults will prevent permanently the intrusion of water. (Feb. 12, 1940.)

2679. **Tuna Fish—Domestic as Imported.**—Santo Alioto, Joseph Alioto, Christopher Alioto, Frank Alioto, John Alioto, Samuel Alioto, and Dominick Alioto, copartners trading under the firm names "Santo Alioto & Sons" and "Alto Products Company" engaged in the sale and distribution of canned foods, including tuna fish, 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.

Santo Alioto, Joseph Alioto, Christopher Alioto, Frank Alioto, John Alioto, Samuel Alioto, and Dominick Alioto, 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 and each of them would cease and desist from the use on labels affixed to the containers of said products, or in any other way of 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 to the ultimate consumer that said products are products obtained from the coasts of Italy or were packed in and imported from Italy, when such is not the fact. (Feb. 12, 1940.)

2680. **Lingerie and Handkerchiefs—Plant or Factory.**—Mamary Brothers, Inc., a corporation, engaged in the manufacture of lingerie and men's and women's handkerchiefs, 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.

Mamary Brothers, 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 owns or operates a plant or factory in Shanghai, China, or Swatow, China, or in any other locality where it does not in fact maintain its own plant or factory; or in any other way representing that it makes or manufactures goods which it imports from China or that it owns and operates or directly and abso-

lutely controls the plant or factory in which such products are made or manufactured, when such are not the facts. (Feb. 12, 1940.)

2681. Fountain Pens, Electric Shavers and Cameras—Special Prices, Limited Supplies, Manufacturer, Guarantee, "Genuine," Value, Etc.—Federal Instrument Corp., a corporation, engaged in the sale and distribution of cheap fountain pens, electric shavers and cameras 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.

Only pens of high price and superior quality are sold with a bona fide "Lifetime" guarantee, and the responsible makers thereof repair or replace pens, so warranted, if defective, without charge and without limitation as to time. When the "point" of a pen is designated as being of a certain metal, the trade and consuming public understand such reference to mean that the nib or point thereof is made of some superior hard metal different from the body of the pen, so as to insure smooth writing and lasting qualities. The word "Genuine," when used to describe an article of commerce, invites unreserved confidence in the truthfulness of the description given, and is taken and understood by the public to signify a complete absence of fiction or counterfeit.

Federal Instrument Corp., in connection with its sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) Representing in any way that its regular method of sale is a "close-out sale" or offers "reduced close-out prices," or that the "Supplies are limited," at the prices offered; or that pretended or imaginary savings from operations are passed on to its customers in the form of remarkable price reductions or "super values"; or in any other manner asserting or implying that there is anything special or unusual about such plan of merchandising so long as no real reduction or trade concession is made therewith.

(b) Representing that its customers receive their goods "direct from factory" or "at a fraction of their regular prices" or in any other way, by direct statement or reasonable inference, that said corporation itself manufactures the goods that it sells, thus eliminating all middleman's profits, or that its prices to the customers are any reduction whatsoever from regular retail prices for which these goods are sold, when such are not the facts.

(c) Quoting figures purporting to be the "value" or the "regular," "genuine" or customary prices of articles, which figures are in excess of the prices for which such articles are sold or can be obtained in the usual course of business; or in any other way repre-

senting that the value of an article offered for sale by it is more than the price charged, so long as said price is equal to or greater than the ordinary retail price for such or similar articles.

(*d*) Representing that a price of \$1 for a pen and pencil set wholesaling at 40 cents means a "cash discount" of \$4 from the regular retail price; or that a price of \$2.75 for an electric shaver wholesaling at 80 cents and retailing at \$2 means a cash discount of \$6.25 from the regular retail price; or that a price of \$1.98 for a camera wholesaling at 65 cents and retailing at \$1 means a cash discount of \$4.52 from the regular retail price or value; or in any other way whatsoever, that a "cash discount" is given or any saving is effected by the buyer where there is none in fact.

(*e*) Issuance of so-called "cash discount vouchers," "coupons" or "certificates" purporting to represent some advantage, benefit, profit, or avail to the holder when there is none in fact; or representing that such spurious token is "worth \$4.00 or more," or worth any sum whatsoever, so long as the prices charged for the goods are the same either with or without the alleged coupon, voucher or certificate.

(*f*) Representing in any way that a designated article is given "free" or as a gratuity to the purchaser of another article, when in fact the cost of the alleged gift is included, either in whole or in part, in a deceptive price charged for the article offered for sale.

(*g*) The advertising, issuance or dissemination of a "Lifetime Guarantee," or "Guarantee for Life" or other general guarantee certificates as pertaining to its 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.

(*h*) Use of the word "genuine" or similar word or representation in a manner purporting to certify or tending to emphasize the truthfulness of any advertising claim contrary to fact.

(*i*) The use of words such as "Genuine Duotone Durium Point" or other words or expressions the effect of which is to import or convey the impression that its pen points are made of or tipped with any purported substance fanciful or real, when such is not a fact.

(*j*) Representing that the fountain pen which it offers for sale "Writes 3 months on 1 filling," or in any other way exaggerating or misstating the actual capacity, qualities or attributes of such pens. (Feb. 14, 1940.)

2682. **Handkerchiefs—Plant or Factory, Foreign Office.**—James S. Mack-soud, sole trader as Macksoud Importing Co., engaged in the importation, sale and distribution of handkerchiefs 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.

James S. Macksoud, in connection with his sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from representing himself in any way to be a manufacturer of handkerchiefs or other merchandise when he neither owns, operates, nor directly and absolutely controls the plant or factory in which the goods sold by him are made; or from representing that he has manufacturing plants of his own at Swatow, China, Shanghai, China, Chefoo, China, or elsewhere, for the production of these or other goods or merchandise when such is not a fact; or from representing that he has an office or place of business in Shanghai, Chefoo or other place where he does not maintain in fact such an establishment. (Feb. 15, 1940.)

2683. **Luggage—Fictitious Prices and Reductions.**—Sam Skuller, an individual trading as Likley Luggage Co., engaged in the sale and distribution of luggage at retail and by mail order, 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.

Sam Skuller, in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from—

(a) Quoting, in his catalogs, price lists, labels, tags, or in any other way, fictitious or misleading figures purporting to be the regular sale or list prices of merchandise, or figures which are in excess of the prices at which such articles are sold by him in the normal and usual course of trade.

(b) Representing in any way whatsoever, in his catalogs, trade literature or otherwise, that a discount of 50 percent or any other fictitious reduction from his customary prices is offered the purchaser when such is not a fact. (Feb. 17, 1940.)

2684. **Ribbons—Composition.**—John C. Welwood Corp., a corporation, engaged in the sale and distribution of ribbons 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.

John C. Welwood Corp., 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 words "Moire Taffeta," "Satin Taffeta" or any other silk connoting word or words, or in any way 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 "Moire" or the word "Taffeta" or the word "Satin" is used properly as descriptive of the construction of a fabric or product containing fiber other than pure silk, then the word so used shall be accurately and nondeceptively qualified by using (in immediate conjunction therewith, and in letters of at least equal size and conspicuousness) a word or words clearly naming and disclosing the fiber, fibers or materials of which said fabric or product is composed, stated in the order of their predominance by weight, such as, beginning with the largest constituent; for example, "Rayon and Silk Satin Taffeta" for a fabric of satin taffeta construction and composed of a mixture of rayon and pure silk, each present in substantial proportion but with the silk predominant; or, "Rayon Moire Taffeta," where the product is composed of rayon.

(b) Selling or offering for sale any product made of rayon without disclosure of the fact that the material of which said product is composed is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published.

(c) 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; for example, "Rayon and Silk" where the product is composed of rayon and silk, the silk predominating, or "Cotton and Rayon" where the cotton content predominates. (Dec. 8, 1939.)

2685. **Smoking Tobacco—Foreign Office.**—James Eshelby and Isabel S. Eshelby, executors of the Estate of Fanny L. Eshelby, and as such executors trading under the name "E. O. Eshelby Tobacco Company," engaged in the manufacture of tobacco products, including a smoking tobacco designated "Colonial Smoking Mixture," in competition with partnerships and with corporations, individuals and firms 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.

James Eshelby and Isabel S. Eshelby, 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, they and each of them, as executors of the estate of Fanny L. Eshelby or in any other capacity, will cease and desist from the use on the packages or containers of said products or in any other way of the words "British Office" or the purported address "2 Wembley Road, Northumberland" and from the use of either the said words or the said purported address so as to import or imply that the business conducted by them has associated or connected therewith a British office or one which is located at the address specified, when such is not the fact. (Feb. 19, 1940.)

2686. **Handkerchiefs—Manufacturer.**—Embassy Handkerchief Co., Inc., a corporation, engaged in the sale and distribution of handkerchiefs 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.

Embassy Handkerchief Co., Inc., in connection with its sale and distribution of handkerchiefs or other merchandise in commerce as defined by said Act, agreed to cease and desist from designating, describing or referring to itself as a "manufacturer" of handkerchiefs or other merchandise when it neither owns, operates, nor directly and absolutely controls the plant or factory in which the goods sold by it are made; or in any manner, representing that it has a manufacturing plant of its own for the production of these or other goods or merchandise when such is not a fact. (Feb. 19, 1940.)

2687. **Handkerchiefs—Foreign Offices, Branch Offices, Stockrooms and Factory.**—Cambridge Handkerchief Works, Inc., a New York corporation with its principal place of business in the city of New York, State of New York, and with a factory in Mayaguez, Puerto Rico, engaged in the manufacture of men's and women's handkerchiefs between and among various States of the United States, 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.

Cambridge Handkerchief Works, Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed it will cease and desist from representing that it maintains foreign offices at Shanghai, China, or Swatow, China, or offices and stockrooms at Chicago, Illinois, or in any other locality where no such office or stockroom exists in fact; or that it has a factory or plant at

Passaic, N. J., or in any other place where it does not actually own, operate or directly and absolutely control such a plant or factory wherein the products which it sells are made. (Feb. 19, 1940.)

2688. **Corrugated Boxes or Shipping Containers—Manufacturer.**—Irving L. Odman Co., a corporation with its principal place of business in the city of Chicago, engaged in the sale and distribution of corrugated boxes or shipping containers 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.

Irving L. Odman Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from marking or stamping its products with its corporate or trade name together with the words "Certificate of Box Maker" or the word "Maker" or any other word or words of similar meaning so as to import or imply that the said Irving L. Odman Co. makes or manufactures the said products, 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. (Feb. 19, 1940.)

2689. **Metal Novelties—Composition.**—Henry Bronsther and Miller Bronsther, copartners, trading under the firm name of The Anchor Manufacturing Co., engaged in the manufacture of glassware and glass and metal novelties, 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.

Henry Bronsther and Miller Bronsther, and each of them, in connection with the sale and distribution of their products in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from branding, labeling, or otherwise designating or describing any product or the metal content thereof as "Sterling Silver" or "Sterling" which is not in fact throughout a homogeneous alloy containing not less than 92.5 percent pure silver. (Feb. 20, 1940.)

2690. **Handkerchiefs—Manufacturers and Foreign Factories.**—Henry Goldberg and Murray Van Praag, copartners trading under the firm name of Goldberg & Van Praag, engaged in the sale and distribution of handkerchiefs in 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.

Henry Goldberg and Murray Van Praag, and each of them, in connection with the sale and distribution of their merchandise in commerce as defined by said act, agreed they will cease and desist from representing on their stationery or other printed or advertising matter that they are "manufacturers," or from the use of any other words or expressions of similar meaning so as to import or imply or the effect of which may be to convey the belief to purchasers that they make or manufacture the handkerchiefs offered for sale and sold by them; or that they actually own, operate, or directly and absolutely control the plants or factories in which such products are made or manufactured. They further agree to cease and desist from stating or representing in any way that they own, operate or maintain factories at Mayaguez, Puerto Rico, Swatow, China, Chefoo, North China, or elsewhere when such is not a fact. (Feb. 20, 1940.)

2691. **Yeast Feed for Cattle, Poultry, Etc.—Qualities and New Discovery.**—Warren E. Lair, an individual trading as Jamaica Milling Co., engaged in the business of manufacturing a prepared yeast culture feed offered as a supplement to grain for the growing and fattening of cattle, hogs, poultry, and other domestic animals, under the trade name "Min-Ro-Lac," in commerce in competition with other individuals and with firms, partnerships, and corporations 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.

Warren E. Lair, in connection with the offering for sale, sale and distribution of the Min-Ro-Lac product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist from the use in his 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—

(a) That the use of said product will reduce or cut feeding costs one-half.

(b) That the said product is a remedy for infectious diseases of the digestive tract.

(c) That it will obviate or remove the Blackhead or Cholera hazard from turkey raising.

(d) That it will cause the production of larger eggs or appreciably increase the egg production of hens fed therewith.

(e) That the addition of one tablespoonful of the product to each grain ration feed for milk cows will result in a noticeable or marked

difference in the milk flow or condition of the cows so fed or that the addition of such quantity of the product to the feed rations of horses or mules will act as a wonderful conditioner or renew the life and vigor of such livestock.

(f) That such product is a new discovery.

(g) That 96 pounds of properly balanced feed or any other quantity of such feed in excess of  $32\frac{1}{3}$  pounds is obtainable from the admixture of water to  $\frac{1}{3}$  pound of said product and 1 bushel or 32 pounds of ground oats.

(h) That the said yeast concentrate product will produce a sweet culture instead of an ordinary or usual fermentation of feeds.

(i) That the normal vitamin content of the average ordinary home grown rations is so supplemented by the addition thereto of said product as to assure more rapid daily gains by beeves fed therewith. (Feb. 20, 1940.)

2692. **Yeast Feed for Cattle, Poultry, Etc.—Qualities and New Discovery.**—Ralph D. Schultz and Arthur J. Reeder, copartners, who, in 1936 and for about 2 years thereafter, were actively engaged under the trade name Min-Ro-Lac Sales Co., in the sale and distribution in commerce of a product known as “Min-Ro-Lac”, in competition with other partnerships, individuals, firms, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ralph D. Schultz and Arthur J. Reeder, in connection with the offering for sale, sale, and distribution of the Min-Ro-Lac product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed that they, and each of them, will cease and desist from the use in their 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—

(a) That the use of said product will reduce or cut feeding costs one-half.

(b) That the said product is a remedy for infectious diseases of the digestive tract.

(c) That it will obviate or remove the blackhead or cholera hazard from turkey raising.

(d) That it will cause the production of larger eggs or appreciably increase the egg production of hens fed therewith.

(e) That the addition of one tablespoonful of the product to each grain ration feed for milk cows will result in a noticeable or marked difference in the milk flow or condition of the cows so fed or that the addition of such quantity of the product to the feed rations of horses or mules will act as a wonderful conditioner or renew the life and vigor of such livestock.

(f) That such product is a new discovery.

(g) That 96 pounds of properly balanced feed or any other quantity of such feed in excess of  $32\frac{1}{3}$  pounds is obtainable from the admixture of water to  $\frac{1}{3}$  pound of said product and 1 bushel or 32 pounds of ground oats.

(h) That the said yeast concentrate product will produce a sweet culture instead of an ordinary or usual fermentation of feeds.

(i) That the normal vitamin content of the average ordinary home-grown rations is so supplemented by the addition thereto of said product as to assure more rapid daily gains by beeves fed therewith. (Feb. 20, 1940.)

2693. **Handkerchiefs and Embroideries — Foreign Offices.**—Samuel Franco, sole trader as S. Franco Co., engaged in the importation, sale, and distribution of handkerchiefs and embroideries 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.

Samuel Franco, in connection with the sale and distribution of his merchandise in commerce as defined by said act, agreed to cease and desist from representing in his trade literature or otherwise that he maintains or operates offices or establishments in Swatow, China, or in Chefoo, China, or in any other locality where he does not actually maintain such an office or establishment. (Feb. 21, 1940).

2694. **Class and Fraternity Jewelry—Composition.**—Bastian Brothers Co., a corporation, engaged in the manufacture of class and fraternity jewelry 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.

In the jewelry industry and trade an article described as "gold" is understood to be of 10 carats or better in fineness. "Commercial Standard CS67-38 for Marking Articles Made of Karat Gold" as adopted by representative manufacturers, distributors, and users of karat-gold articles, contains the following definitions:

2b. "Gold" includes any alloy of the element gold of not less than 10 karat fineness. "Karat gold" means an alloy of the element gold of not less than 10 karat fineness.

2e. "Quality Mark" means any mark, as herein defined, indicating or purporting to indicate that any article is composed of gold, or indicating or purporting to indicate the quality, fineness, quantity, weight, or kind of gold in an article.

4. No gold article of less than 10 karat fineness shall have applied to it any quality mark.

Bastian Brothers Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from stamping, branding, labeling, or otherwise designating any article or articles manufactured from any alloy of the element gold of less than 10 carat fineness as "gold," or by the use of any other "Quality mark," indicating or purporting to indicate that any such article is gold. (Feb. 12, 1940.)

2695. **Jewelry, Radios, Luggage, Etc.—Wholesale Jewelers.**—Oskamp Nolting Co., a corporation, engaged in the business of selling jewelry, radios, luggage, 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.

Oskamp Nolting Co., in connection with the offering for sale, sale and distribution of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from representing or designating itself as "Wholesale Jewelers" or its merchandise as "Wholesale Jewelry," and from the use in its advertisements and advertising matter of whatever kind or description of the words "Wholesale Jewelers" or "Wholesale Jewelry" or of other word or words of similar meaning so as to import or imply that the merchandise sold by the said Oskamp Nolting Co. is obtainable by the purchaser at wholesale prices. Said corporation also agrees to cease and desist from the use of the word "Wholesale" in any way as descriptive of the business conducted by it, the effect of which tends or may tend to convey the belief to purchasers that the merchandise purchased from the corporation under the alleged 50 percent discount is the price at which said merchandise or comparable competitive merchandise is sold to the jobbing or retail trade in the usual course of business, when such is not the fact. (Feb. 23, 1940.)

2696. **Athletes' Foot Preparation—Qualities and Guarantees.**—Ruth Cecil Arden, sole trader as The Verard Co., engaged in the sale and distribution in interstate commerce, of a medicinal preparation under the trade designation "Verard Solution" intended for use in the treatment of athlete's foot, 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.

Ruth Cecil Arden, in connection with the sale and distribution of her medicinal preparations in commerce as defined by said act, agreed to cease and desist from—

(a) Representing by assertion or inference that Verard Solution or any similar product is of itself a competent treatment or an effective remedy for the disease or condition commonly known as athlete's foot.

(b) Directly or inferentially representing that any person using such medication will no longer suffer with red or swollen feet, cracked or peeling skin, itchiness or danger of spreading; or that beneficial results may be expected by the user without regard to the stage of the infection, the presence of accompanying factors or the necessary hygienic measures which must attend any type of medication for such conditions.

(c) Representing that this medication brings "sure" and "Positive" relief or "clears up all cases" of athlete's foot "completely," or "fully" relieves the same in "less than 10 days" or within any other specified time.

(d) Designating such preparation as a "guaranteed product" or its action as bringing "guaranteed relief;" or the use of the words "guaranteed" or "guarantee" or any other word of similar meaning in connection with the advertising, sale, or offering for sale of her 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. (Feb. 23, 1940.)

2697. **Handkerchiefs—Manufacturer.**—C. Tischhauser, Inc., a corporation, engaged in the sale and distribution of handkerchiefs 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.

C. Tischhauser, Inc., in connection with its sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from designating, describing or referring to itself as a "manufacturer" of handkerchiefs or other merchandise when it neither owns, operates, nor directly and absolutely controls the plant or factory in which the goods sold by it are made; or in any manner representing that it has a manufacturing plant of its own for the production of these or other goods or merchandise when such is not a fact. (Feb. 23, 1940.)

2698. **Handkerchiefs—Manufacturer.**—F. A. Salamy Co., Inc., corporation, engaged in the sale and distribution of handkerchiefs in commerce between and among various States of the United States, 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.

F. A. Salamy Co., Inc., in connection with its sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from representing that it is a "manufacturer" of handkerchiefs or other merchandise, or in any other way importing or implying that it owns and operates or directly and absolutely controls the plant or factory in which the products sold by it are made, when such is not the fact. (Feb. 23, 1940.)

2699. **Candies—Lottery.**—Claxton Candy Co., Inc., a corporation, engaged in the manufacture of candies and in the sale and distribution thereof together with punchboards 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.

Claxton Candy Co., Inc., in connection with its sale and distribution of candy or other merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

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

(c) Supplying to, or placing in the hands of others, punchboards, 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.

(d) Mailing, shipping, or transporting to agents or to distributors or members of the public punchboards, push cards 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.

(e) Selling or otherwise disposing of any merchandise by the use of punchboards, push or pull cards or other lottery devices. (Feb. 23, 1940.)

2700. **Flour—Lottery.**—Abilene Flour Mills Co., a corporation, engaged in the manufacture of flour and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, en-

tered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Abilene Flour Mills 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) Participating in the cost of, or in any way supplying to or placing in the hands of others, premium flour or other merchandise used or to be used to conduct a lottery, gaming device, or gift enterprise in the sale and distribution of flour or other product.

(b) Participating in the cost of, or in any way supplying to or placing in the hands of others, prize-drawing cards or other lottery devices for the purpose of enabling such persons to dispose of or sell any merchandise by the use thereof.

(c) Selling or participating in the sale of any merchandise by the use of prize-drawing cards or other lottery devices. (Feb. 26, 1940.)

2701. Book Matches—Prices, Quality, Free Product, Etc.—Fayette H. Lawson and William A. Lawson, individuals or copartners, trading as Chicago Match Co. and as Book Match Co., engaged in the business of manufacturing book matches and in the sale and distribution thereof in commerce in competition with other individuals and partnerships and with corporations 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.

Fayette H. Lawson and William A. Lawson, in connection with the sale and distribution of their product in commerce as defined by said act, agreed to cease and desist from—

(a) Representing, directly or by implication, that they sell all their book matches at a price of \$7.95 per case of 2,500 books or at any price other than the actual price at which such products are sold by them; or that no extra charge is made for "DeLuxe designs," "Three color covers," or any other style or styles, such as "union labels," and "special red, white and blue covers," when in fact extra charges are made therefor.

(b) Representing that they are "the Quality leader" in the book match industry or that the matches they manufacture and sell are of the "Highest Quality," when such are not the facts.

(c) Stating that their catalogs contain "over 865 Special Book Match cuts" or any other number thereof greater than is actually a fact.

(d) The use in their advertising of the term "three color covers," or of any other term, words, or expression with the capacity, tendency, or effect of creating the impression or conveying the belief to purchasers that the number of colors printed or otherwise inscribed upon the stock from which their book match covers are made is greater than actually is a fact.

(e) Representing that any article is given "free" when receipt of such article is contingent upon any consideration, terms, or conditions, as payment of money or rendering of services, not clearly and unequivocally disclosed in direct connection with the making of such representation.

(f) The use in their advertising or printed matter or in any other way of the words "Bronzing" or "Bronze," or words of similar meaning, as descriptive of their printed match book covers or other printed products so as to import or imply or the effect of which may be to convey the belief to purchasers that such printed product is the result of imparting a gold, silver, or other metallic color by means of powders, painting, or chemical process, when such is not a fact. (Mar. 1, 1940.)

2702. **Handkerchiefs—Manufacturer.**—M. Zwaifler & Co., Inc., engaged in the sale and distribution of handkerchiefs 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.

M. Zwaifler & Co., Inc., in connection with its sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from designating, describing, or referring to itself as a "manufacturer" of handkerchiefs or other merchandise when it neither owns, operates, nor directly and absolutely controls the plant or factory in which the goods sold by it are made; or in any manner, representing that it has a manufacturing plant of its own for the production of these or other goods or merchandise when such is not a fact. (Mar. 1, 1940.)

2703. **Handkerchiefs—Manufacturer and Domestic and Foreign Factories.**—M. Joseph Rosen, sole trader as Manfield Handkerchief Co., engaged in the sale and distribution of handkerchiefs in commerce between and among the various States of the United States, 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.

M. Joseph Rosen, in connection with his sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from the designating, describing, or referring to his business as that of a "manufacturer" of handkerchiefs or other merchandise when he neither owns, operates nor directly and absolutely controls the plant or factory in which the goods sold by him are made; or from representing that he has factories or plants for the production of these or other goods or merchandise at Passaic, N. J.;

Chicago, Ill.; Minneapolis, Minn.; Los Angeles, Calif.; Boston, Mass., or elsewhere; or maintains foreign offices at Paris, France; Manchester, England; Swatow, China; Mayaguez, Puerto Rico; Belfast, Ireland; or elsewhere, when such are not facts; or from representing that he has offices of his own in Passaic, N. J.; Chicago, Ill.; Minneapolis, Minn.; Los Angeles, Calif.; Boston, Mass.; or elsewhere, when in fact the offices so designated or referred to are those of salesmen and are not financed, supervised, and controlled by him. (Mar. 1, 1940.)

2704. Kelp Product—Composition, Qualities, Ailments, Doctor, Etc.—Melvin E. Page, an individual trading as Dental Research Co., engaged in the sale and distribution of a kelp product under the trade designation “Ce-kelp,” 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.

Melvin E. Page in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from representing in any way, directly or indirectly—

(a) That Ce-kelp is “Rich in minerals,” or that it prevents or corrects most of what physicians call the deficiency diseases, or any such.

(b) By statement, inference, or implication, that Ce-kelp or similar product is a competent treatment or an effective remedy for any of the following conditions:

Goiter, heart trouble, tuberculosis, diabetes, anemia, high and low blood pressure, hardening of the arteries, rheumatism, neuritis, arthritis, kidney and bladder trouble, frequent colds, nervousness, constipation, acidosis, pyorrhea, over and underweight, cataract, cancer, “etc.”

(c) That any of the following are recognized or properly classified as being deficiency diseases: Heart trouble, tuberculosis, anemia, high and low blood pressure, hardening of the arteries, rheumatism, neuritis, arthritis, kidney and bladder trouble, frequent colds, nervousness, constipation, acidosis, pyorrhea, over and underweight, cataract or cancer.

(d) That the main cause of deficiency diseases is lack of mineral elements in ductless glands, or that this or any other kelp product is “literally packed” with such essential elements.

(e) That there is an increasing prevalence of degenerative diseases, or that noted medical authorities are of opinion that the white races will disappear from the face of the earth unless the causes are understood; or by statement or inference that such degenerative diseases are due to “mineral deficiency,” or that Ce-kelp or similar product has

any cognizable effect in the prevention, correction, or cure of these or any other diseases whatsoever.

(f) That faulty metabolism is due to impoverished ductless glands; or that Ce-kelp provides "the necessary foods" of the ductless glands, "corrects" metabolism, or supplies the necessary materials for the proper functioning of "all the organs of the human system."

(g) That our common foods do not supply the minerals for the maintenance of health and body; or that centuries of rainfall have washed such minerals from the soil and carried them to the sea, whereby they "cannot get into" our vegetable food plants.

(h) That science has not yet discovered a way in which inorganic minerals may be prepared so that the body can assimilate them, or that in organic form they are builders of the body rather than mere stimulants.

(i) That rheumatism and arthritis are due to alternating excess and insufficiency of phosphorus or calcium in the blood, or that these or cataract of the eye may be removed or cleared up by feeding phosphorus to the glands.

(j) That kelp is "the missing ingredient" containing those substances "most often absent in soil raised food"; or, "definitely" or otherwise, that Ce-kelp is a "normalizer of the body metabolism" or is not a drug.

(k) That Ce-kelp can do no harm to anyone in any way, or that the taking of "too much of it doesn't do any harm"; or that it "positively," or perceptibly, improves the body's disease resisting powers; or restores the impoverished glands; or heals the body in a normal way or at all; or gives resistance to colds and all disease germs or any thereof; or that its continued use will result in a "marked improvement," or any substantial improvement, in general health tone; or tends to "correct," or has any discernible effect upon, the underlying causes of symptoms; or that it feeds the glands, or that in no other way can the organs of the body keep healthy and efficient.

(l) That the endocrine or ductless glands "have charge" of the replacement of the body cells; or that the "boss" endocrine is the pituitary, which sends messages to and regulates opposing glands, restoring order between them and reinstating their "normal condition of check and checkmate."

(m) That white flour and sugar cause the perfect health, physique, and teeth of the primitive peoples to disappear.

(n) That refined foods, generally and without proper qualification, have been deprived of certain food principles, namely, the vitamins and the minerals; or that "fourteen" vitamins are known today, or any number in excess of that recognized by competent medical authority.

(o) That disease conditions for which kelp is given to cattle are "many times more prevalent" in human beings.

(p) That the only way to be sure that all the trace minerals essential to health are in the diet is to make sea food a part of one's daily intake; or that a few Ce-kelp tablets every day amply supply all such trace minerals.

(q) That insurance statistics or any other statistics or records show that over 50 percent of the persons who die in the United States or elsewhere between the ages of 55 and 64, die of diabetes; or so representing that any other percentage or proportion thereof in excess of the actual ratio or number.

(r) That a lowered calcium-carbono-phosphate content of the blood and/or the structure of the hard tissues of the body result from the eating of sugar, or that by the intake of sugar other needed materials are taken out of the blood and tissues.

(s) That effects of a "one-sided salt intake" or the common use of salt are acne, skin eruptions, constipation, diarrhea, or comparable afflictions; or that such intake makes wounds slow to heal or disturbs the blood content of four, or any, valuable salts or substances.

(t) That Ce-kelp supplies all the salts needed by the body, or that the flavor of food is improved with powdered Ce-kelp used as a seasoning.

(u) That potato water is a correct remedy for arthritis, or that Ce-kelp is also a correct remedy therefor, or is better as such a remedy than potato water or any other water.

(v) That the use of kelp changes the level of calcium and phosphorus in the system thereby reducing the susceptibility and increasing the immunity to dental decay; or otherwise representing in any way that Ce-kelp or similar product materially affects the ratio of calcium and phosphorus or the preservation or building of the teeth.

(w) That many of the so-called incurable diseases are not incurable at all, or that "most everything can be cured" by removing the causes for the lack of resistance to diseases by adequate nutrition, or that mineral intake is the first requirement of such adequate nutrition; or the use of any statements or assertions having the capacity, tendency, or effect of creating the impression or conveying the belief to consumers that Ce-kelp or similar product will cure or be instrumental in bringing about a cure of "incurable diseases" or "most anything."

That he will cease and desist from designating himself as "Dr." or "Doctor" unless, whenever so referring to himself, and in immediate connection therewith, it be clearly and unequivocally disclosed that he is a doctor of dentistry and not of medicine; or from

representing that he is "one of the leading authorities" or is a recognized authority at all, on calcium-phosphorus blood studies or similar subjects, or that he has given more time and work to the subject than any other person, when such is not the fact. (Mar. 1, 1940.)

**2705. Handkerchiefs—Manufacturer.**—Jack M. Gemal, sole trader as Gemal Handkerchief Co., engaged in the sale and distribution of handkerchiefs 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.

Jack M. Gemal, in connection with his sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from designating, describing, or referring to himself as a "manufacturer" of handkerchiefs or other merchandise when he neither owns, operates, nor directly and absolutely controls the plant or factory in which the goods sold by him are made; or in any manner, representing that he has a manufacturing plant of his own for the production of these or other goods or merchandise when such is not a fact. (Mar. 4, 1940.)

**2706. Handkerchiefs—Manufacturer.**—General Handkerchief Co., Inc., a corporation, engaged in the sale and distribution of handkerchiefs 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.

General Handkerchief Co., Inc., in connection with its sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from designating, describing, or referring to itself as a "manufacturer" of handkerchiefs or other merchandise when it neither owns, operates, nor directly and absolutely controls the plant or factory in which the goods sold by it are made; or in any manner, representing that it has a manufacturing plant of its own for the production of these or other goods or merchandise when such is not a fact. (Mar. 4, 1940.)

**2707. Sea Food—Nature.**—East Coast Fisheries, Inc., a corporation, engaged in the sale and distribution of fish and crustacea 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.

The American lobster, also known as the Northern lobster, is found only along the North American coast from North Carolina to Lab-

rador. It is more abundant and attains its greatest size in the northern part of its range in Eastern Maine and the Maritime Provinces. These lobsters are scientifically known as macrurous crustacean 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, rock lobster, and southern lobster. The term "lobster" has long been associated in the minds of the consuming public with the genus *Homarus*.

East Coast Fisheries, Inc., in connection with the sale and distribution of sea-food products in commerce as defined by said act, agreed to cease and desist from the use of the word "Lobster" as descriptive of a species of food fish other than that properly known as "lobster," the macrurous crustacean of the genus *Homarus*, unless the said word "Lobster," whenever so used, is accompanied, in equally conspicuous type and in direct connection therewith, by appropriate language identifying the species or locality of such product. (Mar. 7, 1940.)

**2708. Merchandise—Foreign Concern or Branch and Imported as Domestic.**—London House, Ltd., engaged in the sale and distribution of imported and domestic merchandise in commerce between and among various States of the United States, 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.

London House, Ltd. agreed to cease and desist from the use of the words "London House, Ltd." as and for its corporate and trade name, or the address London on its trade stationery or the words "London House" or expressions or legends of similar meaning as a brand or label for its merchandise or in its advertising matter, or picturizations depicting English characters or scenes, so as to import or imply or have the capacity or tendency to confuse, mislead, or deceive purchasers into the belief that said New York corporation is a London house or company, or manufactures products or conducts a business or maintains a branch in London, or that domestic merchandise manufactured in this country is of English or other foreign origin and imported into the United States. (Mar. 6, 1940.)

**2709. Concrete Burial Vaults—Qualities and Test.**—W. F. Tomlinson Co., a corporation, engaged in the manufacture of concrete burial vaults, 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.

W. F. Tomlinson 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 that its concrete vaults are “as enduring as the ages,” “as durable as solid granite,” or constructed “to last forever” or in any other way representing by statement or inference that they are everlasting or durable for all time.

(b) Representing that either the material used or the type of construction of such vaults will insure complete protection against moisture, vermin, or all other severe underground dangers to which a vault may be exposed.

(c) Representing that an immersion test in water for a limited time, or any similar demonstration, is “dramatic proof” or furnishes conclusive evidence that such vaults will permanently remain waterproof or will afford or assure enduring or permanent protection to the caskets or bodies encased therein under the conditions of use. (Mar. 8, 1940.)

**2710. Advertising Material—Threatening Infringement Suits and Exclusive Territory.**—Harry J. Baruch, manager and active directing head of Owen-Fields, Inc., Curtis, Owen, Fuller Corporation, corporations, engaged in the sale and distribution, in interstate commerce, of advertising material consisting of cuts, mats, printed, and other matter, in competition with other individuals and corporations and with 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.

Harry J. Baruch, Owen-Fields, Inc., and Curtis, Owen, Fuller Corporation, and each of them, in connection with their sale and distribution of advertising material in commerce as defined by said act, agreed to cease and desist from—

(a) Representations direct or implied, made either by themselves, or by their canvassing salesmen or agents, that users of competitive advertising copy such as “It’s a Fact,” “Isn’t it the Truth,” or “Where’s Elmer,” or other features resembling or purportedly resembling the prepared advertising copy or displays sold or offered for sale by them, will or may be involved in litigation for copyright infringement or otherwise, unless suits or actions against those threatened are duly and immediately prosecuted.

(b) The circulation, either by themselves or by their representatives, of threats of suit for infringement of copyrights or otherwise among customers or prospective customers of competitors, not made in good faith but for the purpose of or with the effect of harassing

or intimidating customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their businesses.

(c) Representing in any way, directly or indirectly, either by themselves or by their agents, that the purchaser of an advertising feature or series sold by them, such as "Its the Truth" or "Where's George," will thereby obtain or be assured of exclusive rights, within a specified territory or otherwise, to the use of any mats, cuts, or prepared advertising copy incorporating the same or similar aspect, approach, or characteristic idea; or that protection of such alleged exclusive rights will be afforded the user, when such are not facts. (Mar. 9, 1940.)

2711. **Medicinal Preparation—Qualities.**—Acquin Pharmacal Co., a corporation, engaged in the production of a medicinal preparation designated "Acquin" 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.

Acquin Pharmacal Co., in connection with the sale and distribution of its product, "Acquin," in commerce, as defined by said act, agreed to cease and desist from statements or representations which convey or may tend to convey the belief to purchasers that "Acquin" or similar product is a competent or effective treatment or remedy for headaches, simple neuralgia, colds, sore throat, or other malady, disease, or ailment or is efficacious for any purpose other than as a temporary relief of minor pains or mild discomforts incident thereto. (Mar. 13, 1940.)

2712. **Women's Undergarments—Composition.**—Martha Maid Manufacturing Co., engaged in the manufacture of women's undergarments and in the sale and distribution thereof in commerce between and among various States of the United States, 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.

Martha Maid 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—

(a) The use of the term or phrase "Pure Dye" as applied to any fiber or fabric or part of fabric unless such material so described is exclusively pure silk without any other other fiber, weighting, excess finishing, or dyeing materials. If the term or phrase "Pure Dye" be used in a truthful and nondeceptive manner as descriptive of the silk

content of a mixed fabric, it shall be accurately, clearly, and unequivocally disclosed in immediate conjunction therewith that such term or phrase so employed is used as applying only to the silk content of such mixed fabric; for example, "Rayon and Pure Dye Silk."

(b) Branding, labeling, selling, or offering for sale any product composed of rayon and other kinds of fiber or substances without full and nondeceptive disclosure, in labels, on tags, invoices and whatever advertising matter is used, 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 giving the percentage of any fiber which is present in less than a substantial proportion and also taking such steps in connection therewith as are necessary in the respective transactions to avoid and prevent deception. (Mar. 13, 1940.)

**2713. Medicinal Preparation—Qualities.—Professional Laboratories, Inc.,** engaged in the manufacture of a medicinal preparation designated "Tri-Costivin," in competition with other corporations and with individuals, firms, and partnerships likewise engaged in the sale and distribution, in interstate commerce, of similar products and of products for similar purposes, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Professional Laboratories, Inc., in connection with the sale and distribution of its product "Tri-Costivin" or similar preparation, in commerce as defined by said act, agreed to cease and desist from representing by statement or inference—

(a) That "Tri-Costivin" is not a laxative.

(b) That such or any similar product will normalize or regulate the flow of gastric juice.

(c) That generally and without regard to vitamin deficiencies, this or any like product will invigorate the nervous mechanism or control the stomach or intestinal musculature.

(d) That by the additional influx of function-energizing hormones, said product will increase the activity of the pancreas or the duodenum, when in fact it contains no such hormones.

(e) That by means of bile salts, endocrine gall bladder substance or otherwise, such preparation will regulate the flow of bile. (Mar. 14, 1940.)

**2714. Oil Burners—Manufacturer, Corporation, Guarantee, Size of Business, Earnings or Profits, Etc.—James W. Brigham,** an individual trading under the assumed name of Brigham Oil Burner Co. and also as "Ace-Heat Oil Burner Div., Metallic Manufacturing Company," Peter Parr, vice president of Metallic Manufacturing Co., and James W.

Brigham, operating individually and as "Brigham Oil Burner Company," as "Ace-Heat Oil Burner Div., Metallic Manufacturing Company," and as "Ace-Heat Oil Burner Div., Metallic Mfg. Co., Peter Parr, President," engaged in the sale in commerce of oil burners for installation in heating and cooking stoves, in competition with other individuals and with corporations, 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.

James W. Brigham, Peter Parr and Metallic Manufacturing Co., and each of them, in connection with the sale and distribution of oil burners or other devices or merchandise in commerce as defined by said act, they will cease and desist from—

(a) The use, or permitting the use, of the words "Ace-Heat" Oil Burner Div., Metallic Manufacturing Company" as a trade name or designation for the individual business of James W. Brigham or any other individual; or in any manner representing that said personal business is that of Metallic Manufacturing Co. or other corporation, or is a "Division" thereof; or otherwise, by collusion, ruse or artifice, imposing upon purchasers and the public under such or any other false or assumed character of business.

(b) The use of the fictitious official title "President," as applied to James W. Brigham in the "Brigham Oil Burner Company" of which he is the sole party in interest, or to Peter Parr in the nonexistent "Ace-Heat Oil Burner Division"; or of any other feigned or pretended appellation with the capacity, tendency or effect of creating an erroneous impression as to the organization and personnel of such business.

(c) Advertising a spurious "Guarantee," or designating as guarantor the Metallic Manufacturing Co. or any other corporation, person or legal entity which has not in good faith duly and formally undertaken to secure faithful performance of the terms of the guaranty offered.

(d) Representing that the burners offered for sale by any of the parties hereto, are manufactured or sold "by the thousands," or otherwise indicating any number thereof in excess of the actual figures.

(e) Representing that the purported "low price" for which these burners are sold is occasioned by or due to "quantity production" or to mass production of any kind, when such is not a fact; or use of the word "flivver" or similar term in a manner the effect of which is or may be to convey the belief that this particular device has influenced the general sale and distribution of oil burners as the "flivver" has done in the automobile field; or in any other manner representing that this is a business of great magnitude or national importance.

(f) Representing directly or indirectly, that "big money," "unlimited profits," a "tremendous market," or a "nice income" from a "few hours a day spare time," or any other impressive or unusual earnings have been realized or may be expected or anticipated by persons selling or handling such product; or that prospective salespersons or other representatives can or may make profits or earnings from the sale thereof which are in excess of the average net profits or earnings theretofore consistently made by those who have sold said product in the ordinary and usual course of business and under normal conditions and circumstances. (Mar. 15, 1940.)

2715. **Hosiery and Lingerie Preparation—Qualities, New Product, Fictitious Prices, Special or Limited Offers, Manufacturer, Guarantee, Etc.**—Sanford W. Binker, an individual, trading as Superior Sales Co. and as Superior Manufacturing Co., engaged in the sale and distribution in interstate commerce of a product designated "Superior" for use as a treatment for hosiery and lingerie, 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.

Sanford W. Binker, in connection with the sale and distribution of his product in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from—

(a) The use in his advertising or printed matter of whatever kind or description of any statement or representation which directly asserts or imports or implies that the treatment of silk hosiery or lingerie with said product will prevent or stop such articles of wearing apparel from running or snagging, rotting, or fading, or will increase the breaking strength of the heel or toes of such hosiery or make the hosiery last three or four times longer than would hosiery not so treated or will reduce hosiery or lingerie expense one half or more, or that the use of said product can be relied upon generally to improve the texture or set the color of silk wearing apparel.

(b) Representing, directly or by implication that said product is "new" or of recent origin or discovery.

(c) Advertising or representing in any manner, as the customary or regular price of his product, any price or value which is in fact fictitious or in excess of the price at which such product customarily is offered for sale and sold in the usual course of business.

(d) Representing as "free" an article included, with another article in a combination offer, when in fact neither article is given free or as a gratuity, but the price paid is the consideration for the two articles purchased, or from representing that any article is given free or as

a gratuity, when the alleged gift is included in the consideration paid for some other article.

(e) Advertising in any way so-called "special advertising campaign" offers, when in fact such offers are not unusual or limited as to the time of their acceptance or otherwise, but are the customary offers usually made in the usual course of business.

(f) The use of the word "Manufacturing" as part of his trade name or from the use of the said word or of any other word or term of similar import or meaning in any way so as to import or imply that the said Sanford W. Binker makes or manufactures the product sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said product is made or manufactured.

(g) The use of the word "guaranteed" or the word "guarantee" or any other word of similar meaning in connection with the advertisement, sale, or offering for sale of his product unless, whenever such word is used clear and unequivocal disclosure shall be made in direct connection therewith of exactly what is offered by way of security, as for example, refund of purchase price. (Mar. 18, 1940.)

2716. Magazine—Puzzle Prize Contests.—The United Publishing Co., also trading as "The Home Friend," a corporation, engaged in the sale and distribution of a publication or periodical entitled "The Home Friend Magazine" 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 Publishing 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) Disseminating any advertisement or advertising matter which conveys or tends to convey the impression or belief that any money or other thing of value is to be given or awarded to any person or persons as a prize, unless all of the terms and conditions under which such prize is to be awarded be clearly and definitely indicated or set forth in immediate connection with such offer.

(b) Representing, inferentially or otherwise, that the solving of a puzzle contained in or forming a part of a contact advertisement or in any follow-up literature or otherwise, will or may result in the winning of an automobile, a money prize, substantial or otherwise, or other thing of substantial value, when such is not the fact.

(c) Statements or representations in or pertaining to contact advertisements, follow-up literature, or otherwise, which infer, import, or imply that persons answering such advertisements or solving puzzles

contained therein will attain thereby an opportunity, wonderful or otherwise, to win an automobile, cash prize or other thing of value, or attain any material benefit other than that which may accrue as a result of entering into a subsequent contest or contests, the outcome or determination of which is to depend upon the number of magazine subscriptions or other commodities sold or of services rendered by the various contestants.

(d) Using any progressive, integrated or continuous plan to sell magazine subscriptions, commodities, or merchandise unless every step or phase of the plan is clearly set forth in the first mailing to the prospect, before any money or service is accepted, showing without ambiguity exactly what will be required of the prospect and what compensation or regard will be given for each act or payment required in contending for a prize, award, premium, or other advantage or benefit. (Mar. 19, 1940.)

2717. **Electric Brooders—Composition.**—Royal Manufacturing Co., engaged in the sale and distribution of poultry equipment and hatchery supplies, including electric brooders, 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.

Royal 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 it will cease and desist from the use in its advertisements and advertising or printed matter or in any other way of the word "Chrome" as descriptive of the heating elements with which its said brooders are equipped, and from the use of the word "Chrome" or of any other colorable imitation of the word "Chromium" in any way as descriptive of said heating elements so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said heating elements are composed of chromium. If the said elements are composed in substantial part of chromium and in part of other metal, and the word "Chrome" is used to refer to such chromium content, then in that case, the word "chrome" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said heating elements are not composed wholly of chromium but are composed in part of metal other than chromium. (Mar. 19, 1940.)

2718. **Face Powder—Laboratories and Manufacturer.**—Premier Laboratories, Inc., engaged in the sale and distribution of face powder in commerce in competition with other corporations and with indi-

viduals, 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.

Premier Laboratories, Inc., in connection with its sale and distribution of face powder or other merchandise in commerce, as defined by said act, agreed to cease and desist from—

(a) The use of the words "Premier Laboratories, Inc." as and for its corporate or trade name when in fact there are no such laboratories; in any way the effect of which is to import or imply or cause the belief that said corporation actually owns and operates or controls a place devoted to experimental study in any branch of natural science or the application of scientific principles in the preparation of its products or of any drugs or chemicals, when such is not the fact.

(b) Designating, describing, or referring to itself as "Manufacturing Chemists and Perfumers" or in any other way representing itself to be a manufacturer of chemicals, perfumes, or other commodities when it neither owns and operates nor directly and absolutely controls the plant or factory in which the goods sold by it are made; or in any manner, representing that it has a manufacturing plant of its own for the production of these or other goods or merchandise, when such is not a fact. (Mar. 19, 1940.)

2719. **Dog Food—Composition.**—Variety Foods, Inc., a corporation, engaged in the business of manufacturing a canned dog food and in the sale of certain thereof under the trade name "Vigor" 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.

Variety Foods, Inc., in connection with the marking, branding, labeling, or advertising of the dog food offered for sale, sold, or distributed by it in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the term "Meat-By-Products" as descriptive of an ingredient of which said food is composed, and from the use of the said term in any way so as to import or imply or the effect of which tends or may tend to convey the belief that the said food contains an edible part other than meat which has been derived from the carcasses of animals, as cattle, swine, sheep, or goats in good health and sufficiently mature at the time of slaughter. (Mar. 19, 1940.)

2720. **Academic Caps and Gowns—Composition.**—Emanuel Cohen, Daniel Cohen, and Abraham Kadis, copartners, trading as National Academic Cap & Gown Co., engaged in the sale and distribution of

academic caps and gowns and other articles of merchandise, 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.

Emanuel Cohen, Daniel Cohen, and Abraham Kadis, in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from—

(a) The use of the word "Silk" either independently or as a part of the trade designation "Silk Neu Faille" or in conjunction with any other word or words, in trade indicia, advertisements, or otherwise, to designate or describe fabrics not made of silk, the product of the cocoon of the silkworm; and from the use of such word "Silk" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that products made of other materials are actually made of silk.

(b) Selling or offering for sale any product made of rayon without disclosure of the fact that the material of which such product is composed is rayon, made clearly and unequivocally in invoices and labeling, and in all advertising matter, sales promotional descriptions or designations thereof, however disseminated or published. (Mar. 19, 1940.)

2721. **Sweaters and Swimming Suits—Composition.**—Louis Rubin, sole trader as Princeton Knitting Mills, engaged in the manufacture, sale, and distribution of sweaters and swimming suits 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 Rubin, in connection with the sale and distribution of his products in commerce as defined by said act, agreed to cease and desist from the—

(a) Use in his advertising matter, or as labels, tags, or otherwise of the legend "100% Wool" as descriptive of bathing suits or other garments not composed entirely of wool; or the use of the word "Wool" in any way so as to import or imply that the garment referred to is composed wholly of wool when an integral part thereof is composed of other fibers. If the body of the garment is properly represented as "Wool," but the supporter, plaque, or reinforcement is of other material, then the word "Wool" shall be immediately accompanied by suitable phraseology, in type equally conspicuous, indicating clearly that such designation does not apply to the supporter, plaque, or reinforcement.

(b) Branding, labeling, selling, or offering for sale any product, an integral part of which is composed of rayon and other kinds of fibers 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." (Mar. 20, 1940.)

2722. **Electric Dry Shaver—Fictitious Prices.**—Miracle Dry Shaver Corp., a corporation, and J. M. Friedman, president and owner of substantially all of its capital stock, engaged in his individual capacity and as president of the corporation, in the sale and distribution in interstate commerce, a type of electric razor of the dry shaver variety under the two trade names "Miracle" and "Shave King" 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.

Miracle Dry Shaver Corp. and M. J. Friedman, in his capacity as an individual and as president of the said corporation, agreed, in connection with the advertisement, sale, or distribution of products in commerce as defined by said act, to cease and desist from offering for sale, selling, or supplying others with products to which are affixed or which bear or in any manner are referred to by means of any price purporting to be the retail selling price of the said products, when in fact such price is not the regular retail selling price thereof or is in excess of the price at which the product is actually or customarily offered for sale or sold or intended to be sold in the usual course of retail trade. (Mar. 15, 1940.)

2723. **Stone Monuments and Markers—Qualities.**—Sears, Roebuck & Co., a corporation, operating a number of catalog mail-order houses and conducting a large number of retail stores throughout the United States, selling and distributing merchandise including marble and granite monuments, 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.

Sears, Roebuck & Co., in connection with its sale and distribution of stone monuments and markers in commerce as defined by said act, agreed to cease and desist from the use in its printed or advertising matter or in any other way, of the words "lasts forever" or the words "eternally beautiful" or other words of similar meaning, so as to

import or imply that the monuments or markers to which said word or words refer will last forever or throughout long periods of time beyond their provable capacity of endurance; and from representing that lettering and ornamentation will show up better on blue vein Vermont marble than on "any other kind," including by inference all other kinds of blue marble when such is not a fact. (Mar. 25, 1940.)

**2724. Oil and Oil Products—Refineries.**—Allied Petroleum Corp., a corporation, originally organized as the "Allied Refineries, Inc.," engaged in the sale and distribution of oil and oil 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.

Allied Petroleum Corp. agreed to cease and desist from the use of the word "Refineries" as part of the corporate or trade name used by it in connection with the advertisement, offering for sale, sale, or distribution of its commodities in commerce, as commerce is defined by the Federal Trade Commission Act; and from the use of the word "Refineries" in any way, the effect of which conveys, tends, or may tend to convey the belief to purchasers that the said corporation is engaged in business as a refinery or that it actually owns and operates or directly and absolutely controls the plant or factory in which are refined the commodities offered for sale and sold by it. (Mar. 26, 1940.)

**2725. Hosiery—Mills and Manufacturers.**—Seven Point Hosiery Mills, Inc., a corporation, engaged as a wholesaler or jobber in the sale and distribution of hosiery 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.

Seven Point Hosiery Mills, Inc., in connection with its sale and distribution of hosiery or other merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Mills" as part of its corporate or trade name, and from the use of the word "Manufacturers" as descriptive of its business. It also agreed to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that the said corporation makes or manufactures the products sold by it, or that it actually owns and operates or directly and absolutely controls the plant or factory in which such products are made or manufactured. (Mar. 26, 1940.)

**2726. Art Linen, Embroideries and Handkerchiefs—Manufacturers and Foreign Factories.**—K. Katen & Co., Inc., a corporation, engaged in the

importation, sale, and distribution of art linen, embroideries, and handkerchiefs 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.

K. Katen & Co., Inc., in connection with its sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Manufacturers" as descriptive of its business, and from representing that it has plants or factories for the production of such or any other goods at Funchal, Madeira; Shanghai, China; Florence, Italy; Yokohama, Japan, or elsewhere. It also agreed to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that the said corporation makes or manufactures the products sold by it, or that it actually owns and operates or directly and absolutely controls the plant or factory in which such products are made or manufactured. (Mar. 26, 1940.)

2727. Handkerchiefs—Manufacturers.—I. Shalom & Co., Inc., a corporation, engaged in the importation, sale, and distribution of handkerchiefs 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.

I. Shalom & Co., Inc., in connection with its sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Manufacturers" as descriptive of its business. It also agrees to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that the said corporation makes or manufactures the products sold by it, or that it actually owns and operates or directly and absolutely controls the plant or factory in which such products are made or manufactured. (Mar. 27, 1940.)

2728. Photographic and Printed Products—Nature.—James Bayne Co., a corporation, engaged in the manufacture of photographic and printed products 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.

James Bayne Co., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist from designating its gelatin printing process or any other colotype or planographic form of printing as "Bayne Gravure," "gravure," or "photogravure"; or in any other way, using the word or term "gravure" as descriptive of products which are not in fact made of the gravure (intaglio) process as understood and applied by industry and the trade, with the capacity and tendency or effect of misleading or deceiving purchasers as to the nature thereof. (Mar. 25, 1940.)

2729. **Handkerchiefs—Manufacturers.**—Belfast Manufacturing Co., Inc., a corporation, engaged in the sale and distribution of handkerchiefs 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.

Belfast Manufacturing Co., Inc., in connection with its sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Manufacturing" as a part of its corporate or trade name or the word "Manufacturers" as descriptive of its business. It also agreed to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that the said corporation makes or manufactures the products sold by it, or that it actually owns and operates or directly and absolutely controls the plant or factory in which such products are made or manufactured. (Mar. 25, 1940.)

2730. **Handkerchiefs—Manufacturers and Foreign Factories.**—Morris S. Levy and A. Bert Levy, copartners trading under the firm name of S. M. Levy & Sons, engaged in the sale and distribution of handkerchiefs 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.

Morris S. Levy and A. Bert Levy, and each of them, in connection with their sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Manufacturers" as descriptive of their business, and from representing that they have plants or factories for the production of such or any other goods at Mayaguez, Puerto Rico, Swatow (South) China, or elsewhere, unless they should make or manufacture the products sold by them, or unless they should actually own or operate or directly and absolutely control the plant or factory in which such products are made or manufactured, in which event they

may make truthful representations as to the same. They also agreed to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that they make or manufacture the products sold by them, or that they actually own and operate or directly and absolutely control the plant or factory in which such products are made or manufactured. (Mar. 25, 1940.)

2731. **Hosiery, Underwear and Sportswear—Mills.**—Irving L. Alter and Samuel Dershowitz, copartners trading under the firm name of Equity Hosiery Mills, engaged as jobbers in the sale and distribution of hosiery, underwear, and sportswear, in competition with other firms and partnerships and with individuals and corporations 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.

Irving L. Alter and Samuel Dershowitz, in connection with their sale and distribution of merchandise in commerce as defined by said act, agreed they will cease and desist from the use of the word "Mills" as a part of the firm or trade name under which they conduct their business. They also agree to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that the said copartners make or manufacture the products sold by them, or that they actually own and operate or directly and absolutely control the plant or factory in which such products are made or manufactured. (Mar. 25, 1940.)

2732. **Hosiery—Mills and Manufacturers.**—Duke Hosiery Mills, Inc., a corporation, engaged in the sale and distribution of hosiery 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.

Duke Hosiery Mills, Inc., in connection with its sale and distribution of hosiery or other merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Mills" as part of its corporate or trade name, and from the use of the word "Manufacturers" as descriptive of its business. It also agreed to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that the said corporation makes or manufactures the products sold by it, or that it actually owns and operates or directly and absolutely controls the plant or factory in which such products are made or manufactured. (Mar. 28, 1940.)

2733. **Handkerchiefs and Linens—Manufacturers.**—Henry Matier & Co., Ltd., a corporation of Ireland, with principal place of business in Belfast, North Ireland, and with a branch office in the city of New York, and Thomas E. Smith, managing director of its New York office, in charge of the business conducted by said corporation in the United States, engaged in the sale and distribution of handkerchiefs and linens in interstate commerce, in competition with other corporations and individuals and with 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.

Henry Matier & Co., Ltd., and Thomas E. Smith, and each of them, in connection with their sale and distribution of handkerchiefs, linens, or other merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Manufacturers" as descriptive of their business. They also agreed to cease and desist from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that the said corporation makes or manufactures the products sold by it, or that it actually owns and operates or directly and absolutely controls the plant or factory in which such products are made or manufactured. (Mar. 28, 1940.)

2734. **Merchandise—Lottery.**—Fred F. Sefton and E. G. Krieg, copartners trading under the firm name of Gralett Co., engaged in the sale and distribution in interstate commerce of merchandise with punchboards or other lottery equipment for stimulating the sale thereof, 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.

Fred F. Sefton and E. G. Krieg, and each of them, in connection with their 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, punchboards, 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 punchboards, 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 punchboards, push or pull cards, or other lottery devices. (Mar. 29, 1940.)

2735. Drugs, Cosmetics, Toilet Goods, Etc.—Membership Certificate, Manufacturer, Scope of Business, Etc.—Purcell & Co., Inc., engaged in the sale and distribution in interstate commerce of drugs, cosmetics, toilet goods, and other beautician supplies, 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.

Purcell & Co., Inc., in connection with the sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

1. Issuing, furnishing, or supplying any so-called "Membership Certificate" or document to its "service members" or customers which states, represents, or may tend to represent that the said Purcell & Co., Inc., is in full possession of such knowledge that it is able to and consequently has certified that the "member" or person named in the certificate is informed concerning or has knowledge of the chemicals used in the manufacture of beauty preparations.

2. The use of any statement, pictorial, or other representation of any kind or description so as to import or imply or the effect of which tends or may tend to convey the belief that the said corporation makes or manufactures the products which it sells or that it is engaged in chemical research work or that it maintains a chemical laboratory or employs a chemist or chemists in the conduct of its business or that it will and does generally prepare quantitative analyses of preparations submitted to it by its "service members" or others.

3. The use of statements or representations of whatever kind or description which import or imply or the effect of which tends or may tend to convey the belief that its products or preparations are identical with or are a duplicate of competitor's nationally advertised or trade-marked or copyrighted preparations, or that it sells or supplies formulae or chemicals by the use of which its "service members" or customers may manufacture, make or produce preparations which are identical with or duplications of trade-marked or copyrighted preparations.

4. Stating or representing that its products, or any thereof, are sold throughout the world or have world-wide distribution.

5. The use of the term "Vitamin 'F'" as a designation for or as descriptive of a product offered for sale and sold by it, when in fact, there is no so-called "Vitamin 'F'" now included in the vitamin field or among the various vitamins presently listed or recognized by the prevailing weight of authorities on vitamin nomenclature. (Apr. 1, 1940.)

**2736. Varnish and Paint Products—Government Endorsement.**—Hall Hardware Co., a corporation, engaged in the sale and distribution of varnish and paint products of various kinds under the trade name "Supermix," 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.

Hall Hardware Co., in connection with the 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 or advertising matter of whatever kind or description of the word or trade name "Supermix" in connection or conjunction with the statement "Facts you Should Know About Painting. Most of These facts Are Taken From Bulletin No. 193, U. S. Dept. of The Interior" so as to import or imply that the said products are specifically referred to in the said Government bulletin, and from the use of the said word or words or trade name "Supermix" in any way the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that said products have been recommended, approved, or endorsed by the United States Department of the Interior or by any Federal department or agency. (Apr. 1, 1940.)

**2737. Handkerchiefs—Manufacturers.**—Brockman & Schloss, Inc., a corporation, engaged in the importation, sale, and distribution of handkerchiefs and linens 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.

Brockman & Schloss, Inc., in connection with its sale and distribution of handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from representing that it has taken over the handkerchief-manufacturing activities of Marshall Field & Co. or of any other organization or establishment. It also agreed to cease and desist from the use of the word "manufacturing" or words of similar implication in a manner the effect of which tends or may tend to convey the belief that the said corporation makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls the plant or factory in which such products are made or manufactured. (Apr. 1, 1940.)

**2738. Sponges—Places of Business, Fleet of Sponge Fishing Boats, Producer, Etc.**—Licourie Sponge Co., Inc., a corporation, engaged in the packing of sponges 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.

Licourie Sponge Co., Inc., in connection with its sale and distribution of sponges in commerce as defined by said act, agreed to cease and desist from—

(a) Representing that it maintains offices or places of business in Chicago, Ill., or Tarpon Springs, Fla., or in any other city or locality, when such is not a fact, or that it has a wharf or packing house at Tarpon Springs, Fla., or elsewhere, when in fact it has no such wharf or packing house.

(b) Using illustrations or other representations the natural and probable consequence of which may be to mislead the public into the belief that said corporation operates a fleet of sponge fishing boats from which fishing by the diving method is conducted, when in fact it neither operates such a fleet of boats nor carries on sponge fishing by means of divers.

(c) Representing that it is a producer of the highest grade of Rock Island sponges or that it is a "producer" of any sponges, when in truth it conducts no sponge-fishing operations but buys from others the sponge products which it packs and sells. (Apr. 2, 1940.)

2739. **Boys' Carpenter Sets—Manufacturer and Foreign as Domestic.**—Victor Eckardt Manufacturing Co., Inc., a corporation, engaged in the business of assembling and packing boys' carpenter sets 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.

Victor Eckardt Manufacturing Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist—

1. From the use of the word "Manufacturing" as part of its corporate or trade name in connection with the offering for sale, sale, or distribution of its boys' carpenter sets in commerce as defined by the Federal Trade Commission Act, and from the use of the word "Manufacturing" or the words "Made by" followed by its corporate or trade name, or in any way the effect of which tends or may tend to convey the belief to purchasers that the said corporation makes or manufactures the tools of which said sets are composed, or that it actually owns and operates or directly and absolutely controls the plant or factory in which said tools are made or manufactured.

2. From representing on the containers of its merchandise, or in any other way, by the use of the words "Made in U. S. A." or of any other similar words, the effect of which tends or may tend to convey

the belief to purchasers that an assortment of merchandise to which the said words refer is composed wholly of American-made products; that is to say, that each and every item thereof is made in the United States of America. If the assortment is composed of items made in the United States of America and in part of an item or items made elsewhere, and the letters "U. S. A." are used properly to designate such American-made items, then in that case there shall be accompanying words printed in equally conspicuous type which indicate clearly that said assortment is not composed wholly of items made in the United States of America. (Apr. 2, 1940.)

2740.—Hospital and Laboratory Supplies and Equipment—Foreign as Domestic.—Jacob Schultz, an individual, trading as Schultz Surgical Instrument Co., engaged in the sale and distribution of hospital and laboratory supplies and equipment, including microscopic cover glasses, bearing the trade name "Crystal," 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.

Jacob Schultz, an individual, trading as Schultz Surgical Instrument Co., 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, in his advertising matter, or trade literature, or otherwise, of the slogan or legend "Made in U. S. A.," or of other words or terms of similar inference so as to import or imply that the imported glass of which said products are composed is, or that the products in their entirety are, of domestic origin. (Apr. 16, 1949.)

2741. Art Linens, Laces and Handkerchiefs—Manufacturers and Foreign Factories.—Elias Hedaya, Sam Hedaya, and Isadore Hedaya, copartners, trading as Hedaya Importing Co., engaged in the importation, sale, and distribution of art linens, laces, and handkerchiefs 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.

Elias Hedaya, Sam Hedaya, and Isadore Hedaya, in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use of the word "Manufacturers" as descriptive of their business, and from representing that they have plants or factories for the production of such or any other goods at Shanghai, Swatow, Wusih, and Wenchow, or elsewhere. They also agree to cease and desist from the use of any other word or words of similar implication the effect of which tends or may tend to convey the belief that they make or manufacture the products

sold by them, or that they actually own and operate or directly and absolutely control a plant or factory in which such products are made or manufactured. (Apr. 2, 1940.)

2742. Ointment—"Chemical" and Qualities.—John W. Oneal, an individual trading as J. W. Oneal Chemical Co., engaged in the sale and distribution of a medicinal preparation designated "To-He-To Ointment" 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.

John W. Oneal, in connection with the sale and distribution of his product "To-He-To" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

(a) The use of the word "Chemical" as part of his trade name or otherwise so as to import or imply that he is a chemist, or that he employs a chemist or chemists in the compounding or manufacture of said product, or that he actually owns and operates or directly and absolutely controls a chemical laboratory wherein experiments are perfected in the manufacture of said product, when such is not the fact.

(b) The use in his advertisements and advertising matter or otherwise of statements or representations which import or imply, or the effect of which tends or may tend to convey the belief to purchasers that said product is a competent or effective remedy, treatment, or cure for colds, headache, sore throat, croup, pneumonia, chafed hands, itching piles, sore muscles, chilblains, bruises, rheumatism, or hay fever, or that it will do more than to serve as palliative in connection with such conditions as colds, hay fever, itching piles, chilblains, bruises, and sore muscles. (Apr. 4, 1940.)

2743. Cleaning Fluid—"Makers," Users of Product, Qualities, Etc.—Maurice A. Goodman, an individual, trading as the Presto Co., engaged in the sale of furniture and also of a cleaning fluid designated "Presto," 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 A. Goodman, 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 advertising or printed matter, on his labels, or in any other way—

1. Of the word "makers" or of any other word or words of similar implication which directly asserts, or the effect of which tends or

may tend to convey the belief to purchasers, that the said individual makes, manufactures, or prepares said product, or that he actually owns and operates or directly and absolutely controls the plant or establishment in which said product is made or prepared.

2. Of the statement "why such firms as [naming them] keep this cleaning fluid" or of any other similar statement or representation so as to import or imply that the named firms are present users of the said product, when such is not the fact.

3. Of the statements "Presto Cleans Clean," "Removes all stains quickly and permanently," or of any other statement or representation of similar meaning, when in fact the use of such product will not return to their original appearance all kinds of fabric materials regardless of the nature of the stain or marking to which the materials have been subjected.

4. Of the words "leaves no ring," either alone or in connection 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 said product will leave no ring when applied only to the spot sought to be removed from the fabric.

5. Of the term "noninflammable" or of any other word or words of similar meaning as descriptive of the said cleaning fluid. (Apr. 4, 1940.)

2744. **Handkerchiefs, Linens, and Laces—Office or Place of Business.**—Joseph M. Sutton and Abraham Husney, copartners, trading under the firm name of Sutton & Husney, engaged in the importation, sale, and distribution of handkerchiefs, linens, and laces in interstate commerce, in competition with other firms and partnerships likewise engaged, 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.

Joseph M. Sutton and Abraham Husney, and each of them, in connection with their sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from representing in any way that they have or maintain their own office or place of business in China or in any other locality when such is not a fact, or from representing as their own any office or establishment belonging to an independent agency with which they have no more than a contractual relationship. (Apr. 4, 1940.)

2745. **Incandescent Lamps—Manufacturers.**—American Standard Corp., a corporation engaged in the business of selling incandescent lamps 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.

American Standard Corp., in connection with the 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 on its stationery or other printed matter, or in any other way, of the word "Manufacturers," either alone or in connection or conjunction with any other word or words, as descriptive of the business conducted by it, and from the use of the word "Manufacturers," or of any other word or words of similar implication the effect of which tends or may tend to convey the belief to purchasers that it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made. (Apr. 4, 1940.)

2746. Encyclopedias—"Publishing," Collection Agency and Free Products.—Stafford Publishing Co., engaged in the sale and distribution in commerce between and among various States of the United States of books, including two sets of encyclopedias, 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.

Stafford Publishing Co. agreed to cease and desist, either directly or indirectly, from the use—

1. Of the word "Publishing" as part of its corporate or trade name and of the use of the word "publishing" in any way the effect of which tends or may tend to convey the belief that the business conducted by the said corporation is that of a printer or publisher or that it actually owns and operates or directly and absolutely controls the plant in which the publications offered for sale and sold by it are printed or published.

2. Of the trade name "Publishers Credit Syndicate" on its stationery or other printed matter used for the purpose of making collections of the delinquent accounts of customers who have subscribed for its encyclopedias, when in fact no such collection agency exists and/or is employed by the said corporation.

3. Of the word "free" or of any other word of similar implication as descriptive of products offered by the said corporation in connection with the sale of its "deals," when in fact the said products are not given free or as a gratuity but the cost thereof is included, either in whole or in part, in the price of the "deals." (Apr. 5, 1940.)

2747. "Xter-Mite" Preparation—Qualities, Scientific or Relevant Facts, Indorsement or Approval, Guarantee, Etc.—Atlas Wood Preservative Co., Inc., engaged in the sale and distribution, in commerce between

and among various States of the United States, of a preparation or compound consisting of a number of chemical ingredients, designated "Xter-Mite," intended for the protection of wood from termites, decay, and fungi, 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.

Atlas Wood Preservative Co. agreed to cease and desist from—

(a) Representing that "Xter-Mite" when applied as directed to any and all wood or woods will—

1. Embalm or adequately preserve the wood.
2. Prevent decay.
3. Thoroughly penetrate the wood.
4. Prevent attack by termites or insects.
5. Destroy all termites or insects.
6. Prevent the return of termites or insects.
7. Increase the strength of wood.

(b) The use of the coined word "Permanize," or other word or words akin to the word permanent or other words of like meaning, so as to import or imply that "Xter-Mite," when applied, remains permanently in or on the wood and will not dry out or lose its effectiveness.

(c) Representing that termites or other wood boring insects:

1. Cause serious damage within 4 to 6 months or within any other period of time less than that in which such damage ordinarily will occur.

2. Will practically ruin a structure before their presence would be discovered.

3. Are in all wood.

(d) Designating a ratio of 1,000 to 1 or any other ratio in comparing the number of buildings damaged by decay and termites to the number of buildings damaged by other causes, unless and until comprehensive surveys have established a basis for any such comparison.

(e) Designating the year 1936 or any other year as the year during which termites became established in every State in the United States unless and until there be scientific or other generally accepted authority for such representation.

(f) Representing generally that home buyers, finance companies, banks, investors, and governmental agencies demand or require that buildings or structures receive treatment for termites before they make loans on or purchase the same; or that termite treatment increases the loan value of such properties except in cases where this is a fact.

(g) Representing that "Xter-Mite" has received the approval of leading architects, engineers, the Federal Housing Administration, or others, when such is not a fact.

(h) Representing that there are 44 species of destructive termites in the United States or that 1 female termite lays 80,000 eggs per day, or making any other representations, quantitatively or otherwise, relative to termites, in a manner the effect of which tends or may tend to cause building owners and the general public to believe the termite menace or hazard to be greater than actually is a fact.

(i) Representing that termites or the termite "civilization" are superior to the human race.

(j) Representing either directly or by implication that many or all the States of the United States have enacted laws under which corporations, firms, or individuals engaged in the business of termite eradication or control are licensed, when such is not a fact; or that only licensed corporations, firms, or individuals are qualified to disseminate information pertaining to termites or other wood-boring insects.

(k) The use of the word "guarantee" or the word "guaranteed" or any other word of similar meaning in connection with the advertising, sale, or offering for sale of its 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. (Apr. 4, 1940.)

**2748. Finger Nail Preparations—Composition and Qualities.**—Juliette Marglen Products Co., a corporation, engaged in the business of selling in interstate commerce a line of toilet preparations consisting of a mixture of lacquers and other ingredients for use on the fingernails, and said preparations being known as "Juliette Marglen Seal-O-Wax," "Juliette Marglen Nail-O-Wax," "Juliette Marglen Wax-O-Namel," "Juliette Marglen Creme-O-Wax," and "Juliette Marglen Nail-O-Wax Remover," 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.

Juliette Marglen Products 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—

(a) Of the word "Wax" as part of the trade name or designation for any of said products, and from the use of the word "Wax" 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 said products, or any thereof, are or is composed of wax.

(b) Of any statement or representation which tends or may tend to convey the belief that said products, or any thereof, are or is composed of wax in such significant amount as to form a continuous wax coating such as would afford protection to the nails to which applied.

(c) Of any statement or representation which tends or may tend to convey the belief that any one of said products, either alone or in combination with any or all of the others, will afford any appreciable aid in keeping the cuticle soft and pliable, or that the use thereof will encourage the growth of stronger or thicker nails or have a stimulating effect on the nails, or prevent cracking, breaking, or splitting of the nails of the user.

(d) Of any statement or representation to the effect that the product designated "Creme-O-Wax," or any of the products, possesses healing properties to the extent that it will return to normal cuticles that are dry and torn, regardless of the cause of these conditions or of associated infections or complications. (Apr. 5, 1940.)

2749. **Women's Undergarments—Composition.**—Luxuray, Inc., a wholly owned subsidiary of Beaunit Mills, Inc., engaged in the manufacture by Beaunit Mills, Inc., and the sale and distribution by Luxuray, Inc., of women's undergarments in commerce between and among various States of the United States, 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.

Luxuray, Inc., and Beaunit Mills, Inc., and each of them, agreed to cease and desist from stating or representing by means of labels, advertising matter, or in any other way, that their undergarments of the type commonly known as "Woolies," or garments made of similar fabrics, are 30 percent wool and silk, or that they are composed of fibers in any designated proportion other than the correct and accurate ratio thereof. (Apr. 5, 1940.)

2750. **Neckties—Composition.**—Rittan Knitting Mills, Inc., engaged in the manufacture of men's neckties and in the sale and distribution thereof 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.

Rittan Knitting Mills, Inc., agreed it will cease and desist from—

(a) Selling or offering for sale any silk product which contains any metallic weighting without full and nondeceptive disclosure of the presence of such metallic weighting, together with the proportion of percentage thereof, made in the labels, tags, or brands attached to the merchandise and in the invoices and all advertising matter,

sales-promotional descriptions, or representations, however disseminated or published.

(b) Selling or offering for sale any silk or silk product without disclosure of the fact that such material or product is silk, made clearly and unequivocally in the invoices, in labels, tags, or brands attached to the merchandise, and in whatever advertising, sales-promotional descriptions, or representations thereof may be used, however disseminated or published, where such nondisclosure has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public. (Apr. 8 1940.)

2751. **Dresses—Manufacturers and Composition.**—International Dress Co., engaged in the sale and distribution of misses and junior dresses in commerce between and among various States of the United States, 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.

International Dress Co. agreed that in connection with the sale and distribution of its dresses or other merchandise in commerce it will cease and desist from—

(a) The use of the word “manufacturers” as descriptive of its business; and from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief that it makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls the plant or factory in which such products are made or manufactured.

(b) Selling or offering for sale any product made of rayon without disclosure of the fact that the material of which such product is composed is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales-promotional descriptions, or representations thereof, however disseminated or published. If the word “celanese” be used to designate a product composed of rayon, such word shall be immediately accompanied by the word “rayon” printed in type equally conspicuous so as to indicate clearly that said product is rayon; for example, “celanese rayon.” (Apr. 9, 1940.)

2752. **Dress Goods—Composition.**—Knickerbocker Textile Corp., engaged in the sale and distribution of silk and rayon dress goods in commerce between and among the various States of the United States, 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.

Knickerbocker Textile Corp., in connection with its sale and distribution of dress goods or other merchandise in commerce, agreed it will

cease and desist from selling or offering for sale any product made of rayon without disclosure of the fact that the material of which such product is composed is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales-promotional descriptions, or representations thereof, however disseminated or published. If the word "celanese" be used to designate a product composed of rayon, such word shall be immediately accompanied by the word "rayon," printed in type equally conspicuous, so as to indicate clearly that said product is rayon; for example, "celanese rayon." (Apr. 9, 1940.)

**2753. Leather Goods and Novelties—Composition.**—Felder Brothers, Inc., engaged in the sale and distribution of leather and imitation leather goods and novelties 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.

Felder Brothers, Inc., agreed that it will cease and desist from—

(a) The use of the words "Genuine Leather Composition" as descriptive of any article not composed of genuine leather; and from the use of the words "Genuine" or "Leather," or any other words of similar import, in any way which may have the tendency or capacity to confuse, mislead, or deceive purchasers into the belief that products composed of or containing other materials are actually made of leather.

(b) The use of the word "Barkhyde" as and for a trade name or brand under which to advertise, sell, or distribute its products; and from the use of the term or expression "Bark" or of any trade name, coined name, or other word descriptive of a product as being the hide of an animal which is in fact nonexistent, and from the use of the word "Hyde" or any other word of similar import which has or may have the capacity, tendency, or effect of conveying the belief or creating the impression that a composition fabric is composed wholly of the hide of any animal. (Apr. 9, 1940.)

**2754. Casein Glue—Qualities.**—Lignotite Co., a corporation, engaged in the manufacture of casein glue and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships 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.

Lignotite Co., in connection with the sale and distribution of its casein glue in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use on

its invoices or other printed or advertising matter or otherwise of the word "waterproof" or of any other word or words of similar meaning or implication as descriptive of its glue 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 said product is impervious to water or its effects. (Apr. 10, 1940.)

2755. Men's Shirts, Ties, Etc.—Manufacturers, Imported, Composition, Nature of Manufacture, Direct Dealing, Value, Etc.—Wellington Manufacturing, Inc., a corporation, engaged in the sale and distribution of men's shirts, ties, and other haberdashery 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.

Wellington Manufacturing, Inc., in connection with the sale and distribution of its merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) The use of the word "Manufacturing" as part of its corporate or trade name and of the word "Manufacturers" as descriptive of its business; and from the use of any other word or words of similar implication, the effect of which tends to convey the belief that it makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls a plant or factory in which such products are made or manufactured.

(b) Representing by picturizations, descriptions, or otherwise that the plant or factory of Unity Shirt Corporation or of any other concern is that of Wellington Manufacturing, Inc.; or in any other way representing that it has a plant or factory of its own or that illustrations depicting a manufacturing plant are those of a plant or factory belonging to and operated by said corporation.

(c) Representing by means of labels, tags, advertising matter, oral presentation or in any other way that fabrics of domestic manufacture are "Imported Fabrics."

(d) The use of the words "Pure Silk of Heavy Quality" or "Silk" independently or as a part of or in conjunction with any other word or words in trade indicia, advertisements or otherwise, to designate or describe fabrics or merchandise not made of silk, the product of the cocoon of the silk worm; and the use of such word "Silk" in any way which may have a tendency or effect to confuse, mislead, or deceive purchasers into the belief that products made of other materials are actually made of silk.

(e) Selling or offering for sale any product made of rayon without disclosure of the fact that the material of which such product is composed is rayon, made clearly and unequivocally in the invoices,

labeling and in all advertising matter, sales promotional descriptions or representations thereof however disseminated or published.

(f) Branding, labeling, or otherwise designating or describing a product as all wool, the fiber content of which is not wool throughout.

(g) Designating or describing neckties or other products not made or fashioned according to the craft of a tailor as "Hand Tailored."

(h) Representing that the goods which it sells are available to the purchaser at manufacturer's prices or at manufacturer-to-consumer prices; or otherwise, by statement or implication in any way representing that its customers save a middleman's profit at the prices quoted.

(i) Representing that the neckties which it offers for sale and sells are of "\$2 and \$3 qualities"; or, by the use of fictitious valuations or figures or in any other way, directly or indirectly representing that an article of its merchandise is actually worth more than the price charged its customer therefor. (Apr. 11, 1940.)

2756. Manicuring Instruments—Nature.—Wigder Manufacturing Co., engaged in the manufacture of manicuring instruments, 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.

Wigder Manufacturing Co., in connection with the sale and distribution of its manicuring instruments or other products in commerce as defined by said act, agreed it will cease and desist from advertising, labeling, branding, or in any other way representing that such products are "rustproof;" or otherwise, by the use of the term "rustproof" or of any word, term or expression of similar import, representing that articles which have not been scientifically processed in a manner that will absolutely prevent the rusting thereof, are rustproof. (Apr. 11, 1940.)

2757. Chromium Plated Steel Furniture—Composition.—Emil J. Paidar Co., a corporation, engaged in the sale and distribution of professional furniture, barber shop fixtures, and beauty parlor equipment 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.

Emil J. Paidar Co., in connection with its sale and distribution of chromium plated steel furniture in commerce as defined by said act, agreed to cease and desist from the use of trade designations or brands "Chrometube" or "Chromedtube" as applied to or descriptive of products not composed throughout of chromium metal; and from the use of the word "Chrome" or the word "Chromed" or any

similar word coined or otherwise in its advertising matter or in any way as descriptive of the metal content of a product which is not chromium throughout. If in referring to products made of steel which is merely coated or covered with chromium, the words "Chrome" or "Chromed" or words of similar meaning or implication be used as descriptive of such coating or covering, then in that event the word used shall be immediately accompanied by some other word or words as "plated," so as to indicate clearly that such metal products are not composed throughout of chromium. (Apr. 12, 1940.)

2758. **Linens and Handkerchiefs—Manufacturers and Foreign Factories.**—Sabbagh Brothers, Inc., a corporation, engaged in the sale and distribution of decorative linens and handkerchiefs 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.

Sabbagh Brothers, Inc., in connection with its sale and distribution of decorative linens, handkerchiefs, or other products in commerce as defined by said act, agreed to cease and desist from the use of the word "Manufacturers" as descriptive of its business and from representing that it has plants or factories for the production of such or any other goods at Chefoo, China; Swatow, China; Shanghai, China; or elsewhere. It also agreed to cease and desist from the use of any other word or words of similar implication the effect of which tends or may tend to convey the belief that it makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls a plant or factory in which such products are made or manufactured. (Apr. 12, 1940.)

2759. **Handkerchiefs—Nature of Manufacture.**—New York Handkerchief Manufacturing Co., a corporation, engaged in the manufacture and in the sale and distribution of handkerchiefs 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.

New York Handkerchief Manufacturing Co., in connection with the sale and distribution of its handkerchiefs or other merchandise in commerce as defined by said act, agreed to cease and desist from the use, directly or indirectly, of the term "Pre-Shrunk" or the term "Shrunk" or word, term, mark, label, or representation of like effect or similar import, as descriptive of its goods when the same are not in fact shrinkproof or nonshrinkable, or have not in fact been fully shrunk, or preshrunk to the extent that no residual shrinkage is left

remaining in such goods. If the term "Pre-Shrunk" or the term "Shrunk" be used properly to indicate that such goods have undergone the application of a shrinkage process and have been shrunk to a substantial extent but as to which there remains a certain amount of residual shrinkage, then such term or word shall be accompanied as an integral part thereof or in immediate conjunction therewith, by a truthful phrase, statement or assertion clearly and unequivocally setting forth in percentage or percentages the amount of residual shrinkage remaining in both the warp and the filling, or in the warp or the filling whichever has the greater residual shrinkage; for example, "Pre-shrunk (or shrunk)—will not shrink more than —%." The percentage of residual shrinkage so designated shall not be less than the percentage shown under recognized and reliable test methods such as Commercial Standard CS59-39. (Apr. 12, 1940.)

2760. **Diapers—Sterilized.**—Earnshaw Knitting Co., engaged in the business of selling hosiery and garments, including diapers known by the trade name "Vanta," for infants and children, in commerce between and among various States of the United States, 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.

Earnshaw Knitting Co., in connection with the offering for sale, sale, and distribution of its packaged products in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from the use on its cartons or in its advertising matter of the word "sterilized" or of any other word of similar implication as descriptive of products which are not in a state of sterility at the time of their removal from the package by the purchaser thereof; and from the use of the said word in any way, the effect of which tends or may tend to convey the belief that said products are free from pathogenic bacteria and other micro-organisms at the time of their removal from the package by the purchaser thereof. (Apr. 15, 1940.)

2761. **Stock Feeds—Composition, Nature, Etc.**—Western Mills, Inc., a corporation, engaged in the business of manufacturing stock feeds, including a product which it has sold in interstate commerce under the trade names or designations "Sioux Prize Mineral Meat Scraps" and "Sioux Mineralized Meal," 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.

Western Mills, Inc., in connection with the advertisement, 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—

1. From the use of the word "meat" either alone or in connection with the words "scraps" or "meal" in the trade name or designation for its product or otherwise to describe or refer to said product which is not composed wholly of meat, meat scraps, or meat meal; unless, if said product is composed in substantial but less than a predominant part of meat or meat products, and the word "meat" is used to refer to such meat content, then in that case, it shall be made to appear, clearly and unequivocally, by other suitable words or manner, that said product is not composed wholly or in predominant part of meat or meat products or meat meal.

2. From describing or representing its product to be the "one and only balancer" when in fact, there are available on the market other substances of the same or substantially the same value and which are intended for similar uses.

3. From the use of any statement or representation relating to the proportions of savings in feeding costs allegedly obtained from the use of said product, when in fact, there is no authentic basis for such claimed savings. (Apr. 15, 1940.)

2762. **Pens—Nature.**—Eagle Pencil Co., Inc., a corporation, engaged in the manufacture of pens, pencils and allied products, 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.

When pens are "Tipped," the trade and the consuming public understand the term 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 quality.

Eagle Pencil Co., Inc., in connection with the sale and distribution of its pens or other products in commerce as defined by said act, agreed to cease and desist from the use of the descriptive designation "Iridoid" as applied to or in connection with pen points which it sells or offers for sale; and from the use of the word "Iridoid" or any other coined or fictitious word, term or expression the effect of which is or may be to import or imply or convey the impression that pen points so designated are made of or tipped with any purported substance fanciful or real having special or exceptional qualities. (Apr. 15, 1940.)

2763. **Used Automobile Tires—"Reconditioned," Conditions, Qualities, Limited Offer, Etc.**—Perry-Field Tire & Rubber Co., engaged together

with Herman M. Bilski, Alfred A. Bilski, and Wolf Levy in the business of the purchase, repair, and resale of used automobile tires 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.

Perry-Field Tire & Rubber Co. and the said Herman M. Bilski, Alfred A. Bilski, and Wolf Levy, in connection with the advertisement offering for sale, sale or distribution of tires in commerce, as commerce is defined by the Federal Trade Commission Act, agreed they and each of them will forthwith cease and desist from—

1. The use of the word "reconditioned" or of any other word of similar import, without qualification, or of the picturization of a tire or tires purportedly equipped with treads equivalent to or simulating those of new tires, or of the said picturization in connection with the said unqualified word, the effect of which tends or may tend to convey the belief to customers or prospective customers that each of the tires to be furnished them will be equipped with treads like those on new tires or that the treads thereof will be of such good, sound condition as are the pictured treads, namely, the treads on new tires.

2. Requiring customers, who seek to avail themselves of the advertised 12 months service, to ship their tires to the aforesaid Chicago office for inspection and to pay the transportation cost of such shipment as well as the transportation cost of the tires sent for replacement, unless the fact that such conditions are imposed and such charges made is clearly and unequivocally set out and stated in the advertisement.

3. The use of any statement or so-called agreement which purports to assure continuity of service from said tires which is improbable under the conditions of their work.

4. The use of the words "For a limited time only" or of any other words of similar meaning in connection with the alleged gift offer of merchandise, when in fact such gift offer is an ordinary and customary one made in the usual course of business. (Apr. 15, 1940.)

2764. **Insecticides—Containers or Packages of Competitor.**—Lilly Products Co., Inc., engaged in the business of manufacturing insecticides, including an arsenical preparation designated "Ant Cups" to be used as an ant and roach eliminant, and in the sale and distribution thereof in commerce between and among various States of the United States 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.

Harris Products Co., is the name of a concern located in Miami, Fla., where it has been engaged at all times since the latter part of 1926 in the business of manufacturing an ant and roach insecticide and in the sale thereof, under the trade designation "Ant Buttons," in commerce between and among various States of the United States and in competition with other concerns engaged in the sale of products intended for similar uses. In selling and distributing its products in commerce, the said Harris Products Co. at all times has caused and now causes its insecticide, green in color, to be placed in bottle caps, a number thereof being packed in containers of a distinctive size and shape, coloring and wording; and the said products, due to such characteristic packing and dressing, have become well and favorably identified in the public mind as products manufactured by the said Harris Products Co. and which had been sold by it in the competitive market for a number of years prior to the doing of the acts and things by Lilly Products Co., Inc., hereinafter set forth.

Lilly Products Co., Inc., agreed that it will cease and desist forthwith from offering for sale or selling in commerce, as defined by the Federal Trade Commission Act, its insecticides placed in containers or packages whose dress or appearance is contrived or formed, as by means of the color effects used or of pictorial or other designs or printed words or statements in type of a size or kind, so as to simulate the dress or appearance of the containers or packages in which similar merchandise is sold or offered for sale by a competitor, with the tendency or capacity to confuse, mislead or deceive purchasers into the belief that its merchandise is the merchandise of a competitor. (Apr. 16, 1940.)

2765. Candy—Lottery Schemes.—F. C. Klotz, Jr., sole trader as Klotz Confection Co., engaged in the manufacture of candy and in the sale and distribution thereof together with push cards 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.

F. C. Klotz, Jr., in connection with his sale and distribution of candy or other merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) 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.

(b) Supplying to, or placed 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.

(c) 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.

(d) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 18, 1940.)

2766. **Oil Burner Devices—History, Comparative Data or Merits, Scientific Facts, Qualities, Safety, Earnings, Etc.**—Diagraph-Bradley Stencil Machine Corp., engaged in the sale and distribution in commerce between and among various States of the United States of oil burners of the so-called "blue flame" type for installation in stoves, ranges, and the like, 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.

Diagraph-Bradley Stencil Machine Corp. agreed that, in connection with the advertisement or offering for sale, sale, or distribution of its devices in commerce, as commerce is defined by the Federal Trade Commission Act, it will cease and desist from stating or representing, either directly or by implication—

1. That its device is a new invention.
2. That the greater proportion of air to oil consumed in its device is so substantially different from the proportion of air to oil generally consumed in other oil burners as to be a factor of economical use for consideration in connection with the purchase of its device.
3. That the fuel oil consumed in the device is cheaper than coal in all sections of the country or is 35 percent more economical than coal, wood, or gas generally.
4. That there is scientific basis for the claim that the heat obtained from the device is twice as hot as other heat, or, in fact, is any hotter than other heat.
5. That all of the features of the device, including lighting, are automatic.
6. That the device assures absolute or perfect safety.
7. That exclusive trade territory is allotted or reserved by the corporation to each of its agents.
8. That a burner actually is given free or as a gratuity to the agent to start him in business for himself, or for any other reason, when in

fact, the burner is obtained by the agent for a monetary or other consideration.

9. That its agents, salesmen, 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, or representatives in the ordinary and usual courses of business and under normal conditions and circumstances. (Apr. 18, 1940.)

2767. **Paint Products—History, Comparative Data and Merits, Qualities and Competitive Products.**—Nu-Enamel Corporation, engaged in the manufacture of a general line of paint products, and in the sale and distribution thereof in commerce between and among various States of the United States, 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.

Nu-Enamel Corporation, in connection with the sale and distribution of its products in commerce, agreed it will cease and desist from representing—

(a) That Nu-Enamel enamelled paint is the first basic improvement in house-paint in over 400 years, or that all good painters so agree; or that from the year 1521 until Nu-Enamel invented enamelled paint there had been “over 400 years of stagnation” in the art of making paint.

(b) That Nu-Enamel Corporation was the first to discover the process for using tung oil as a base for paint, enamel and varnish.

(c) That Nu-Enamel enamelled paint “Lasts 3 times as long” as lead-and-oil paints, or lasts for any specified length of time longer than ordinary paint.

(d) That a surface painted with Nu-Enamel will, after a considerable period such as 5 years, be restored to its original luster and beauty or to its original appearance by the simple operation of washing.

(e) That lead-and-oil paint, or “even the best grade” thereof, produces a “shocking” appearance, or that a lead-and-oil paint film “is not possible to clean successfully”; or that the three basic ingredients of Nu-Enamel possess certain distinct virtues not found in ordinary lead-and-oil paint; or that linseed oil will combine with mist or rain and disappear from the paint film; or that the lead pigment in ordinary paint lacks strength and oxidizes, or rapidly causes immediate chalking and color fading. And the said Nu-Enamel Corporation further agrees not to publish similar or other disparaging

statements as to competitive products, or to disseminate advertising material or representations, by assertion, picturization, or inference, to the effect that lead-and-oil paint products are inherently inferior and unsatisfactory for the purposes used. (Apr. 18, 1940.)

2768. **Candy—Lottery Schemes.**—Mark D. Hodges, sole trader as Hodges Candy Co., engaged in the manufacture of candy and in the sale and distribution thereof together with push cards 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.

Mark D. Hodges, in connection with his sale and distribution of candy or other merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) 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.

(b) 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.

(c) 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.

(d) Selling, or otherwise disposing of, any merchandise, by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 18, 1940.)

2769. **Candy, Pipes and Cigarettes—Lottery Schemes.**—Gorton Cigar and Candy Co., engaged in the sale and distribution of lottery assortments of candy, pipes, and cigarettes in commerce between and among various States of the United States, 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.

Gorton Cigar and Candy Co., in connection with the sale and distribution of candy, pipes, cigarettes, or other merchandise in commerce as defined by said act, agreed it will cease and desist from—

(a) Selling or distributing candy, pipes, cigarettes, or other 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 scheme, gaming device, or gift enterprise.

(b) Supplying to, or placing in the hands of others candy, pipes, cigarettes, 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 merchandise to the general public.

(c) Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with candy, pipes, cigarettes 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 merchandise, to the general public.

(d) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 17, 1940.)

2770. Automobile Tires—Composition.—Falls Rubber Co. of Akron, Inc., engaged in the business of manufacturing automobile tires and in the sale thereof in commerce between and among various States of the United States, 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.

Falls Rubber Co., of Akron, Inc., in connection with the offering for sale, sale, or distribution of its tires in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from marking, stamping, branding, or labeling said tires with either the phrase "Silent Safety Six" or "Heavy Duty 6" or with any other phrase of similar implication, the effect of which conveys, tends, or may tend to convey the belief that the tires so referred to are composed, constructed, or equipped with six plies. The said corporation also agrees to cease and desist from the use on its tires or the wrappings thereof or in connection with the advertisement, sale or distribution of such tires of any mark, stamp, brand, or label which imports or implies that the said tires contain more plies in their construction than they actually contain. (Apr. 17, 1940.)

2771. Pipes, Cigars and Tobacco Products—Lottery Schemes.—Rothenberg & Schloss Cigar Co., a corporation, engaged in the sale and distribution of pipes, cigars, and tobacco 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.

Rothenberg & Schloss Cigar Co., in connection with the sale and distribution of its cigars, tobaccos, and pipes in commerce as defined by said act, agreed to cease and desist from—

(a) Supplying to or placing in the hands of others, cigars, tobaccos, and pipes, or other merchandise, together with punchboards, push or pull cards or other lottery devices, which said punchboards, push or pull cards or other lottery devices, are to be used, or may be used, in selling or distributing such merchandise to the general public.

(b) Supplying to or placing in the hands of others, punchboards, push or pull cards or other lottery devices, either with cigars, tobaccos, and pipes, 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 such merchandise to the general public.

(c) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 19, 1940.)

2772. Cigarettes—Factory, Importer and Branches.—Peter Zaphirio, sole trader as A. Zaphirio & Co., engaged in the sale and distribution of cigarettes under his private brand of “Zaphirio” 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.

Peter Zaphirio, in connection with his sale and distribution of cigarettes or other products in commerce as defined by said act, agreed to cease and desist from—

(a) The use of the word “Manufacturers” as descriptive of his business or of the legend “Fac. No. 355, 2d Dist. N. Y.,” in a manner importing or implying that such factory is his own; and from the use of any other word or words of similar implication the effect of which tends or may tend to convey the belief 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 such products are made or manufactured.

(b) Representing that the cigarettes sold by him are “Blended from our own direct importation of choice Turkish tobacco”; or in any other way representing that he is an importer of such tobacco or of any other commodity.

(c) Representing that he has branch places of business in New York or in Cavalla Macedonia or elsewhere. (Apr. 19, 1940.)

2773. **Casein Glue—Qualities.**—Herman J. Reich and A. W. Render, copartners trading as Magic Iron Cement Co., engaged in the business of selling a casein glue and in the sale thereof under the trade name "Magic" in commerce between and among various States of the United States, 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.

Herman J. Reich and A. W. Render, in connection with the sale and distribution of their casein glue in commerce, as commerce is defined by the Federal Trade Commission Act, agreed they and each of them will cease and desist from the use in their advertising or printed matter, on their labels or in any other way of the word "waterproof" or of any other word or words of similar meaning or implication as descriptive of their said glue, which is not, in fact, waterproof, and from the use of such word in any way, the effect of which tends or may tend to convey the belief that said product is impervious to water or its effects. (Apr. 19, 1940.)

2774. **Oil Burner Device—History, Comparative Data or Merits, Free Product, Exclusive Territory, Etc.**—The United Factories, Inc., a corporation, engaged in the sale and distribution in interstate commerce of oil burners for installation in stoves and furnaces, 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 Factories, 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 the device sold by it is a new cheap-type oil burner or that it burns cheap oil in a new way; or by the use of similar terms or phrases or otherwise, representing that the heating process employed in its open-pool or pot-type oil burners is an innovation or involves any new principles; or inferentially or otherwise that such burners operate satisfactorily with grades of oil inferior to or cheaper than the grades which should be used therein.

(b) Representing that the oil burners which it sells furnish twice the heat rendered by coal or wood, either at half the cost or at smaller cost, or at all; or by statement or inference representing generally or without due regard to circumstances and environment that the heat from such oil burners is any greater than that from coal or wood or is any cheaper.

(c) Representing that any article is given "free" or as a gratuity when the receipt of such article is contingent upon any consideration, terms, or condition, as payment of money or rendering of services.

(d) Representing by statement or inference that exclusive trade territory is or may be given, allotted, or reserved, either "free" or for a consideration or otherwise, to any person, or that agents or salespersons are designated for any territory or district with exclusive agency or selling rights therein. (Apr. 22, 1940.)

2775. **Corn and Callous Pads—History, Qualities, Comparative Data or Merits, Guaranteed, Opportunities, Earnings, Free Products, Etc.**—Edna Foster, a sole trader as American Royal Products Co., engaged in the sale and distribution of corn and callous pads in commerce between and among various States of the United States, 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.

Edna Foster, in connection with her sale and distribution of corn pads or other commodities in commerce as defined by said act, agreed she will cease and desist from representing—

(a) That the "Riteway" Corn and Callous Remover or any product of similar composition is amazing, new, marvelous, sensational, or different, or has outstanding or other features over all existing types; or that it stops pain in 3 seconds or removes corn by the roots in 3 days or other specified time; or in any way, by statement or inference representing that such preparation is actually superior to or will accomplish more than like products on the market.

(b) That the "Riteway" Corn and Callous Remover is "\$1,000 guaranteed"; or that sales thereof by dealers are guaranteed or "double money back" guaranteed; or in any other way, by statement or inference, representing that any money or bond in the sum of \$1,000 or other amount has been posted to secure the faithful performance of an undertaking in connection with the purchase or use of said commodity, or that there actually is any guaranty pertaining thereto.

(c) That the sale of said product is going like wildfire for agents, demonstrators, or crew managers, or that an agent or vendor thereof can or may expect to turn \$1 into \$27, or make \$2 to \$3 an hour, or develop a steady and permanent big business in the marketing thereof; or otherwise representing, directly or by implication, that prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings which are in excess of the average net profits or earnings theretofore consistently made by active full-time dealers or salesmen of said commodity in the ordinary and

usual course of business and under normal conditions and circumstances.

(d) That the money-making plan offered in connection with the sale of said product is either wonderful or secret, or that this or the athlete's foot prescription, the foot exercises or any other thing is given "Free" when receipt thereof is contingent upon any consideration, terms, or conditions as payment of money or rendering of services, not clearly and unequivocally disclosed in direct connection with the making of such representation.

(e) That a charge of 10 cents, or other amount, is intended merely "for mailing and handling" of a sample package when in fact such sum covers the full price for which said commodity is regularly sold and delivered; or representing that such package is worth 25 cents or any amount in excess of that for which it is usually sold; or that a commodity is given "with my compliments" where money has been paid therefor.

(f) That she has paid \$50 or any other sum for her athlete's foot prescription; or by designating it as a "\$50 Formula" or in any other way, representing that such prescription is worth \$50 or other amount in excess of the actual cost thereof.

(g) That E. L. Fox is the president of American Royal Products Co.; or otherwise, by the use of fictitious names, titles, or designations, representing that her business is incorporated or extensive in size and operation. (Apr. 22, 1940.)

2776. Advertising Material and Corn and Callous Remover—Qualities, Guaranteed, Opportunities, Earnings, or Profits, Free, Etc.—Van de Mark Advertising, Inc., a corporation, and Claude Efnor, vice president of said corporation, and its representative, engaged in the sale and distribution, in interstate commerce, of advertising material consisting of cuts, mats, and printed or other matter prepared for promoting the sale by others of divers and sundry goods and commodities, in competition with other corporations and individuals and with 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.

Van de Mark Advertising, Inc., and Claude Efnor, in connection with any promotional activities concerning or relating to the sale of goods or commodities in commerce as defined by said act, agreed, and each of them, agreed to cease and desist from distributing, placing for publication, or otherwise disseminating advertising matter or material which contains any statement or representation to the effect—

(a) That the "Riteway" Corn and Callous Remover or any product of similar composition is amazing, new, marvelous, sensational, or different; or that it stops pain in 3 seconds or removes corn by the

roots in 3 days, or other specified time; or in any way, by statement or inference representing that such preparation is actually superior to or will accomplish more than like products on the market.

(b) That the "Riteway" Corn and Callous Remover is "\$1,000 Guaranteed"; or in any other way, by statement or inference, representing that any money or bond in the sum of \$1,000 or other amount has been posted to secure the faithful performance of an undertaking in connection with the purchase or use of said commodity, or that there actually is any guaranty thereof.

(c) That the sale of said product is "going like wildfire for agents, demonstrators, crew managers," or that an agent or vendor thereof can or may expect to "Turn \$1.00 into \$27.00"; or otherwise representing, directly or by implication, that prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings which are in excess of the average net profits or earnings theretofore consistently made by active full-time dealers or salesmen of said commodity in the ordinary and usual course of business and under normal conditions and circumstances.

(d) That the money-making plan offered in connection with the sale of said product is either wonderful or secret, or that this or any other thing is given "Free" when receipt thereof is contingent upon any consideration, terms, or conditions, as payment of money or rendering of services, not clearly and unequivocally disclosed in direct connection with the making of such representation.

(e) That a charge of 10 cents, or other amount, is intended merely "for mailing and handling" of a sample package when in fact such sums covers the full price for which said commodity is regularly sold and delivered; or representing that such package is worth 25 cents or any amount in excess of that for which it is sold by the advertiser. (Apr. 22, 1940.)

2777. Toilet Vinegar—Source or Origin.—Cassell Products, Inc., a corporation, engaged in the sale and distribution of a toilet vinegar, among other things, 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.

Cassell Products, Inc., 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 wrappers, tags, or other advertising media of the word "British" either alone or in connection with any other word or words, pictorial or other representation, or in any way, the effect of which tends or may tend to convey the belief to purchasers that

said product is of English origin or that it is made or manufactured in the British Isles, or any thereof. (Apr. 22, 1940.)

2778. **Molasses—Composition.**—Standard Refining Co., Inc., incorporated under the laws of the State of New Jersey in February of 1939 for the purpose of acquiring, and it did then acquire, the good will, trade name, and all physical assets of a business which theretofore had been conducted under the name "Standard Refining Company" by Eleanor G. Rudiger in cooperation with Joseph H. Rudiger, the said individuals having become, respectively, the president and vice president of the aforesaid corporation following its organization. The said corporation now conducts and at all times since its organization has continued to conduct the same business previously carried on by the said individuals, such business consisting of the sale and distribution of molasses, syrups, and honey in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged. The above corporation entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Standard Refining Co., Inc., a corporation, and Eleanor G. Rudiger and Joseph H. Rudiger, as individuals and as officers of the said corporation, agreed that it and they and each of them, in connection with the offering for sale, sale, and distribution of said product in commerce, as commerce is defined by the Federal Trade Commission Act, will cease and desist forthwith from the use of the words "Extra Fancy Barbados Molasses" as a mark, stamp, brand, or label for said product which is not composed wholly of molasses originating in the islands of Barbados; and from the use of the word "Barbados" either alone or in connection with any other word or words or in any way as descriptive of molasses other than Barbados molasses. If said product is composed of a blend having Barbados molasses in substantial quantity as an ingredient thereof and also having an ingredient or ingredients other than Barbados molasses, and the word "Barbados" is used to refer to such Barbados molasses content, then in which case the word "Barbados" shall be accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said product is not composed wholly of Barbados molasses but is a blended product in which Barbados molasses is but one of two or more ingredients. (Apr. 23, 1940.)

2779. **Cigarettes and Lottery Devices—Lottery Schemes.**—Archie Jacobstein and Bessie Jacobstein, copartners trading under the firm name of Louisville Novelty Manufacturing Co., engaged in the sale and distribution of novelty merchandise including lottery devices in interstate commerce in competition with other firms and partnerships and with individuals and corporations likewise engaged, en-

tered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Archie Jacobstein and Bessie Jacobstein, and each of them, in connection with the sale and distribution of their products in commerce as defined by the Federal Trade Commission Act, agreed they will cease and desist from—

(a) Supplying to or placing in the hands of others, jar deals, push or pull cards, punchboards, or other lottery devices either with assortments of cigarettes or other merchandise, or separately, which said jar deals, push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing cigarettes, or other merchandise, to the general public.

(b) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 23, 1940.)

2780. **Wrinkle Plasters—Qualities.**—Jay P. Walk, an individual trading as Cleo-Pax, engaged in the manufacture of so-called wrinkle plasters and in the sale thereof under the trade name or designation "Cleo-Pax," 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.

Jay P. Walk, in connection with the advertisement, offering for sale, sale, or distribution of his plaster products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist from the use of any statement which directly asserts or imports or implies or the effect of which tends or may tend to convey the belief that such products, when used as directed or otherwise, will check or prevent the formation of wrinkles or will lift up sagging facial lines or cause such lines or wrinkles which result from age to fade away or become shallower, or that the use of said products will rejuvenate aged or aging skin, or eradicate, remove, or bring about the permanent disappearance of facial wrinkles or lines that result with advancing years. (Apr. 23, 1940.)

2781. **Pipes and Cigarettes—Lottery Schemes.**—Briarcraft, Inc., engaged in the manufacture of pipes, and in the sale and distribution thereof in interstate commerce; including punchboard deals involving certain pipes and cigarettes; causing the same, when sold, to be shipped 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.

Briarcraft, Inc., in connection with the sale and distribution of its pipes and cigarettes in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from—

(a) Supplying to or placing in the hands of others, pipes, cigarettes, or other merchandise, together with punchboards, push or pull cards, or other lottery devices, which said punchboards, push or pull cards, or other lottery devices, are to be used, or may be used, in selling or distributing such merchandise to the general public.

(b) Supplying to or placing in the hands of others, punchboards, push or pull cards, or other lottery devices, either with pipes, cigarettes, 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 such merchandise to the general public.

(c) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 23, 1940.)

2782. Red Cedar Shingles—Guarantee, Qualities, and Mills.—Colonial Lumber Specialties, Inc., a corporation, engaged in the sale and distribution of red cedar shingles 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.

Colonial Lumber Specialties, Inc., in connection with its sale and distribution of red cedar shingles or other commodities in commerce as defined by said act, agreed to cease and desist from—

(a) Representing that the "early American Brand" of hand split red cedar shingle is "Guaranteed 20 years against fire," or designating or referring to a limited vendor's warranty as "an unconditional guarantee"; and from the use of the word "Guarantee" or the word "Guaranteed" or any other word or words of similar meaning in connection with the advertising, offering for sale, sale, or distribution of such or any other products unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security and also any qualifying restrictions, limitations, or provisos.

(b) By the use of expressions such as "This guarantee does away with all uneasiness in reference to the fire hazard," or in any other way representing, directly or indirectly, that there is no danger from fire where the hand split red cedar shingles sold by it are used, or that

the same will not ignite; or representations of any kind having the capacity or tendency to convey the belief or create the impression that untreated wooden shingles have been rendered fireproof.

(*c*) The use in its trade stationery of the words "Mills in British Columbia, West Virginia" or other designated locality; and from the use of any other word or words of similar implication the effect of which tends or may tend to convey the belief that it makes or manufactures the products sold by it or that it actually owns and operates or directly and absolutely controls a plant or mill in which such products are made or manufactured. (Apr. 25, 1940.)

2783. **Watches, Cameras, Electric Shavers, Coffee Brewers, Etc.—Lottery Schemes.**—Leo Pevsner, engaged in the sale and distribution of jewelry and novelty goods, and of prize and premium merchandise together with push cards, 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.

Leo Pevsner, in connection with his sale and distribution of jewelry novelties and premium merchandise in commerce as defined by the Federal Trade Commission Act, agreed he will cease and desist from—

(*a*) Selling or distributing watches, cameras, electric shavers, coffee brewers, or any other 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 scheme, gaming device, or gift enterprise.

(*b*) Supplying to or placing in the hands of others watches, cameras, electric shavers, coffee brewers, 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 merchandise to the general public.

(*c*) Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices, either with watches, cameras, electric shavers, coffee brewers, 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 merchandise to the general public.

(*d*) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 25, 1940.)

2784. **Bread—Lottery Scheme.**—Kaiser Baking Co., a corporation, trading also as Frantz Home Bakers, engaged in the making of bakery products, and in the sale and distribution thereof in inter-

state 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.

Kaiser 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 selling or otherwise disposing of such bread or other products or merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 25, 1940.)

**2785. Skin Preparation—Qualities.**—Theresa H. Boyer and Ann Bray, copartners doing business as Dated Cream Co., engaged in the sale and distribution of an emollient preparation designated "Dated Cream," 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.

Theresa H. Boyer and Ann Bray, in connection with the offering for sale, sale, or distribution of their preparation known as "Dated Cream" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed they and each of them will cease and desist from stating or representing, either directly or by implication or in any other way, that the said product has healing properties or penetrates the skin, or that it will go down deep into the pores and cleanse them of all foreign matter or will stimulate the pores to normal action, or that it activates the sebaceous glands or does more than to cleanse the surface. Said copartners also agree to cease and desist from representing that said product will vitalize the skin or remove wrinkles or will prevent or restore sagging muscles or restore a substance natural to the skin. (Apr. 25, 1940.)

**2786. Flour—Lottery Schemes.**—Nashville Roller Mills, a corporation, engaged in the blending, sale, and distribution of flour and feedstuffs, 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.

Nashville Roller Mills in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from—

(a) Supplying to or placing in the hands of others, premium flour, or other merchandise, which is to be used or may be used to conduct a lottery, gaming device, or gift enterprise in the sale and distribution of flour or other product.

(b) Supplying to or placing in the hands of others, pull cards, prize drawing cards, or other lottery devices, either with assortment of flour or other merchandise, or separately, which said pull cards, prize drawing cards, or other lottery devices are used, or may be used, in selling or distributing such flour or other merchandise, to the general public.

(c) Selling or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 25, 1940.)

2787. **Cameras and Close-Out Stocks—Syndicate, Lottery Schemes, and Prices.**—Morton J. Friedman, an individual trading as Traders Syndicate, engaged in the buying of distressed or close-out stocks of merchandise 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.

Morton J. Friedman 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 in his trade name or otherwise of the word or term "Syndicate" as descriptive of his business, or of any word, term, or expression of similar import, having the tendency or capacity to create the impression or convey the belief that such individual proprietorship is an association or group of persons combining to carry out a financial, industrial, or commercial project or enterprise.

(b) Supplying to or placing in the hands of others, cameras 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 cameras or other merchandise to the general public.

(c) Supplying to or placing in the hands of others, push or pull cards, punchboards, or other lottery devices, either with cameras 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 cameras or other merchandise to the general public.

(d) Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

(e) Representing a camera regularly sold by him for \$2.95 as "\$17.50 Value," and from quoting a fictitious price of any article of merchandise or quoting a figure purporting to be its actual and genuine value which is in excess of the price for which said article is sold or can be obtained in the usual course of business. (Apr. 26, 1940.)

2788. **Beverage Concentrates—Lottery Schemes.**—Dainty Foods Manufacturers, Inc., a corporation, engaged in the sale and distribution of a concentrated compound or powder designated “North Pole Ade” for the making of summer beverages, assembled in lottery assortments for the marketing 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.

Dainty Foods Manufacturers, 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) Supplying to or placing in the hands of others, assortments of North Pole Ade concentrates, or other merchandise, together with prize drawing cards or other lottery devices which said prize drawing cards or other lottery devices are used, or may be used, in selling or distributing such beverage concentrates, or other merchandise, to the general public.

(b) Supplying to or placing in the hands of others, prize drawing cards or other lottery devices either with or without assortments of beverage concentrates or other merchandise, or separately, which said prize drawing cards or other lottery devices are to be used, or may be used, in selling or distributing such concentrates, or other merchandise, to the general public.

(c) Selling or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Apr. 26, 1940.)

2789. **Hosiery—Mills, Manufacturer, Composition, and Fictitious and Special Prices.**—Max Kaufman, sole trader as Caroline Hosiery Mills engaged as a jobber and retailer in the sale and distribution of hosiery 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.

Max Kaufman, in connection with his sale and distribution of hosiery or other merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) The use of the word “Mills” as part of his trade name and of the word “Manufacturers” as descriptive of his business; and from the use of any other word or words of similar implication, the effect of which tends or may tend to convey the belief 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 such products are made or manufactured.

(b) Representing that his place of business is in Hickory, N. C., or that his place of business in New York City is but a branch or sales office thereof; or by the use of these or any other fictitious designations or addresses, representing that he has a hosiery mill or place of business located in the cotton-mill section of the country or that his address in New York City is other than his sole place of business.

(c) Representing that he sells men's hosiery "at mill prices," "Direct from Mill to Consumer" or "From Manufacturer to Consumer" or that he distributes "our" mills' production to "the many large organizations throughout the entire United States"; or by a statement or inference representing in any way that his customers buy direct from the mill, thereby eliminating middlemen's profits, or that he is a distributor for any mill in the sense of his being its authorized general sales agent, or that his business extends throughout the entire United States or includes many large organizations among its customers.

(d) The use of the word "Silk" in trade indicia, advertisements, or otherwise, to designate or describe hose or merchandise not made wholly of silk, the product of the cocoon of the silk worm; and the use of such word "Silk" in any way which may have the tendency or effect to confuse, mislead, or deceive purchasers into the belief that products made of or containing other material are composed of silk.

(e) Branding, labeling, selling, or offering for sale any product composed of rayon and other kinds of fiber or substances without full and nondeceptive disclosures of the rayon and other content of such products, 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; for example, "Rayon, Cotton and Silk."

(f) Representing that the regular retail value of the hose sold by him is \$3 per dozen; or representing in any other way that the regular retail price or the true value of such merchandise is any amount in excess of the price for which he sells the same and for which comparable products are actually or customarily being sold in the retail market; or in any other way placing a fictitious or exaggerated valuation upon the merchandise sold and offered for sale by him.

(g) Representing the usual and customary price for which he sells his products as a "special price"; or representing in any other way that a price is "special" so long as no reduction or other trade concession is made therewith. (Apr. 26, 1940.)

2790. **Copper-Steel Sheets—Qualities and Results.**—Carnegie-Illinois Steel Corp., a corporation, engaged in the business of manufacturing copper-steel sheets, among other things, to be used in the construction or manufacture of many articles, as grave vaults and caskets, 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.

Carnegie-Illinois Steel 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 in its advertisements and advertising matter or in the advertising supplied by it to others for their use of statements or representations which directly assert or import or imply—

1. That said copper-steel sheets retain the same degree of resistance to deterioration caused by rust, corrosion, or pitting, resulting from their burial in soils generally, as they possess, when subjected only to atmospheric conditions above ground.

2. That burial vaults or caskets made of "copper-steel" sheets are more durable or longer lived or more resistant to rust corrosion, or pitting (when submerged in the soils) than vaults or caskets made of plain steel sheets of like weight and thickness buried in soils of the same or similar chemical nature or action.

3. That the said corporation has available or on file records of numerous disinterments which show copper-steel vaults to be in excellent condition after many years under ground.

4. That vaults made of copper-steel have been completely proved by the performances of hundreds of vaults now in use.

5. That the records show that U. S. S. Copper Steel Vaults were still in good condition when disinterred after from 17 to 21 years interment. (May 1, 1940.)

2791. **Binding Ribbons—Composition.**—Reuben Berman, an individual trading as Arrow Seam Binding Co. and Ribbon Seam Binding Co., engaged in the business of cutting fabric materials into binding ribbons which, after they have been carded or wound on spools or bolts, he sells and has sold 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.

Reuben Berman in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from—

1. Representing that his products, or any thereof, are or is composed of fibers or materials other than those of which the same actually are composed.

2. Using the word "Taffeta" or any other silk-connoting word to designate a product not composed of silk, the product of the cocoon of the silkworm. If the product is composed in substantial part of silk, and the word "Taffeta" is used to designate such silk content, then in that case, the word "Taffeta" shall be immediately 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 taffeta or silk and which also will accurately describe each other constituent fiber or material of which the product is composed in the order of its predominance by weight, beginning with the largest single constituent.

3. Invoicing, labeling, branding, advertising, or otherwise representing its products which are composed in part of rayon without clearly and unequivocally disclosing in the invoices, labeling and in all advertising matter that said products contain rayon and, when said products are composed in part of rayon, from failing to disclose each constituent fiber or material, including rayon, by name, in the order of its predominance by weight, beginning with the largest single constituent. (May 1, 1940.)

2792. **Luggage or Leather Goods—Prices.**—Howard Woodward, an individual trading as Howard Woodward & Co., engaged in the business of selling and distributing different types or articles of luggage or leather goods, 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.

Howard Woodward 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 wholesale catalogs, or in any other way, of list prices which are not the prices at which the said products actually are sold to the retail dealer. (May 1, 1940.)

2793. **Electrical Goods and Supplies—Size of Business.**—American Television & Radio Co., a corporation, engaged in the business of manufacturing a highly specialized line of electrical goods consisting of vibrators, vibrator-operated and rectifier power supplies and in the sale and distribution of said 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.

American Television & Radio Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from stating or representing in its advertisements and advertising matter of whatever kind or description that it is the "World's Largest Manufacturer" of the most complete line of electrical goods and supplies, above named, and from the use of the words "World's Largest Manufacturer" or of any other words of similar implication, the effect of which tends or may tend to convey the belief that there are no other manufacturers who make or who are now equipped to make as complete a line of such merchandise as that manufactured by the said American Television & Radio Co. (May 1, 1940.)

2794. **Furs, Furriers' Supplies and Silk Goods—Importers and Manufacturers.**—Roth, Saltzman & Co., Inc., a corporation, engaged in the sale of furs, furriers' supplies, and silk goods, 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.

Roth, Saltzman & 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 on its letterheads or invoices or in any other way of the words "Importers and Manufacturers" either alone or in connection or conjunction with any other word or words as descriptive of its business activities. It also agrees to cease and desist from in any way representing, as through the use of the word "Importers" that it imports the products which it offers for sale and sells, or through the use of the word "Manufacturers," that it actually owns and operates or directly and absolutely controls the plant or factory in which its merchandise is made or manufactured. (May 1, 1940.)

2795. **Blankets, Cedar Chests, Clocks, Ladies' Apparel, Etc.—Lottery Schemes and Composition.**—Charles Barash, an individual trading as Louisville Novelty House, engaged in the sale and distribution of sundry articles of merchandise together with push cards, 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.

Charles Barash in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from—

(a) Selling or distributing Indian pattern blankets, cedar chests, electric clocks, wrist watches, floor lamps, ladies' "satin" pajamas

and gowns, princess slips, or any other 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 scheme, gaming device, or gift enterprise.

(b) Supplying to or placing in the hands of others, Indian pattern blankets, cedar chests, electric clocks, wrist watches, floor lamps, ladies' "satin" pajamas and gowns, princess slips, 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 merchandise to the general public.

(c) Supplying to or placing in the hands of others, push or pull cards, punchboards or other lottery devices, either with Indian pattern blankets, cedar chests, electric clocks, wrist watches, floor lamps, ladies' "satin" pajamas and gowns, princess slips, 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 merchandise to the general public.

(d) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

(e) The use of the term or phrase "pure dye" or the descriptive term "satin" as applied to any fiber or fabric or part of fabric unless such material so described is exclusively pure silk without any other fiber, weighting, excess finishing or dyeing materials, or loading or adulterating materials. If the term or phrase "pure dye" be used in a truthful and nondeceptive manner as descriptive of the silk content of a mixed fabric, it shall be accurately, clearly and unequivocally disclosed in immediate conjunction therewith that such term or phrase so employed is used as applying only to the silk content of such mixed fabric; for example, "Rayon and Pure Dye Silk";

(f) Branding, labeling, selling, or offering for sale any product composed of rayon and other kinds of fiber or substances without full and nondeceptive disclosure, in labels, on tags, invoices and whatever advertising matter is used, 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 giving the percentage of any fiber which is present in less than a substantial proportion and also taking such other steps in connection therewith as are necessary in the respective transactions to avoid and prevent deception. (May 1, 1940.)

2796. **Cleaning Fluid—Qualities and Laboratories.**—Harry Teichlauf, an individual trading as Textile Laboratories, engaged in the sale of a cleaning fluid under the trade designation "Textilene" 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 Teichlauf 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, or in any other way—

1. Of the statements "Removes all stains," "It is particularly excellent for Lipstick stains" or of any other statement or representation of similar implication when in fact, the use of such product will not return to their original appearance all kinds of fabric materials, regardless of the nature of the stain or marking to which the materials have been subjected;

2. Of the statement "It will not leave spots, rings or discoloration" or of any other similar representation, the effect of which tends or may tend to convey the belief that the said product, when applied only to the spot sought to be removed from certain fabrics, as weighted silks, will leave no ring or will not cause a resultant discoloration;

3. Of the word "Laboratories" as part of his trade name or in any way, when in fact the said Harry Teichlauf does not own and operate or control the laboratory in which the cleaning fluid sold by him is made or manufactured. (May 1, 1940.)

**2797. Pianos and Other Musical Instruments—Terms and Conditions.—**E. E. Forbes & Sons Piano Co., Inc., a corporation, engaged in the retail sale of pianos and other musical instruments, 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:

E. E. Forbes & Sons Piano 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 advertisements and advertising matter of whatever kind or description of the statement "No Money Down," when in fact, a down payment generally is required and insisted upon in the sale of such instruments, and from the use of the said words or of any other words of similar implication the effect of which tends or may tend to convey the belief to prospective purchasers that the instruments offered for sale under such representation may be purchased without the making of any down payment. (May 2, 1940.)

**2798. Candies, Etc.—Lottery Schemes.—**Hollander, Inc., a corporation, engaged in the manufacture of confectionery and in the sale and distribution thereof in assortments together with push cards, in interstate commerce, in competition with other corporations and with indi-

viduals, 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.

Hollander, 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) Selling or distributing confections, candies, or any other 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 scheme, gaming device, or gift enterprise;

(b) Supplying to or placing in the hands of others confections, candies, 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 merchandise to the general public;

(c) Supplying to or placing in the hands of others push or pull cards, punchboards or other lottery devices, either with confections, candies 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 merchandise to the general public;

(d) Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (May 2, 1940.)

2799. Men's Clothing—Custom and Hand Tailored and Composition.—Ted Brooks Clothing Co., Inc., a corporation, engaged in the sale and distribution of men's clothing, 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.

Ted Brooks Clothing 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 any garments offered for sale and sold by it as "custom tailored" which are not in fact made to order for the persons buying same.

(b) Representing any garment only partially finished by hand as being "hand tailored throughout".

(c) Selling or offering for sale any product made of rayon without disclosure of the fact that the material of which such product is composed is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published. If the word "Celanese" be used to designate a product composed of

rayon, such word shall be immediately accompanied by the word "Rayon" printed in type equally conspicuous so as to indicate clearly that said product is rayon, and if the word "Satin" is used properly as descriptive of the construction of a fabric composed of rayon, then such word shall be accurately and non-deceptively qualified by the word "Rayon" in type equally conspicuous; for example, "Celanese Rayon Satin." (May 2, 1940.)

2800. **Hosiery—Mills.**—B. Ontra Co., Inc., a corporation, trading as Reggie's Hosiery Mills, engaged in the sale and distribution of hosiery, 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.

B. Ontra 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 word "Mills" as part of the trade name under which it offers for sale or sells its products in commerce as defined by the said act; and from the use of the word "Mills" or of any other word of similar implication in any way, the effect of which tends or may tend to convey the belief to purchasers that the said corporation actually owns and operates or directly and absolutely controls the plant or factory wherein are made or manufactured the products offered for sale and sold by it. (May 2, 1940.)

2801. **Paint and Oil Products—Composition, Refining, Etc.**—Carl L. Ficken, an individual trading as Noble Refining Co., engaged in the business of selling paint and oil 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.

Carl L. Ficken in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist forthwith—

1. From the use of the word "linseed" either alone or in connection or conjunction with the word "blended" or with any other word or words as descriptive of a product which is not composed of pure linseed oil or a blend of pure linseed oils, and from the use of the word "linseed" in any way, the effect of which tends or may tend to convey the belief that the product referred to is composed of pure linseed oil, when such is not the fact.

2. From the use of the word "turpentine" either alone or in connection or conjunction with the word "blended" or with any other word or words as descriptive of a product which is not composed of

pure turpentine or a blend of pure turpentines, and from the use of the word "turpentine" in any way, which tends or may tend to cause the belief that the product referred to is composed of pure turpentine, when such is not the fact.

3. From the use of the word "Refining" as part of his trade name, and from the use of the word "Refining" or the word "Producers" or of any other word or words of similar implication, when in fact, the said individual does not produce or refine the products sold by him, that is to say, does not actually own and operate or directly and absolutely control the refinery or factory in which said products are produced or refined. (May 3, 1940.)

2802. Knitting Yarns—Composition and Factory.—Joseph A. Keller, an individual, trading as F. & K. Yarn Co., engaged in the sale and distribution of knitting yarns, 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.

Joseph A. Keller in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from—

1. Representing that said products, or any thereof, are composed of fibers or materials other than those of which the same actually are composed.

2. Using the word "Cashmere" or the word "Cashiere" or of any other word simulating the word "Cashmere" to designate a product which is not composed wholly of the hair of the Cashmere goat.

3. Using the word "silk" or "crepe" or any other silk-connoting word as descriptive of a product which is not composed of silk, the product of the cocoon of the silk worm.

4. Using the word "tweed" as descriptive of a product which is not composed of wool.

*Provided*, That if the product is composed in substantial part of either cashmere, silk or tweed, and the word "Cashmere," "Silk," or "Tweed" is used properly to describe such cashmere, silk or tweed content, then in that case, the said word "Cashmere," "Silk," or "Tweed" shall be immediately accompanied by some other word or words printed in equally conspicuous type and which accurately describes each other constituent fiber or material of which the product is composed in the order of its predominance by weight, beginning with the largest single constituent.

5. Using the words "Pure Boucle" as descriptive of a product composed of rayon, or otherwise to advertise, offer for sale, sell or distribute a product composed in whole or in part of rayon without

clearly and unequivocally disclosing such rayon content and, when the product is composed in part of rayon, from failing to disclose each constituent fiber or material by name in the order of its predominance by weight, beginning with the largest single constituent.

6. From using the word "Factory" or of any other word of similar implication, the effect of which tends or may tend to convey the belief that the said Joseph A. Keller makes or manufactures the products sold by him or that he actually owns and operates or directly and absolutely controls the factory or plant in which said products are made or manufactured. (May 3, 1940.)

**2803. Candy Bars—Food Value.—**F. B. Washburn Candy Corp., a corporation engaged in the business of manufacturing candy bars 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.

F. B. Washburn Candy Corp., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from stating or representing that its said products are equal in food value to either 2 eggs, 2 baked potatoes, 2 lamb chops, or a glass of milk. Said corporation also agreed to cease and desist from the use of any statement or representation, the effect of which tends or may tend to convey the belief that its candy bar products contain food value greater than is actually the fact. (May 6, 1940.)

**2804. Sales Promotion Plan—Lottery Devices and Earnings or Profits.—**R. Thomas Lincoln and Henry Thompson trading as Volume Sales Promotion Co., engaged in the sale and distribution of a sales promotion plan known as "Swap for Cash," 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.

R. Thomas Lincoln and Henry Thompson in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from—

(a) Selling or distributing sales promotion cards or any other device so designed that their use by retail dealers constitute or may constitute the operation of a game of chance, gift enterprise, or lottery scheme.

(b) Supplying to or placing in the hands of retail dealers or others, sales promotion cards or sales booster plans or schemes or any other devices which are used or which may be used without alteration or

rearrangement thereof to conduct a lottery, game of chance, or gift enterprise when distributed to the consuming public.

(c) Furnishing or supplying to dealers display posters or circulars or other advertising literature bearing legends or statements informing the public as to the manner in which said sales promotion cards or other lottery devices are to be or may be distributed and used.

(d) Representing directly or by implication 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.

(e) Representing directly or by implication 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. (May 6, 1940.)

2805. **Casein Glue—Qualities.**—L. B. Allen Company, Inc., a corporation, engaged under the trade name "O. R. Chemical Company" in the sale of a casein glue, 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. B. Allen 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 on its labels or in any other way of the word "waterproof" or of any other word or words of similar import as descriptive of said glue which is not, in fact, waterproof; and from the use of such word in any way, the effect of which tends or may tend to convey the belief that said product is impervious to water or its effects. (May 6, 1940.)

2806. **Handkerchiefs—Manufacturers.**—Isaiah S. Assin and Mac Ancona, copartners, trading as I. S. Assin & Co. engaged in the sale and distribution of handkerchiefs 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.

Isaiah S. Assin and Mac Ancona in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use of the word "Manufacturers" as descriptive of their business. They also agree to cease and desist from the use of any other word or words of similar implication the effect of which tends or may tend to convey the belief that they make or manufacture the products sold by them, or that they actually own and operate or directly and absolutely control the plant or factory in which such products are made or manufactured. (May 6, 1940.)

2807. **Women's Undergarments—Composition, Nondisclosure and Origin or Sponsorship.**—Blossom Products Corp., a corporation engaged in the manufacture of women's undergarments and in the sale and distribution thereof, through its subsidiary, Rayon Corp. of America, 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.

Blossom Products Corp. and Rayon Corp. of America in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from—

(a) Misstatements of the percentage of any fiber present in any product offered for sale by them.

(b) Deceptively concealing the true fiber content or failing to make full and nondeceptive disclosure of the fiber content of articles which purport to be wool; that is, have the appearance and feel of being wool. In a case of named fabrics which are present in less than a substantial amount the percentage thereof shall be given.

(c) Using the unqualified terms "Woolywarms" or "Woolies" or word or expression of similar import as descriptive of garments or other products when the fiber thereof is not composed wholly of wool.

(d) Attaching to merchandise sold by them, brands, labels, or other trade indicia bearing the name "Dr. Ames" or other fictitious name or symbol having the capacity or tendency to mislead or deceive purchasers or prospective purchasers as to the origin or sponsorship of such products. (May 8, 1940.)

2808. **Table and Kitchenware—Terms and Conditions, Connections or Affiliations, Promotional or Publicity Undertakings and Pottery.**—Imperial China Co., Inc., a corporation, engaged in the business of selling table and kitchenware under a sales-promotional plan or scheme 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.

Imperial China Co., Inc., in connection with the offering for sale, sale, or distribution of its table and kitchenware in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the stating or representing, either directly or through its salesmen or agents or in any other way—

1. That the \$60 or other deposit required to be paid by the “redemption dealer” who enters into contractual relations with the said corporation, is to be considered by such dealer only in the nature of a good faith bond or as a temporary deposit or as earnest money and that the said amount, or such part of it as has not been credited in connection with the purchase or ware by the said dealers, will be returned to the dealers at their request if the plan under which the ware is purchased proves unsatisfactory to the dealers after a 60-day trial.

2. That the said Imperial China Co., Inc., is closely affiliated with Royal China Inc., or that the latter corporation owns 80 percent of the stock of the former corporation, or that the said two corporations are working in close cooperation, or that under a working agreement between the two corporations, Imperial China Co., Inc., has taken over and is now conducting the business of Royal China, Inc., in Texas or other designated territory and will supply the requirements of all customers, including those of Royal China, Inc.

3. That the Imperial China Co., Inc., is able to and will furnish the same or identical patterns as those furnished by Royal China, Inc., so that by purchasing the sales-promotional plan offered by Imperial China Co., Inc., the “redemption dealer” will be able to continue to supply customers who have accumulated sets of the Royal China, Inc., patterns and who might wish to further add to such sets.

4. That the Imperial China Co., Inc., or its salesmen, would obtain a specified minimum number of “cooperating dealers” who would agree to purchase certificates from Imperial China Co., Inc., and distribute the same among their own customers for redemption by the “redemption dealers”; that the said salesman would remain in the locality for a sufficient length of time to properly instruct the “cooperating dealers” in the operation of the plan, or would return within a short time to give such instruction; or that newspaper advertising and publicity campaigns to assure the success of the plan would be provided or undertaken by the salesmen at the expense of the Imperial China Co., Inc., unless and until such representations actually are fulfilled.

5. That the said Imperial China Co., Inc., owns and operates or controls the pottery wherein is made the table and kitchenware offered for sale and sold by the said corporation. (May 10, 1940.)

2809. Rugs—Source or Origin, Qualities and Imported.—Abraham & Straus, Inc., a corporation, engaged in the sale and distribution of 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.

“Persian,” “Chinese,” and “Numdah” rugs, as known to the public and the trade, are made in Persia, China, and the Cashmir district of India, respectively, and possess the characteristic common to all true oriental rugs in that they are hand-woven or hand-knotted of colored woolen or silk yarn (with warps of cotton sometimes added), featured by distinctive texture, workmanship, and design, and by the fact that the pattern and colors appear on the back side as well as the front.

A “reproduction” is a counterpart or reconstruction of something else. The words “Persian,” “Chinese,” and “Numdah” in advertising, labels, or other trade indicia either with or without the word “reproduction,” connote all the essential structure and properties of a genuine oriental or Chinese rug and imply that it possesses the special fibers and the almost universally known superior wearing and appearance qualities thereof.

Abraham & Straus, Inc., in connection with its sale and distribution of rugs in commerce as defined by said act, agreed to cease and desist from—

(a) The use in its printed or advertising matter or as a brand for rugs which it offers for sale and sells, of the words “Persian,” “Chinese,” “Numdah” or other distinctively oriental names as descriptive of rugs which are not in fact made in the countries or localities designated with all the essential characteristics and qualities of such rugs.

(b) The use of the words “Persian Chinese Numdah Reproductions,” “Persian Reproductions,” “Chinese Reproductions,” or other use of the word “Reproduction” as descriptive of rugs which are not in fact reproductions of the types named, to wit: True counterparts or reconstructions thereof in all particulars.

(c) The use of the words “Persian,” “Chinese,” “Numdah,” or other distinctively oriental appellation in connection with any rug which does not contain all the inherent qualities and properties of such oriental and Chinese rugs, unless when properly used to describe the design or pattern only thereof, the word “Persian,” or the word “Chinese” or the word “Numdah” 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 the type named; for example, "Persian Design," "Chinese Pattern."

(d) The use of the words "Importers' Surplus—Persian, Chinese, Numdah," "Importer's Close-Out of Gem-Like Reproductions—Chinese, Persians, Numdahs," or "Imported Reproductions—Persian, Chinese, Numdah"; and from the use of the words "Importer's" or "Imported" in connection with geographic names in any way having the capacity or tendency to create the impression or convey the belief that goods actually made in other countries are from the countries named. If the word "Imported" or similar term be properly used to indicate that such goods are not of domestic origin and geographic names are correctly used to describe the type of product imported, then in such case the true country of origin shall be clearly and nondeceptively disclosed in direct connection therewith. (May 15, 1940.)

2810. Rugs—Source or Origin, Qualities, Importer, Value, Etc.—Irving Heiney, an individual trading as Linen Mart and as Imperial Lingerie Store, engaged in the sale and distribution of rugs, 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.

"Chinese," "Persian," "Sarouk," "Kirman," and certain other oriental rugs as known to the public and trade are made in China, Persia, or elsewhere in the Orient and possess the characteristics common to all true oriental rugs in that they are handwoven or hand-knotted of colored woolen or silk yarn (with warps of cotton sometimes added) featured by distinctive texture, workmanship and design, and by the fact that the pattern and colors appear on the reverse as well as the front or face of the rug.

A "replica" is a duplicate—that which resembles or corresponds to something else. A designation "Persian Replica" as applied to a rug simulating or copying the design or pattern only of a Persian rug is misleading in that it connotes all the essential structure and properties of a genuine oriental rug and implies that it possesses the special fibers and the almost universally known superior wearing and appearance qualities thereof.

Irving Heiney in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist, in his printed or advertising matter or by window display cards or otherwise, from—

(a) The use of the words "Chinese," "Persian," "Sarouk," "Kirman," "Karvan," "Bagdad," "Calcutta," "India," "Irak," or other distinctively oriental names or words, or of illustrations depicting

oriental scenes, depictions or characters on labels, brands, or otherwise in connection with the rugs sold and offered for sale by him; and from the use of said words or illustrations 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 true oriental and/or Chinese rugs.

(b) The use of the words "Imported Sarouk Replica," "Imported Persian Replica," "Persian Replica," "Imported Karvan Persian Replica," "Genuine Samarkand Chinese Replica," or other use of the word "Replica" or of any similar word which imports that the article to which such word applies is a replica or duplicate of an original, as descriptive of rugs which are not in fact reproductions of the types named, to wit: True counterparts or reconstructions thereof in all particulars.

(c) The use of the words "Chinese," "Persian," "Sarouk," "Kirman," "Karvan," "Samarkand," "Bagad," "Calcutta," or other distinctive oriental appellation in connection with any rug which was not made in the country or locality designated or implied and does not contain all the inherent qualities and properties of such oriental or Chinese rug, unless when properly used to describe the design or pattern only thereof, such word or words of oriental appellation 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 the type named; for example, "Persian Design," "Chinese Pattern."

(d) The use of the words "Imported Sarouk Replica," "Imported Persian Replica," "Genuine Imported Heavy Karvan," or "Imported Karvan Persian Replica"; and from the use of the word "Imported" or any word of like meaning in connection with geographic names in any way having the capacity or tendency to create the impression or convey the belief that goods actually made in other countries are from the countries named. If the word "Imported" or similar term be properly used to indicate that such goods are not of domestic origin and geographic names are correctly used to describe the type of product imported, then in such case the true country of origin shall be clearly and nondeceptively disclosed in direct connection therewith.

(e) Representing by the use of the word "Importer" on his stationery or otherwise that he is an importer or directly imports his merchandise or goods from abroad.

(f) Representing the "worth" or value of any article of merchandise offered for sale by him to be an amount or figure which is in fact fictitious and in excess of the price at which such product is customarily offered for sale and is available to the purchasing public. (May 15, 1940.)

2811. **Storage Batteries—Comparative Data and Merits.**—Norris Ouellette, an individual trading as Power Battery Co., engaged in the manufacture of storage batteries 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.

Norris Ouellette 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 "Power Cell" or other battery of similar construction maintains a high voltage under excessive load; or otherwise, by statement or inference, that the terminal voltage maintained by Power Cell is either higher than or more enduring than that of standard competitive batteries on the market.

(b) That "Power Cells," or batteries of similar construction, charge fully in one-third to one-half the time required for other batteries, or in any specified comparative time not fully established by competent and reliable scientific evidence. (May 16, 1940.)

2812. **Jewelry—Prices.**—Yeblon & Co., Inc., and Hyman & Zaslav, Inc., engaged in the sale and distribution of jewelry and allied 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.

The term "list price" as applied to the sale of merchandise is an expression used by wholesalers and manufacturers in connection with their sales to the retail trade; and an indicated discount from such list price determines the amount which the retail dealer pays for the goods purchased by him. That is to say, a discounted list price connotes the amount charged the dealer by a wholesaler for the item of merchandise. His resale price to the public, or "retail price," is consequently higher, and may or may not be equal to the wholesaler's original list price.

Yeblon & Co., Inc., and Hyman & Zaslav, Inc., in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist from the use, in catalogs, printed matter, or in any other manner, of the terms "List Prices," "Discount," "Catalog List Price," or "Subject to Our Regular Distributors Discount"; or from representing in any way directly or inferentially that the prices at which they offer for sale and sell their various items of merchandise constitute a discount to the purchaser or are wholesale prices, when in fact said prices are the usual and

customary prices at which they sell such merchandise in the normal course of business. (May 16, 1940.)

2813. **Cigarettes—"Importing" and Source or Origin.**—MM Importing Co., Inc., engaged in the sale and distribution of cigarettes, among other merchandise, 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.

MM Importing Co., Inc., agreed that it will cease and desist from the use of the word "Importing," as part of its corporate or trade name or in any other way, in connection with the offering for sale, sale, or distribution of products which it does not actually import. It also agrees to cease and desist from the use of the word "Importing" as part of the corporate or trade name under which it offers for sale, sells, or distributes in commerce cigarettes which are made or manufactured, in whole or in part, of domestically grown tobacco or which are manufactured in the United States of America. It also agrees to cease and desist from the use of the word "Importing," or of any other word or words of similar implication, either alone or in connection with the words "Turkish Cigarettes," or in any way, the effect of which tends or may tend to convey the belief to purchasers that said cigarettes are made wholly or in part of imported tobacco or are manufactured abroad, unless, if the said "Importing" is used in connection with the sale of cigarettes, actually imported by said company, which are composed wholly of imported tobacco, but which are made or manufactured in the United States of America, then in that case, it shall be disclosed, clearly and unequivocally, on the face of the container of the cigarettes that the same are domestically manufactured or that they are not of foreign manufacture. (May 17, 1940.)

2814. **Facial Preparations—Nature of Manufacture and Qualities.**—Alexandra de Markoff Sales Corp., a corporation, engaged in the sale of cosmetics, including facial preparations, 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.

Alexandra de Markoff Sales Corp., in connection with the sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from—

1. Representing, through the use of the words "compounded by hand" or of any other word or words of similar import designating

or to purportedly describe products which are not compounded by hand, and from the use of the said words in any way, the effect of which tends or may tend to convey the belief that the products referred to are in fact made or mixed by hand.

2. The use of the words "Skin Food" or of any other word or words of similar import to designate or as descriptive of a product which does not in fact serve as a food or nourishment for the human skin or tissues, and from the use of said words in any way so as to import or imply that the said product will feed or nourish the skin or tissues to which it is externally applied.

3. Representing that its so-called "Skin Food," when applied to the skin, is absorbed by the skin with the result that the skin is fed or nourished or otherwise therapeutically benefited by such absorption of said product.

4. Stating or representing that its products, or any thereof, will erase or remove lines or wrinkles from the skin, build up the tissues, remould the face, or restore or perpetuate youthful or firm contours to the face or throat. (May 18, 1940.)

2815. **Dimple-Making Device—Qualities, Patented, Nature, Etc.**—John H. Lofquist, an individual, engaged in conducting a business under the trade name "Darling Dimple Company" said business consisting of the sale of a so-called dimple-making device 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.

John H. Lofquist, in connection with the advertisement, offering for sale, sale or distribution of his device in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from stating or representing—

1. That the said device will produce permanent dimples in the face of the user thereof, or that any facial depression which may be effected through the use of said device will be other than of a temporary nature, or that such depression in the soft tissues of the cheeks will not promptly disappear under normal action of the facial muscles when the pressure exerted by the device has been removed.

2. That the said device is the subject matter of a United States or other patent, unless and until such is a fact.

3. That the said device was patented or invented by "Dr. J. H. Lofquist" or that the said device contains special or scientific features which are the result of medical advice or services. (May 18, 1940.)

2816. **Cleaning Fluid—New Product and Qualities.**—Lionel E. Samuels, individual trading as Solvosol Co., engaged in the business of compounding and packing a cleaning fluid and in the sale and distribution thereof under the trade name "Solvosol" in interstate com-

merce, 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.

Lionel E. Samuels, in connection with the offering for sale, sale, or distribution of his cleaning fluid in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in his labels or containers or in any other way—

1. Of the word "New" either alone or in connection with the word "Entirely" or "Process" or with any other word or words as descriptive of said product which is not in fact new.

2. Of the phrase "Leaves No Ring" or of any statement or representation of similar implication, the effect of which tends or may tend to convey the belief that the said product will not leave a ring or discoloration when applied only to the spot to be removed from certain fabrics, as for example, weighted silks. (May 18, 1940.)

2817. **Gauze Bandages—"Sterilized."**—Cra-Tex Corp., a corporation, engaged in the business of manufacturing gauze bandages and in the sale thereof under the trade name "Cra-Tex" 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.

Cra-Tex Corp., 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 or printed matter of the word "sterilized" or of any other word or words of similar implication as descriptive of its products which are not in a state of sterility at the time of their removal from the package by the purchaser thereof, and from the use of the said word in any way, the effect of which tends or may tend to convey the belief that said products are free from aerobic and anaerobic bacteria and other microorganisms at the time of their removal from the package by the purchaser thereof. (May 18, 1940.)

2818. **Rugs—Source or Origin and Qualities.**—Stern Brothers, a corporation, engaged in the operation of a retail department store and in the sale and distribution of 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.

True Oriental rugs are made in Asia and have for many years been well-known to the purchasing public as possessing certain characteristics in that they are hand-woven or hand-knotted of colored woolen

of silk yarn (with warps of cotton sometimes added), featured by distinctive texture, workmanship and design, and by the fact that the colors and pattern 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. Designations such as "Oriental Reproductions," "American Oriental," or "Domestic Oriental," as applied to a rug simulating or copying the design or pattern only of an oriental rug, are misleading in that they connote all the essential structure and qualities of a genuine oriental rug and imply that it possesses the special fibers and the almost universally known superior wearing and appearance qualities thereof.

Stern Brothers, in connection with its sale and distribution of machine-made rugs in commerce as defined by said act, agreed to cease and desist from—

(a) The use of the words "Kara Kirman" or other distinctively oriental names as descriptive of rugs which are not in fact made in the countries or localities designated or implied with all the essential characteristics and qualities of such rugs.

(b) The use of the words "Oriental Reproductions," "Sarouk, Kirman, Kashan reproductions," "American-Made Oriental Reproductions," or other use of the word "Reproductions" or of any similar word which imports or implies that the article to which such word applies is a reproduction, replica, or duplicate of an original, as descriptive of rugs which are not in fact reproductions of the types indicated; to wit: True counterparts or reconstructions thereof in all particulars.

(c) The use of the words "American Oriental," "Domestic Oriental," or other appellation including the word "Oriental" or other expression indicative of an oriental type, as descriptive of a rug which does not contain all the inherent qualities, properties and constructive features of a true oriental rug.

(d) The use of the words "Sarouk," "Kirman," "Kashan," or other distinctively oriental appellation in connection with any rug which was not made in the country or locality designated or implied and does not contain all the inherent qualities and properties of such oriental rugs; unless, if properly used to describe the design or pattern only thereof, such word or words of oriental appellation 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 the type named; for example, "Kirman Design," "Sarouk Pattern." (May 18, 1940.)

2819. Greeting Cards—"Free Samples," Terms and Conditions and Products Sent Unordered.—Merwin B. Grogan, sole trader as M. B. Grogan

Co., engaged in the sale and distribution of greeting cards 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.

Merwin B. Grogan, in connection with his sale and distribution of greeting cards or other merchandise in commerce as defined by said act, agreed to cease and desist from—

(a) Advertising "free samples" or any other use of the word "free" or similar expression in a manner purporting a gift or gratuity only, where any consideration such as payment of money, rendering of services, or otherwise, is required of the person receiving articles of merchandise sent in response to his request for such free samples or other gratuity.

(b) Delivering any invoiced article of merchandise to a customer or prospective customer without prior notice of the terms under which such article is to be sent and permission first obtained to make the shipment; inducing a customer to order samples or other goods by deceptively concealing the terms of the transaction; or in any other way imposing a burden upon a customer or prospective customer either to pay for goods received by him or return the same where he has not been previously apprised of such conditions and consequently authorized the shipment. (May 18, 1940.)

2820. **Greeting Cards—"Request Samples" and Terms and Conditions.**—Harry Doehla, Senia Doehla, Margaret Doehla, and August Doehla, copartners, trading variously under the firm names of Bluebird Studios and Harry Doehla Co., engaged in the sale and distribution of greeting cards and other commodities in interstate commerce, in competition with other firms and partnerships and with individuals and corporations like engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Harry Doehla, Senia Doehla, Margaret Doehla, August Doehla, and each of them, agreed in connection with their sale and distribution of greeting cards or other merchandise in commerce as defined by said act, they will cease and desist from the use in their advertising matter of the statement "Request samples" or otherwise inviting their customers or prospective customers to receive sample goods unless in immediate connection therewith and with equal conspicuousness it be clearly indicated that the goods thus referred to will be billed to the recipient and payment required. (May 18, 1940.)

2821. **Fountain Pens—Value, Special or Limited Offers and Quality.**—Maurice Robbin and Hilda Robbin, copartners trading as Robbin's Camera Shop, engaged in the sale at retail of cards, cameras and

other products, including so-called "John Shannon Vacuum Filler Sacless Fountain Pens" 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.

Maurice Robbin and Hilda Robbin, in advertising, offering for sale, selling, or distributing their products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed and each of them, to cease and desist from—

1. Stating or representing that said products are a \$3 value or of any other alleged valuation which is exaggerated or in excess of the actual value of said products or the price which the purchaser pays and the copartners charge for said products in the usual course of business.

2. Stating or representing that the offered retail sales price of said product is "special" or will last for "3 days only" or any other time limitation, when in fact said price is the regular and customary price asked for said products in the usual course of business and without limitation as to time.

3. Stating or representing that bona fide protection for life is extended and assured to the purchasers of said pens, when in fact, no such protection is offered and the products are not of such quality as to last for the period of life expectancy.

4. The use of the statement "Your first investment is your only investment" or of any other statement of like import or meaning, when in truth, such statement is contrary to the facts. (May 18, 1940.)

2822. **Greeting Cards—"Free Samples," Terms and Conditions and Products Sent Unordered.**—Southern Greeting Card Co., a corporation, engaged in the sale and distribution of greeting cards 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 Greeting Card 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 "free samples," or any other use of the word "free" or similar expression in a manner purporting a gift or gratuity only, where any consideration such as payment of money, rendering of services, or otherwise, is required of the person receiving articles of merchandise sent in response to his request for such free samples or other gratuity.

(b) Delivering any invoiced article of merchandise to a customer or prospective customer without prior notice of the terms under which such article is to be sent and permission first obtained to make the shipment; inducing a customer to order samples or other goods by deceptively concealing the terms of the transaction; or in any other way imposing a burden upon a customer or prospective customer either to pay for goods received by him or return the same where he has not been previously apprised of such conditions and consequently authorized the shipment. (May 20, 1940.)

2823. **Men's Shirts or Other Textile Materials—"Vat Dyed" or Quality.**—Spiegel, Inc., a corporation, engaged in the sale and distribution of merchandise including men's shirts, 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.

When a textile material steeped in a liquor containing a dye is exposed to the air, the dye is reformed by oxidation and precipitated in the fiber. Dyes so used are called "Vat Dyes." Fabrics made of yarn dyed before being woven are referred to as "Yarn Dyed." To the trade and the purchasing public the term "Vat Dyed" connotes a superior quality of dye coloring which commands a much higher price for a product than if it were yarn dyed.

Spiegel, 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 by statement or inference that yarn dyed shirts or other textile materials are "vat dyed," or in any other way passing off as "vat dyed" any goods or merchandise not actually dyed by the vat process. (May 20, 1940.)

2824. **Greeting Cards—"Free Samples", Terms and Conditions and Products Sent Unordered.**—Edith M. Schwer, executrix of the estate of Charles C. Schwer, deceased, trading as Charles C. Schwer, engaged in the sale and distribution of greeting cards 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.

Edith M. Schwer, in connection with the sale and distribution of her products in commerce, as defined by said act, agreed to cease and desist from—

(a) Advertising "free samples," or any other use of the word "free" or similar expression in a manner purporting a gift or gratuity only, where any consideration such as payment of money, rendering of services, or otherwise, is required of the person receiving articles

of merchandise sent in response to his request for such free samples or other gratuity.

(b) Delivering any invoiced article of merchandise to a customer or prospective customer without prior notice of the terms under which such article is to be sent and permission first obtained to make the shipment; inducing a customer to order samples or other goods by deceptively concealing the terms of the transaction; or in any other way imposing a burden upon a customer or prospective customer either to pay for goods received by him or return the same where he has not been previously apprised of such conditions and consequently authorized the shipment. (May 21, 1940.)

2825. **Greeting Cards and Christmas Package Wrappings—"Free Samples", Terms and Conditions and Products Sent Unordered.**—John A. Hertel Co., a corporation, engaged in the sale and distribution of greeting cards and Christmas package wrappings, 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.

John A. Hertel 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 "free samples," or any other use of the word "free" or similar expression in a manner purporting a gift or gratuity only, where any consideration such as payment of money, rendering of services, or otherwise, is required of the person receiving articles of merchandise sent in response to his request for such free samples or other gratuity.

(b) Delivering any invoiced article of merchandise to a customer or prospective customer without prior notice of the terms under which such article is to be sent and permission first obtained to make the shipment; inducing a customer to order samples or other goods by deceptively concealing the terms of the transaction; or in any other way imposing a burden upon a customer or prospective customer either to pay for goods received by him or return the same where he has not been previously apprised of such conditions and consequently authorized the shipment. (May 22, 1940.)

2826. **Correspondence Course in Cartooning—Indorsements or Testimonials, Success or Standing, Employment and Free Gift.**—Bernard Singerman, an individual trading as Raye Burns School of Cartooning, engaged in the business of conducting a correspondence school in cartooning which includes the sale and distribution of lesson material 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 Singerman, in connection with the offering for sale, sale, and distribution of his course of instruction in cartooning in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist forthwith from the use in his advertisements and advertising or printed matter of whatever kind or description or in any other way—

1. Of statements or representations or of letters or the reproduction of letters purportedly written by the editor or by others associated with magazines or publications, the effect of which tends or may tend to convey the belief, that such magazines or publications now buy thousands, or any number of cartoons yearly from the Raye Burns School of Cartooning, when in fact the said magazines or publications are not in print at the present time and have not been in print for some time.

2. Of letters or the reproduction of letters purportedly received by the said Raye Burns without solicitation on his part from persons associated with magazines, syndicates, schools, and the like, so as to import or imply that the said publications or concerns habitually turn to or call upon the said Raye Burns School of Cartooning for the cartoonists they need, or that the said Raye Burns School of Cartooning enjoys a prestige in the matter of placing its students with such publications or concerns which it does not have.

3. Of statements or representations which tend or may tend to convey the belief that any one, whether or not he or she is possessed of the ability or talent to draw or to create saleable cartoons, can achieve success as a cartoonist or can readily find lucrative employment, or that the students of the said Raye Burns School of Cartooning are widely sought after by editors, publishers or others desiring to purchase cartoons.

4. Of the statement or representation that his course in cartooning will be mailed as a "gift" or as "complimentary copies" to each person sending in \$1 "to cover the expense of printing and mailing," when in fact, the expense of printing and mailing the course in cartooning does not amount to \$1 and is so much less than said amount as to offer the said Raye Burns a profit of such substantiality over and above the printing and mailing expense as to negative the statement or representation that the said course is either complimentary or a gift. (May 23, 1940.)

2827. **Sleeping Bags—Composition.**—Woods Manufacturing Co., Ltd., a corporation, engaged in the business of manufacturing certain sleeping bags at the Ogdensburg plant 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.

Woods Manufacturing Co., Ltd., 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 advertisements and advertising matter of whatever kind or description of the word "Eider" or "Arctic," either alone or in connection or combination with the word "down" as descriptive of the filler content of its products which are not in fact filled with down obtained from the Eider duck, and from the use of the said words "Eider" or "Arctic" or of any other word or words of similar import, in anyway, the effect of which tends or may tend to convey the belief to purchasers that the filler of said products is composed of Eiderdown, as such term is generally understood and accepted to mean. Said corporation also agrees to cease and desist from the use, in connection with the sale, advertising, describing or distributing of its products, of any statement, of pictures or symbols which tend or may tend to convey the belief to purchasers that the filler of said products is composed of down obtained from wild or other water fowl, such as are referred to by the statement or represented by the pictures or symbols, when in fact, such is not the case. (May 23, 1940.)

2828. **Aluminum Kitchen Utensils—Composition.**—Enterprise Aluminum Co., engaged in the manufacture of aluminum kitchen utensils and in the sale and distribution thereon 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.

Enterprise Aluminum Co. agreed that in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, it will cease and desist from the use of the word "Silverglo" or other term of similar import to designate or describe its aluminum products; and from the use of such or any like designation or expression containing the word "Silver" with a capacity or tendency to create the impression or convey the belief to purchasers that the durability or value of such utensils is enhanced or affected by silver metal contained therein. (May 27, 1940.)

2829. **Coffee—Nature, Qualities, Composition and Source or Origin.**—Old Dutch Mills, Inc., engaged in the business of roasting and blending coffee 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.

In the coffee trade, "Mocha" denotes a superior coffee grown in the Yemen district in Arabia and "Java" a superior coffee grown in the island of Java. Mocha has a very high and distinctive flavor and Java a very strong body. For many years the blend of these two coffees has been favorably known throughout the world, and the term "Mocha and Java" is generally understood to mean a blending of these two coffees, and is regarded by a large portion of the consuming public as synonymous with all that is best in coffee. As the sources of supply are limited, the genuine Mocha and Java coffee is much more expensive than many ordinary coffees.

Old Dutch Mills, Inc., in connection with the sale and distribution of its coffee products in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from—

(a) The use of the words "Mocha and Java" in its advertising, on its labels and containers, in oral presentations by salesmen or otherwise, as descriptive of its Old Dutch brand of coffee or other product of similar composition; and from featuring the words "Mocha" and "Java" in anyway which has or may have the capacity, tendency, or effect of conveying the belief to purchasers that a blend of these with other types of coffee is a pure blend of wholly Mocha and Java as such term is construed by the trade and consuming public.

(b) Passing off an inferior blend of coffee as "Mocha and Java"; or in anyway, by adroit wording, deceptive typography, guile or subtlety, representing that Mocha and Java are the sole or the principal ingredients of a coffee product the bulk of which consists of cheaper grades and qualities.

(c) The use on its invoices or trade literature of the letters "O D M & J" as applied to said coffee, or of other letters, terms or symbols importing or implying that the Old Dutch brand of coffee is either wholly or predominantly of Mocha and Java.

(d) Naming, in its sales promotional representations, on its labels, brands, or otherwise, the minor factors of a blended coffee offered for sale and sold by it without first naming also, as a part of such descriptive statement and with equal conspicuousness, the major factors, all in their order of predominance by bulk; for example, "Santos, Colombian, Mocha and Java." (May 27, 1940.)

2830. **Sheets and Pillowcases—Source or Origin, Qualities, Patent, Manufacturers and Factory.**—Equitable Embroidery Co., Inc., engaged in the sale and distribution of sheets and pillowcases 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.

Equitable Embroidery Co., Inc., in connection with the sale and distribution of its merchandise in commerce, as commerce is defined

by the Federal Trade Commission Act, agreed it will cease and desist from—

(a) The use of the words “Madero Embroidery” or “Madero” as a brand, trade mark, or other sales designation of sheets, pillowcases or other merchandise sold by it; or the use of the word “Madero” or any other semblance of the word “Madeira” as descriptive of any article of merchandise which is not produced in the Madeira Islands with all the qualities and properties of genuine Madeira products.

(b) Representing that a patent is pending on the construction or with reference to any other feature of the sheets and pillowcases which it offers for sale.

(c) The use of the word “Manufacturers” as descriptive of its business; and from the use of any other word or words of similar implication the effect of which tends or may tend to convey the belief that it makes or manufactures the products sold by it, or that it actually owns and operates or directly and absolutely controls a plant or factory in Mayaguez, P. R., or elsewhere, in which such products are made or manufactured. (May 27, 1940.)

2831. Rugs—Nature, Source or Origin, Imported and Qualities.—Gimbel Brothers, Inc., a corporation, engaged in operating a retail department store and in the sale and distribution of 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.

True oriental rugs are made in Asia and have for many years been well-known to the purchasing public as possessing certain characteristics in that they are hand-woven or hand-knotted of colored woolen or silk yarn (with warps of cotton sometimes added), featured by distinctive texture, workmanship and design, and by the fact that the colors and pattern 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. Designations such as “Oriental Reproduction,” “Oriental Replica,” or “American Oriental,” as applied to a rug simulating or copying the design or pattern only of an oriental rug, are misleading in that they connote all the essential structure and qualities of a genuine oriental rug and imply that it possesses the special fibers and the almost universally known superior wearing and appearance qualities thereof.

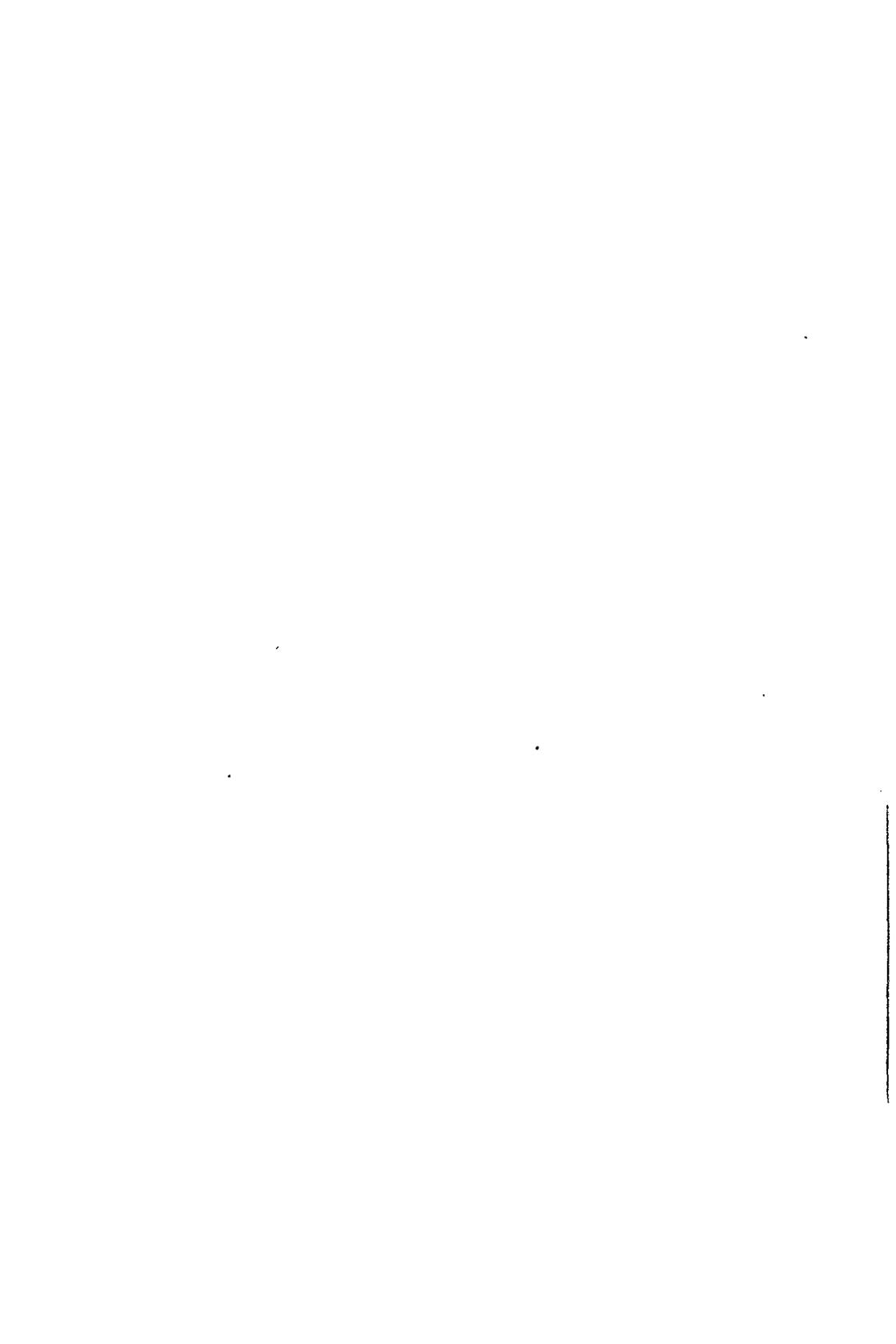
Gimbel Brothers, Inc., in connection with its sale and distribution of machine-made rugs in commerce as defined by said act, agreed to cease and desist from—

(a) The use of the words "Oriental Reproduction," "Oriental Replica," "Copies of Real Orientals," "Aristan Reproductions of Orientals," "Imported Reproductions" of "Hand-Woven Orientals," or other use of the words "Reproduction," "Replica" or "Copies" or of any similar word which imports or implies that the article to which such word applies is a reproduction, replica, or duplicate of an original, as descriptive of rugs which are not in fact reproductions of the types indicated; to wit: True counterparts or reconstructions thereof in all particulars.

(b) The use of the words "American Oriental" or other appellation including the word "Oriental" or other expression indicative of an oriental type, as descriptive of a rug which does not contain all the inherent qualities, properties and constructive features of a true oriental rug.

(c) The use of the word "Oriental" or other distinctly oriental appellation in connection with any rug which was not made in the country or locality designated or implied and does not contain all the inherent qualities or properties of such oriental rug; unless, if properly used to describe the design and pattern only thereof, such word or words of oriental appellation 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 the type named.

(d) The use of the words "Imported Reproductions of Hand-Woven Orientals"; and from the use of the word "Imported" or any word of like meaning in connection with geographic names or words in any way having the capacity or tendency to create the impression or convey the belief that goods actually made in other countries or regions are from the countries or regions named or implied. If the word "Imported" or similar term be properly used to indicate that such goods are not of domestic origin and geographic names or terms are correctly used to describe the type of product imported, then in such case the true country of origin shall be clearly and nondeceptively disclosed in direct connection therewith. (May 29, 1940.)



## DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS<sup>1</sup>

0727.<sup>2</sup> **Moth Repellent—Qualities, New and Earnings or Profits.**—The Puro Co., Inc., a corporation, 3107 Pine Street, St. Louis, Mo., vendor-advertiser, was engaged in selling a moth repellent designated Puro and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That Puro will protect upholstery from damage by moths.
- (b) That Puro is brand new, an amazing discovery, is just out, contains a secret chemical, or by any other terminology that Puro is new or different from all other moth preventives.
- (c) That persons selling Puro are earning fortunes thereby, or are making \$5 to \$8 per day.

(d) By the use of such 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.

The said The Puro Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (April 4, 1940.)

02269.<sup>2</sup> **Poultry Feed and Remedy—Qualities.**—The G. E. Conkey Co., a corporation, Cleveland, Ohio, vendor-advertiser, was engaged in selling poultry feeds and remedies designated Conkey's Y-O Starting Feed and Conkey's Y-O 32% Supplement and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That either of the products will prevent leg weakness in poultry when that condition is not due to a deficiency of vitamin D.
- (b) That either of the products is a competent treatment for or an effective remedy for an existing leg weakness, or that either of them will cure that condition. (Jan. 2, 1940.)

<sup>1</sup> The stipulations in question are those of the radio and periodical division with vendor-advertisers. Period covered is that of this volume, namely, December 1, 1939, to May 31, 1940, inclusive. For digests of previous stipulations, see vols. 14 to 29 of Commission's decisions.

<sup>2</sup> Supplemental.

02349.<sup>1</sup> **Correspondence Course—Opportunities.**—American Landscape School, a corporation, Plymouth Building, Des Moines, Iowa, vendor-advertiser, was engaged in selling a correspondence course in Landscape Architecture and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the positions open in the profession of landscape architecture and gardening greatly exceed the number of persons qualified and available to fill such positions, or that the opportunities for employment in the profession of landscape architecture and gardening are greater than is actually the case.

(b) That it daily receives letters from prospective employers offering its students and graduates opportunities for employment in the field of landscape architecture and gardening, or that the opportunities for employment which it is able to offer its students and graduates are greater than is actually the case.

*It is agreed,* That this supplemental stipulation as to the facts and agreement to cease and desist is to be taken and considered to be supplemental to a stipulation heretofore executed by the American Landscape School and accepted and approved by the Federal Trade Commission on March 17, 1939, and that said stipulation is to remain in full force and effect, and the terms thereof are not to be affected in any way by this supplemental stipulation.<sup>2</sup> (May 7, 1940.)

02469. **Typewriters—Free Trial and Comparative Data or Merits.**—Woodstock Typewriter Co., a corporation, Woodstock, Ill., vendor-advertiser, was engaged in selling typewriters designated Woodstock Typewriters and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That a free trial may be had of a Woodstock typewriter until such time as a free trial is provided to all responsible persons in all localities in which the representation is regularly disseminated,

(b) That, according to information in its possession, Woodstock typewriters were used to win most of the world's school contests, when it does not possess any reliable information to that effect. (Dec. 5, 1939.)

02470. **Woolen Blankets—Nature of Manufacture.**—Frank E. Davis Fish Co., a corporation doing business under the trade name The Colbey Co., 93 Rogers Street, Gloucester, Mass., vendor-advertiser, was engaged in selling woolen blankets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

Using the word "Pre-shrunk" or any other term or words of similar import or meaning, to describe, designate, or in any way refer to any blanket which is not in fact shrink-proof or nonshrinkable, or which has not been fully shrunk or preshrunk to the extent that no residual shrinkage is left therein. (Dec. 2, 1939.)

<sup>1</sup> Supplemental.

<sup>2</sup> See 28 F. T. C. 1857.

02471. **Medicinal Preparation—Nature of Product and Qualities.**—The Chattanooga Medicine Co., a corporation, Chattanooga, Tenn., vendor-advertiser, was engaged in selling a medicinal preparation designated Cardui 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 Cardul, or any other medicinal preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name.

Is an analgesic or will act immediately to relieve the pain or discomfort associated with menstrual distress or other functional disturbances of women. (Dec. 7, 1939.)

02472. **Coffee—Comparative Data or Merits.**—The Kroger Grocery & Baking Co., a corporation, 35 East Seventh Street, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a food product designated Kroger's Hot Dated Coffee and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the cost of packing coffee by any method other than that employed by the advertiser, is any amount in excess of the actual cost thereof.

(b) That coffee is not as fresh as it could be if it does not have the date of roasting stamped on the package.

(c) That the date stamped on the advertiser's package or container, of itself, indicates to the retailer or consumer the length of elapsed time in days since the coffee contained therein was roasted.

(d) That ordinary systems of dating only measure the time from warehouse to consumer.

(e) That such of the advertiser's coffee as is not sold, on or before the date stamped on the package, is not for sale at any price;

(f) That the advertiser's system of dating is "the only" method or system that has any meaning.

(g) That no other coffee affords the same freshness at the time of purchase. (Dec. 7, 1939.)

02474.<sup>1</sup> **Abdominal Binder—Qualities.**—J. J. McSherry, Jr., and Dorothy Shepard, partners trading as The Sta-Wel Belt Co., 18 East 53d Street, New York City, vendor-advertisers, were engaged in selling an abdominal binder designated Sta-Wel Belt and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) Prevents seasickness and other travel sickness for all persons who use it.

(b) Is a "Nerve Control Belt" or in any other manner that it controls the nerves or inhibits nerve impulses.

<sup>1</sup> Stipulation 02473 was accepted November 17, 1939, and will be found in vol. 29 at p. 1536.

The said J. J. McSherry, Jr., and Dorothy Shepard further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Dec. 11, 1939.)

02475. **Correspondence Lists—Opportunities, Special Offers, Statistical Data, Undertakings, Etc.**—Gladys Fore, an individual trading as such, and as The Success Club, The Sunshine Club, and the Club Supreme, Oxford, Fla., vendor-advertiser, was engaged in selling lists of names of persons desiring correspondence for social and matrimonial purposes and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) Persons listed with her or holding membership in any of her enterprises are assured that golden opportunities are awaiting them.

(b) That any offer is special unless it is less in price than the usual or regular price charged and limited in time.

(c) Persons listed with her are worth any specified amounts, or have any specified income, or any social, business or financial standing other than that disclosed by competent investigation.

(d) The prices of the lists of names or memberships sold by her were formerly \$5.

(e) The \$2 down payment in "The Sunshine Club" is used to pay for printing, mailing, etc., or is expended in behalf of the purchaser, or that the coupon mentioned in connection with the sale of the membership in The Sunshine Club is of any value.

(f) That any business owned, operated, or controlled by her as an individual or under a trade name, is competitive with the same business owned, operated, or controlled by her under any other trade name or names. (Dec. 12, 1939.)

02476. **Tissue Builder—Qualities and Nature of Product.**—Walter W. George, an individual, 150 Nassau Street, New York City, was engaged in the business of conducting an advertising agency which disseminated advertisements for a tissue builder designed Jane Cook's Wonder Tissue Creme on behalf of Jane Cook Method, Los Angeles, Calif., and the advertising agency agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

That such a cream will increase the size of the bust or that it will correct a flat chest, flabby or sagging bust, scrawny neck, or an underweight condition.

The said Walter W. George further agreed to cease and desist from disseminating or causing to be disseminated any advertisements which represent 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. (Dec. 13, 1939.)

02477. **Course for Hair and Scalp Treatment—Nature of Product, Qualities, Results, New or Scientific Discovery, Guarantee, Etc.**—Raymond F. Biggin, an individual doing business under the trade name Physical Culture Studio, 116 Church Road, Foxcroft, Philadelphia, Pa., vendor-advertiser, was engaged in selling a booklet prescribing a course of treatment for hair and scalp designated Healthy Hair and agreed, in

connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the "Healthy Hair" course of treatment for the hair and scalp, or any similar course of treatment sold under that name, or any other name or names—

1. Employs a principle that is now used by those skilled in physical culture; or
2. Has found an application in health institutions where regular treatments may be had.

(b) That the "Healthy Hair" course of treatment for the hair and scalp, or any similar course of treatment sold under that name, or any other name or names, will—

1. Feed starved or poisoned hair roots;
2. Remove poison from hair roots; or
3. Restore new beauty and vigor to hair;

(c) That the "Healthy Hair" course of treatment for the hair and scalp, or any similar course of treatment sold under that name, or any other name or names, will—

1. Produce results when all other methods have failed;
2. Stimulate dormant circulation of the scalp; or
3. Remove incrustations and other strictures which prevent the hair from growing properly.

(d) That the "Healthy Hair" course of treatment for the hair and scalp is a new discovery or a scientific discovery.

(e) That the "Healthy Hair" course of treatment for the hair and scalp, or any similar course of treatment sold under that name, or any other name or names, will—

1. Overcome scalp disorders;
2. Prevent baldness;
3. Enable one to enjoy beautiful hair;
4. Stop falling hair;
5. Cure dandruff; or
6. Rid the hair of scalp and hair ailments that lead to baldness.

(f) That the "Healthy Hair" course of treatment for the hair and scalp is a way to avoid the risk of baldness.

(g) That the "Healthy Hair" course of treatment for the hair and scalp is the one and only way to preserve hair.

(h) That results are guaranteed. (Dec. 13, 1939.)

02478. Medicinal Preparations—Qualities.—Kress & Owen Co., a corporation, 361 Pearl Street., New York City, vendor-advertiser, was engaged in selling medicinal preparations designated Glyco-Thymoline and Glyco-Thymoline Cough Drops and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) Will prevent, in a prophylactic sense, colds, sore throats, or coughs, prior to the establishment of the infections which cause these conditions.

(b) Will stop, in a curative sense, colds, sore throats, or coughs, if and when the infections which cause these conditions have been established.

(c) When used in a douche, is recommended as being a suitable, effective remedy or competent treatment for nasal catarrh, colds, sore throats, vaginal catarrh (leucorrhoea), or for any other condition which might be treated by the use of a douche without publishing or causing to be published in connection with all of such advertisements an adequate statement which fully discloses the fact that unless competent medical advice is first obtained concerning the advisability of routine, indiscriminate irrigation of the nasal, throat, mouth or vaginal passages, with Glyco-Thymoline, harmful effects are apt to result to individuals resorting to this practice.

(d) When used in connection with mouth acidity, or unpleasant breath, will be of any benefit thereto other than those benefits which are derived from its ability to reduce, temporarily, such mouth acidity and to diminish, temporarily, through such acid reduction, only that unpleasant breath which is caused by mouth acidity.

(e) Will aid in the relief of irritated and inflamed mucous membranes or be of any benefit thereto "in any part of the body."

(f) Aside from its antilacid properties, has any therapeutic properties, when used on the mucous membranes of the mouth, nose, throat, or vagina, beyond its ability to aid in cleansing or soothing and thereby helping to heal.

(g) Will do more than temporarily reduce the offensive odor of leucorrhoeal discharges. (Dec. 18, 1939.)

02479. **Baby Chicks—Guaranteed, Insurance, and Inspected.**—Ernest A. Berry, an individual, trading and doing business as Sunflower Hatchery and Sunflower Poultry Farm & Hatchery, Newton, Kans., vendor-advertiser, was engaged in selling baby chicks 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 expressions as "Livability Guaranteed" or by any other similar statement that he guarantees the livability of all grades of chicks sold by him unless and until he makes reimbursement in full for all losses by death.

(b) That he carries insurance to protect his customers from loss due to the death of any chicks purchased from him unless and until he carries insurance with an accredited insurance company for the protection of his customers against his failure to make reimbursement in accordance with his agreement.

(c) That the breeders producing his chicks are inspected by the American Poultry Association until the breeders are actually inspected by an impartial representative of such Association and not in any way connected with his hatchery. (Dec. 18, 1939.)

02480. **Electric Fence Units—Savings or Economy, Qualities and Comparative Data or Merits.**—Fred F. Richards, an individual trading as Richards' Electro-Fence Co., 309 North Eleventh Street, Payette, Idaho, vendor-advertiser, was engaged in selling various electric fence units designated Electro-Fence Units and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That, by the installation of electric fences or of any Electro-Fence Unit, anyone can thereby effect a saving of any definite amount, irrespective of the amount of fencing required.

(b) That any electric fence unit selling at a lower price than Electro-Fence Units, is without a built-in indicator.

(c) That the voltage of any Electro-Fence Unit is greater than that of any other make, or that the voltage of competitive units, whether referred to individually or collectively or in any manner, is less than is actually the case.

(d) That Electro-Fence Units are the safest to use or cost the least to purchase or operate.

(e) That the use of any Electro-Fence controller with a single wire enclosure can be relied upon to confine every animal of any class of livestock, 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.

(f) That the warning signal device or that the mechanisms used to change alternating current to direct current and to permit but a small amount of current to reach the fence at one time are exclusive features of the Electro-Fence Units. (Dec. 18, 1939.)

02481. Medicinal Preparation—Qualities, Composition, Ailments, Results, Safety, and Laboratories.—Harry Tomback, an individual, trading as Tomil Research Laboratories, 501 West One hundred eighty-third Street, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Albaderm and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the application of "Albaderm" to the skin will of itself relieve or can be depended upon to relieve acne, blackheads, whiteheads, or other skin blemishes.

(b) That the application of "Albaderm" to the skin will "Dissolve" pimples or that it will cause them to disappear.

(c) That by the repeated and continued use of "Albaderm" alone, for any given period of time, sufferers of pimples, acne, blackheads, or other skin blemishes can rid themselves permanently of these blemishes or can obtain permanent relief.

(d) That "Albaderm", or the ingredients composing it, will exert powerful bacteriocidal or germicidal action, or will remove bacteria infections causing skin blemishes.

(e) That "Albaderm" is a product consisting of sulphides and sulphur, or impliedly that "Albaderm" contains any sulphur which does not exist in combination, as a chemical compound, with some other element.

(f) That the sulphides in "Albaderm" will restore tone to dilated blood vessels.

(g) That "Albaderm" contains any ingredient which is approximately one-third or more as actively germicidal as phenol.

(h) That the use of "Albaderm" will be of material influence in healing any or all sore spots.

(i) That acne is most generally found in people with an oily skin, or that an oily skin is a cause of acne, blackheads, or whiteheads.

(j) That the application of "Albaderm" will of itself render the skin clear, blemish-free, beautiful, alluring, or velvety.

(k) That as a result of the continued application of "Albaderm" to the skin, one will attract those one yearns to love, or that one will become popular.

(l) That the application of "Albaderm", according to the directions prescribed, has brought happiness to hundreds of individuals or to any other specific number of individuals.

(m) That the application of "Albaderm" to the skin is harmless in all cases.

(n) Through the use of the words "laboratory" or "research," or any other word or words or terms of similar meaning or import as a part of any trade name, or in any other manner that he owns, controls, operates, conducts, or maintains a laboratory for the purpose of conducting researches or for manufacturing, testing or experimenting with the preparation sold by him until he actually owns and operates a laboratory wherein he conducts research work in connection with the preparation sold by him. (Dec. 19, 1939.)

02482. Medicinal Preparations—Qualities, Nature, Association of Members of Medical Profession, Etc.—World's Dispensary Medical Association, a corporation, 665 Main Street, Buffalo, N. Y., vendor-advertiser, was engaged in selling medicinal preparations designated Dr. Pierce's Golden Medical Discovery and Dr. Pierce's Favorite Prescription 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 "Dr. Pierce's Golden Medical Discovery" 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) Will keep the digestive system in tune regardless of the system's requirements; is an anti-acid or will counteract excess acidity of the stomach; will of itself build up the human system, relieve a weakened condition, tired run-down feeling, increase weight, pep, energy, vigor, or vitality; or is the one or only recognized tonic.

That a medicinal preparation now designated "Dr. Pierce's Favorite Prescription" or any other medicinal preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

(b) Is an analgesic or will act immediately or quickly to relieve the pain or discomfort associated with menstrual distress or other functional disturbances of women.

(c) Is of any appreciable value in relieving the pain or discomfort associated with menstrual distress or other functional disturbances of women unless in direct connection therewith it is stated that such results may follow only when used for some length of time.

It is further agreed that the World's Dispensary Medical Association in connection with the dissemination of advertising by the means or in the manner above set out will cease and desist from representing—

(d) By the use of the word "association" or word or words of similar import or meaning in its corporate title or otherwise that it is an association of doctors or medical men;

(e) That complete medical advice is given those persons who write for the same. (Dec. 13, 1939.)

02483. Neckties—Earnings or Profits, Opportunities, Nature and Qualities.—Louis Kaine, an individual trading as No-Stitch Mfg. Co., 36-38 Thirty-eighth Street, Long Island City, N. Y., vendor-advertiser, was engaged in selling coated fabric neckties, designated "No-Stitch Ties" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That persons with or without selling experience can end their money worries, make large profits immediately, earn steady incomes, or earn incomes comparable to "upper bracket" incomes.

(b) That a person can make a specified number of sales in any definite period of time.

(c) That No-Stitch Ties are made from a fabric recently discovered by science.

(d) That such ties will not stain or that every kind of stain can be removed without injuring the ties.

The said Louis Kaine further agreed to cease and desist from representing directly or by implication—

1. That prospective agents, salesmen, distributors, dealers, or 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 constantly 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 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 either not actually net earnings or profits or was not made in the ordinary course of business and under normal conditions and circumstances. (Dec. 18, 1939.)

02484. Shoe Polish and Dye and Shoe Cleaner—Qualities and Comparative Merits.—Barton Manufacturing Co., Inc., a corporation, 4157 North Kingshighway, St. Louis, Mo., vendor-advertiser, was engaged in selling a shoe polish and dye designated Dyanshine and a white shoe cleaner designated Barton's White Glaze Polish and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Dyanshine will eliminate scratched and marred areas from shoe leather or do more than render such areas less conspicuous to casual observation by supplying thereto a color similar to that of the leather wherein they occur.

(b) That the process of recoloring, redyeing, and imparting a highly polished, lively finish to used shoe leather with Dyanshine is a process of restoring color

to such leather, or that this process is an exclusive feature found only in Dyanshine.

(c) That Dyanshine or the oils thereof will render shoe leather impervious to water or keep it in its original condition; feed or nourish leather.

(d) That Dyanshine causes shoes or the leather of which they are composed to retain the appearance they had when new; take on the appearance of new shoes after being repaired one or more times; or remain in their original, new condition while being used.

(e) That shoe dyes, pastes, or polishes other than Dyanshine cause shoes to become marred by unsightly cracks or in any manner whatsoever damage or detract from the appearance of the shoe leather on which they are used.

(f) That Dyanshine exerts any influence or control in any manner whatsoever over the number of times a shoe may be repaired or half-soled.

(g) That Dyanshine will cause shoes to wear better or last longer than they would if Dyanshine had not been used thereon.

(h) That when shoe dyes, pastes, or polishes other than Dyanshine are used on the shoes, the upper leather thereof will dry out, become cracked, lose its original appearance, become dull and lusterless, or that such shoes are apparently worthless as soon as the soles become worn.

(i) That Dyanshine will have any effect whatsoever on the outer sole, insole, box-toe, lining, welting, and other parts of a shoe, excluding the upper shoe leather, by making unqualified statements relative to its effects upon "shoes."

(j) That Barton's White Glaze Polish will not rub off shoes after its application thereto. (Dec. 20, 1939.)

02485. Food Grater and Health Booklet—Qualities, Comparative Merits, Guarantees, Results, Prices, Special Offers, Free, Opportunities, Etc.—William G. Barnard, and William G. Barnard, Jr., copartners, trading as Natural Foods Institute, 807 St. Clair Avenue NE., Cleveland, Ohio, vendor-advertiser, was engaged in selling a food grater designated The Barnard Grater and a booklet designated Health Via The Carrot and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the Barnard Grater expresses juice from carrots or any other vegetables or fruits.

(b) That no other instrument grates foods properly or at well.

(c) That a carrot grated with the Barnard Grater will produce more juice than an orange.

(d) That the use of the Barnard Grater is the only certain way and a quicker and easier method of getting all the elements from the raw carrot.

(e) That the use of the Barnard Grater is necessary for the extraction of vegetable and fruit juices.

(f) That the Barnard Grater guarantees against injury to the hands.

(g) That carrots are more healthful than other vegetables or contain an unusual amount of health-producing elements, vitamins, or minerals.

(h) That carrots have any specific or selective qualities or corrective or curative powers in the treatment of disease.

(i) That carrots or carrot juice are remedies or competent treatments for any disease or disorder of the human system or body.

(j) That carrots or carrot juice contain vitamins D or E or that they contain more vitamins A, B, C, and G than any other vegetable.

(k) That carrots are the only vegetable that contain as much as 75 percent of the mineral salts found in all foods.

(l) That carrot juice is pure, unadulterated carotene vitamin A.

(m) That carrot juice or carrot and other vegetable juices have relieved or helped correct diseases or conditions, or aided in healing ills.

(n) That carrot juice is essential for health or a health preserver.

(o) That carrot juice has healing properties or unusual health value or helps counteract body toxins.

(p) That carrot juice or a carrot-juice diet is of any specific benefit in the treatment or relief of any disease, infirmity, or condition.

(q) That all vitamins and minerals are extracted by the cooking process and by disposing of the cooking fluid a deficiency in the diet is occasioned, resulting in decayed teeth, infected tonsils, adenoids or appendix, or other diseases or conditions.

(r) That the book "Health via the Carrot" contains tested diets or diets of proven therapeutic value in the treatment of disease.

(s) That the book "Health via the Carrot" contains essential information as to what juice or combination of juices is best for diseases.

(t) That the book "Health via the Carrot" contains necessary information as to when and in what quantities juices should be taken to secure maximum benefit.

(u) That the book "Health via the Carrot" is a guide to what vegetable juices will do for health.

(v) That the book "Health via the Carrot" publishes for the first time the facts about the health value of carrot juice and other vegetable and fruit juices.

(w) That the book "Health via the Carrot" contains information concerning the diet, health, and disease which every person should know.

(x) That the book "Health via the Carrot" shows how to regain or preserve health or points the way to health.

(y) That the book "Health via the Carrot" contains a complete list of diseases that have been helped, together with the diets used.

(z) That the book "Health via the Carrot" outlines proper juice diets that will help correct any disease, disorder, or condition.

(aa) That the purchase of the book "Health via the Carrot" and the Barnard Grater has brought health to anyone.

(bb) That vitamin A is the sunshine vitamin or that it builds up resistance against infectious disease.

(cc) That carotene vitamin A has tremendous health value.

(dd) That the Barnard Grater regularly sells for \$1.

(ee) That the book "Health via the Carrot" regularly sells for \$0.50.

(ff) That the offer of the book "Health via the Carrot" with the purchase of a Barnard Grater is a special offer for a limited time only.

(gg) That the book "Health via the Carrot" is given free with the purchase of a Barnard Grater so long as the cost thereof is included in the purchase price of the Grater or the two sold as one article.

(hh) That the Barnard Grater and the book "Health via the Carrot" are guaranteed to give satisfaction.

(ii) That house-to-house salespeople sell the Barnard Grater quickly or easily.

(jj) That the Barnard Grater is as near a 100 percent seller as possible.

(kk) That the sales talk furnished salespeople sells the grater. (Dec. 20, 1939.)

02486. **Medicinal Preparation—Qualities.**—D. S. Evans, S. B. Evans, and Hattie M. Evans, a copartnership, doing business under the firm name of Evans Drug Co., Springfield, Mo., and Medora Whinrey, owner, and Robert B. Whinrey, manager, doing business under the trade name of The Kru-Gon Co., Muncie, Ind., vendor-advertisers, were engaged in selling a medicinal preparation designated Kru-Gon and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Kru-Gon is a competent remedy in the treatment of indigestion, gas pains, bloating, neuritis, rheumatism, night rising, nervousness, insomnia, kidney trouble, stomach trouble, and run-down condition.

(b) That Kru-Gon is a competent remedy in the treatment of constipation, unless limited to temporary constipation.

(c) That Kru-Gon—

1. "Regulates" the stomach.
2. "Corrects" constipation;
3. Removes poisons from the system in a natural manner;
4. Drives neuritis pains from the body;
5. Gives back health;
6. "Ends" indigestion attacks;
7. "Corrects" kidney disorders;
8. Enables one to eat and enjoy meals;
9. "Restores" appetite;
10. "Tones" the kidneys;
11. Makes the stomach function properly;
12. Relieves rheumatism and neuritis;
13. Gets to the very source of the trouble;
14. Makes one feel like a different person;
15. "Frees" one from constipation and that tired listless feeling;
16. Relieves nervousness;
17. Restores old time pep and energy; or
18. Gives relief after other remedies had failed. (Dec. 26, 1939.)

02487. **Medicinal Preparation and Detergent—Qualities, Safety, Results, and New.**—Martin A. Levitt, an individual operating under the trade name of The William A. Reed Co., 1420 Walnut Street, Philadelphia, Pa., vendor-advertiser, was engaged in selling two products, one a medicinal preparation designated Medrex Ointment, and the other a medicinal detergent designated Medrex Soap and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Medrex Ointment, used alone or in combination with Medrex Soap, is a competent treatment or an effective remedy for pimples in any manner other than as a relief for the itching of pimples and to a limited extent as a skin antiseptic, fungicide, and desiccant.

(b) That Medrex Ointment or Medrex Soap, or both, heal or clear the skin.

(c) That either Medrex Ointment or Medrex Soap, or both, will constitute a competent treatment or an effective remedy for blackheads, open pores, dry

open sores, bumps, eczema, rashes, or "other skin conditions of external origin" or "other disfiguring defects," or in any manner so as to include chafing, red roughened skin, chapped skin or burning feet when due to anything other than exposure exertion or fatigue.

(d) That Medrex Ointment penetrates below the surface of the skin or acts entirely safely or without irritations.

(e) That Medrex Ointment "corrects," "helps to correct," or "rids" the skin of pimples, blackheads, or any other condition, or by any other terminology, that its results are permanent.

(f) That either of these products is a "new" preparation. (Dec. 28, 1939.)

**02488. Medicinal Preparation—Comparative Merits, Qualities, Etc.—**Pritchard & Thompson Advertising Agency, Inc., a corporation, 403 Baroone Street, New Orleans, La., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal product designated H F on behalf of Gore Products, Inc., New Orleans, La., 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 the 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 the product H F is world renowned or is the world's most famous athlete's foot medicine.

(f) That more money has been spent for advertising H F in a given time than on any other athlete's foot medicine.

Pritchard & Thompson Advertising Agency, Inc., further agreed to forthwith cease and desist from disseminating or causing to be disseminated any advertisements which represent, directly or by implication, by means of pictorial representations that the product H F will cause any part of the body to become well, healed, or cured. (Jan. 2, 1940.)

**02489. Lace Cloths—Nature of Product.—**Kresge Department Stores, Inc., a corporation operating under the trade name of The Palais Royal, Eleventh and G Streets NW., Washington, D. C., vendor-advertiser, was engaged in selling Chinese filet banquet or dinner cloths designated as Tuscany Lace and agreed, in connection with the dis-

semination of future advertising, to cease and desist from representing directly or by implication—

That any banquet cloths or other articles sold by it are Tuscan lace, unless they are in fact true Tuscan lace. (Jan. 2, 1940.)

02490. **Betting System—Advertising Offer.**—William Michael, trading as The Paty Publishing Co., 618 South Western Avenue, Los Angeles, Calif., vendor-advertiser, was engaged in selling a system for making selections in horse races designated The Flat Wager System and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

That the booklet which he distributes gratuitously for advertising purposes contains instructions and information for making selections in horse races. (Jan. 2, 1940.)

02491. **Men's Shirts—Nature of Manufacture.**—Harry Marks, an individual doing business as O. Henry Shirt Co., Greensboro, N. C., vendor-advertiser, was engaged in selling men's shirts and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That his shirts will not shrink or are otherwise preshrunk, when the materials used in the manufacture of said shirts have not been fully shrunk or preshrunk to the extent that no residual shrinkage is left therein.

(b) That his shirts will not fade or are manufactured from materials whose colors are fast, unless or until the color or dye in materials is a true fast color and will not fade or blanch when subjected to laundering.

The said Harry Marks agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 9, 1940.)

02492. **Cosmetic—New and Unique, Comparative Merits, Qualities, Indorsements, Etc.**—Arthur M. Donnelly and E. R. Evans, partners trading as Donnelly Co., 5988 Easton Avenue, St. Louis, Mo., vendor-advertisers, were engaged in selling a cosmetic designated Roll-Away Lotion and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) Is the only new and unique skin lotion on the market.

(b) Contains ingredients not used in any other lotion.

(c) Is the only preparation which rolls off the skin.

(d) Is efficient as a general healing preparation.

(e) Smooths out horny, scratchy, or wrinkled skin in every instance; or that it does so at all when aged skin is in such conditions or when such conditions have existed over a long period of time.

(f) Removes calluses except in cases where the cause producing the calluses is removed or avoided.

(g) Possesses penetrating qualities.

(h) Is widely recommended by doctors or that its use has been recommended by several or many doctors.

- (i) Eradicates cigarette stains or that its use alone eradicates ink stains.
- (j) Is the only cleanser which will not dry the skin.
- (k) Works faster, goes farther, is heavier or creamier than all other lotions.
- (l) Is more effective than other lotions in softening and smoothing rough skin surfaces.
- (m) Affords complete protection to the skin against the effects of wintry weather and household tasks.
- (n) Whitens the skin or possesses bleaching properties.
- (o) Cleans more efficiently than soap.

The said Arthur M. Donnelly and E. R. Evans further agreed that in connection with the dissemination of advertising by the means and in the manner above set out, they will forthwith cease and desist from representing, directly or by implication—

- (p) That pores in the skin have appreciable depth or are capable of holding a material amount of foreign substance.

The said Arthur M. Donnelly and E. R. Evans further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 10, 1940.)

02493. **Livestock and Poultry Feeds—Qualities, Comparative Merits, Success, Use or Standing, Results, Etc.**—K. Eddie, B. D. Eddie, Bedar Eddie, and Pauline Eddie, copartners, trading as Superior Feed Mills, 2100 S. Robinson Avenue, Oklahoma City, Okla., vendor-advertiser, was engaged in selling various livestock and poultry feeds, designated Superior Chick-to-Pullet All-in-One Mash, Superior Egg Mash, Superior Pig and Hog Meal, Superior Hog Cubes, Superior Milk Producer, Superior Broiler Mash, and Dandy Kandy Sweet Feed Cattle Fattener and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Superior Chick-to-Pullet All-in-One Mash or any other feed preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Will guard against all common chick troubles; or
2. Will avoid the possibility of chick troubles or of set-backs or of disease; or
3. Is the only feed of its type; or
4. Excels every other chick feed or chick mash in economy of use or in case of feeding or in promoting growth and development; or
5. Will insure profits or will insure the lives of chicks; or
6. Will, through its vitamin content or otherwise, prevent common chick diseases or common chick troubles except insofar and to the extent that its nutritional qualities may be of value as an aid in effecting such results; or
7. Is always used by successful poultrymen or is more widely used than any other chick feed; or
8. Will, through its cod liver oil content or otherwise, provide all of the benefits of sunshine.

(b) That Superior Egg Mash, or any other feed preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Will produce more eggs or will produce eggs more cheaply than any other feed; or
2. Will "assure" large, uniform eggs or good egg production at the least feed cost, or will "assure" more eggs or healthier hens; or
3. Is more widely used and recommended than any other; or
4. Can be relied upon to double the egg production of the average flock; or
5. Supplies, through its cod liver oil content or otherwise, all of the benefits of sunshine.

(c) That one bag of Superior Pig and Hog Meal, or any other feed preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, is equal in feeding value to 12 bushels of corn, or excels every other feed in promoting the growth and development of swine.

(d) That Superior Hog Cubes or any other feed preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, are generally superior to any other hog feed and excel all other hog feeds in economy of use or in promoting weight gain.

(e) That Superior Milk Producer, or any other feed preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Is a complete feed; or
2. Furnishes in kind and quality all ingredients supplied by fresh green grass; or
3. Is the only feed containing citrus pulp; or
4. Was the first balanced dairy feed; or
5. Will, through its citrus pulp content, increase the appetite.

(f) That Superior feeds give the best and cheapest results.

(g) That they are always first with new feeds.

(h) That, by using the various Superior feeds, prospective purchasers, irrespective of the feed or ration already employed, will thereby realize such results as increased profits or greater egg production or better health and development of their flocks or increased hatchability or greater livability or better feathering or greater milk production or milk production at less cost.

(i) That Superior Broiler Mash, or any other feed preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, will insure against or prevent the possibility of cannibalism or of leg weakness or of slipped tendons.

(j) That Dandy Kandy Sweet Feed Cattle Fattener, or any other feed preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, makes market top cattle quicker than any other feed.

The aforesaid advertiser vendors further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 11, 1940.)

02494. Hand Lotion—Comparative Merits and Qualities.—The Frostilla Co., Inc., a corporation, Elmira, N. Y., vendor-advertiser, was engaged in selling a hand lotion designated Frostilla Fragrant Lotion

and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That competitive lotions in general leave a sticky or gummy residue.

(b) That the ingredients in Frostilla Fragrant Lotion are definitely known to be more costly than those employed in competitive lotions generally, when such is not, in fact, definitely known.

(c) That Frostilla Fragrant Lotion or any other preparation containing substantially the same ingredients or possessing the same properties whether sold under that name or any other name.

1. Excels other hand lotions in general in producing such beneficial results as it is capable of effecting or accomplishes such results where other lotions generally fail; or
2. Prevents the nail cuticle from becoming rough or ragged; or
3. Is effective for every case of parched skin or for every case of reddened hands; or
4. Tones or stimulates the skin or does more than aid in conditioning the skin; or
5. Is "the" perfect hand lotion; or
6. Keeps hands young looking; or
7. Is most always preferred where hand lotions are tested side by side.

The said The Frostilla Co., Inc., further agree not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 12, 1940.)

02495. Matrimonial Agency—Comparative Merits, Special Offers, Etc.—J. E. Hershner, an individual trading as Exchange Publishing Co., 3827 Main St., Kansas City, Mo., vendor-advertiser, was engaged in selling lists of names, memberships and information in a matrimonial agency and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That his facilities for placing one in correspondence or bringing about marriages are greater or better than those of any other matrimonial bureau or offer any better chances of success;

(b) That any offer is "special" unless it is less in price than the usual or regular price charged and is limited in time;

(c) That his statements relating to the financial or other standing, education, character, occupation or profession of those whose names appear on such lists are other than the mere statements of those persons themselves, in the absence of some reasonable investigation into the truth or falsity of such statements.

The said J. E. Hershner agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 12, 1940.)

02496. Medicinal Preparation—Qualities.—A. C. Stonestreet, and W. F. Stonestreet, copartners, trading as Sampson Medicine Co., Winston-Salem, N. Car., vendor-advertisers, were engaged in selling a medicinal preparation designated Cook's C. C. C. 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 as Cook's C. C. C. or any other medicinal preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, is of therapeutic value in cases of kidney trouble, or diarrhea, or flux, or ague, or female weakness, or phthisic, or cuts or burns, or in any condition where the skin is lacerated, or is of any therapeutic value for any external condition, unless its value is expressly limited to the temporary symptomatic relief of such condition and then only where and to the extent that the symptoms of such condition may be relieved by the use of a counterirritant, or is of any therapeutic value for any internal condition unless its value is expressly limited to the temporary symptomatic relief of such conditions and then only where and to the extent that the symptoms of such condition may be relieved by the use of a carminative.

The said A. C. Stonestreet and the said W. F. Stonestreet further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing statement. (Jan. 16, 1940.)

02497. Medicinal Preparation—Qualities, Results and Remedy.—B. Frank Senseman, an individual, 5300 Lancaster Ave., Philadelphia, Pa., advertiser-vendor, was engaged in selling a medicinal preparation designated Dr. Senseman's Calf Scours Remedy and Dr. Senseman's Calf Scour Powder 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 "Dr. Senseman's Calf Scours Remedy" and "Dr. Senseman's Calf Scour Powder," or any other preparation containing substantially the same ingredients, or possessing the same properties, whether sold under said names or any other name or names—

(a) Is an effective treatment or competent remedy for the disease known as white scours or scours.

(b) Is a proven product.

(c) Restores to normal the intestines of calves afflicted with the disease known as white scours or scours.

It is further agreed by B. Frank Senseman that in connection with the dissemination of advertising by the means and in the manner above set out, he will forthwith cease and desist from representing by the use of the word "Remedy" in the trade name of his preparation, or any other word or words of similar import or meaning, in designating said preparation, that the same is a remedy for white scours or scours.

The said B. Frank Senseman further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 15, 1940.)

02498. Medicinal Preparations—Nature, Qualities, Ailments, Etc.—Harold Hain, an individual trading as Hain Pure Food Co., 604 San Mateo St., Los Angeles, Calif., vendor-advertiser was engaged in selling medicinal preparations designated Hain Col-Lax and Hain Colon Food and agreed in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Hain Col-Lax:

1. Is a laxative food or is a natural laxative; or
2. Will effect a change in intestinal flora; or
3. Is not capable of producing any degree of irritation; or
4. Is efficacious or harmless in all cases of intestinal disorders.

(b) That defecation of three or four times daily is essential in the elimination of putrefaction or toxemia.

(c) That Hain Col-Lax will do more than relieve constipation.

(d) That colitis, ulcers, appendicitis, nervous breakdowns or other diseases and pathological conditions are the direct result of auto-intoxication, unless it is stated that such is merely the opinion of some medical authorities.

(e) That putrefaction cannot occur in an acid environment or in a carbohydrate environment or that the predominance of acid forming bacteria will cause the system to be free of toxic poisons.

(f) That the use of Hain Colon Food will completely eliminate putrefaction or, through changing the intestinal flora or otherwise, clear the blood stream of toxic wastes and regulate the entire system.

(g) That "many foods" and dust in the air are full of "putrefactive" germs.

Harold Hain further agreed to cease and desist from designating in any way his lactose dextrin product as a colon food.

The said Harold Hain further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 17, 1940.)

02499. Medicinal Preparation—Qualities and New.—Vadscos Sales Corp., a corporation, 2109 Borden Ave., Long Island City, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Quinlax and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) Is a competent or effective treatment to stimulate circulation or to eliminate acids through the pores.

(b) Treats "seven" symptoms or phases of a cold or is an effective treatment or remedy for all of the symptoms which usually accompany colds.

(c) Is a complete treatment or an effective remedy for colds.

(d) Is a new preparation on the market or affords a new method for treating colds or their symptoms.

(e) Is ideal or especially suitable for children. (Jan. 16, 1940.)

02500. **Cereal—Composition and Qualities.**—General Mills, Inc., a corporation, trading as Sperry Flour Co., Chamber of Commerce Building, Minneapolis, Minn., vendor-advertiser, was engaged in selling a cereal designated Wheat Hearts and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the amount of wheat germ in a package of Wheat Hearts is equivalent to the amount of wheat germ in any specified quantity of wheat when such quantity of wheat has a wheat germ content greater than that of a package of Wheat Hearts.

(b) That its product Wheat Hearts has a Vitamin B<sub>1</sub> content greater than any other cereal.

(c) That the caloric value of its product Wheat Hearts is directly transmissible into or is an equivalent of bodily energy or vitality.

(d) That any amount of Wheat Hearts will supply a quota of vitamin B<sub>1</sub> unless the amount stated is in accord with scientific determinations.

The said General Mills, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 19, 1940.)

02501. **Lubricating Oil—Qualities, Test, Results and Comparative Merits.**—The McAlester Fuel Co., a corporation, McAlester, Okla., vendor-advertiser, was engaged in selling an oil designated as Paranay Motor Oil and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Paranay Motor Oil possesses qualities never before known in any oil.

(b) That the so-called "Miracle Test" is the best test ever devised for determining the lubricating qualities of motor oils.

(c) That the strength of the oil film alone on motor bearings determines the quality of lubrication obtained from any oil, and the ability of any oil to prevent excessive friction.

(d) That Paranay Motor Oil has the toughest film in oildom and the longest life.

(e) That the use of Paranay Motor Oil will cause the motor to produce more pep, mileage, horsepower and speed, or quicker acceleration, greater hill-climbing ability, a cooler motor and less engine wear than all other motor oils.

(f) That the use of Paranay Motor Oil will result in almost no repair bills.

(g) That more Paranay Motor Oil clings to the motor bearings and for a longer period of time than all other motor oils and affords better protection to the motor bearings than all other motor oils.

(h) That Paranay Motor Oil prevents the excessive friction and wear in the motor caused by other oils, especially while breaking in the motor.

(i) That Paranay Motor Oil will keep an automobile, tractor, truck, or any other machine running just as smoothly, powerfully or economically the second, third or fourth year as it ran the first year.

The said The McAlester Fuel Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 19, 1940.)

02502. **Women's Coats—Nature, Quality, Earnings or Profits, Etc.**—Herman Korach, an individual doing business under the trade name of H. Korach Co., 809 West Roosevelt Road, Chicago, Ill., vendor-advertiser, was engaged in selling women's coats and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) Using the word "Pony" or any other word that simulates "Pony" in sound or spelling; or the words "lamed" or "lambled" or any other word containing the letters "Lam" or simulating the word "Lamb" in sound or spelling; or the word "Persian," or any word that simulates "Persian" in sound or spelling; or the word "Koracal," or any word that simulates "Karakul" or "Caracul" in sound or spelling; or the words "Seal" or "Seal Plush," or any other words or terms that contain the word "Seal" or any word that simulates "Seal" in sound or spelling; or the name of any animal, pelt or fur to designate any cloth coat or garment that is not made of the pelt or fur of the animal designated, unless immediately preceded by the words "Cloth imitation of" in clear, plain conspicuous type.

(b) Representing that his coats are the original genuine Koracal coats.

(c) Representing that his coats previously designated "Koracal" are new or novel.

(d) Representing that his coats will satisfy a woman's longing for a fur coat.

(e) Representing he has developed a strange new material that looks exactly like fur.

(f) Representing that hundreds of women in any one locality are eager to buy his coats.

(g) Representing that his salespersons or agents purchase his coats at a price permitting them to charge a customer a very excessive price and at the same time having said customer believe that she is obtaining a bargain.

(h) Representing 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 either in cash amounts or percentage of profit within any specified period of time or otherwise of any amounts which are in excess of the net average earnings or profits within like periods of time or otherwise made by a substantial number of his active full-time agents, salesmen, distributors, dealers or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

Herman Korach further agreed that in his 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.

Herman Korach further agreed that in computing the period of time during which specified earnings or profits were made he 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.

The said Herman Korach agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 19, 1940.)

**02503. Fumigant, Insecticide and Rodent Control—Safety, Comparative Merits, Qualities and Results.—**Innis, Speiden & Co., a corporation, 117 Liberty St., New York City, vendor-advertiser, was engaged in selling a fumigant, insecticide and rodent control designated Larvacide and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Larvacide is a safer fumigant, unless conspicuous notice is given in direct connection with every claim for safety, that all fumigants are a deadly poison, but by Larvacide's capacity to produce tears warns persons to get away from it.

(b) That Larvacide is generally a more effective fumigant than other similar products.

(c) That Larvacide provides complete control of pests; or completely exterminates bugs, moths, every flying and crawling pest, including rats and mice.

(d) That Larvacide when used on lumber or other forest products will effect a permanent or continued freedom from insect life.

(e) That Larvacide has generally no equal as a fumigant or insecticide.

(f) That Larvacide is the most powerful fumigant yet developed.

(g) That one fumigation a year with Larvacide will provide protection from moths unless it is clearly stated in direct connection with such representation that usual general spot treatment is needed.

(h) That the use of Larvacide to fumigate machinery will result in egg-free flour made by such machinery.

(i) That Larvacide penetrates every berry in every bushel of wheat.

The said Innis, Speiden & Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 19, 1940.)

**02504. Dental Plate Reliner—Qualities and New.—**J. D. Hagey, an individual trading as Plast-O-Dent Co., 2631 Woodward Ave., Detroit, Mich., vendor-advertiser, was engaged in selling a dental plate reliner designated Plast-O-Dent, formerly known as Dr. Johnson's Plate Reliner, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That plates can be refitted by using Plast-O-Dent.

(b) That Plast-O-Dent is healing or kindly to the tissues.

(c) That this product will perfect the fit of dental plates.

(d) That the simplicity of its application assures its success.

(e) That Plast-O-Dent will eliminate in every instance the discomfort and embarrassment due to loose plates.

(f) That it is an amazing, new discovery.

The said J. D. Hagey agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 19, 1940).

**02505. Medicinal Preparations—Manufacturer and Qualities.**—Herman R. Wild, Robert M. Wild and Harry F. Thompson, copartners, trading as Wild Drug Co., 405 Ninth St., Huntington, W. Va., were engaged in selling medicinal preparations designated Wild's Cold Capsules and Wild's Cough Syrup and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That they, individually or collectively, manufacture or compound the product, Wild's Cold Capsules, or the product, Wild's Cough Syrup.

(b) That the product, Wild's Cold Capsules, or any other medicinal preparation containing substantially the same ingredients or possessing the same properties whether sold under that name or any other:

1. Has a tonic effect or tones the system, or is of value in building up body resistance; or
2. Will stop colds, or prevent their development, or will stop the congestion of a cold, or is a remedy for colds.
3. Will provide relief from colds unless expressly limited to relief of certain of the symptoms of a cold; or that all of the ingredients in said product are harmless.

(c) That Wild's Cough Syrup, or any other medicinal preparation containing substantially the same ingredients, or possessing the same properties, whether sold under that name or any other—

1. Will prevent the development of colds.
2. Will relieve bronchial troubles or colds unless relief is expressly limited to certain of the symptoms of a cold or of bronchial troubles; or
3. Will stop any cough, or will afford relief from a cough regardless of its severity.

The said Herman R. Wild, the said Robert M. Wild and the said Harry F. Thompson, further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Jan. 26, 1940.)

**02506. Birth Control Device—Qualities.**—Scientific Instruments, Inc., a corporation, 3410 West 60th Pl., Chicago, Ill., vendor-advertiser, was engaged in selling a birth control device designated The Rule of Life and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the Rule of Life, or O-K Calendar, or any other device operating upon the same theory, provides a method of complete, or any definitely stated percentage, of birth control.

The said Scientific Instruments, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Jan. 29, 1940.)

02507. "Scalptone"—Ailments and Qualities.—Packer's Tar Soap, Inc., a corporation, 101 West Thirty-first Street, New York City, vendor-advertiser, was engaged in selling a medicinal preparation designated Scalptone, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) By direct statement or by inference that all dandruff is due to an infection with *Pityrosporon ovale* or any other organism, or that dandruff is usually due to such an infection.

(b) That "Scalptone" used either alone or in combination with any other product will "eradicate" dandruff, "prevent" dandruff, "cure" dandruff, or "rid" the scalp of dandruff or in any other way, directly or impliedly, that it will permanently eliminate or eradicate dandruff from the head of the user.

(c) That "Scalptone" will "arrest" falling of the hair, or by any other terminology that the use of "Scalptone" prevents loss of hair or increases the growth of hair, except when clearly qualified and limited to such results as, according to the consensus of reliable medical authority, may be achieved by the action of this product in cleansing the scalp and stimulating the circulation of the hair follicle.

(d) That the use of "Scalptone" will assure healthful scalp conditions or keep the hair healthy, or that it constitutes a complete scalp treatment.

(e) That "Scalptone" disinfects the scalp.

(f) That wetting of the hair is a contributing cause or is to any substantial degree responsible for 6 out of 10 cases of baldness, or that experts so believe, or that experts generally are of the opinion that baldness is due to wetting of the hair.

(g) That dandruff is generally the cause of baldness, or that any organism is recognized as "the dandruff germ."

The said Packer's Tar Soap, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 1, 1940.)

02508. Deodorant—Results and Qualities.—The Odo-Ro-No Co., Inc., a corporation, 191 Hudson Street, New York City, vendor-advertiser, was engaged in selling a deodorant designated Odorono and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

That the results to be obtained from the use of Odorono are unqualified, immediate, and absolute as implied by such words and phrases as "no possibility," "insure," "stop," "instantly," and "always."

The said The Odo-Ro-No Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 1, 1940.)

02509. Radio Devices—Qualities, Free and Laboratories.—M. Maltz, an individual trading as Wonder-Tone Laboratories, 7078 North Clark Street, Chicago, Ill., vendor-advertiser, was engaged in selling two mechanical devices designated Wonder-Tone Line Noise Eliminator and Wonder-Tone Aerial Eliminator, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

That these devices designated Wonder-Tone Line Noise Eliminator and Wonder-Tone Aerial Eliminator, or any other device or devices, the same or similarly constructed on the same or similar mechanical principles, made for the same or similar purposes, whether sold under the above names or any other name or names, attached to a radio receiving set—

(a) Will improve radio reception on all kinds of radio receiving sets;

(b) That Wonder-Tone Line Noise Eliminator will under all circumstances or under all conditions eliminate or have any effect in overcoming audible interference coming in over the antenna, power line or by the use of the Wonder-Tone Aerial Eliminator.

(c) That Wonder-Tone Line Noise Eliminator will eliminate or have any effect in overcoming audible interference coming in over the ground system.

(d) That Wonder-Tone Line Noise Eliminator or Wonder-Tone Aerial Eliminator are new inventions or are different from other devices used for the same purpose.

(e) That Wonder-Tone Line Noise Eliminator with or without the use of the Wonder-Tone Aerial Eliminator will insure cleartone reception of broadcasts over distant radio stations.

It is hereby further agreed that M. Maltz in advertising, selling or offering for sale any article of merchandise in commerce will cease and desist from:

(f) Representing that Wonder-Tone Aerial Eliminator is given free or that any other item of merchandise regularly included in a combination offer is given free when the price or cost of such item is included or recovered in the selling price charged for said combination offer.

(g) The use of the word "Laboratories" in his trade name unless and until he owns and operates a laboratory under the supervision of a person or persons competent to conduct scientific research and experiments.

The said M. Maltz agreed not to publish or cause to be published any testimony containing any representation contrary to the foregoing agreement. (Feb. 5, 1940.)

02510. Medicinal Preparation—Qualities and Results.—Iod-Ise Manufacturing Co., Inc., a corporation, Martin Avenue, Clifton, N. J., vendor-advertiser, was engaged in selling a medicinal product designated Iod-Ise, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the product is an "iodine" corn remover or an "iodine" discovery or an "iodine" preparation.

(b) That the product "ends" or "stops" soreness or pain, or from otherwise representing or implying that it will afford permanent relief.

(c) That the product will rid one of corns or prevent their return.

(d) That the product heals tissue.

The said Iod-Ise Manufacturing Co., Inc., further agreed to cease and desist from the use of any and all advertising claims of whatever nature which directly or indirectly represent that the actual removal of corns is due in any way to the iodine content of its product.

The said Iod-Ise Manufacturing Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 13, 1940.)

02511. Psychology Course and Charm—Qualities, Guaranteed, Success, and Use or Standing.—Ada Roehr, trading as M. Williams, box 637, Jersey City, N. J., vendor-advertiser, was engaged in selling a medal designated Success Emblem, printed instructions designated The Lifetime Guide, and printed affirmations and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the alleged psychological teachings embodied in The Lifetime Guide and printed affirmations, if followed, will enable one to attain love, or the love of a special person; success, prosperity, a new start in life, a good position, health, happiness, honor, confidence, increased income, the mastery of difficult occupations, money, fidelity of a companion, correction of all troubles, influence, and easy living, good luck, a removal of bad luck, increased salary; the return of a friend, husband, wife, relative, or loved one; the power to solve all problems; power over neighbors, friends, enemies, or anything; power to overcome jealousy, power to banish sickness, power to overthrow evil influence, power to stop others from taking advantage of one's kind disposition; power to cause undesirable persons to leave, move, or go away; or power to get whatever one wants; or do other than offer instructions designed to influence the mental attitude of the student.

(b) That the material considered herein is guaranteed.

(c) That the material considered herein is used throughout the world.

(d) That by following the instructions offered in the material considered herein one is sure to attain success and happiness.

(e) That the material considered herein is being used daily by thousands of people.

The said Ada Roehr agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 13, 1940.)

02512. Medicinal Preparation—Qualities and New.—Kirkwood Laboratories, Inc., a corporation, Clifton, N. J., vendor-advertiser, was engaged in selling a medicinal preparation designated Har-Ex Capsules, 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 Har-Ex Capsules, or any other medicinal preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name is—

- (a) A competent or effective remedy for hay fever, rose fever, or asthma;
- (b) A "new" medicine or a "new" method of treatment;
- (c) "Quick" to ease suffering or sneezing from hay fever or rose fever, or "quick" to give relief from trouble due to local irritation; or
- (d) That the misery of rose fever, hay fever, or asthma is "ended" by its use.

The said Kirkwood Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Feb. 17, 1940.)

02513. Poultry Remedy—Qualities and Maker.—C. E. Twombly, an individual, 146 Mystic Avenue, Medford, Mass., vendor-advertiser, was engaged in selling a poultry remedy designated Cankerine, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That the product is sure in action.
- (b) That the product will cure canker in pigeons or poultry.
- (c) That by use of the product a canker can be removed without bleeding or soreness.
- (d) That the product is prepared by him unless and until he actually compounds it.

The said C. E. Twombly further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 17, 1940.)

02514. Poultry Remedy—Qualities and Comparative Merits.—C. A. Blair, Jr., an individual trading as Farmco Chemicals, care of Joplin Globe Publishing Co., Joplin, Mo., vendor-advertiser, was engaged in selling a poultry remedy designated Farmco Poultry Tablets, 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 Farmco Poultry Tablets, or of any other medicinal preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name in commerce—

- (a) Is an effective or competent treatment to fight, combat, or prevent fowl cholera, diarrhea, flu, coccidiosis, roup, typhoid, or blackhead; or to stop poultry losses; or to build healthy flocks; or to strengthen growing chicks; or
- (b) Is the very best poultry antiseptic tablet or is beneficial in combating coccidiosis, roup, brooder pneumonia, tuberculosis, blackhead (in turkeys), flu, colibacillosis, diarrhea, cholera, typhoid; or
- (c) Is a competent or effective treatment to prevent infection of poultry. (Feb. 19, 1940.)

02515. Rebuilt Automobile Tires—Size, History, Guaranteed, Safety and Qualities.—Apex Tire, Inc., a corporation, 505 Central Avenue, Pawtucket, R. I., vendor-advertiser, was engaged in selling rebuilt automobile tires designated Apex Rebuilt Tires, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

1. That Apex Tire, Inc., is America's largest quality tire rebuilders until such is the fact established by competent evidence.

2. That Apex Tire, Inc., is the world's largest rebuilder of tires until such is the fact established by competent evidence.

3. That Apex Tire, Inc., is the pioneer of the tire-rebuilding industry.

4. That Apex Rebuilt Tires are guaranteed against all road hazards.

5. That Apex Rebuilt Tires carry a new-tire guarantee.

6. That Apex Rebuilt Tires are unconditionally guaranteed for 6 months.

7. That all Apex Rebuilt Tires are guaranteed against road hazards.

8. That Apex Rebuilt Tires are as safe or durable as new tires or that they will save their owners 50 percent or nearly 50 percent of new-tire costs or that they will give the same trouble-free service as first-line new tires.

The said Apex Tire, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 20, 1940.)

02516. Soap—Tested, Indorsements or Approval, Qualities and Composition.—Manhattan Soap Co., Inc., a corporation, 441 Lexington Avenue, New York City, vendor-advertiser, was engaged in selling a soap designated Sweetheart Toilet Soap and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That research experts or laboratories have tested, in connection with their quality ratings of soaps, all brands of soap.

(b) That beauty experts endorse the use of Sweetheart Toilet Soap.

(c) That doctors advise or prescribe the use of Sweetheart Toilet Soap.

(d) That the use of Sweetheart Toilet Soap will cause the skin to become healthy or keep the skin healthy.

(e) That the use of Sweetheart Toilet Soap will cause one to become or stay young.

(f) By the use of such terms as "skin diet," or any other words, phrases, or methods, that Sweetheart Toilet Soap contains anything which will nourish or feed the skin.

(g) That Sweetheart Toilet Soap performs anything new or marvelous.

(h) That any premium is gold plated when in fact it is gold electroplated.

The said Manhattan Soap Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 26, 1940.)

02517. Hosiery—Qualities, Composition, Nature of Manufacture, Opportunities, Earnings or Profits, Etc.—II, J. Esch, an individual doing busi-

ness under the trade name of Plymouth Hosiery and Plymouth Sales Co., Plymouth Building, Minneapolis, Minn., vendor-advertiser, was engaged in selling hosiery, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Plymouth Hosiery is new improved hosiery, stronger in the foot, possesses a built-in quality, more stretch, or wears longer than other hose manufactured and offered for sale to the purchasing public; or possesses many exclusive features not offered by stores or other direct-selling companies.

(b) That hosiery all parts of which are not knitted entirely from the thread manufactured from the cocoon of the silkworm is silk or pure silk.

(c) That hosiery knitted on a bar less than 15 inches in size is out-size of regular hosiery.

(d) That portions of his hosiery are lisle, when the thread used in knitting said portions of hosiery do not meet the standards required for lisle.

(e) That certain of his hosiery made with a mock seam up the back has a fashion seam up the back.

(f) That portions of his hosiery are linen, when the yarn from which said portions of hosiery are knitted contains fibers other than linen.

(g) That Plymouth socks will outwear two pairs of ordinary socks.

(h) That certain of his brands of hosiery are not sold by any other direct-selling company.

(i) That no retail store can possibly compete with Plymouth prices.

(j) That salespersons selling Plymouth hosiery make a sale at practically every call with little difficulty, cannot help succeeding to obtain orders, most of which run 6 to 12 pairs of hose.

(k) That he provides his salespersons with a business that means a lifetime prosperity.

(l) 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 his active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

(m) 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 his active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

(n) Any amount as being the actual earnings or profits of any specified agent, salesmen, distributor, dealer, or other representative earned in the ordinary and usual course of business and under normal conditions, when such amount was either not actually net earnings or profits or was not made in the ordinary course of business and under normal conditions and circumstances.

H. J. Esch further agreed that in computing the period of time during which specified earnings or profits were made he 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.

The said H. J. Esch agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 26, 1940.)

02518. **Stock Remedies—Qualities.**—Dairy Association Co., Inc., a corporation, Lyndonville, Vt., vendor-advertiser, was engaged in selling stock remedies designated Bag Balm and Kow Kare, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That Bag Balm is completely antiseptic.
- (b) That Bag Balm is healing unless limited to its aid to nature in the process of healing.
- (c) That Bag Balm is a competent treatment or effective remedy for acute mastitis or inflamed or caked udders, unless limited to its value as a massage and counterirritant.
- (d) That Bag Balm cannot taint milk.
- (e) That Kow Kare will prepare a cow for freshening or prevent calving disasters, unless limited to such aid as it may afford these conditions when cows are not assimilating or digesting feed properly.
- (f) That Kow Kare will assure any specific increase in milk production or profits.

The said Dairy Association Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 26, 1940.)

02519. **Spark Plug Cleaner—Qualities, Comparative Merits, Opportunities, Earnings or Profits, Status, Etc.**—L. B. Patterson and Jack Wolfe, trading as Ace Equipment Co., Walnut Building, Des Moines, Iowa, vendor-advertisers, were engaged in selling a spark-plug cleaner designated Ace Spark Plug Cleaner, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That a spark-plug cleaner, now designated Ace Spark Plug Cleaner, or any other device of substantially the same construction or possessing the same mechanism, whether sold under that name or any other name, will clean a spark plug or a set, or any number of spark plugs, in less time than it actually takes for the average auto mechanic to clean such plugs under the usual conditions prevailing around the average small oil and gas station, and including the time required to remove such plugs from the cylinder block of an automobile engine and to replace them after they have been cleaned; or
  - (b) Is the finest, quickest cleaner ever made; or
  - (c) Will clean spark plugs as well as higher-priced spark-plug cleaners;
- or
- (d) Does the work as well as the machine selling for as high as \$18.95; or
  - (e) That its nearest competition is a big machine selling for \$18.95; or

(f) That big superstations can afford expensive machines, but smaller stations had to do without until this invention; or

(g) That there were no spark-plug cleaners selling for less than \$18.95 until the Ace Spark Plug Cleaner was invented; or

(h) That it formerly took mechanics half an hour to clean a certain number or a set of spark plugs unless it is clearly and plainly stated in direct connection therewith that it refers to cleaning such plugs by hand; or

(i) That sales can be made in less time than the average time required by their agents in the ordinary and usual course of business and under normal conditions and circumstances to sell such cleaners; or

(j) That a salesman by the name of Rich made \$52.50 in 20 hours, or any other sum of money within any period of time, selling spark-plug cleaners for the said parties, or that any other person made any sum of money selling spark-plug cleaners unless he did so selling spark-plug cleaners made and sold by the said parties;

(k) 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 their active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances;

(l) 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 their active full-time agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances;

(m) 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 either not actually net earnings or profits, or was not made in the ordinary course of business and under normal conditions and circumstances;

(n) 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 their 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 L. B. Patterson and Jack Wolfe 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 L. B. Patterson and Jack Wolfe further agreed to cease and desist from using the words "President" or "Pres.," or any abbreviation thereof, or any other official titles or abbreviations thereof

that imply they are a corporation, or anything other than individuals or a copartnership.

The said copartners, L. B. Patterson and Jack Wolfe, agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 26, 1940.)

02520. Radios—Prices.—The General Electric Co., a corporation, Schenectady, N. Y., vendor-advertiser, was engaged in selling radios, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

1. That prices for radios made by or for it and specified in catalogs, advertising, advertising literature, and otherwise are the prices at which such radios are currently sold or intended by it to be sold, unless such stated prices are the true and correct prices at which such radios are consistently, customarily, and regularly sold or intended by it to be sold in the due course of current business.

2. That stated prices were the former or regular prices at which such radios sold unless such prices are the true and correct prices at which they were consistently, customarily, and regularly sold in the due course of business during the time referred to.

3. The General Electric Co. further agreed that it will not supply to its distributors, wholesalers, retail dealers, or others, any information, data, advertising copy, or suggestions calculated or intended to induce such distributors, wholesalers, retail dealers, or others to incorrectly state the former price, list or regular price of any of the radios sold by it.

4. The General Electric Co. also further agreed that it will not approve or pay any portion of the cost of advertising prepared or published by or for its distributors, wholesalers, retail dealers, or others, which to its knowledge incorrectly states or misrepresents the former, list, or regular price of such radios.

The said General Electric Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 26, 1940.)

02521. Arch Supports—Qualities, Nature, Statistical Data, Etc.—Jones Pulmotor Arch Support Co., a corporation, 1205 Grand Avenue, Kansas City, Mo., vendor-advertiser, was engaged in selling an arch support designated Jones Pulmotor Arch Supports, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That its arch supports stimulate circulation of the blood or aid in the elimination of poisons; increase energy or vitality; strengthen the feet or muscles in the feet; rebuild the feet; correct or cure any foot disorder or any condition which causes foot or leg ailments; remedy the cause of and thereby prevent the recurrence of any symptom or condition; in cases of bunions and callouses, do more than afford palliative relief; or that they are of any benefit for rheumatism, arthritis, stiff joints or varicose veins.

(b) That Jones Pulmotor Arch Supports are complete "air cushions" or that they are substantially air-filled devices.

(c) That Jones Pulmotor Arch Supports are "foot correctors."

(d) That there is any massaging effect or vacuum-suction action occasioned by the supports which is of therapeutic, remedial, or palliative value or effect, or which aids in the elimination of fatigue or is beneficial to any part of the system.

(e) That its supports benefit any symptom unless such representation is specifically limited to symptoms caused by, and it is stated in direct connection therewith that the symptoms are caused by, faulty arch support.

(f) That the average shoe binds the foot to the extent that it causes faulty circulation.

(g) By the statement that 9 out of 10 persons in the United States are foot defectives, or by any similar statement in any words or figures, that reliable statistics have been compiled showing any definite proportion of the population of any given area to have defective feet if and when the statistics indicated by the statement do not exist.

(h) That any definite proportion of the population in any given area needs or could be benefited by Jones Pulmotor Arch Supports.

(i) That such symptoms as aching back, aching legs, swollen ankles, stiff joints, callouses, and symptoms of arthritis or rheumatism, or any other symptom or condition necessarily indicates the persons so afflicted has defective feet or needs or could be benefited by Jones Pulmotor Arch Supports.

(j) That the health of the feet may be insured by or foot ailments can be prevented by wearing Jones Pulmotor Arch Supports.

(k) That there is any person employed by or connected with Jones Pulmotor Arch Support Co. who has had experience correcting or assisting in the correction of foot or leg ailments.

(l) That measurements of the feet or tracings of the outlines of the feet taken by a prospective mail order purchaser, or information furnished by such prospective purchaser concerning his foot troubles, or measurements taken from such data or information, or any combination thereof, constitutes a scientific or exact method of ordering or manufacturing arch supports, eliminates guess-work or conjecture in making arch supports, or enables the Jones Pulmotor Arch Support Co. to fill an order with supports that fit the buyer's individual requirements.

The said Jones Pulmotor Arch Support Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Feb. 27, 1940.)

02522. Athlete's Foot Preparation—Qualities and Indorsements or Approval.—Israel Freed, an individual doing business as Kamazin Manufacturing Co., 145 West Kingsbridge Road, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation, for the treatment of a condition known as athlete's foot, designated Kamazin Powder 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 Kamazin Powder affords relief from the condition known as athletes foot for a long period of time or affords permanent relief.

(b) That there is any assurance that Kamazin Powder will afford relief from the condition known as athlete's foot.

(c) That doctors prescribe, recommend, or endorse Kamazin Powder.

The said Israel Freed further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 1, 1940.)

02523. **Stock and Poultry Feed—Qualities.**—Maritime Milling Co., Inc., a corporation, 1009 Chamber of Commerce, Buffalo, N. Y., vendor-advertiser, was engaged in selling stock and poultry feeds designated Bull Brand Dairy Rations and Bull Brand Vitamized Complete Starter and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Bull Brand Dairy Rations alone keeps herds in better physical condition or milk production at consistently higher levels.

(b) That Bull Brand Dairy Rations is the feed of champions.

(c) That Bull Brand Vitamized Complete Starter Ration alone builds into chicks increased livability, better feathering or pigmentation, or larger or sturdier bodies.

(d) That the use of the complete Bull Brand poultry feeding program assures more eggs, more profit, or more money.

The said Maritime Milling Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 6, 1940.)

02524. **Furniture Polish, Food Products and Cosmetics—Qualities, Composition, Source or Origin and Business Status.**—Harold C. Breckenridge, an individual trading as Quality Chemical Co., 20030 Russell Street, Detroit, Mich., vendor-advertiser, was engaged in selling a furniture polish designated Scientific: food products under the general heading Magic Concentrates designated French Chef Flavors, French Chef Spices, French Chef Table Syrup, and French Chef Food Colors and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Scientific contains a "secret" ingredient.

(b) That Delora Alice Skin Lotion is "healing" or that it has a "healing" action.

The said Harold C. Breckenridge further agreed to cease and desist from using the word "French" as descriptive of any of his products not made in France or not composed chiefly of French ingredients; from using the word "La France" and "Orient" as descriptive of any of his perfumes not made in, or not composed chiefly of ingredients from, France or the Orient; and from using the words "pure ingredients" as descriptive of any product that is synthetically flavored to imitate the real and true flavor; and the said Harold C. Breckenridge further agreed to cease and desist from using the title "President," or from otherwise representing that the business conducted by him as an individual is a corporation or an association.

The said Harold C. Breckenridge further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 6, 1940.)

02525. Medicinal Preparation—Qualities.—Alonzo O. Bliss Medical Co., a corporation, 1811 Columbia Road, Washington, D. C., vendor-advertiser, was engaged in selling a medicinal preparation designated Bliss Native Herb Tablets 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 the word "quickly" or any other word or words of similar import or meaning that said product will give immediate relief for upset stomach, gas bloating pains, acid risings, lost appetite, sour stomach, and headaches, due to constipation or any other cause or causes.

(b) By the use of the words "positive relief" or any other word or words of similar import or meaning that said product relieves all cases of upset stomach, gas bloating pains, acid risings, lost appetite, sour stomach, and headaches, due to constipation or any other cause or causes.

(c) That the product will flush the bowels or kidneys.

(d) That the product will "pep up" the liver, or from otherwise representing or implying that it will stimulate the liver.

(e) That the product will cause a faster elimination of kidney wastes.

(f) That the product will "pep up" or "tone up" the stomach, or otherwise representing that said product is a treatment for the stomach, unless limited to such influences as it might have as a stomachic.

The said Alonzo O. Bliss Medical Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 7, 1940.)

02526. Medicinal Preparation—Ailments, Qualities, Nature, Etc.—Bio-Vegetin Products, Inc., a corporation, trading as V. M. Products, 500 North Dearborn Street, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Neural-Aid and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That nervousness is an affliction or that it is due to modern eating or living.

(b) That the product is a nerve food or from otherwise representing or implying that it is of any particular benefit to the nerves.

(c) That the product is a competent treatment or an effective remedy for nervousness, neuralgia, nerve fatigue, constipation, nervous insomnia, constant worry, muscular aches or pains, or disturbances of the nervous system.

(d) That the product is a competent treatment or an effective remedy for neuritis unless limited to its aid in the treatment of peripheral neuritis, alcoholic neuritis, neuritis due to anemia, neuritis of pregnancy, or neuritis of pellagra.

(e) That the product brings lasting relief or that it acts on the cause of any nervous condition or that any of its substances are absolutely necessary

to a properly functioning nervous system or that drugs or medicines cannot bring relief when the elements contained in Neural-Aid are lacking.

(f) That in using the product one is getting the required factors for starved nerves or that it restores the capacity to enjoy life or to participate in zestful pursuits.

(g) That the American diet is deficient in the vital substances required by the nervous system, unless such claim is qualified to indicate that the average diet is not deficient therein.

(h) That through the use of the product—

- (1) A pure zest for living replaces a former feeling of nervous fatigue.
- (2) New strength becomes available.
- (3) Elimination is improved.
- (4) Nervous, sleepless nights are transformed into peaceful slumber.
- (5) There is freshness or strength for a full day.
- (6) One will have a sound nervous system.

The advertiser further agreed to cease and desist from using the word "neural" or any other word of similar import or meaning as a part of the trade name for the product.

The said BioVegetin Products, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 8, 1940.)

02527. Medicinal Preparation—Qualities and Indorsements or Approval.—Robert J. Schwyn, an individual trading as Schweizer Tee, 3154 N. Racine Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation for diabetes designated Schweizer Tee 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 Schweizer Tee, or any other medicinal preparation containing substantially the same ingredients, whether sold under that name or any other name—

- (a) Is a competent remedy or an effective treatment for diabetes.
- (b) Is prescribed or recommended by doctors.
- (c) Helps the organs to function normally.
- (d) Effects a reduction of sugar or makes a broader diet possible.

The said Robert J. Schwyn further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 8, 1940.)

02528. Medicinal Preparation—Qualities, Safety, Source or Origin and Indorsements or Approval.—BioVegetin Products, Inc., a corporation, trading as V. M. Products, 500 North Dearborn Street, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Myacin and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the product kills or ends pain, or from otherwise representing or implying that it will afford more than temporary relief from pain associated with rheumatism, arthritis, neuritis, sciatica, gout, or lumbago.

(b) That use of the product will enable one to forget aches and pains.

(c) That the product contains no harmful or habit forming drugs.

(d) That the product will not upset the stomach, or that it affords safe relief.

(e) That the formula for the product originated in Europe, or that it is used by thousands of doctors and hospitals in the United States.

The said BioVegetin Products, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 8, 1940.)

02529. **Electric Fence—Economy and Savings, Qualities and Comparative Merits.**—Reid Electric Mfg. Co., a corporation, 543 North Cicero Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling an electric controller designated Reid Electric Fencer and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That anyone can make a saving of 80 percent or any other definite amount by the use of the Reid Electric Fencer, irrespective of the amount of fencing required.

(b) That the use of such device will reduce the cost of fencing in comparison with the cost of other types of fence unless the type of fence with which comparison is made is clearly and plainly stated in direct connection with such representations.

(c) That the Reid Electric Fencer embodies a new construction principle never before attained.

(d) That the use of such device with a single strand of wire or one wire will hold all livestock, or that one wire will hold sheep, hogs, or goats.

(e) That such device with wire fencing will hold or repel stock, wild animals or domestic animals, unless stated in close proximity to such statement that it will not do so until such animals have been properly trained to respect and fear the electric shock or sting that results from contact with the wire.

(f) That the Reid Electric Fencer never fails or disappoints.

(g) That by the use of an electric wire fence one may complete a fencing job in half the time and with half the labor required to complete a fence by any other method.

(h) That one man can fence 20 acres in a day by use of an Electric Wire Fence.

(i) That a single barbed wire on inexpensive short wood posts 50 feet apart with electricity properly applied will hold livestock as safely and securely as concrete and steel.

The said Reid Electric Mfg. Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 8, 1940.)

02530. **Correspondence Club—Nature, Etc.**—William Michael Braun, an individual, doing business in his own name and as The Braun Club, 353 West Forty-seventh Street, Chicago, Ill., vendor-advertiser, was engaged in selling a list of names of persons seeking correspond-

ents 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 said enterprise is of service generally to one who is lonesome or wants a wife, husband, or sweetheart, unless such a representation is supported by sufficient investigation as to the actual facts.

(b) That members receive many interesting letters and photographs, unless such a representation is supported by sufficient investigation as to the actual facts.

(c) That "special" or any members receive quick, satisfactory results, or receive, interesting letters and photographs, within the next few days or within a short period of time, or at all, unless such representations are supported by sufficient investigation as to the actual facts.

(d) That parties seeking correspondents are worth any specified amounts, or have any specified income, or any social, business, professional, or financial standing other than that disclosed by a competent investigation, unless in direct connection with any claim set forth, the source of his information is stated.

The said William Michael Braun agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 15, 1940.)

02531. Antiseptic Preparations—Qualities, Comparative Merits, Etc.—Zonite Products Corp., a corporation 405 Lexington Avenue, New York City, vendor-advertiser, was engaged in selling antiseptic preparations designated Zonite Ointment, Zonite Liquid, and Zonite Vaginal Suppositories (Zonitors) and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the cause of menstrual distress is often due to the presence of germs, or that the problem of feminine hygiene is eliminated by the use of said products or that said products are a competent treatment for Leucorrhoea.

(b) That said products will kill germs or bacteria unless in direct connection therewith such expressions as "at contact" or "bacteria with which it comes in contact" or "which it can reach" or unless for any reason such as physical conformation or malformation the germs cannot be reached, are used.

(c) That Zonite Liquid has a soothing action on the membranes or may always be used without risk or that it can never injure delicate tissues.

(d) That the use of Zonite Liquid can or does assure the users thereof of freedom from grippe, colds, coughs, or other diseases of the respiratory system, or that Zonite Liquid is effective in combatting the cause of pyorrhoea.

(e) That Zonite Liquid will control all dandruff or itchy scalp skin or end dandruff or itchy scalp skin, or that dandruff is always caused by local bacteria or fungus or that Zonite will permanently cure or relieve dandruff.

(f) That Zonite Liquid will kill onion breath permanently or end all strong mouth odors, or destroy all odor causes.

(g) That said products are the only antiseptics which are nonpoisonous under similar conditions of use,

(h) That Zonite Liquid or Zonite Ointment are 100 percent effective in preventing athlete's foot or will assure the user thereof of immunity from athlete's foot.

That said Zonite Products Corp. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 18, 1940.)

02532. Poultry, Dairy and Hog Feeds—Qualities, Results, Etc.—J. Kendley Martin, an individual trading as Standard Milling Co., 46 Fairlie Street, Atlanta, Ga., vendor-advertiser, was engaged in selling poultry, dairy and hog feeds Super Quality Pullet Mash, Super Quality Starting Mash, Super Quality Laying Mash, Super Quality all Mash Broiler Ration, Super Quality Coccidiosis Control Mixture, Super Quality Supplement Mash, Super Quality Growing Mash, Super Quality Breeding Mash, Standard 18 percent Hog Feed, Standard 40 percent Hog Supplement, Super Quality all Mash Starting Ration, Sav-Mor Poultry Mash, Tru-Valu Poultry Mash, Super Quality Fermenting Mash, and Standard 24 percent Dairy Feed 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 feeding plans or any of his feeds or any ingredient in such feed will "insure" or "assure" for the user any result which may not be expected to follow under every condition of use or which, for its accomplishment, is not entirely dependent on such feeding plan or on such feed or on any ingredient or ingredients in such feed.

(b) That prospective purchasers, by using any of his feeds or by virtue of any ingredient or ingredients in such feed, will thereby be enabled to realize results superior to those already being obtained, unless such improved results would be expected to follow unequivocally and however meritorious the feed or ration already being employed by such prospective purchasers, and where the realization of any such improved result would be expected to be limited to cases where prospective purchasers had been employing feeds inferior to those which he offers for sale that then such limitation be clearly, appropriately and conspicuously indicated.

(c) That any of his feeds are perfectly balanced.

(d) That Super Quality Coccidiosis Control Mixture, when used in conjunction with proper sanitary measures or otherwise, will absolutely prevent the development of coccidiosis in baby chicks or that said mixture will cure coccidiosis, or that said mixture will do more than aid in the prevention of coccidiosis, or that its use will obviate the necessity of resorting to drugs or medicines for the treatment or prevention of coccidiosis, or that it is completely medicated, or that it will help in the prevention of infectious disease generally or of any specific infectious disease, unless, where it does so only by reason of its nutritive qualities, such reason is clearly, appropriately, and conspicuously indicated.

(e) That any of his feeds incorporate every new feeding discovery of value in a poultry or livestock ration.

(f) That every ingredient in Super Quality Starting Mash is completely assimilated or that said mash is potently fortified with all the known vitamins.

(g) That the minerals present in Super Quality Supplement Mash are completely water soluble.

- (h) That cereal grains are deficient in all of the vitamins.
- (i) That Super Quality Growing Mash provides in ample amounts every known vitamin.
- (j) That Super Quality Pullet Mash will prevent the possibility of neck moult or premature production.
- (k) That Standard 24 percent Dairy Feed will provide a complete ration.
- (l) That the buttermilk or milk sugar content in Super Quality feeds is of any particular value in aiding digestion or assimilation or in promoting intestinal health or in giving a tonic effect or in helping to keep the intestinal tract free of harmful bacteria.
- (m) That his various feeds are sold entirely direct to the purchasing public.
- (n) That Super Quality Starting Mash will afford the lowest mortality rate or that any of his hog feeds will afford the highest profit or will grow and develop swine at the lowest feeding cost or will put on the most weight or will grow and develop swine in the shortest time or with the smallest amount of feed.

The said J. Kendley Martin further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 21, 1940.)

02533. **Book on Eye Exercises—Qualities, Etc.**—Macfadden Book Co., Inc., a corporation, 205 West Forty-second Street, New York City, vendor-advertiser, was engaged in selling a book embracing a system of eye exercises entitled "Strengthening the Eyes" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That its book now entitled "Strengthening the Eyes," whether under that or any other title, containing or prescribing the same or similar ophthalmological advice and exercises, is based upon new facts or that the said advice or exercises are new or revolutionary.
- (b) That by following said advice and exercises a person with weak or defective vision may quickly train any of the muscles of his eyes so as to correct such weak or defective vision.
- (c) That the use of the method advocated in this book will enable everyone to train the muscles of the eyes so as to make them work properly at all times without effort or strain.
- (d) That the use of this method will enable one to obtain perfect eyesight either with or without the use of glasses.
- (e) That the suggestions, advice, and method of exercise prescribed in this book will help one to control the muscles of the eyes, without qualification, or by any other terminology, importing or implying that they will help one to control all muscles of the eyes.
- (f) That none of the exercises prescribed in this book can cause injury to the eyes.
- (g) That as a result of the purchase and use of the method described in this book, those who have used glasses to overcome the effect of faulty refraction, far or nearsightedness, astigmatism, squint eyes, cross eyes, weak, watering eyes, poor vision, eye headache or strain, or any one of such conditions can, in general or in the majority of instances, remove these ocular defects and can thereby be relieved of the necessity for wearing glasses.
- (h) That the method prescribed in this book will give one complete mastery over any eye muscles; and
- (i) That exercise is the only real help in cases of impaired vision.

The said Macfadden Book Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 25, 1940.)

02534. **Root Beer—Qualities.**—The Charles E. Hires Co., a corporation, 206 South Twenty-fourth Street, Philadelphia, Pa., vendor-advertiser, was engaged in selling a beverage designated Hires R-J Root Beer and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That Hires R-J Root Beer will preserve the alkaline reserve.
- (b) That Hires R-J Root Beer has the same alkaline reaction as orange juice and in the same manner aids in maintaining the alkaline balance.
- (c) That Hires R-J Root Beer is healthful because it is not acid forming or is a health protecting beverage.
- (d) That Hires R-J Root Beer agrees with foods because it is not acid forming.

The Charles E. Hires Co., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 25, 1940.)

02535. **Elastic Exerciser and Correspondence Courses—Qualities.**—Joe Bonomo, an individual trading as Joe Bonomo Publications, 229 West Forty-second Street, New York, N. Y., vendor-advertiser, was engaged in selling an elastic exerciser designated Companion Exerciser and three courses in physical culture designated Muscle Tension System, Complete Bonomo System, and Beautify Your Figure 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 the Companion Exerciser will cause a return of pep, vitality, energy, or a better complexion right from the start or in any specified time.
- (b) That use of the Companion Exerciser will cause an improvement of the nerves or the restoration of health.
- (c) That use of the Companion Exerciser will correct constipation.
- (d) That the use of Muscle Tension System will make the user a real man fast, or will give to the user brawny strength, burly health, or a he-man body.
- (e) That use of the Muscle Tension System will cause one to be healthy.
- (f) That use of the complete Bonomo System will enable one to excel in any form of sports.
- (g) That use of the Complete Bonomo System will assure the user of becoming well or strong, regardless of age, weight, or condition of the body.
- (h) That the use of the Complete Bonomo System for a few minutes a day will assure the user of attaining an athlete's all-around development.
- (i) That use of the Complete Bonomo System will pack the user full of vim or masculine virility.
- (j) That use of the Complete Bonomo System will make the user a physical wonder.

(k) That use of the Beautify Your Figure Course will cause the user to acquire inviting contours quickly or in any specified time.

The said Joe Bonomo agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 26, 1940.)

02536. **Medicinal Product—Qualities, New and Nature.**—Wolverine Products, Inc., a corporation, Maccabees Building, Detroit, Mich., vendor-advertiser, was engaged in selling a medicinal preparation designated Digests and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That this product will overcome or in any way affect halitosis or improve bad breath.

(b) That this preparation will aid, promote or result in improved digestion.

(c) That this is a new product or gives new relief.

The said Wolverine Products, Inc., further agreed that it will forthwith cease and desist from designating the said product or any other preparation of the same or substantially similar composition by the word "Digests" or any other name which imports or implies that the product is a digestive or that it has any direct effect upon digestion.

The said Wolverine Products, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Mar. 26, 1940.)

02537. **Motor Lubricant—Qualities and Comparative Merits.**—Quaker State Oil Refining Corp., a corporation, Oil City, Pa., vendor-advertiser, was engaged in selling a motor lubricant designated Quaker State Motor Oil and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That it has definitely ascertained that most dealers are convinced that Quaker State Motor Oil is the purest or safest lubricant available.

(b) That it has ascertained that Quaker State Motor Oil gives a definite percentage more lubrication than all other motor oils, when, in truth and in fact, such definite percentage has not been so ascertained by it.

(c) That it has definitely ascertained that Quaker State Motor Oil always gives more mileage than any other motor oil, unless it has been so ascertained.

(d) That Quaker State Motor Oil eliminates the hazards of engine carbon.

The said Quaker State Oil Refining Corp. agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Mar. 26, 1940.)

02538. **Medicinal Preparation—Qualities.**—William Orland, an individual doing business as Hot Drops Co., 116 Market Street, Philadelphia, Pa., vendor-advertiser, was engaged in selling a medicinal

preparation designated Hot Drops and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

1. Hot Drops are a competent remedy or an effective treatment for coughs or for sore throat or that said preparation has any therapeutic value in the treatment thereof in excess of providing a temporary palliative relief for some of the symptoms commonly encountered in colds.

2. Hot Drops give lasting relief.

The said William Orland further agreed not to publish or cause to be published any testimonial concerning any representation contrary to the foregoing agreement. (Mar. 27, 1940.)

02539. **Stock and Poultry Feed—Qualities.**—Everett L. Bowers, Inc., a corporation, Ellicott Square, Buffalo, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for stock and poultry feeds designated Bull Brand Dairy Rations and Bull Brand Vitamized Complete Starter on behalf of Maritime Milling Co., Inc., 1009 Chamber of Commerce Building, Buffalo, N. Y., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Bull Brand Dairy Rations alone keeps herds in better physical condition or milk production at consistently higher levels.

(b) That Bull Brand Dairy Rations is the feed of champions.

(c) That Bull Brand Vitamized Complete Starter Ration alone builds into chicks increased livability, better feathering, or pigmentation, or larger or sturdier bodies.

(d) That the use of the complete Bull Brand poultry feeding program assures more eggs, more profit, or more money. (Mar. 28, 1940.)

02541.<sup>1</sup> **Medicinal Preparation—Free, Qualities, Price and Government Approval or Guarantee.**—Frederick Hoffman, trading as Maxine Co., Fairfax, Okla., vendor-advertiser, was engaged in selling a medicinal preparation designated Aviola and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

that the instructions for enema for constipation are free or will enable one to keep the bowels clean and the body healthy.

It is hereby further agreed by Frederick Hoffman that in connection with the dissemination of advertising by the means and in the manner above set out he will forthwith cease and desist from representing, directly or by implication, that a medicinal preparation now

<sup>1</sup> Stipulation No. 02540, approved March 28, 1940, was rescinded by the Commission as of May 8, 1940, and matter involved made the subject of a new stipulation, No. 02602, approved July 17, 1940, which will be found reported in its appropriate place in vol. 31 of the Commission's Decisions.

designated *Aviola*, or any other medicinal preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Is a preventive or competent cure or an effective treatment for piles, hemorrhoids, or any other rectal ailment.

2. Acts as an analgesic for piles or hemorrhoids or any other rectal ailment, or will in any manner relieve the pain, anguish, worry, or agony that may be associated with said ailments.

3. Is a competent remedy or an effective treatment for protruding piles or is of any therapeutic value in the prevention of protruding piles.

4. Will stop piles from bleeding.

5. Is sold at a price intended to cover only the cost of manufacture and not intended to include a profit.

6. Is "Guaranteed under the Pure Food and Drug Act," or by the use of any other words or expressions, has been examined or is approved by the Federal Government, or that the Federal Government guarantees it complies with the law.

The said Frederick Hoffman agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Apr. 4, 1940.)

02542. **Mechanical Device—Qualities, Economy or Savings and Opportunities.**—W. M. Houston and M. Logan, copartners, trading as H. & L. Conversions, 2112 Addison Street, Berkeley, Calif., vendor-advertisers, were engaged in selling a mechanical device designated under various names, including *Dies-L-Gas*, *Semi Diesel Fuel Oil Conversion Unit*, *Des-A-Gas Unit*, and *H. & L. Fuel Oil Conversion Unit* and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) By the words "*Semi-Diesel*" or otherwise that the H. and L. Fuel Oil Conversion Unit when attached to an ordinary gasoline engine converts the latter into a semi-Diesel engine or into an engine which functions in the manner of a semi-Diesel engine.

(b) By the words "*Des-A-Gas*," "*Dies-L-Gas*," or otherwise that the H. and L. Fuel Oil Conversion Unit when attached to an ordinary gasoline engine converts the latter into a Diesel engine or into an engine which functions in the manner of a Diesel engine.

(c) That reliable evidence at present indicates that Diesel engines will be in our automobiles within a year.

(d) That by the use of an H. and L. Fuel Oil Conversion Unit an ordinary gasoline engine will be capable of delivering as much power or more power per gallon of fuel oil than it ordinarily could deliver on gasoline without the use of this device.

(e) That with the use of an H. and L. Fuel Oil Conversion Unit, the performance of a motor on fuel oil or on low-grade gasoline will be equal to or superior to that of the same motor on a good grade of gasoline.

(f) That by the use of an H. and L. Fuel Oil Conversion Unit more mileage per gallon will be obtained on fuel oil or on low-grade gasoline than would be obtained without the use of this device on a good grade of gasoline.

(g) That one will obtain one-third more mileage on fuel oil through the use of an H. and L. Fuel Oil Conversion Unit than one would obtain ordinarily on gasoline without the use of this unit.

(h) That an ordinary gasoline engine will idle or saunter idly at all times on fuel oil as well as on gasoline.

(i) That when an H. and L. Fuel Oil Conversion Unit and fuel oil are used no carbon is formed in the engine or that there is no dilution of the lubricating oil with the fuel oil.

(j) That the heat units in the fuel oil that is used in a motor equipped with an H. and L. Fuel Oil Conversion Unit are completely "cracked" or volatilized.

(k) That as a result of the installation of an H. and L. Fuel Oil Conversion Unit, and the use of fuel oil, an ordinary gasoline engine will run in an almost frictionless manner, or that it will run more smoothly than it otherwise would.

(l) That fuel oil vapor before combustion is completely vaporized or "dry."

(m) That an H. and L. Fuel Oil Conversion Unit is "absolute perfection."

(n) That with the demonstrated savings that one can make with the H. and L. Conversion Unit sales resistance is practically eliminated.

The said W. M. Houston and M. Logan agreed not to publish or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Apr. 4, 1940.)

02543. Nasal Filter—Qualities.—The Nasal Filter Co., a corporation, 12 North Third Street, Columbus, Ohio, vendor-advertiser, was engaged in selling a nasal filter designated Dr. Weaver's Nasal Filter 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" or in any other manner that Dr. Weaver's nasal filter will cure hay fever.

(b) That Dr. Weaver's Nasal Filter will afford incredible relief for hay fever sufferers.

(c) That Dr. Weaver's Nasal Filter will relieve asthma or sinus trouble.

(d) That Dr. Weaver's Nasal Filter will prevent asthma, hay fever, sinus trouble, or anthracosis.

(e) That Dr. Weaver's Nasal Filter will act as or provide a defense against colds.

(f) That Dr. Weaver's Nasal Filter will prevent all dust from entering the nostrils.

The said Nasal Filter Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Apr. 5, 1940.)

02544. Cosmetic—Qualities.—Sempray Jovenay Co., a corporation, 650 Turner Avenue, NW., Grand Rapids, Mich., vendor-advertiser, was engaged in selling a cosmetic designated Sem-Pray Jo-Ve-Nay and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That the product is a complete beauty treatment.

(b) That the product will smooth away or remove lines from the skin or change the normal texture of the skin to make it seem finer.

- (c) That the product will keep the skin young.
- (d) That the product is a competent treatment or effective remedy for blackheads.
- (e) That the product will remove all traces of foreign matter from the pores.

The said Sempray Jovenay Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 9, 1940.)

02545. **Novelties—Opportunities, Earnings, or Profits, Free and Patented.**—Hook-Fast Specialties, Inc., a corporation, P. O. Box 1425, Providence, R. I., vendor-advertiser, was engaged in selling novelties designated Hook-Fast Products and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That it sets agents up in business for themselves, or that it offers a chance for men to get in business for themselves; or that the profits, earnings or income will be big, substantial, or come in daily, or increase weekly; or

(b) That it furnishes a sample case or samples when it requires payment, deposit, or services before it supplies its agents with a sample case or samples unless it clearly and plainly states in direct connection with every such statement just what is required in the form of payment, deposit, services, or otherwise in full detail; or

(c) By using the terms "free" or "without cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondent'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 terms "free" or "without cost," or any other terms 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; or

(d) That any of its products are patented or sold exclusively by its agents unless such be the facts; or

(e) By using the terms "free" or "without cost" or any other terms of similar import or meaning to designate or describe any article of merchandise regularly included in a combination offer with any other article or articles of merchandise that such article is a gift or included without cost or charge to the buyer.

The said Hook-Fast Specialties, Inc., in soliciting salespersons agents, or dealers in aid of the sales of its products, further agreed to cease and desist from representing directly or by implication—

(f) 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; or

(g) 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; or

(h) 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 either not actually net earnings or profits, or was not made in the ordinary course of business and under normal conditions and circumstances; or

(i) 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.

Hook-Fast Specialties, Inc., further agreed that in its 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.

Hook-Fast Specialties, Inc., further agreed that in computing the period of time during which specified earnings or profits were made it 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.

The said Hook-Fast Specialties, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 11, 1940.)

**02546. Food Products—Comparative Value and Prices and Qualities.—**Elam G. Hess, an individual, Manheim, Pa., vendor-advertiser, was engaged in selling a food product now designated Kano and previously known as Pecano and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication—

That a food now designated "Kano" or "Pecano," or any other food of substantially the same composition or possessing substantially the same ingredients, whether sold under those names or any other names—

(a) supplies more nourishing value than does either beefsteak, eggs, whole milk or fish.

(b) costs less than other specified foods unless such representation is accompanied by a complete statement of the basis for the purported price comparison.

- (c) contains more food value per dollar than all other foods.
- (d) is the best source of tissue-building material.
- (e) revitalizes or recleanses one's body.
- (f) aids in the removal of waste matter or that it helps to regulate, vitalize or protect one's body.
- (g) is nature's perfect food.
- (h) is effective in treating the condition known as malnutrition in all cases or in cases which may be due to causes other than a deficiency of the food elements supplied by said product.

The said Elam G. Hess further agreed to cease and desist from representing that a comparison of the respective number of calories contained in his product with that contained in other foods is a correct basis for comparison of their respective nourishing values.

The said Elam G. Hess further agreed to cease and desist from representing that the food value of Pecano or Kano is to any degree or extent greater than the food value of any other specified food when such comparison is not based upon measurable units.

The said Elam G. Hess further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 12, 1940.)

**02547. Medicinal Preparation—Scientific Facts and Qualities.—**Mystic Laboratories, Inc., a corporation, 257 Cornelison Avenue, Jersey City, N. J., vendor-advertiser, was engaged in selling a medicinal preparation designated Mystic Cream and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) Is an amazing or scientific development.
- (b) When rubbed on hands, causes them to be as soft or as white as the hands of a child.
- (c) Has any other than a temporary effect upon the skin unless used regularly, unless such representations are limited to rough, red or chapped hands.
- (d) Will cause any immediate transformation in the condition of the skin.

That said Mystic Laboratories, Inc. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 12, 1940.)

**02548. Cleaning Preparations—Qualities and Comparative Merits.—**The Absorene Mfg. Co., a corporation, 1609 North 14th Street, St. Louis, Mo., vendor-advertiser, was engaged in selling cleaning preparations designated Abso Crystals and Absorene, and agreed in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) The product designated Abso Crystals whitens clothes perfectly or naturally; that it gives longer life to fabrics; or that it makes clothes whiter with less washing or rinsing.
- (b) That said product is superior to soap or soap powders; "the" most powerful water-softener ever discovered by chemists; the most effective or economical cleanser or cleaner for all house cleaning, laundry, or bath.

(c) Absorene sanitizes the atmosphere for healthful cleaning or that it doesn't crumble.

The said The Absorene Mfg. Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 12, 1940.)

02549. **Books—Qualities.**—Pioneer Publications, Inc., a corporation, R. K. O. Building, Rockefeller Center, New York City, vendor-advertiser, was engaged in selling books entitled Eugenics and Sex Harmony and New Birth Control Facts and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

1. That the birth control method outlined in the book "New Birth Control Facts" is dependable in bringing about or avoiding conception.

2. That said book contains a table or information which, if followed, enables all users to compute a safe period.

The said Pioneer Publications, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 15, 1940.)

02550. **Chocolate Flavored Syrup—Composition, Qualities, and Comparative Merits.**—Bowey's, Inc., a corporation, 401 West Superior Street, Chicago, Ill., vendor-advertiser, was engaged in selling a chocolate flavored syrup designated Dari-Rich Syrup and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

1. Is made of milk or otherwise representing that the same is made of whole milk.

2. Is a chocolate drink or is chocolate milk.

3. Is an aid to so-called "beauty-diets."

4. Contains 100 percent more energy value than other beverages, unless a direct comparison is made with a beverage specifically mentioned the energy value of which has been determined scientifically.

5. Will not lessen mealtime appetite if consumed between meals.

6. Is a health-building drink.

It is agreed that inhibition (1) hereof shall not inhibit Bowey's, Inc., from representing said finished drink to be milk or made of whole milk in localities where whole milk is used by dairies and others in the preparation of the product. (Apr. 16, 1940.)

02551. **Medicinal Preparations—Comparative Merits and Qualities.**—James J. Durr, an individual doing business as Dickey Eye Water Co., P. O. Box 771, Montgomery, Ala., vendor-advertiser, was engaged in selling a medicinal preparation designated Dr. J. A. Dickey's Eye Water and, agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That said preparation is superior in beneficial qualities to any other preparation used for the same purposes.

(b) That said preparation is recognized as a standard preparation for the eyes; and

(c) That said preparation is a remedy or is capable of curing or healing.

The said James J. Durr further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 23, 1940.)

02552. Poultry, Dairy and Hog Feeds—Qualities, Results, Etc.—Ulric C. Jones Advertising Agency, an individual, Hurt Building, Atlanta, Ga., was engaged in the business of conducting and advertising agency which disseminated advertisements for poultry, dairy, and hog feeds designated Super Quality Pullet Mash, Super Quality Starting Mash, Super Quality Laying Mash, Super Quality All Mash Broiler Ration, Super Quality Coccidiosis Control Mixture, Super Quality Supplement Mash, Super Quality Growing Mash, Super Quality Breeding Mash, Standard 18 percent Feed, Standard 40 percent Hog Supplement, Super Quality All Mash Starting Ration, Sav-Mor Poultry Mash, Tru-Valu Poultry Mash, Super Quality Fermenting Mash and Standard 24 percent Dairy Feed 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 feeding plans of J. Kendley Martin or that any of the feeds of J. Kendley Martin or any ingredient or ingredients in such feed will “insure” or “assure” for the user any result which may not be expected to follow under every condition of use or which, for its accomplishment, is not entirely dependent on such feeding plan or on such feed or on any ingredient or ingredients in such feed.

(b) That prospective purchasers, by using any of the feeds of J. Kendley Martin or by virtue of any ingredient or ingredients in such feed, will thereby be enabled to realize results superior to those already being obtained unless such improved results would be expected to follow unequivocally and however meritorious the feed or ration already being employed by such prospective purchasers, and where the realization of any such improved result would be expected to be limited to cases where prospective purchasers had been employing feeds inferior to those which are offered for sale and sold by J. Kendley Martin, that then such limitation be clearly, appropriately and conspicuously indicated.

(c) That any of the feeds of J. Kendley Martin are perfectly balanced.

(d) That Super Quality Coccidiosis Control Mixture, when used in conjunction with proper sanitary measures or otherwise, will absolutely prevent the development of coccidiosis in baby chicks, or that said mixture will cure coccidiosis or do more than aid in the prevention of coccidiosis, or that its use will obviate the necessity of resorting to drugs or medicines for the treatment or prevention of coccidiosis, or that it is completely medicated, or that it will help in the prevention of infectious diseases generally or of any specific infectious disease, unless, where it does so only by reason of its nutritive qualities, such reason is clearly, appropriately and conspicuously indicated.

(e) That any of the feeds of J. Kendley Martin incorporate every new feeding discovery of value in a poultry or livestock ration.

(f) That every ingredient in Super Quality Starting Mash is completely assimilated or that said mash is potently fortified with all the known vitamins

(g) That the minerals present in Super Quality Supplement Mash are completely water soluble.

(h) That cereal grains are deficient in all of the vitamins.

(i) That Super Quality Growing Mash provides in ample amounts every known vitamin.

(j) That Super Quality Pullet Mash will prevent the possibility of neck moulting or premature production.

(k) That Standard 24 percent Dairy Feed will provide a complete ration.

(l) That the buttermilk or milk sugar content in Super Quality feeds is of any particular value in aiding digestion or assimilation or in promoting intestinal health or in giving a tonic effect or in helping to keep the intestinal tract free of harmful bacteria.

(m) That the various feeds distributed by J. Kendley Martin are sold entirely direct to the purchasing public.

(n) That Super Quality Starting Mash will afford the lowest mortality rate or that any of the hog feeds sold and offered for sale by J. Kendley Martin will afford the highest profit or will grow and develop swine at the lowest feeding cost or will put on the most weight or will grow and develop swine in the shortest time or with the smallest amount of feed. (Apr. 24, 1940.)

02553. **Deodorant—Qualities and Opportunities.**—C. E. Woodling, an individual trading as C. E. Woodling Chemical Works, 127 South Jefferson Street, Allentown, Pa., vendor-advertiser, was engaged in selling a chemical designated Odorene which is to be sprayed in rooms for deodorizing them, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the product is instant in action.

(b) That the product will banish, end or kill odors, or from otherwise representing or implying that it is permanent in effect.

(c) That there is no competition in selling the product.

(d) That the product is new in any territory unless there have been no previous sales in the locality referred to.

(e) That the financial opportunities afforded in selling the product are unparalleled.

(f) That the product is effective for all odors.

The said C. E. Woodling further agreed that in connection with claims made concerning the efficacy of the product he will only state the particular odors against which the product is efficacious.

The said C. E. Woodling agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 25, 1940.)

02554. **Hand Lotion—Comparative Merits, Results and Qualities.**—Charles Dallas Reach, an individual, trading as Chas. Dallas Reach Co., 58 Park Place, Newark, N. J., was engaged in the business

of conducting an advertising agency which disseminated advertisements for a hand lotion designated Frostilla Fragrant Lotion on behalf of The Frostilla Co., Inc., of Elmira, N. Y. and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That competitive lotions in general leave a sticky or gummy residue.

(b) That the ingredients in Frostilla Fragrant Lotion are definitely known to be more costly than those employed in competitive lotions generally, when such is not, in fact, definitely known

(c) That Frostilla Fragrant Lotion—

1. Excels other hand lotions in general in producing such beneficial results as it is capable of effecting or accomplishes such results where other lotions generally fail; or
2. Prevents the nail cuticle from becoming rough or ragged; or
3. Is effective for every case of parched skin or for every case of reddened hands; or
4. Tones or stimulates the skin or does more than aid in conditioning the skin; or
5. Is "the" perfect hand lotion; or
6. Keeps hands young looking; or
7. Is most always preferred where hand lotions are tested side by side.

The said Charles Dallas Reach further agreed not to disseminate or cause to be disseminated any testimonial containing any representation contrary to the foregoing agreement. (Apr. 24, 1940.)

02555. Medicinal Preparation—Comparative Merits and Qualities.—New England Products, Inc., a corporation, 1601 Payne Street, Evanston, Ill., vendor-advertiser, was engaged in selling a medicinal preparation composed chiefly of garlic designated Peacock's Garlic Capsules 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 Peacock's Garlic Capsules 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 more effective than ordinary garlic or other garlic preparations, or is rich in calcium, potassium or phosphorus, or provides alkaline properties for the human system.

(b) Will give one good health, restore vitality or cause one to feel young, or will relieve one of a run-down feeling or will build up resistance.

(c) Is of value in the treatment of colon irritation or indigestion or has any value other than the value which it may have as a carminative.

(d) Is of value in the treatment of low or high blood pressure other than any tendency which it may have to temporarily reduce high blood pressure in those cases where the same is caused by a constriction of the blood vessels.

(e) Is of value in treating rheumatism, bronchitis, coughs, colds, or other respiratory infections.

(f) Is antiseptic or has germ killing powers when taken internally.

The said New England Products, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Apr. 26, 1940.)

02556. Medicinal Preparation—Qualities.—Mrs. Greta J. Leskovar, an individual, 507 East 73d Street, New York City, vendor-advertiser, was engaged in selling a medicinal preparation designated Lesko Herbs Tea and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) Is a competent treatment or effective remedy for retarded, suppressed, irregular, or sick monthly periods.

(b) Is an aid for the relief of the pain or discomfort attending irregular menstruation; or

(c) Will relieve the cramps or colic, of troublesome or irregular menstruation due to exposure or cold or any other cause.

The said Mrs. Greta J. Leskovar further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 1, 1940.)

02557. Medicinal Preparation—Qualities.—Samuel Cohen, an individual, doing business under the trade name S. C. Sales Co., 126 W. Baltimore Street, Baltimore, Md., vendor-advertiser, was engaged in selling a medicinal preparation designated Mag-Net-O Balm and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the preparation is a remedy or competent treatment for varicose veins or leg swellings, or that its use alone, or in connection with the application of heat, rubbing, or exercises will remedy, correct, eliminate, or help reduce varicose veins or leg swellings; or

(b) That said preparations alone or used in connection with the application of heat, rubbing, or exercises, is a remedy or competent treatment for sciatica pains, rheumatic pains, lumbago pains, lame back, stiff neck, headache, chest colds, earache, or simple sprains, or that the preparation has any therapeutic value in the treatment thereof in excess of a rubefacient and counter-irritant; or

(c) That the said preparation penetrates to congested or otherwise affected parts, or that said preparation is an aid in the treatment of deep-seated congestion; or

(d) That said preparation alone or used in connection with the application of heat, rubbing or exercises is a new method of treatment for varicose veins or leg swellings.

The said Samuel Cohen further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 1, 1940.)

02558. Medicinal Preparation—Qualities.—Van Sant, Dugdale & Co., Inc., a corporation, Court Square Building, Baltimore, Md., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation designated Bliss

Native Herb Tablets on behalf of Bliss Medical Co., Washington, D. C., and agreed to cease and desist from representing directly or by implication—

(a) By the use of the word "quickly" or any other word or words of similar import or meaning that said product will give immediate relief for upset stomach, gas bloating pains, acid risings, lost appetite, sour stomach, and headaches, due to constipation or any other cause or causes.

(b) By the use of the words "Positive relief" or any other word or words of similar import or meaning that said product relieves all cases of upset stomach, gas bloating pains, acid risings, lost appetite, sour stomach, and headaches, due to constipation or any other cause or causes.

(c) That the product will flush the bowels or kidneys.

(d) That the product will "pep up" the liver, or from otherwise representing or implying that it will stimulate the liver.

(e) That the product will cause a faster elimination of kidney wastes.

(f) That the product will "pep up" or "tone up" the stomach, or otherwise representing that said product is a treatment for the stomach, unless limited to such influence as it might have as a stomachic. (May 2, 1940.)

02559. Insecticide—Qualities.—Buhach Producing & Manufacturing Co., a corporation, 37 East Channel Street, Stockton, Calif., vendor-advertiser, was engaged in selling an insecticide designated Buhach and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

1. That said product is effective in killing all species of moths or all insect pests.

2. By use of the words "get rid of," "banish," or any other words of similar import or meaning, that Buhach, when spread across the trails of ants or roaches, kills or repels all of such pests.

The said Buhach Producing & Manufacturing Co. further agreed not to publish or cause to be published any testimonial concerning any representation contrary to the foregoing agreement. (May 2, 1940.)

02560. Correspondence Course—Qualities and Academy.—Eleanor Moore, an individual, trading as Academy of Hawaiian Music, 18 South Seventeenth Avenue, Maywood, Ill., vendor-advertiser, was engaged in selling a correspondence course designated Home Study Course for the Hawaiian Guitar and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the course is a new method of instruction for learning to play the Hawaiian Guitar.

(b) That purchasers of said course of instructions require no talent, or special talent, or an "ear" for music to learn to play the Hawaiian guitar, or that all pupils can, through said course of instruction, learn to play the Hawaiian guitar.

(c) That a pupil can learn to play from regular piano music or any other kind of sheet music, unless such representations are qualified to explain that such music must include a separate score upon which the melody notes are written and upon which a chord designation is printed above each bar.

(d) That a pupil can learn to play regular songs after receiving and studying the first lesson of the said music course.

The said Eleanor Moore further agreed to cease and desist from using the word "Academy," or any other word, term, or name of like import and meaning as any part of her trade name, or to designate or describe the business of selling any correspondence course of instructions in music.

The said Eleanor Moore further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 3, 1940.)

02561. Medicinal Preparation—Qualities and Remedy.—C. G. Ives, an individual, trading as Ives Drug Co., Glenwood Drug Co., and Ives Druggist, 1600 Glenwood Avenue, Minneapolis, Minn., vendor-advertiser, was engaged in selling a medicinal preparation designated Ives Wonder Pile Remedy and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

That said preparation is an effective remedy or a competent treatment for the physical disorder and condition known as hemorrhoids or piles; that its use will avoid an operation; or that it has any therapeutic value in the treatment of piles in excess of a mild, temporary, palliative for the itching, burning, and similar irritations that are usually due to, or associated with, the superficial symptoms of some types of piles.

The said C. G. Ives further agreed to forthwith cease and desist from using the word "Remedy" or any other word or term of like import or meaning as any part of any trade name used to designate or describe the said preparation.

The said C. G. Ives further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 6, 1940.)

02562. Medicinal Preparation—New, Qualities, Results and Laboratory.—V. G. Fernandez, an individual doing business under the trade name of Wonder Laboratory, 4557 Ellis Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling a medicinal preparation designated Anticalvez and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) Is a new discovery.

(b) Eliminates dandruff.

(c) Stops falling hair or dandruff.

(d) Gives the hair vigor and the luster of youth.

(e) Has done wonders for many who would not be without it.

(f) Will improve the hair or scalp.

(g) Or a similar preparation used by his mother resulted in her hair being abundant or of natural color at the age of seventy or at any other time or age.

(h) Will prevent baldness or gray hair; or cause one to have an abundant growth of hair.

The said V. G. Fernandez further agreed to forthwith cease and desist from representing, by the use of the word "laboratory" or any abbreviation thereof as part of his trade name, or by any other means, that he maintains a laboratory, until and unless he owns, operates or controls, under direct supervision of a qualified scientist, an adequately and properly equipped laboratory where scientific analyses, tests and experiments are conducted.

The said V. G. Fernandez further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 7, 1940.)

02563. Medicinal Preparations—Qualities, Results, Nature, Composition, Etc.—Chief Two Moon Herb Co., a corporation, Waterbury, Conn., vendor-advertiser, was engaged in selling medicinal preparations designated Chief Two Moon Bitter Oil, Chief Two Moon Cough, Chief Two Moon Skin Cream, Chief Two Moon All-Herb Stomach Relief, Chief Two Moon All-Herb Kidney Relief, Chief Two Moon All-Herb Nerve Remedy, Chief Two Moon All-Herb Female Tonic, Chief Two Moon All-Herb Rheumatism Relief, Chief Two Moon All-Herb Tonic Relief, Chief Two Moon All-Herb Asthma Relief, and Chief Two Moon All-Herb Liver Relief and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That Chief Two Moon was the "world's greatest herbist."
- (b) That Chief Two Moon remedies—
  1. Are "Indian" remedies.
  2. Are "herb" remedies except where the major portion of active ingredients are herbs.
  3. Have brought relief and restored health and happiness to thousands of sufferers throughout the country; or
  4. Are effective treatments for stomach trouble, tumors, rheumatism, kidney and liver ailments, nervousness, asthma.
- (c) That a medicinal preparation now designated "Chief Two Moon Bitter Oil," or any other preparation containing substantially the same ingredients or possessing the same properties whether sold under that name or any other name—
  1. Is a competent remedy in the treatment of congestion of the lungs, ulcers of the stomach, colitis, rheumatism, constipation (unless limited to temporary constipation), backache, headache, stomach trouble, eczema, neuritis, intestinal trouble, or spinal trouble; or
  2. Contains the juices of roots, barks and herbs which are of an especial value.
- (d) That a medicinal preparation now designated "Chief Two Moon All-Herb Nerve Remedy," "Chief Two Moon Nervine Tea," "Nervine" or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Soothes the entire nervous system.
2. Supplants lost energy; or
3. Aids in creating new nerve force.

(e) That a medicinal preparation now designated "Chief Two Moon All-Herb Stomach Relief," "Chief Two Moon Stomach Tea," or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Has any remedial effect in the treatment of any stomach disease, chronic or organic stomach condition.
2. Is blended by Chief Two Moon; or
3. Is unsurpassed as a natural health agent.

(f) That a medicinal preparation now designated "Chief Two Moon All-Herb Asthma Relief," "Chief Two Moon Asthma Tea," or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Is Nature's most powerful weapon in combatting asthma; or
2. Is effective in counteracting the dangerous and treacherous asthma condition.

(g) That a medicinal preparation now designated "Chief Two Moon All-Herb Rheumatism Relief," "Chief Two Moon Rheumatism Tea," or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Stimulates assimilation.
2. Makes rich blood.
3. Stimulates elimination.
4. Throws off impurities.
5. Builds up resistance; or
6. Is a competent remedy for rheumatism.

(h) That a medicinal preparation now designated "Chief Two Moon All-Herb Female Tonic," "Chief Two Moon Female Tea," or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Is beneficial to women at trying periods.
2. Is an effective treatment for any ailment to which women are subject; or
3. Builds rich blood and strength after childbirth.

(i) That a medicinal preparation now designated "Chief Two Moon All-Herb Kidney Relief," "Chief Two Moon Kidney Tea," or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Is formulated according to the old tested and proven Indian remedy;  
or
2. Is a competent remedy in the treatment of any organic kidney disease.

(j) That a medicinal preparation now designated "Chief Two Moon All-Herb Liver Relief," "Chief Two Moon Liver Tea," or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name—

1. Is blended in Chief Two Moon's scientific laboratory.
2. Is Nature's able assistant in toning up the liver to allow its proper functioning; or
3. Has any medicinal value in the treatment of diseases of the liver.

(k) That a medicinal preparation now designated "Chief Two Moon All-Herb Tonic," "Chief Two Moon Tonic Tea," or any other preparation contain-

ing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name is marvelous or excels as a tonic.

(l) That a medicinal preparation now designated "Chief Two Moon Skin Cream," or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, is of any value in the treatment of irritations of the skin except minor irritations due to external causes.

(m) That a medicinal preparation now designated "Chief Two Moon Cough Elixir," or any other preparation containing substantially the same ingredients, or possessing the same properties, whether sold under that name or any other name—

1. Relieves spasm and pain.
2. Restores tone to the affected parts; or
3. Is a suitable preparation for coughs other than those due to colds.

The said respondent further agreed to cease and desist from the use of any or all of the following words, or any other word or words of similar import or meaning, to designate any of its products, to wit: "nervine," "nervine tea," "nerve remedy," "asthma tea," or "asthma relief."

The said advertiser further agreed to cease and desist the circulation and dissemination of a certain booklet entitled "Chief Two Moon Herbs for Health," consisting of 32 pages and containing many claims, representations and testimonials concerning the alleged benefits which have been and are to be derived from the foregoing products and which in large part the advertiser admits are unwarranted.

The said Chief Two Moon Herb Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (May 3, 1940.)

02564. **Cosmetics, Food Supplements, and Medicinal Preparations—Qualities, Results, Nature, Composition, Etc.**—Battle Creek Dietetic Supply Co., a corporation, 16 Court Street, Battle Creek, Mich., vendor-advertiser, was engaged in selling cosmetics designated Health House Brand Hormone Cream and Health House Brand Vitamin F Cream; food supplements designated Health House Brand Yeast Vitamin Tablets, Health House Brand Vegetable Mineral Broth, Health House Brand Vegetable Tablets, Health House Brand Wheat Germ and Health House Brand Vitamin E Capsules; and a medicinal preparation designated Health House Brand Cough Syrup with Vitamins A, B, D and G and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That vitamin E is known to be of value in preventing sterility or miscarriage in humans, or in causing a longer retention of sex impulses, or in improving strength, vigor or vital resistance, or that vitamin E is the fertility vitamin.

(b) That Health House Brand Hormone Cream will help prevent lines or wrinkles.

(c) That Health House Brand Vitamin F Cream aids in restoring the skin's normal balance, or helps to keep the skin young, or that said cream, by virtue of its "Vitamin F" content or otherwise, is of value in preventing or correcting conditions of dandruff or brittle hair or brittle finger nails or roughness of the skin or dryness of the skin, or that "Vitamin F" is known to be of value in skin or scalp conditions.

(d) That the vitamins as contained in Health House Brand Cough Syrup are present in sufficient amounts to be of therapeutic value.

(e) That Health House Brand Vegetable Tablets or that Health House Brand Vegetable Mineral Broth will help maintain the acid-alkaline balance of the body.

(f) That Health House Brand Wheat Germ is of value in conditions of faulty digestion or faulty elimination or anorexia or improperly balanced meals in any case other than where such conditions may be due to lack of sufficient vitamin B in the diet.

(g) That Health House Brand Yeast Vitamin Tablets are of value in cases of skin blemishes or bowel troubles or lowered resistance or anorexia except where these conditions are due to lack of sufficient vitamin B in the diet.

(h) That vitamins tend to normalize weight, or that vitamins will help reduce obese persons to normal weight, or that vitamins will help underweight persons to attain normal weight except where such persons are underweight because of insufficient vitamins in their diet.

(i) That it has been established as an actuality or that scientific authorities are all in agreement that the ordinary and modern diet is lacking in vitamin B or that most people receive an inadequate supply of this vitamin.

The said Battle Creek Dietetic Supply Co. also agreed that where any of its products contain any fatty acids, it will cease and desist from designating such acids as "Vitamin F."

The said Battle Creek Dietetic Supply Co. further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (May 3, 1940.)

02565. Correspondence Club—Unique, Results Guarantee, Special Offer, Etc.—Belmont Lindsey, an individual trading as The National Social Club, 3453 Brooklyn Street, Kansas City, Mo., vendor-advertiser, was engaged in selling lists of names purporting to be members of The National Social Club and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That The National Social Club is unique or that The National Social Club's plan or service is unique.

(b) That results are guaranteed to members.

(c) That services rendered to persons are specialized services.

(d) That free information or free descriptions can be obtained by persons answering advertisements.

(e) That his statements relating to the financial or other standing, education, character, age, occupation or profession of those whose names appear on such lists are other than mere statements of those persons themselves in the absence of some reasonable investigation into the truth or falsity of such statements.

(f) That any offer is special unless it is less in price than the usual or regular price and limited in time.

The said Belmont Lindsey agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 8, 1940.)

**02566. Hair Dye and Shampoo—Nature and Qualities.**—The Nestle-LeMur Co., a corporation, Port Authority Building, 111 Eighth Avenue, New York City, vendor-advertiser, was engaged in selling a hair dye designated Nestle Colorinse and a hair shampoo designated Nestle Shampoo and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That Nestle Colorinse is not a dye.
- (b) That Nestle Colorinse improves the natural color of the hair.
- (c) That Nestle Colorinse in any manner imparts youth to the hair or recaptures the youthfulness of the hair.
- (d) That Nestle Colorinse is a vegetable compound.
- (e) That Nestle Shampoo adds a natural sheen to the hair.
- (f) That the use of Nestle Shampoo helps overcome or is a corrective or cure for dandruff, or stops, checks or aids in stopping or checking falling hair, or that the use of Nestle Shampoo alone will minimize excessive hair loss due to scurfed or sluggish scalp.

The said The Nestle-LeMur Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 9, 1940.)

**02567. Antifreeze Solution—Demand, Success and Qualities.**—Sigvart Sivertson, an individual doing business as The Morco By-Products Co., 1758 Lunt Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling an antifreeze solution designated Security Anti-Freeze and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That the demand for Security Anti-Freeze is any definite amount not in accordance with the facts.
- (b) That the sales of Security Anti-Freeze exceed those of any other automobile antifreeze.
- (c) That tests for the effects of Security Anti-Freeze upon objects in a container demonstrate the same results as will be obtained under actual conditions of use.
- (d) That tests upon objects in a container represent the tests which would be performed in a laboratory.
- (e) That Security Anti-Freeze or any given dilution thereof has a freezing point not in accordance with the facts.
- (f) That a constant antifreeze strength or freezing point is maintained by Security Anti-Freeze.
- (g) That it is not necessary to determine by the use of recognized testing methods, such as a hydrometer, the degree of antifreeze strength or the freezing point of a solution of Security Anti-Freeze.
- (h) That Security Anti-Freeze will not foam in the automobile radiator.

(i) That Security Anti-Freeze is harmless to the radiator or motor of an automobile.

(j) That Security Anti-Freeze will not corrode the automobile parts with which it comes in contact.

(k) That Security Anti-Freeze is the only type of automobile anti-freeze known as "non-evaporating" or as "requiring only one filling a season."

(l) That Security Anti-Freeze has the same qualities as anti-freezes containing ethylene glycol.

The said Sigvart Sivertson agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 9, 1940.)

02568. Medicinal Preparation—Qualities.—Hobo Medicine Co., a corporation, Beaumont, Tex., vendor-advertiser, was engaged in selling a medicinal preparation designated Hobo Medicine and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That Hobo Medicine—

1. Is regarded as a family standby or a competent or effective treatment for kidney or bladder disorders.
2. Will produce normal activities of disordered or diseased kidneys or bladder.
3. Is an aid in restoring normal health, energy, or pep to those suffering from kidney or bladder disorders.
4. Will help relieve or aid in correcting kidney or bladder disorders.
5. Will help cleanse or remove from the system or blood stream excessive poisonous or irritating acids or dangerous poisonous wastes, or have any effect upon the blood stream.
6. Will help relieve the distress caused by backache, headache, dizziness, rheumatism, dizzy spells, traveling pains, nervousness and puffy eyes due to kidney or bladder disorders.
7. Is an aid to lovelier skin.

(b) That pimples, sallow skin, puffy eyes can be aided by its use.

(c) That women improve or keep or help keep their complexions free of blemishes by its use.

(d) That men and women have been aided to better health by its use.

The said Hobo Medicine Co. further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (May 15, 1940.)

02569. Medicinal Preparation—Qualities and Laboratory.—Marvan Laboratory, Inc., a corporation, 30 East Third Street, New York City, vendor-advertiser, was engaged in selling a medicinal preparation designated Marvan Dermopathic Salve and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That said product is an effective remedy or competent treatment for eczema, itch, rash, pimples, psoriasis, chronic leg sores, acne, ringworm, barber's itch, athlete's foot, poison ivy, itching piles, seborrhea capitis, dermatitis, pruritus ani, pruritus vulva, or other skin diseases, or that it has any therapeutic

tic value, in the treatment of such diseases, disorders, or conditions in excess of a temporary relief from the itching, burning and similar irritations that are often associated with the diseases, disorders and conditions mentioned;

(b) That said product will relieve, stop or remove itching or burning or other irritations immediately;

(c) That said product will relieve inflammation, allay irritation, or will heal;

(d) That said product is anti-pruritic or antiphlogistic.

The said advertiser further agreed to cease and desist from representing, by the use of the word "laboratory" or any other term of similar meaning or like import as a part of its trade name or in any manner, that it conducts or operates a laboratory.

The said Marvan Laboratory, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 16, 1940.)

**02570. Medicinal Preparation—Qualities.**—Joseph Balassa, an individual trading as Balassa Laboratories, 47 Sixteenth Avenue, Newark, N. J., vendor-advertiser, was engaged in selling a preparation designated Corn Stick and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That it will end, mitigate or relieve the pain incident to the condition known as bunions;

(b) That it will take away or remove the diseased condition known as bunions.

The said Joseph Balassa further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 16, 1940.)

**02571. Medicinal Preparation—Qualities and Results.**—Morten Laboratories, Inc., a corporation, 308 South Harwood Street, Dallas, Tex., vendor-advertiser, was engaged in selling a medicinal preparation designated Hay-No 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 Hay-No 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 remedy or effective treatment for hay fever or that it has any therapeutic value in excess of affording symptomatic relief for said disease; or

(b) That the results to be achieved by the use of the said product in the treatment of sinus irritations, head colds, cold-clogged air passages, distress of nose-blowing and sneezing, stuffiness or other symptomatic conditions are amazing, wondrous or quick, or that said product is a discovery.

The said Morten Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 17, 1940.)

02572. **Medicinal Preparation—Qualities.**—The Num-O-Col Co., Inc., a corporation, 9 South Walker Street, Oklahoma City, Okla., vendor-advertiser, was engaged in selling a medicinal preparation designated Milt's Num-O-Col Ointment 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 "Milt's Num-O-Col Ointment" 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 an effective treatment or competent remedy for pneumonia, influenza, or common colds.

(b) is an effective treatment or competent remedy for sore throat or rheumatism unless limited to such relief of the symptoms of these conditions as may be afforded by its counterirritant properties.

The said The Num-O Col Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 18, 1940.)

02573. **Medicinal Preparation—Qualities and "Doctor".**—Leonard J. Hartmann, an individual, 1538 West Fifth Street, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Concentrated Food Particle (Wheat Germ Oil) and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That the product will prevent or overcome disease.

(b) That the product will afford an increase in health or energy.

(c) That the product is beneficial for all persons or at all times, or as a supplement to the ordinary diet.

(d) That the product is a competent treatment or an effective remedy for female hemorrhage, dysmenorrhea, cramps or uterine tenderness.

(e) That the product will restore potency or that it is a competent treatment or an effective remedy for sterility unless limited to its aid in treating the condition when it is due to a Vitamin E deficiency and it is further explained in direct connection therewith that sterility due to a Vitamin E deficiency is an extremely rare occurrence.

(f) That the product will cause:

- (1) An increase in testicular growth,
- (2) A hastened healing of skin wounds,
- (3) An increase in growth of children.

(g) That any statement or conclusion published by him is the statement or conclusion of any other number of persons or organizations unless such is a fact.

The said Leonard J. Hartmann further agreed that when using the word "Doc" or any other word or words as descriptive of or indicative

of his profession, he will state the particular profession in which he is licensed.

The said Leonard J. Hartmann further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 20, 1940.)

02574. Insecticides—Qualities, Comparative Merits, Etc.—Wilson Bros. Paint and Hardware Co., a corporation, 3863 Cottage Grove Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling certain insecticides designated “Distol Concentrate” and “Thymite” and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

- (a) That Distol Concentrate will kill bed bugs or bed bug eggs instantly.
- (b) That most bed bug mixtures scatter bed bugs into the walls or woodwork.
- (c) That roaches are carriers of cancer.
- (d) That roaches and bed bugs are carriers of disease germs or disease.
- (e) That Distol Concentrate is odorless.
- (f) That Thymite will rid or eliminate roaches from all buildings overnight.
- (g) That one application of Thymite will keep any building clean of roaches, water bugs, silver bugs, or ants, for one year.
- (h) That there are no other insecticides which will achieve substantially the same results as will Distol Concentrate or Thymite.

The said Wilson Bros. Paint and Hardware Co., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 20, 1940.)

02575. Food Supplements and Medicinal Preparations—Nature and Qualities.—McCullum Laboratories, a corporation, 17234 South Main Street, Gardena, Calif., vendor-advertiser, was engaged in selling food supplements and medicinal preparations designated Isodent, Isomar, Isoveg, Isolax, Kelp Tablets and Garlic-Parsley McCullum Tablets 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 above named products supplies to the average diet the mineral or vegetable elements in which such diet is deficient.
- (b) That a medicinal preparation now designated Isodent, or any other medicinal preparation containing substantially the same ingredients, or possessing substantially the same properties, whether sold under that name or any other name, is a balanced dentifrice, or that it restores natural color to the teeth, or builds firmness of the gum tissues or attacks acid mouth germs or reduces tartar.
- (c) That a food product now designated Isomar, or any other preparation containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, is a balanced gland food, or combines the most valuable organic minerals from land or sea vegetation.
- (d) That a food product now designated Isoveg, or any other product containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, provides a source of many

of the more important nutritional factors, or that such factors are frequently missing in the average daily menu.

(e) That the preparation now designated as Isolax, or any other preparation or product containing substantially the same ingredients, or possessing the same properties, whether sold under that name, or any other name, is a food.

(f) That the food product now designated Kelp Tablets or any other product containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, is rich in vital minerals or that such minerals are necessary to body nutriment.

(g) That the food product now designated Breakfast Granules or any other product containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, aids the digestion.

(h) That the food product now designated Alfalfa Tea and Tablets, or any other product containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, aids Nature in providing a source of natural alkaline nutriment; that it is a valuable internal supplement to creams or powders, or that it increases liquid secretion.

(i) That the food product now designated Garlic-Parsley McCollum Tablets, or any other product containing substantially the same ingredients or possessing the same properties, whether sold under that name or any other name, will reduce high blood pressure, or that clinical investigation has shown that either garlic or parsley will cause a lowering of blood pressure, or relieve headaches, dizziness or similar symptoms resulting from functional high blood pressure.

The said McCollum Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 27, 1940.)

02576. Medicinal Preparation—History, Nature and Qualities.—Medical Tea Co. of California, Inc., a corporation, and Otto Wise, an individual trading as Medical Tea Co. of California, 307 South Hill Street, Los Angeles, Calif., were engaged in selling a medicinal preparation designated Cento Tea, formerly designated Aesculapius Tea and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(a) That such product or that the particular formula for such product has been used for centuries or has been used for any period of time greater than is actually the case.

(b) That such product or that any of the ingredients in such product is of value in the treatment of gall or liver or kidney ailments, or is a competent and reliable agent for the relief of symptoms associated with such ailments, or is of value in preventing or dissolving kidney stones, or gallstones, or possesses healing or analgesic properties, or is capable of restoring one to normal or vital health, or aids the liver in its functions, or purifies gall passages, or helps eliminate poisons and foreign matter from the system, or possesses disinfectant properties, or acts as a cleanser for the liver or kidneys or gall, or cleanses the stomach, or is capable of bringing about a proper distribution of body liquids, or stimulates gall secretions.

(c) That such product is not a laxative.

(d) That the ingredients in such product are carried to the affected parts.

(e) That all modern physicians subscribe to the theory that constipation causes auto-intoxication or a "backing up" of toxic poisons within the body.

(f) That every ingredient in such product possesses therapeutic value.

(g) That the hypericum content of such product stimulates the appetite.

The said Otto Wise and the said Medical Tea Co. of California, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (May 27, 1940.)

02577. Drug—Success and Qualities.—Armand S. Weill Co., Inc., a corporation, 170 Franklin Street, Buffalo, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a drug designated "Raz-Mah" on behalf of Templetons, Inc., Buffalo, N. Y., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication—

(a) That said preparation 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. (May 28, 1940.)

## DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION <sup>1</sup>

### ALLE-RHUME REMEDY COMPANY, INC., AND BLOCK DRUG COMPANY, INC. v. FEDERAL TRADE COMMISSION <sup>2</sup>

No. 7245

(Circuit Court of Appeals, Third Circuit, Dec. 5, 1939)

Order dismissing, on stipulation and agreement of parties, petition for review of cease and desist order of Commission in the matter of Alle-Rhume Remedy Co., Inc., et al., Docket 3678, August 25, 1939, 29 F. T. C. 707, and which, as thereafter modified on November 13, 1939 (29 F. T. C. 716), directed respondent corporations, their officers, etc., to cease and desist from disseminating any advertisements in connection with offer and sale of their "Allenru" or other similar medicinal preparation, which advertisements represent, directly or by implication, that preparation in question 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 safe or scientific formula, etc., as in said order in detail set forth.

*Sher & Sher*, of Rutherford, N. J., for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, of Washington, D. C., for the Commission.

Before BIGGS and MARIS, *Circuit Judges*:

Upon consideration of the agreement of counsel for both sides, in the above entitled cause,

*It is now ordered*, That the said appeal be, and the same is, hereby dismissed.

<sup>1</sup> During the period covered by this volume, namely, December 1, 1939, to May 31, 1940, the United States Supreme Court denied certiorari in the following cases involving the Commission: *Justin Haynes & Co., Inc. v. F. T. C.*, December 4, 1939, 308 U. S. 616; *The Great Atlantic & Pacific Tea Co. v. F. T. C.*, January 2, 1940, 308 U. S. 625 (rehearing denied, January 29, 1940, 309 U. S. 694); *Glade Candy Co. v. F. T. C.*, *Ostler Candy Co. v. F. T. C.*, and *Shupe-Williams Candy Co. v. F. T. C.*, March 25, 1940, 309 U. S. 675; *International Art Co. et al. v. F. T. C.*, May 20, 1940, 310 U. S. 632; and *Webb-Crawford Co. et al. v. F. T. C.*, May 20, 1940, 310 U. S. 638.

Decisions of the Circuit Courts of Appeals in the foregoing cases are respectively reported, as follows, namely, *Justin Haynes & Co., Inc.*, 105 F. (2d) 988, 29 F. T. C. 1578; *The Great Atlantic & Pacific Tea Co.*, 106 F. (2d) 667, 29 F. T. C. 1591; *Glade Candy Co.*, *Ostler Candy Co.*, and *Shupe-Williams Candy Co.*, 106 F. (2d) 962, 29 F. T. C. 1584; and *International Art Co. et al.* and *Webb-Crawford Co. et al.*, respectively, reported in 109 F. (2d) 303 and 109 F. (2d) 268, and in this volume, *infra* at pp. 1635 and 1630.

<sup>2</sup> Not reported in Federal Reporter. For case before Commission, see 29 F. T. C. 707.

EDUCATORS ASSOCIATION, INC., ET AL. v. FEDERAL  
TRADE COMMISSION<sup>1</sup>

No. 97

(Circuit Court of Appeals, Second Circuit. Dec. 18, 1939)

**JURISDICTION—IN GENERAL—COMPETITIVE WIDE SALE IN INTERSTATE COMMERCE—  
SCHOOL REFERENCE WORKS—PUBLISHERS.**

A New York corporation publishing a reference book suitable for use by school children and sold in interstate commerce in many states in competition with others selling similar books is subject to the Federal Trade Commission Act. Federal Trade Commission Act, section 5; 15 U. S. C. A. section 45.

**FINDINGS OF COMMISSION—WHERE SUPPORTED BY SUBSTANTIAL EVIDENCE.**

Findings of the Federal Trade Commission supported by substantial evidence are conclusive.

**FINDINGS OF COMMISSION—TRADE AND CORPORATE NAMES—BUSINESS PRIVATE  
PROFIT ENTERPRISE AS EDUCATIONAL UNDERTAKING.**

Evidence supported finding of the Federal Trade Commission that corporate and trade names of business enterprises selling reference book for profit misled a substantial portion of prospective purchasers into erroneous belief that teachers and educators were united to sell book for a common purpose other than financial gain and that members of the public were induced to make purchases which they would not have made except for their erroneous belief.

**PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—BUSINESS STATUS, ADVANTAGES  
OR CONNECTIONS—BUSINESS PRIVATE PROFIT ENTERPRISE AS EDUCATIONAL  
UNDERTAKING.**

[471] Where business enterprises selling reference books for profit employed selling procedure designed to give impression that their paramount purpose was not profit but the attainment by a group of learned people of their purpose to serve the cause of education, the purchasing public was entitled to be protected against the deception practiced, and a proper order to that end by the Federal Trade Commission was in the public interest.

**PUBLIC INTEREST—METHODS, ACTS AND PRACTICES—COMMISSION ACTION—SPECIFIC  
AND SUBSTANTIAL AS PREREQUISITE.**

The interest of the public in selling procedure to justify action by the Federal Trade Commission must be specific and substantial.

**CEASE AND DESIST ORDERS—MODIFICATION BY COURT—IN GENERAL.**

The Circuit Court of Appeals has power to modify orders of the Federal Trade Commission.

<sup>1</sup> Reported in 108 F. (2d) 470. For case before Commission, see 23 F. T. C. 1006. On petition for rehearing, see *infra*, p. 1658.

CEASE AND DESIST ORDERS—MODIFICATION BY COURT—METHODS, ACTS AND PRACTICES—TRADE AND CORPORATE NAMES—BUSINESS PRIVATE PROFIT ENTERPRISE AS EDUCATIONAL UNDERTAKING—“EDUCATORS ASSOCIATION”—MODIFICATION TO PERMIT USE IF DISCLOSURE TRUE STATUS BY ACCOMPANYING WORDS.

Use of term “Educators Association” in names employed by business enterprises selling reference book for profit in a manner not misleading to the purchasing public would not be “unfair competition,” and hence an order of the Federal Trade Commission, requiring enterprises to cease and desist from representing through use of that term that they constituted a group of educators or that their business was anything other than a private enterprise for profit, was modified to provide that names could be used if coupled with other words revealing true character of business.

CEASE AND DESIST ORDERS—DISCONTINUANCE OF PRACTICES—IN GENERAL—EFFECT.

Discontinuance of practices violative of the Federal Trade Commission Act does not alone deprive the Federal Trade Commission of power to make an order otherwise justified, but, under the act, past as well as present practice gives the commission cause for action. Federal Trade Commission Act, section 5 (b) ; 15 U. S. C. A., section 45 (b).

CEASE AND DESIST ORDERS—DISCONTINUANCE OF PRACTICES—TERMS AND CONDITIONS—AGENTS’ OR REPRESENTATIVES’—REFUNDS—BUSINESS STATUS, ADVANTAGES OR CONNECTIONS, AND PRODUCT OF SELLER—EDUCATIONAL CONNECTIONS AND BOOK’S OFFICIAL ADOPTION AS TEXTBOOK REQUIRED.

Though business enterprises organized to sell a reference book for profit had ceased to violate the Federal Trade Commission Act before complaint was filed, the Federal Trade Commission could order enterprises to cease and desist from representing to prospective representatives that they would refund deposits under certain conditions and from representing that they were connected with educational institutions or that their book was prescribed as a textbook, where those provisions of order were based on adequate findings supported by evidence.

(The syllabus, with substituted captions, is taken from 108 F. (2d) 470)

On petition by the Educators Association, Inc., and others, to review order of Commission requiring petitioners to cease and desist from the use of certain sales practices found to amount to unfair methods of competition in interstate commerce in violation of section 5, order modified, and, as modified, affirmed.

*Townsend, Kindleberger & Campbell*, of New York City (E. Crosby Kindleberger, of New York City, of counsel), for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. William L. Pencke* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for respondent.

Before SWAN, CHASE, and CLARK, Circuit Judges.

*CHASE, Circuit Judge:*

The Federal Trade Commission issued a complaint against the petitioners and, after hearings thereon, made an order requiring them to cease and desist from the use of certain sales practices which were found to amount to unfair methods of competition in interstate commerce in violation of section 5 of the Federal Trade Commission Act (38 Stat. 717, 15 U. S. C. A. 45). This petition was brought to review that order.

[472] During the proceedings certain facts were stipulated and, from those facts supplemented by evidence taken as to others, it was shown that Educators Association, Inc., is a New York corporation with its principal office in the city of New York which publishes a reference book suitable for use by school children which is called *The Volume Library*. This book is sold in interstate commerce in many of the states in competition with others selling similar books.

Educators Association, Inc., sells its entire output of *The Volume Library* to petitioner, Leo F. Tully, who is its president and owns 95 percent of its stock. He does business under the trade name Educators Association and maintains offices at the address of Educators Association, Inc. He either sells the books outright to the other petitioners who in turn sell them to the public or has them sold to the public by the other petitioners acting as sales agents. In either event, the sales are ostensibly made to the public by Educators Association. In connection with each sale of a book the purchaser is given a certificate of membership in Educators Association, which in fact is only a trade name, that bears a facsimile of the corporate seal of Educators Association, Inc., and the signatures of L. L. Tully, president; E. E. Richards, vice president; and M. L. Kelley, secretary. It states in part that " \* \* \* the person to whom this certificate is addressed and immediate family are members of Educators Association. Said membership becomes effective when 'The Volume Library' is fully paid for, and gives full privileges for 10 years of consulting our Bureau of Research and Service regarding any practical question whose answer does not appear in 'The Volume Library.'" This service is given without cost provided a self-addressed stamped envelope was enclosed with the inquiry. It is mainly done by having a clerk answer the questions received though some are referred to others and Mr. Tully has an arrangement whereby forty questions a year may be referred to *Encyclopedia Britannica* for answer.

Sales people, employed on a commission basis with certain guarantees, are instructed in the methods of selling to be used and if they follow instructions, which include learning several pages of a compo-

sition called a sales talk, are entitled to the refund of a deposit, after working a designated time, which they are required to make to obtain a sample book and supplies. In making sales, they are expected to call at the homes of people having children in school and enlist their interest in the book by showing how it can be used by the children in their studies. Formerly, some parts of this sales talk may have indicated to parents that the sales agents were connected in some way with the school their children attended or that use of The Volume Library was a school requirement but that method of selling had been stopped before the complaint in these proceedings was issued. There was also evidence to show that sales people had been induced to sign contracts of employment without being fully advised as to the conditions of those contracts but that practice, too, had been discontinued before the issuance of the complaint.

Originally, people who did qualify as educators had had an association which compiled the matter that first was published but had been superseded by the corporate publisher and the contributors, many of them well-known educators, were not associated together at any time after petitioner Tully began to do business under the trade name Educators Association. The order under review provided that petitioners should cease and desist—

“(1) From representing through the use of the term ‘Educators Association’ in any corporate or trade name or through any other means or device, that they or any of them, constitute a group of educators or teachers formed into an association or that the business operated by them, or any of them, is anything other than a private business enterprise for profit.

“(2) Representing to prospective representatives that they will refund deposits or pay any specific sums of money or salaries to such representatives until and unless they fully and adequately disclose all of the terms and conditions upon which refunds or payments are actually made.

“(3) From representing or implying that they or their representatives, agents, or canvassers are connected in any manner with public schools or other educational institutions, or that said Volume Library, or any other and similar publication is prescribed as a text book or required to be used in connection with school work.”

The nature of the business in which the petitioners are engaged clearly makes the Federal Trade Commission Act [473] applicable and if the findings are supported by substantial evidence they are conclusive. (*Federal Trade Commission v. Winsted Co.*, 258 U. S. 483, 491; *Federal Trade Commission v. Curtis Co.*, 260 U. S. 568, 580; *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117; *Fioret Sales Co. v. Federal Trade Commission*, 100 F. (2d) 358 (C. C. A. 2)).

Having found upon substantial evidence that Educators Association, Inc., and Educators Association were both business enterprises organized and existing solely to make profits from the sale of the book and that they did not comprise a group of teachers or educators properly so-called, the Commission found further that the corporate and trade names used did mislead a substantial portion of prospective purchasers into the erroneous belief that a group of teachers and educators were united to sell the book "for a common purpose other than financial gain and have the capacity and tendency to induce members of the public under such false and erroneous belief to make purchases of said volume which they would not make except for such erroneous and false belief." The part of the finding above quoted was, we think, sufficiently supported by the evidence. The selling procedure in connection with the use of those names was designed to give the impression that the paramount purpose to be achieved by the seller was not profit to be gained in business but instead the attainment by a group of learned people of their purpose to serve the cause of education. The natural tendency of such an erroneous concept would be to induce parents to buy the book when they would not have done so had they known the truth. The purchasing public is entitled to be protected against that kind of deception and a proper order to that end is in the public interest (*Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 217).

Of course the interest of the public must be specific and substantial (*Federal Trade Commission v. Paladam Co.*, 283 U. S. 643). In this instance that interest is in not being deceived by the use of the corporate and trade names in connection with attempts to sell the book. The use of those names in a manner which did not mislead the purchasing public would not be unfair and certainly would not be unfair competition. Perhaps paragraph 1 of the order was not intended to prevent the use of either of those names. But we have the power to modify such orders (*Federal Trade Commission v. Balme*, 23 F. (2d) 615, 618), and for the sake of clarity that part of the order should be modified to provide that the names may be used if coupled with other words which do away with their tendency to create a false impression by revealing the true character of the business conducted (*Federal Trade Commission v. Army and Navy Trading Co.*, 88 F. (2d) 776).

The other two paragraphs of the order are based upon adequate findings which are supported by the evidence. Both findings and evidence, however, are to the effect that the petitioners had ceased to violate section 5 of the act in the respects forbidden before the complaint was filed. Because of this, it is argued that paragraphs 2 and 3 of the order should be set aside. We do not understand that discontinuance of practices violative of the act will alone deprive the

Commission of power to make an order otherwise justified. The act in express terms requires the Commission to issue a complaint if it shall appear to it that such a proceeding would be to the interest of the public whenever "\* \* \* any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, \* \* \*" (15 U. S. C. A., sec 45 (b)). Past as well as present practices give the Commission cause for action and their discontinuance is no defense (*Federal Trade Commission v. A. McLean & Son*, 84 F. (2d) 910, 913; *Federal Trade Commission v. Wallace*, 75 F. (2d) 733, 738).

Order modified as above and, as modified, affirmed.

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MILLINERY CREATORS' GUILD, INC., ET AL. v. FEDERAL  
TRADE COMMISSION <sup>1</sup>

No. 9

(Circuit Court of Appeals, Second Circuit. Jan. 22, 1940)

BOYCOTTS—TRADE ASSOCIATION ACTION—STYLE PIRACY PREVENTION—CUTTING OFF COMPETITORS' ACCESS TO CUSTOMERS OR MARKET—WHERE PRICE MAINTAINING EFFECT.

Where trade association having members which comprised a substantial majority of manufacturers of high priced women's hats sought to combat "style piracy" by inducing major retail outlets to refrain from purchasing hats which were piracies of designs registered with the association and by refusing to sell to retailers dealing with pirates, and where necessary effect of the manufacturers' combination was to maintain their price structure, the Federal Trade Commission was justified in entering a cease and desist order on ground that the association's method was "unfair competition," since the boycott employed by the association was unlawful. Federal Trade Commission Act, section 5, 15 U. S. C. A. section 45; Sherman Anti-Trust Act, sections 1, 2, 15 U. S. C. A., sections 1, 2.

BOYCOTTS—IN GENERAL—LEGALITY—WHERE NO RESTRICTIVE RESULT RE IMPORTANT COMPETITIVE PRICE, QUALITY, OR SERVICE.

The anti-trust laws contravene concerted action that unduly confines important areas of competition in price, quality, or service, but, unless it has such restrictive result, a combination to boycott is not necessarily unlawful.

BOYCOTTS—IN GENERAL—LEGALITY—OBJECTIVES—ILLEGAL ACTS—PREVENTION—COMPETITIVE INTENT AND EFFECT—WHERE BENEFICIAL COMPETITION NOT NECESSARILY ELIMINATED AND INTENDED TO BE.

A boycott designed to prevent the commission of an illegal act may be unobjectional so long as the particular agreement is not intended to and does not have the necessary effect of eliminating beneficial competition.

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<sup>1</sup> Reported in 109 F. (2d) 175. For case before Commission, see 24 F. T. C. 1136.

CONCERT OF ACTION—IN GENERAL—LEGALITY—OBJECTIVES—SOCIALY USEFUL TYPES OF COMPETITION—ABOLITION OF.

A boycott or other concerted action aimed at abolishing socially useful types of competition will not be tolerated.

STYLE PIRACY—ORIGINAL DESIGNS—WHERE WITHOUT PATENT OR COPYRIGHT PROTECTION—IMITATION—RELIEF.

Where an "original design" of a hat is too slight a modification to authorize a patent or copyright but the slight modification is of great commercial value because of the whims and cycles of fashion, an imitator may copy with impunity and the law grants no remedy to the creator.

METHODS, ACTS AND PRACTICES—IN GENERAL—UNETHICAL OR UNGENTLEMANLY ACTS—RELIEF—CONFLICTING SOCIAL GAINS AND DETRIMENTS—BALANCE AS CRITERION.

An ungentlemanly practice will be condemned so long as its condemnation will not injure the consuming public more than the ungentlemanly practice itself.

CONCERT OF ACTION—IN GENERAL—LEGALITY—OBJECTIVES—EVILS NOT VIOLATIONS OF POSITIVE LAW—PREVENTION—STYLE PIRACY—WOMEN'S HATS.

Concerted activity may be proper to eliminate evils even though those evils are not violations of positive law, and the fact that the pirate of designs in female haberdashery is immune from legal restraint is not of itself sufficient to forbid an association of creators from devising means to control the pirate.

APPROPRIATION—INGENUITY, LABOR OR EXPENSE OF ANOTHER—IDEAS—WHERE UNPATENTABLE.

Courts will not support a monopoly in an unpatentable idea.

(The syllabus, with substituted captions, is taken from 109 F. (2d) 175)

[176] On petition by Millinery Creators' Guild, Inc., and others, to review and set aside an order by Commission, order affirmed.

*Mr. Lowell M. Birrell*, of New York City (Mr. Charles A. Van Patten, of New York City, of counsel), for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. James W. Nichol*, special attorney, all of Washington, D. C., for respondent.

*Weisman, Quinn, Allan & Spett*, of New York City (Mr. Milton C. Weisman and Mr. Melvin A. Albert, both of New York City, of counsel), for Fashion Originators Guild of America, Inc., amicus curiae.

Before SWAN, AUGUSTUS N. HAND, and CLARK, Circuit Judges.

*CLARK, Circuit Judge.*

This is a petition by Millinery Creators' Guild, Inc., and its members, for review of respondent's cease and desist order directed against petitioners' plan to prevent so-called "style piracy" of designs in women's hats. Such plan was found by respondent to be an unfair

method of competition under section 5 of the Federal Trade Commission Act.

Millinery Creators' Guild, Inc., formerly Millinery Quality Guild, Inc., is a trade association organized as a stock corporation under the laws of the State of New York. It has "members" which the Federal Trade Commission finds to comprise "a substantial majority" of the manufacturers of high-priced women's hats, or hats which sell at wholesale for at least 8 dollars. Though not stated in its certificate of incorporation, the admitted immediate purpose of the Guild is to combat the practice known as "style piracy." Original creations designed by members of the Guild and by other high-priced milliners are often copied as soon as they appear in public, and the copyists manufacture and distribute their "piracies" at prices far below those charged by the originators. To eliminate this type of competition, the Guild has established a registration bureau, with which any creator of original designs and styles may register his model. Once a model is accepted by the bureau, it is the usual practice of members to accept it as an original design and style, but this is not conclusive, final determination being made by a committee of the Guild. Most of the country's major retail outlets have been approached, and over 1,600 of them have been persuaded to sign "Declarations of Coöperation." These Declarations state the intention of the retail stores not to purchase any hats which are piracies of designs registered with the Guild. Members of the Guild have agreed among themselves not to sell to any retailer who persists in purchasing from the pirates. One former member of the Guild, Milgrim Hats, Inc., was expelled from membership for failing to abide by these policies.

We believe that the boycott employed by the Guild is one that is unlawful under the Sherman Anti-Trust Act, 15 U. S. C. A. sections 1, 2. Hence the Federal Trade Commission was justified in concluding that the Guild's method of restraining competition was unfair and in entering its cease and desist order. (*Federal Trade Commission v. Beech-Nut Packing Co.*, 257 U. S. 441, 453; *Butterick Publishing Co. v. Federal Trade Commission*, 85 F. (2d) 522, 525 (C. C. A. 2).)

The antitrust laws contravene concerted action that unduly confines important areas of competition in price, quality, or service. Unless it has this restrictive result, a combination to boycott is not necessarily unlawful. So long as the particular agreement is not intended to and does not have the necessary effect of eliminating beneficial competition, a boycott designed to prevent the commission of an illegal act may be unobjectionable. (*United States v. American Livestock Commission Co., et al.*, 279 U. S. 435; *Swift & Co. v. United States*, 196 U. S. 375, 394; *Butterick Publishing Co. v. Federal Trade Commission, supra*; *United States v. Sugar Institute*, D. C. S. D. N. Y.,

15 F. Supp. 817, 899, modified and affirmed 297 U. S. 553.) In certain cases group action may permissibly have broader objectives, and a trading exchange may fix rules for trading and forbid dealing with non-members, provided again that there is no perceptible effect on legitimate methods of competition. (*Anderson v. United States*, 171 U. S. 604; *Chicago Board of Trade v. United States*, 246 U. S. 231.) [177] But it is easy to overstep the line, and a boycott or other concerted action aimed at abolishing socially useful types of competition will not be tolerated. (*Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600; *Binderup v. Pathé Exchange*, 263 U. S. 291; *Butterick Publishing Co. v. Federal Trade Commission*, *supra*; *United States v. Sugar Institute*, *supra* (with cases cited at 15 F. Supp. 900).)

The permissible zone of conduct has recently been defined in *Sugar Institute v. United States*, 297 U. S. 553, at 598-599, where the Chief Justice declared: "And cooperative endeavor may appropriately have wider objectives than merely the removal of evils which are infractions of positive law," but then said, "As the statute draws the line at unreasonable restraints, a cooperative endeavor which transgresses that line cannot justify itself by pointing to evils afflicting the industry or to a laudable purpose to remove them."

We turn, then, to consider the alleged evil of style piracy, and whether its abolition will eliminate a socially useful type of competition.

What passes in the trade for an original design of a hat or a dress cannot be patented or copyrighted. An "original" creation is too slight a modification of a known idea to justify the grant by the government of a monopoly to the creator; yet such are the whims and cycles of fashion that the slight modification is of great commercial value. The creator who maintains a large staff of highly paid designers can recoup his investment only by selling the hats they design. He suffers a real loss when the design is copied as soon as it appears; the imitator in turn reaps a substantial gain by appropriating for himself the style innovations produced by the creator's investment. Yet the imitator may copy with impunity, and the law grants no remedy to the creator. (*Cheney Bros. v. Doris Silk Corp.*, 35 F. (2d) 279 (C. C. A. 2).)

The Guild emphasizes the immorality of style piracy, and urges that it is an abuse which honest and respectable merchants may permissibly combine to eliminate. But there are larger issues at stake here, and there were larger issues at stake in the *Cheney* case, than the ethical propriety of copying. The law of unfair competition has a simple rubric: An ungentlemanly practice will be condemned so

long as its condemnation will not injure the consuming public more than the ungentlemanly practice itself. Style piracy was not outlawed in the *Cheney* case, because to outlaw it would afford a virtual monopoly to the creator of an unpatented and uncopyrighted design. The holder of a patent or copyright has contributed valuable information to the public, and in return he has been granted a limited monopoly; Congress has not yet, however, seen fit to extend the privileges of a monopolist to the inventor of an unpatentable idea. Despite the limited holding of *International News Service v. Associated Press*, 248 U. S. 215, and its strictures against permitting one person to take a "free ride" on the labor and inventiveness of another, we believe that the public interest is best served by limiting the protection afforded an idea to the particular chattel in which it is embodied. (*Lewis v. Vendome Bags, Inc.*, 108 F. (2d) 16, (C. C. A. 2); *Krem-Ko Co. v. R. G. Miller & Sons*, 68 F. (2d) 872 (C. C. A. 2); *Sinko et al. v. Snow-Craggs Corp.*, 105 F. (2d) 450, 452 (C. C. A. 7).

It is true that concerted activity may be proper to eliminate evils, even though those evils are not violations of positive law, and the fact that the pirate is immune from legal restraint is not of itself sufficient cause to forbid the Guild from devising other means to control him. But here the courts have refrained from enjoining the pirate because they will not support a monopoly in an unpatentable idea. It would be strange to say that the Guild may establish this same monopoly by extrajudicial methods. Style piracy has been lethal in its effect on hat prices, and one of its results has been to make the latest fashions readily available to the lowest purchasing classes. The market of the high-grade originators has been sharply curtailed, and their prices have suffered correspondingly. It is safe to say that the members of the Guild instituted their antipiracy campaign to protect their markets and price levels, as well as to improve business morals within the industry. The testimony of a representative of Peggy Hoyt, Inc., makes this graphically clear.

"Q. Were you asked to become a member of either of these two Guilds?

"A. Yes. \* \* \* Mr. Earl Farrington, who is one of the best grade, what I call a wholesaler, that is, his business is strictly a [178] wholesaler, I have known him for 20 years, crossed with him many, many times on the boat. He called me up and suggested this idea about the fact that the millinery business was in the doldrums, you see, something had to be done about it and they had gotten together all of the leading milliners, so-called, to try to create a greater interest

in women wearing hats and raising the prices for a better grade milliner because, for instance, the average milliner 15 years ago easily got \$30 for every hat they sold, today the God damn thing sells for \$1.95, I mean, they sell for \$1.95 around town, as a result of which they practically ruin every milliner. \* \* \*

We believe, therefore, that concerted action to eliminate style piracy extends beyond the permissible area of industrial self-regulation. The purpose of the milliners, and the necessary effect of their combination, is to maintain their price structure, and to eliminate a distasteful "evil" which the law nevertheless recognizes to be a socially desirable form of competition. Such an antithesis is unavoidable: What is desirable competition to the consumer may be outlaw traffic to the established manufacturer. But while we maintain the competitive system, a monopoly in an idea, not recognized by positive law, must be jealously scrutinized lest the few are protected at the expense of the many. See Fly, *Observations on the Anti-Trust Laws, Economic Theory and the Sugar Institute Decisions: I*, 45 Yale L. J. 1339, 1348, 1371.

Petitioners point out that the similar plan of Fashion Originators' Guild of America, Inc., applicable to women's ready-to-wear dresses, was upheld in a direct action under the antitrust laws in *Wm. Filene's Sons Co. v. Fashion Originators' Guild of America, Inc.*, 90 F. (2d) 556 (C. C. A. 1), affirming D. C. Mass., 14 F. Supp. 353, as well as under a State antitrust law in *Wolfenstein v. Fashion Originators' Guild of America, Inc.*, 244 App. Div. 656, 280 N. Y. S. 361. Apparently these decisions go well to the edge of permissible law, at least as we read the decisions of the Supreme Court. And the *Filene* case carefully distinguishes this proceeding, then pending before the Commission, by pointing out that the Fashion Guild, unlike the Millinery Guild, has no controlling position in the industry, for it contains only a limited number of manufacturers producing less than 6 percent of the yearly output of ready-to-wear dresses. Whether this is a valid distinction need not now be determined, since in any event we feel that the present order is justified.

The form of the order seems appropriate to the end in view, namely, the prohibition of further boycott of retailers and manufacturers who have copied members' styles and designs in female haberdashery. It is affirmed and an order will be entered enforcing it.

SWEETS COMPANY OF AMERICA, INC. v. FEDERAL  
TRADE COMMISSION <sup>1</sup>

No. 154

(Circuit Court of Appeals, Second Circuit. Jan. 29, 1940.)

CEASE AND DESIST ORDERS—SCOPE AND FORM—DEFINITENESS AND COMPLETENESS—  
LOTTERY MERCHANDISING—CANDY—CANDY, ETC., SO PACKED, ETC., THAT SALES,  
ETC., "MAY BE" MADE, ETC.—SELLER OBLIGATIONS AS NOT DEFINED.

Federal Trade Commission's order directing candy manufacturer to cease distributing candy so packed that sales to general public are to be made or "may be made" by means of a lottery, supplying to dealers packages which are used or "may be used" to conduct a lottery, and supplying to dealers assortments of candy which are to be or "may be given" as prizes to purchasers, was objectionable, since the quoted phrases would place upon manufacturer all responsibility for acts of any jobber or retailer who might reassemble candies, however they had been packed, so that they would be again placed in prohibited combination.

CEASE AND DESIST ORDERS—MODIFICATION BY COURT—LOTTERY MERCHANDISING—  
CANDY—WHERE NEITHER PROBABLE NOR ANTICIPATED VIOLATING SALES WITHIN  
APPARENT TERMS PROHIBITIONS.

Where Federal Trade Commission did not intend to prohibit candy manufacturer from making sales unless manufacturer had reason to suppose that jobber or retailer would use candy in connection with lottery, but Commission's order was so sweeping that it seemed to prohibit a sale, even though use of candies in lottery might neither be anticipated nor probable, the order was modified so that it would only preclude sales where a lottery system was known to be practiced, or where the packing of the candy carried an unfair appeal to purchasers.

(The syllabus, with substituted captions, is taken from  
109 F. (2d) 296)

On petition to review an order of Commission requiring petitioner to cease and desist from certain methods of supplying candy to dealers that may be used for a gambling or gift enterprise, order modified.

*Mr. Louis H. Solomon*, of New York City, for petitioner.

*Mr. W. T. Kelley*, chief counsel; *Mr. Martin A. Morrison*, assistant chief counsel; and *Mr. James W. Nichol*, special attorney for Federal Trade Commission, all of Washington, D. C., for respondent.

Before SWAN, AUGUSTUS N. HAND, and CLARK, Circuit Judges.

<sup>1</sup> Reported in 109 F. (2d) 296. For case before Commission, see 27 F. T. C. 1190, and for order as modified to conform with court's decree, see *supra*, p. 1299.

AUGUSTUS N. HAND, *Circuit Judge*:

This is a petition to review an order of the Federal Trade Commission entered on December 7, 1938, against Sweets Company of America, Inc. The petitioner is a manufacturer of candy engaged in shipping its product to retail dealers and jobbers throughout the United States.

The Federal Trade Commission made findings of fact which so far as they are pertinent to the issues before us were the following:

"PAR. 2. In the course and conduct of its business, \* \* \* the respondent has sold various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments is hereinafter described in detail for the purpose of showing the methods used by the respondent, but this description does not include all of the details of the several sales plans which the respondent has used in the distribution of its assortments of candy by lottery or chance. Such assortment is composed of 150 small rolls or pieces of candy of uniform size and shape called 'Little Rolls', which are packed in a box together with 24 larger pieces of candy called 'Dinner For Six', packed in a separate box, which larger pieces of candy are to be given as prizes to purchasers of said small rolls or pieces of candy of uniform size and shape in the following manner:

"The majority of the said small rolls or pieces of candy of uniform size and shape in said assortment have the same color but a small number of or a minority of said small rolls or pieces of candy have a different color. Said rolls or pieces of candy of uniform size and shape retail at the price of 1 cent each, but the purchasers who procure one of the said rolls or pieces of candy colored differently from the majority of said rolls or pieces of candy are entitled to receive, and are given without charge, one of the said larger pieces of candy. The rolls or pieces of candy of uniform size and shape are individually wrapped in non-transparent wrappers, and the color of the said pieces of candy is effectively concealed from purchasers and prospective purchasers until a selection has been made and the wrapper is removed. The said larger pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

\* \* \* \* \*

"PAR. 4. Many dealers buy from respondent equal numbers of boxes of said 'Little Rolls' and said 'Dinner For Six'. Said 'Little Rolls' are contained in a box and the majority of said rolls which are of one color are separated by a partition from the minority of said rolls which are of a different color. There are no indications on the wrappers of said rolls as to the colors thereof. Many retail dealers who purchase said 'Little Rolls' and 'Dinner For Six' mix the said rolls of different colors and sell them for 1 cent each and give

said 'Dinner For Six' pieces of candy as prizes to purchasers of said rolls of a different color than the majority of said rolls in accordance with the sales plan or method described in paragraph 2 hereof. The packing and distributing by respondent of candy in the manner above found is contrary to public policy. \* \* \*

After making a further finding to the effect that other manufacturers in competition with the petitioner do not sell their candies in assortments such as are above described and lose trade because consumers prefer assortments which involve the gambling feature, the Commission concluded that the above practices injure competitors and constitute unfair methods of competition.

[298] The Commission thereupon made an order directing the petitioner to cease and desist:

"1. Selling and distributing candy so packed and assembled that sales of such candy to the general public are to be made or may be made by means of a lottery, gambling device, or gift enterprise.

"2. Supplying to or placing in the hands of dealers packages or assortments of candy which are used or may be used to conduct a lottery, gambling device, or gift enterprise in the sale or distribution of said candy contained in the said packages or assortments to the public.

"3. Supplying to or placing in the hands of dealers for sale to the public packages or assortments of candy composed of individually wrapped pieces of candy of uniform size and shape and of different colors, together with larger pieces of candy or any other merchandise, which said larger pieces of candy or other merchandise are to be or may be given as prizes to the purchasers procuring pieces of said candy of a particular color."

The order to "cease and desist" further provided that within 60 days the petitioner should file a written report setting forth in detail the manner and form in which it had complied with the directions of the Commission.

The petitioner argues that the words "or may be made" in subdivision 1 of the order; "or may be used" in subdivision 2; "or may be given" in subdivision 3 are such as to throw upon it all responsibility for the acts of any jobber or retailer who may reassemble candies, however they may have been packed, so that they are again placed in prohibited combinations. This seems a reasonable criticism, for any box of candies of identical sizes, containing chocolate-covered pieces of a variety of flavors, might be used for gambling purposes, for a child buying some of the pieces might be given a prize if he happened to pick out a piece the contents of which was of a particular flavor. The Commission does not intend to prohibit a manufacturer from making such a sale unless he has reason to suppose that the

jobber or retailer who buys his candy will use it in connection with a lottery. This is shown by the statement in the brief of the Commission that their order is not applicable to "straight candy," because a dealer thereafter so repacks and reassembles it as to sell it as "chance candy." Yet the order is so sweeping that it seems to prohibit a sale like the one described, even though the use of candies in a lottery might neither be anticipated nor probable.

We think that an innocent vendor will not be subjected to the risk of violating the order if it be modified so that the words "are likely to be made" are substituted for "may be made" in subdivision 1; the words "are likely to be used" are substituted for "may be used" in subdivision 2; and the words "are likely to be given" are substituted for "may be given" in subdivision 3. The order as thus modified would only preclude sales where a lottery system was known to be practiced or where the packing of the candy carried an unfair appeal to purchasers. It would not preclude a manufacturer from selling its candies when so packed that a lottery was neither reasonably anticipated, nor suggested, nor likely to occur.

Counsel for the Commission insist that the order requires no modification because it only forbids sales in cases where candy is "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." But this limitation is at most only found in subdivision 1, and not in subdivisions 2 or 3, and even in subdivision 1 precludes any assembly of candy in which a selection of a particular flavor by chance is possible. Subdivision 2 is subject to a similar criticism. Subdivision 3 would preclude sales of candies of uniform size and shape, but of different flavors, contained in wrappers of the same color, even in cases where there was no likelihood of their use in a lottery just because a lottery might possibly occur.

It must be remembered that the proof of the use of petitioner's candies for lottery purposes was confined to transactions in but four or five retail stores. The Commission has shown by its brief that no burdensome order is intended. The difficulty with the order as framed is that when read literally its terms are more severe than the purposes of the Commission require and that it does not clearly inform the manufacturer of its rights.

It is to be observed that the petitioner has not attacked the findings of the Commission that the particular method which the petitioner has employed in assembling its candies for sale and described in paragraph 4 *supra* is a practice which is contrary to public policy. Therefore the [299] order as modified forbids the particular practice therein described and such other practices as are likely to involve a lottery.

An order similar in form to the one in the case at bar was modified by the Courts of Appeal of the Seventh, First, and Ninth Circuits in *Federal Trade Commission v. A. McLean & Son*, 84 F. (2d) 910, 913 (C. C. A. 7); *Federal Trade Commission v. Miller Co.*, 97 F. (2d) 563 (C. C. A. 1); *Ardelle v. Federal Trade Commission*, 101 F. (2d) 718 (C. C. A. 9). In *Ostler Candy Co. v. Federal Trade Commission*, 106 F. (2d) 962 (C. C. A. 10); such an order was allowed to stand without modification by the Court of Appeals of the Tenth Circuit, and in *National Candy Co. v. Federal Trade Commission*, 104 F. (2d) 999, the Seventh Circuit abjured its earlier decision in *Federal Trade Commission v. A. McLean & Son*, *supra*, and permitted a like order to remain unchanged. We think the decisions of the Courts of the First and Ninth Circuits are to be preferred to those of the Seventh and Tenth because they more clearly define the obligation of the manufacturer.

An order should pass affirming the order of the Commission as modified in the manner above provided.

Order modified.

CLARK, *Circuit Judge*, dissenting in part:

I would affirm the Commission's order. I do not believe we should substitute our own vagueness for that of the Commission. The Seventh Circuit Court of Appeals has repented of so doing. *National Candy Co. v. Federal Trade Commission*, 104 F. (2d) 999 (C. C. A. 7), repudiating *Federal Trade Commission v. A. McLean & Son*, 84 F. (2d) 910 (C. C. A. 7). Compare also *Ostler Candy Co. v. Federal Trade Commission*, 106 F. (2d) 962 (C. C. A. 10). These cases hold that the Commission's order cannot reasonably be construed to have application to straight candy, but, in view of the allegations of the complaint and the findings, applies only to candy carrying an unfair appeal to retail dealers and purchasers, on account of the element of chance involved in its sale. So viewed, the order does not make petitioner responsible for acts of retailers and is proper. The cases point to an extensive evil and suggest the undesirability of an ineffective order, as does the testimony before the Commission. If the order proves unworkable in practice, the Commission may correct it more expertly than we can now when we do not know that it contains other than imaginary defects.

I do not understand our modification of the order. Does "likely to be used" mean any more than "capable of being used," which is the present order reasonably construed? Presumably the new order must mean something other than did the one it changes. If "likely" means "probable," and that is something more than "capable," we may be getting dangerously near the nullifying requirement of subjective intent on the part of the manufacturer. At any rate, "are likely to" suggests a question-begging requirement of some unspecified

quantum of proof of possibilities, which may render the order practically unenforceable.

The Commission's difficulty here apparently springs from over-kindness (*cf. Capon Water Co. v. Federal Trade Commission*, 107 F. (2d) 516, 518 (C. C. A. 3)), for an order requiring distinctive labeling of the candies would seem impervious to attack. Even though the Commission may have to come to such an order in time, I would not discourage its trying of milder measures first, as I fear we are doing when we present it with a mandate thus uncertain.

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**WEBB-CRAWFORD COMPANY, AND E. D. WIER, E. L. WIER, AND CARTER W. DANIEL, TRADING AS DANIEL BROKERAGE COMPANY v. FEDERAL TRADE COMMISSION<sup>1</sup>**

No. 8969

(Circuit Court of Appeals, Fifth Circuit. Jan. 30, 1940.)

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—PUBLIC INTEREST—WHETHER FINDING PREREQUISITE.**

The section of Federal Trade Commission Act relating to orders against unfair methods of competition and requiring a finding that proceedings would be in the public interest was inapplicable to proceeding under section of Clayton Act, prohibiting the payment or acceptance of commission, brokerage, or other compensation, without qualification, under which section Trade Commission is not required to inquire about evil effect or whether proceeding would be in the public interest. Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45; Clayton Act, sec. 2 (c), as amended June 19, 1936, 15 U. S. C. A. sec. 13 (c).

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS, OR TO BUYER AGENTS OR REPRESENTATIVES—WHERE BROKER PAYEE OFFICERS AND CONTROLLERS OF BUYER COMPANY.**

In proceeding by Federal Trade Commission to require a company, its officers, and partners of brokerage firm to cease accepting from sellers any fees or commissions or brokerage in connection with purchase of commodities in interstate commerce by the company, evidence sustained finding that brokers in control of company acted as representatives of company and also received commissions. Clayton Act, sec. 2 (c), as amended June 19, 1936, and sec. 11, 15 U. S. C. A. sec. 13 (c) and sec. 21.

**DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—"EXCEPT FOR SERVICES RENDERED" CLAUSE.**

The words "except for services rendered," within Clayton Act provision prohibiting any person from granting or accepting anything of value as commission "or any allowance or discount in lieu thereof, except for services

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<sup>1</sup> Reported in 109 F. (2d) 268. For case before Commission, see 27 F. T. C. 1099. Petition for certiorari denied by Supreme Court on May 20, 1940, 310 U. S. 638.

rendered in connection with the sale or purchase of goods" either to the other party to transaction or to an agent or representative, do not qualify the whole provision so as to authorize any person having any relation to opposite party to commercial sale to take a commission provided he renders service, since true meaning required taking the comma out after "thereof" and inserting it after "rendered."

STATUTES AND STATUTORY CONSTRUCTION—IN GENERAL—PUNCTUATION.

Commas will not be permitted to defeat the legislative meaning.

INTERSTATE COMMERCE—REGULATION—PROTECTION—SCOPE AS POLICE POWER.

Congress has a power to regulate interstate commerce so full and complete that it may prohibit what is of harmful tendency therein, much like a State may in other fields by virtue of the police power.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS, OR TO BUYER AGENTS OR REPRESENTATIVES—WHERE BROKER PAYEES, OFFICERS AND CONTROLLERS OF BUYER COMPANY—WHETHER PROHIBITION DENIAL DUE PROCESS.

The statute prohibiting payment or acceptance of commission, brokerage, or other compensation is not unconstitutional as denying "due process of law," as applied to partners or brokerage firm who owned 95 percent of stock of corporation, who were required to desist from accepting commissions in connection with purchase of commodities in interstate commerce by the corporation.

(The syllabus, with substituted captions, is taken from 109 F. (2d) 268)

On petition by the Webb-Crawford Co. and others to review order of Commission which com[269]manded petitioners to cease and desist from certain practices, and cross-petition by Commission requesting court to command obedience to order, order sustained and obedience commanded.

*Mr. Max Michael*, of Athens, Ga., and *Mr. Edgar Watkins*, of Atlanta, Ga., for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. John Darsey*, special attorney, Federal Trade Commission, both of Washington, D. C., for respondent.

Before FOSTER, SIBLEY, and HOLMES, Circuit Judges.

SIBLEY, *Circuit Judge*:

The Webb-Crawford Co., a corporation, and Ed D. Wier, E. L. Wier, and Carter W. Daniel, who trade under the name Daniel Brokerage Co., bring under review (15 U. S. C. A. sec. 21, 28, U. S. C. A. sec. 225) and order of the Federal Trade Commission which commanded that "The Webb-Crawford Co., its officers, representatives, agents, and employees, and Ed D. Wier, E. L. Wier, and Carter W. Daniel, either in their capacities as partners in Daniel Brokerage Co.

or in their individual capacities, in connection with the purchase of commodities in interstate commerce by the Webb-Crawford Co., do forthwith cease and desist from accepting or receiving from sellers any fees or commissions or brokerage or any allowance in lieu thereof." The Commission by cross petition asks us to command obedience to the order.

There are contentions that some of the findings of fact are unsupported by evidence and other facts are not found which the evidence proves. It is also urged against the order that there is no finding that the condemned practice had an injurious effect upon competition, or that this proceeding would be in the interest of the public as required by statute; and that the complaint does not make the issues adjudged. Lastly, it is urged that the order, resting on subsection (c) of section 2 of the Clayton Act as amended by the act of June 19, 1936, 49 Stats, 1526, 15 U. S. C. A., section 13, denies due process of law as here interpreted and applied.

The complaint in its last paragraph alleges that payment by sellers to and acceptance by Ed D. Wier, E. L. Wier, and Carter W. Daniel of fees and commissions is in violation of section 2, subsection (c) of the statute, they being the majority stockholders, the officers and directors of the buyer, the Webb-Crawford Co. The cease and desist order is supported by and substantially pursuant to the complaint.

The complaint rests squarely on subsection (c) of section (2) of the Clayton Act, and the authority to enforce it granted to the Commission in section 11, 15 U. S. C. A. sections 13 (c), 21. Section 5 of the Federal Trade Commission Act, 15 U. S. C. A. section 45, relates to orders against unfair methods of competition, and as to those a finding that proceedings would be in the public interest is made an element. That section is inapplicable here. While subsection (a) of section 2 of the Clayton Act as amended makes necessary a finding that the discrimination therein condemned affects competition or tends to create monopoly, subsection (c) mentions no such element. Subsection (a) begins: "It shall be unlawful for any person engaged in commerce, in the course of such commerce," to do certain things. Subsection (c) begins with the same words, thus taking a fresh start and by an entirely independent paragraph and without any such qualification condemns other things. The Congress considered the effect on commerce of the things named in subsection (c), and absolutely prohibited them. The Trade Commission is not to enter on any enquiry about their evil effect, nor whether a proceeding would be in the public interest. Its duty is to enforce the prohibition.

We need not consider in detail the attacks upon the findings of fact. It is wholly undisputed that Ed D. Wier, E. L. Wier, and Carter W. Daniel are partners in the brokerage company, and that they own 95 percent of the stock of the Webb-Crawford Co., the first named being the corporation's president and salesman, the second its vice president and its buyer, and the third its secretary and treasurer and financial manager. They constitute its board of directors and completely control it. The brokerage partnership is managed by C. R. Daniel, a brother of Carter W. Daniel and a small stockholder in the Webb-Crawford Co. He has his brokerage office in the warehouse of that com[270]pany, paying rent for it. The brokerage partnership represents only sellers and is paid only by them. It has many other customers beside the Webb-Crawford Co., and the Webb-Crawford Co. buys not over 10 percent of its goods through the partnership. It seems to us that the Board was not justified in finding that the partnership was controlled by the Webb-Crawford Co., but that the reverse is true, that the partners could and did control the corporation. It is not the case of a dummy broker really acting for the buyer. The Webb-Crawford Co. did not get the brokerage fees or any of them. That it borrowed money from some of the partners is not the same thing. Nor do we see that the brokers failed to render selling service to the sellers. Their connection with the large business of the Webb-Crawford Co., which naturally would secure obtaining its orders, other things being equal, would tend to make sellers employ them as their brokers, but there is no evidence that the relationship was abused to the injury of either seller or buyer. What in our opinion is fatally important is that one of the brokers, E. L. Wier, as vice president of the Webb-Crawford Co., does all its buying. He acts as the representative of the buyer; and as one of the brokers receives one-fourth of the commission paid by the seller. Ed D. Wier, who sells the purchased goods for the Webb-Crawford Co., and must have a voice in determining what shall be bought, gets a fourth of the commission; and Carter W. Daniel, who checks the bills and pays them, gets the remainder of the commission. Without reflecting on the faithfulness or honesty of anyone here concerned, it is evident that the tendency and general results are precisely the same as if the Webb-Crawford Co., the buyer, had gotten the commissions. And the law equally condemns both things. Omitting the inapplicable alternatives, we quote from subsection (c): "It shall be unlawful for any person \* \* \* to pay or grant, or to receive, or accept, anything of value as a commission \* \* \* in connection with the sale or purchase of goods \* \* \* either to

the other party to such transaction (the Webb-Crawford Co.,) or to an agent, (or) representative, (E. L. Wier, Ed D. Wier, Carter W. Daniel) \* \* \* of any party to such transaction other than the person by whom such compensation is so granted or paid." Sellers who sell to the Webb-Crawford Co. cannot pay brokers' commissions to these men who in fact act for and represent the buyer in making the purchases. The interposition of C. R. Daniel as manager for the brokers does not change the fact that the commissions are paid to his principals who are the officers and representatives of the buyer.

Subsection (c) contains the words "except for services rendered." Do they qualify the whole subsection, so that any person having any relations whatever to the opposite party to a commercial sale can take a commission, provided he renders service? Such a construction would largely destroy the statute, and nullify its plain intent. The words can, by transferring a comma, be attached to those immediately preceding: "or any allowance or discount in lieu thereof except for services rendered." The statute would then prohibit "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, etc." The punctuation as published is confusing. We think the true meaning is better indicated by taking the comma out after "thereof," and inserting it after "rendered." Commas are not to be suffered to defeat the legislative meaning.

The statute is not unconstitutional as depriving these stockholders, without due process, of their right to engage in business activities merely because they are stockholders in a corporation. They may do all the brokerage business they can which has not been made unlawful. The particular part of their business here ordered to cease has been made unlawful. Congress has a power to regulate interstate commerce so full and complete that it may prohibit what is of harmful tendency therein, much like a State may in other fields by virtue of the police power. We have no doubt that the regulation before us escapes being arbitrary, and has a real relation to the health and purity of interstate commerce. Cases tending to sustain this and other points ruled are *Biddle Purchasing Co. v. Federal Trade Commission*, 96 F. (2d) 687 (C. C. A. 2); *Oliver Bros. v. Federal Trade Commission*, 102 F. (2d) 763 (C. C. A. 4); *Great Atlantic & Pacific Tea Co. v. Federal Trade Commission*, 106 F. (2d) 667 (C. C. A. 3).

The order under review is sustained and obedience to it is commanded.

INTERNATIONAL ART COMPANY, AMERICAN DISCOUNT COMPANY AND JOHN C. KUCK v. FEDERAL TRADE COMMISSION.<sup>1</sup>

No. 6873

(Circuit Court of Appeals, Seventh Circuit. February 1, 1940)

**EVIDENCE—COURT LIMITATIONS—WHERE FINDINGS SUPPORTED.**

In proceeding to set aside cease and desist order of the Federal Trade Commission, Circuit Court of Appeals is not permitted to weigh or review evidence, and findings of Commission, if supported by evidence, are conclusive (15 U. S. C. A. sec. 45).

**CEASE AND DESIST ORDERS—JURISDICTION—PARTIES—JOINER—PARTICIPANTS, AGENTS AND INSTRUMENTALITIES—CORPORATE PHOTOGRAPHER, DISCOUNT CORPORATION, AND SALESMEN—WHERE LATTER CONTRACTORS AND ORDER OBTAINERS THROUGH FALSE REPRESENTATIONS FOR FORMER—TINTED ENLARGEMENTS AND FRAMES.**

In proceeding to review cease and desist order of Federal Trade Commission which was directed against corporate photographer, a discount corporation, and picture salesmen, evidence established that photographer which engaged in selling tinted enlargements and frames therefor and salesmen who contacted customers and obtained orders through false representations, represented that customers were dealing directly with and purchasing directly from photographer, and that salesmen had apparent and actual authority to represent photographer.

**CEASE AND DESIST ORDERS—JURISDICTION—PARTIES—JOINER—PARTICIPANTS, AGENTS AND INSTRUMENTALITIES—CORPORATE PHOTOGRAPHER, DISCOUNT CORPORATION, AND SALESMEN—WHERE DISCOUNT CONCERN LEGAL FICTION IN SCHEME TO MISLEAD AND DEFRAUD.**

In proceeding to review cease and desist order of Federal Trade Commission which was directed against a corporate photographer, a discount corporation, and picture salesmen, wherein evidence established existence of fraudulent and deceptive plan whereby customers were induced to purchase pictures through the salesmen, evidence established that discount corporation was a legal fiction used to forestall claims made by customers who had been victims of fraudulent sales plan, so that cease and desist order was properly entered against the discount corporation.

**METHODS, ACTS AND PRACTICES—DECEPTIVE INDUCEMENTS TO PURCHASE—SPECIAL PRICES OR OPPORTUNITIES TO BUY—"LUCKY DRAW"—TINTED PICTURES.**

Evidence sustained finding of Federal Trade Commission of existence of fraudulent plan by which customers were induced to purchase tinted pictures from salesmen who represented corporate photographer, which included use by salesmen of so-called "draw" by which customer was led to believe that he was being presented with an opportunity to purchase a painting at a price far less than it otherwise would have been.

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<sup>1</sup> Reported in 109 F. (2d) 393. For case before Commission, see 27 F. T. C. 1387. Petition for certiorari denied by Supreme Court on May 20, 1940, 310 U. S. 632.

**CEASE AND DESIST ORDERS—SCHEMES AND METHODS TO DECEIVE AND DEFRAUD—PARTICIPANTS—COMPETITIVE INJURY AND PUBLIC INTEREST—PICTURES AND FRAMES.**

A cease and desist order of Federal Trade Commission which was directed against participators in scheme to sell pictures and frames was authorized as against contention that methods employed by the participators were not injurious to competitors or that proceeding was not in the interest of the public, where the evidence established that the methods employed were fraudulent and deceptive.

**METHODS, ACTS AND PRACTICES—SCHEMES AND METHODS TO DECEIVE AND DEFRAUD—WHERE EFFECTIVE IN INDUCING PURCHASES BY MANY—COMPETITIVE INJURY AND PUBLIC INTEREST AND POLICY.**

A method of selling based upon fraud and deception whereby many persons are induced to purchase a product is contrary to public policy and in itself is an injury to actual and potential competitors, and prevention of such a method by cease and desist order of Federal Trade Commission is authorized in the public interest.

**CEASE AND DESIST ORDERS—SCHEMES AND METHODS TO DECEIVE AND DEFRAUD—IF COMPETITORS ALSO GUILTY.**

A cease and desist order of Federal Trade Commission which was directed against participators in fraudulent scheme for selling tinted pictures and frames was not improper because of alleged fact that competitors of the participators employed same or similar sales methods.

(The syllabus, with substituted captions, is taken from 109 F. (2d) 393)

[394] On petition by the International Art Co. and others against Commission to set aside cease and desist order of Commission, petition denied and order affirmed.

*Mr. Albert H. Fry*, of Chicago, Ill., for petitioners.

*Mr. W. T. Kelley*, *Mr. Martin A. Morrison*, *Mr. M. Marshall Morgan*, and *Mr. James W. Nichol*, all of Washington, D. C., for respondent.

Before SPARKS, MAJOR, and TREANOR, Circuit Judges.

MAJOR, *Circuit Judge*:

This is a petition to set aside a cease and desist order of the Federal Trade Commission, entered December 16, 1938, by virtue of section 45, 15 U. S. C. A. The findings and conclusions of the Commission follow generally the allegations of the complaint. They are both of such length that they can not, with propriety, be set forth in detail.

In substance, the facts found are: Petitioners, International Art Co. (herein called "Art Company"), and American Discount Co. (herein called "Discount Company"), are separate corporations having the same office and principal place of business at 325 West Huron

Street, Chicago, Ill. They were organized by petitioner, John C. Kuck, who is president, general manager, and the owner of substantially all the stock of both corporations. The Art Company has been and is engaged in the business of offering for sale and selling tinted or colored enlargements of family and other photographs, and frames therefor. Kuck directs all activities and controls the affairs and policies of each corporation, and has general control of the representatives, agents and salesmen engaged in the operation of the business, which is conducted throughout and in many of the states. The salesmen are the ones who deal directly with the public in the soliciting and taking of orders, and work in crews under the direct supervision of what is styled as a manager or customer-manager. Each salesman is supplied by the Art Company with all blanks used in connection with the business, including a certificate certifying that the salesman is the duly accredited representative of such company. Order blanks used by the salesmen, when a sale is made, are directed and mailed to the Art Company. When the order is received and filled by the latter, it is delivered to a common carrier and shipped to its point of destination in the name of the company. In the meantime, the salesman who obtained the order has left the particular territory, and another agent known as the delivery man, with his credentials from the company, is there to receive the shipment and make delivery. He notifies the customer in the name of the company as to when personal delivery will be made to the customer's home. At that time, the contract price is collected in cash by the delivery man, or a note taken on a form furnished by the Art Company, but payable to the Discount Company. The business is conducted generally under the direction and control of Kuck.

The salesman, in connection with his sales talk, always has with him a sample picture. His object is to induce the customer to furnish a photograph of some member of the family and enter into a contract by which the Art Company agrees to paint a picture like the sample displayed. Certain false and deceptive statements are found to have been made by the salesmen by which the customer is induced to purchase. Among such are, that the sample picture has been awarded first prize, which has created a great demand therefor, and that the Art Company has arranged for its artist to paint this particular family size and, that the supply will be limited to a few people in each locality for exhibition purposes. For this reason it is represented that the purchaser will be given the picture for the actual cost of materials, or the cost of materials and delivery; that such pictures are expensive and usually sell for \$30, and on some occasions the pictures are represented to have a value as high as \$100; they are referred to as "oil paintings," "hand-painted" and

"finely finished paintings." The prospective customer is advised that the "painting" to be furnished will be finished the same as the sample exhibited and, that the picture will be framed but that the customer need not take the frame unless desired. In instances where the "painting" to be made is of a child or baby, the salesman informs the prospective purchaser that the Chicago Tribune is preparing to hold a baby contest and that the Art Company has made an arrangement to enter its pictures in said contest. The salesman, in order to make a sale, introduces to the prospective purchaser a "draw" which consists of certain certificates enclosed in an envelope. The drawing of a "red seal certificate" entitles the prospect to one picture for \$15, and a second picture free; the drawing of a "blue seal certificate" entitles the prospect to receive two pictures for \$15, or one picture for half the regular price, to wit: \$7.50. The drawing of a "green seal certificate" entitles the prospect to nothing. The salesman so manipulates the drawing that the prospect draws whatever the salesman desires. The picture, as delivered, is completely framed in a hexagon designed frame, and the purchaser is informed by the delivery man that due to the odd design, it can not be procured at any other place, and if the picture is removed from the frame it will quickly deteriorate. If the salesman succeeds in selling the frame, it is at a price ranging from \$22.50 to \$25.

Concerning the representations thus made, the Commission found that the picture delivered is not like the sample displayed; said sample never won a prize; sales are not limited to a selected few persons in any territory; the usual price charged by the Art Company for said pictures was \$7.50; that the purchaser was not given a reduced price; that the so-called "painting" was nothing more than an enlarged photograph made up by a Chicago photographer who charged 25 cents for each enlargement; that a so-called artist colors the pictures and is able to finish 25 or 30 pictures per day; that the entire cost of a finished picture would not exceed \$1.50; that said pictures were not "paintings" as that word is understood by artists or by the public; that the Chicago Tribune did not have a baby contest in progress or even in contemplation; that the purpose of the "draw" was to convey to the mind of the prospective purchaser that he was to receive a picture at a greatly reduced price and, that he could only realize on his successful "draw" by the purchase of a picture, and that the purchaser was induced and persuaded to purchase a frame against his will and at an exorbitant price.

When the purchaser sought relief from the fraud which had been perpetrated upon him, he was informed by the Art Company that the matter was out of its hands and the purchaser was referred to the Discount Company who was the holder of the purchaser's note. The

Discount Company would advise the purchaser that it was an innocent purchaser for value, and would threaten to take legal action, warning the purchaser that this would involve \$10 court costs, plus attorney fees.

It was found that firms and persons engaged in the sale of colored enlargements of photographs and frames in interstate commerce, as well as those engaged in the business of painting portraits and selling paintings, and who truthfully represented the same, are competitors of the Art Company and, that the plan adopted by such company in the sale of its product is an unfair method of competition, as well as prejudicial and injurious to the public.

Before entering into a discussion of the points raised by petitioners, it is well to have in mind the well established rule that this court, in a proceeding of this character, is not permitted to weigh or review the evidence and, that the findings of the Commission, if supported by evidence, are conclusive (*Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73; *Federal Trade Commission v. Standard Education Society et al.*, 302 U. S. 112, 117).

While petitioners, under what they entitle "contested issues" attack substantially every finding made by the Commission, yet their argument is directed to only a few, to which we shall confine our discussion. Further, we think it may be stated, at least as a general proposition, that petitioners' argument is directed at the interpretation placed upon the findings rather than to the findings themselves.

The cease and desist order is directed against the Art Company, the Discount Company and John C. Kuck, and their servants, salesmen, employees, and agents, and it is in connection therewith that petitioners devote a major portion of their argument. It is their contention that both companies are engaged in a separate and independent business and, that none of the so-called managers, salesmen or deliverymen is an agent of such character that his acts are binding upon the Art Company. The Commission with reference to the question of agency, in part found:

"The solicitors, salesmen, deliverymen, district managers, and other representatives selling the respondent International Art Company's colored enlargements of photographs, and frames therefor, to members of the purchasing public, are agents for the International Art Company and are accepted and dealt with as such by the purchasing public. \* \* \*"

[396] Petitioners, with reference to this finding, state:

"Every word of that finding may be true and yet the company does not have control over the actions of those salesmen, nor can the Commission make a new contract for them to give the company

that power, without having the other party to the contract in court, which they did not have. \* \* \*

Then the argument proceeds that the construction of the term "agency" as construed by the Commission, is unwarranted. In other words, that there was no agency in the sense that the Art Company had such control over those participating in the sales plan as would make the company liable for their acts and statements. The Commission further finds regarding this same subject matter:

"Based upon the testimony of customers of the International Art Company and upon general representations of the respondents made both directly and through its agents, salesmen and representatives, and also by reason of the use of the credential cards, contracts and order blanks above described, the Commission finds that the respondents as well as their salesmen and other representatives soliciting orders for pictures and frames therefor, have customarily represented that such customers are dealing direct with the respondent International Art Company and are purchasing such pictures direct from the International Art Company."

We have examined the evidence sufficiently to conclude that this finding not only is supported by substantial evidence, but is conclusively shown. True, there was testimony by the so-called managers and representatives to the effect the business was being conducted by them independently and, that they received no orders or directions from the Art Company. There is evidence, however, including the physical facts, which demonstrate to the contrary. For instance, each salesman was issued a certificate designating him as the representative of the Art Company; the order was taken in its name; the picture was shipped in its name, and the customer was notified in its name of the time of delivery. All blanks used by the salesmen were furnished by the Art Company and bore its name. The customer had a right to believe—in fact, could not have believed otherwise, than that the salesmen were the agents of the Art Company, with full authority in the matter.

Petitioners' argument and authorities are largely concerned with the relation between a manufacturer and a retail merchant. For example, it cites Marshall Field & Co., a store which sells the products of the American Woolen Co., and argues that the latter is not liable for representations made by the former as to the products sold. We assume, however, that Marshall Field & Co. acts entirely in an independent capacity, and not as a representative of the Woolen Company. It is also sought to compare the instant situation with the relation existing between the automobile manufacturer and its local agent. This is another instance, however, of the agency conducting its business in its own right and in an independent manner. These illustrations have no analogy to the present situation. Here, the agent was clothed with

apparent and, we think, real authority to speak and act for and on behalf of the principal, and the latter is bound thereby. We know of no theory of law by which the company could hold out to the public these salesmen as its representatives, reap the fruits from their acts and doings without incurring such liabilities as attach thereto.

In this connection, it is claimed the order should not run against the Discount Company. Again, it is argued that this company has no connection with the Art Company. The finding, however, not seriously disputed, is to the effect that both corporations had their office in the same room, with merely an aisle separating their desks. The Art Company used 325 West Huron Street as its address, and the Discount Company, the Orleans-Huron Building as its address. Petitioner Kuck was president of both corporations and owned practically all of the stock in each. The flimsy argument is made that the Discount Company was organized for the benefit of the customers whose notes were discounted. It is plainly obvious, however, that it was for the benefit of Kuck and the Art Company. Petitioners came close to correctly appraising the situation in their answer in stating the Discount Company served "in an effort to discourage customers from setting up trumped up charges against a legitimate balance small in amount and far from the home office." At another point, reference is made to this company as a "legal fiction." No doubt it was such, the true purpose of which was to forestall a claim [397] made by a customer who had been a victim of the fraudulent sales plan, by pleading itself an innocent purchaser for value. We are unable to perceive any other reason for its existence. There can be no doubt but that it was a corporation without substance and, that its purpose was to aid and assist in the Art Company's plan of operation. We think it was properly included in the Commission's order.

The finding of the Commission that the plan by which customers were induced to purchase, including the use of the "draw," was fraudulent and deceptive, also has ample support. To our minds, the "draw" was not only an important element in a fraudulent scheme, it was fraudulent in itself. We are presented with the unique, as well as illogical argument that the sole purpose of the "draw" was a means of securing entrance into a home, determining whether the prospect had the appearance of financial responsibility, and if not, leaving without offending. True, as a matter of fact, there was no chance of gain or loss in the scheme, but the prospect was made to believe there was an element of gain, and that was plainly its purpose. The fact that the result of the "draw" made by the prospect was determined and fixed by the salesman and, that the prospect, even if lucky, had gained nothing, does not change the situation. The point is, the customer was deceived in that he was led to believe he was being pre-

sented with an opportunity to purchase a painting at a price far less than it otherwise would have been. It is no answer to say that after the customer was thus prepared, the purchase was made by reason of the exhibited sample. We think the testimony and exhibits are thoroughly convincing that the methods employed were fraudulent and deceptive and, that all who participated in the plan from Kuck, as president of the two corporations, down to and including the person who made delivery of the pictures, was a party thereto, and they all plainly come within the inhibition of the Federal Trade Act.

There likewise is no merit in the contention that the methods employed were not injurious to competitors or that the proceeding was not in the public's interest. The Commission properly found to the contrary. A method employed, based upon fraud and deception, whereby many persons are induced to purchase a product, is contrary to public policy and in itself is an injury, not only to actual competitors, but potential as well (*Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 493, 494; *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 651, 652; *National Candy Co. v. Federal Trade Commission*, 104 F. (2d) 999, 1006). The prevention of such a method is in the public interest (*Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 217).

It is also immaterial that competitors employ the same or similar methods. If such be the case, it would afford the basis for an argument that such competitors should be dealt with likewise, not that petitioners should escape.

The petition to set aside the order of the Commission is denied and a decree will be entered affirming the same.

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FEDERAL TRADE COMMISSION *v.* THOMSEN-KING & COMPANY, INC., GEORGE THOMSEN, AND MERROLD JOHNSON<sup>1</sup>

No. 7196

(Circuit Court of Appeals, Seventh Circuit. Feb. 1, 1940.)

TEMPORARY INJUNCTIONS OR ORDERS—APPEALS—WHERE MATTER DISCRETIONARY IN COURT BELOW—REVERSAL—DISCRETION'S ABUSE AS PREREQUISITE.

Reversal of a temporary injunction or order involving discretion necessitates a clear showing of abuse of discretion.

TEMPORARY INJUNCTIONS OR ORDERS—APPEALS—WHERE CONTROVERSY FACTUAL AND DISPUTED IN COURT BELOW.

A temporary injunction or order will ordinarily be affirmed if controversy is factual and disputed.

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<sup>1</sup> Reported in 109 F. (2d) 516. See for injunction order granted by court below, *infra*, p. 1692.

RESTRAINING AND INJUNCTIVE ORDERS—FEDERAL TRADE COMMISSION ACT, SECTION 13—DISTRICT COURT JURISDICTION—PENDENCY OF PROCEEDING BEFORE COMMISSION—WHETHER PREREQUISITE.

District Court's jurisdiction to enjoin the dissemination of false advertisements under statute is not dependent upon pendency of proceeding before Federal Trade Commission. Federal Trade Commission Act of 1914, sec. 13 (a) (2), as added in 1938, 15 U. S. C. A., secs. 53 (a) (2).

RESTRAINING AND INJUNCTIVE ORDERS—FEDERAL TRADE COMMISSION ACT, SECTION 13—SCOPE—AS PREVENTIVE OF OFFENDER'S SUCCESSFUL REAPING OF FRUITS OF WRONGDOING IN ADVANCE OF EFFECTIVE PREVENTIVE COMMISSION ACTION OTHERWISE.

Statute relating to temporary injunction restraining dissemination of false advertisements pending issuance of complaint by Federal Trade Commission was written to prevent ineffectuality of proceeding before Commission due to offender's collecting the spoils incident to improper practices and liquidating or dissolving before the Commission can put a stop to offender's unfair practices.

RESTRAINING AND INJUNCTIVE ORDERS—FEDERAL TRADE COMMISSION ACT, SECTION 13—SCOPE—RESTRAINING ACTION "PENDING THE ISSUANCE OF A COMPLAINT"—AS PERTAINING TO INTERIM FOLLOWING UNLAWFUL ADVERTISEMENT AND IN ADVANCE OF COMMISSION ACTION.

In statute respecting temporary injunction restraining dissemination of false advertisements, expression "pending the issuance of a complaint" means that in the interim between "the causing of the dissemination of an advertisement" in violation of statute and the action of the [517] Federal Trade Commission, the latter may institute suit in district court to enjoin dissemination of such advertisements.

RESTRAINING AND INJUNCTIVE ORDERS—FEDERAL TRADE COMMISSION ACT, SECTION 13—SUPERSEDEAS APPLICATIONS—DEFENDANTS' IRREPARABLE DAMAGE AS AGAINST DECEPTION AND MULCTING OF PUBLIC—PUZZLE SELLING SCHEMES—WHERE PURCHASE INFERIOR PRODUCT AND IN QUANTITY NOT RELATED ORDINARY NEED, REQUIRED, AND LARGE SUMS OTHERWISE EXTRACTED FROM PROSPECTS—COSMETICS.

Application for supersedeas pending appeal from order granting preliminary injunction restraining defendant from disseminating alleged false advertisements would be denied, though damages to defendant would be irreparable where, if injunction were lifted until appeal could be heard, defendants would have extracted several million dollars from prospective buyers on the offer of a chance to win prizes, although ostensibly the transaction dealt with sale of cosmetics, where amounts of sales of cosmetics would not be related to an ordinary person's needs and would not be affected by absence of quality of the cosmetics.

COURT OF EQUITY—DUTIES—IN GENERAL—ILLEGITIMATE PROFITS, AND BUSINESSES UNFAIRLY CONDUCTED.

A court of equity has no duty to protect illegitimate profits or to advance business which is conducted by unfair business methods.

(The syllabus, with substituted captions, is taken from 109 F. (2d) 516)

On motion for supersedeas pending appeal from District Court for the Northern Division of Illinois, Eastern Division, and in action by Commission against Thomsen-King Company, Inc., and others to restrain defendants from disseminating alleged false advertisements, and in which preliminary injunction was granted, supersedeas pending appeal from order granting such preliminary injunction denied.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Curtis Shears*, special attorney, both of Washington, D. C., for Commission.

*Mr. Robert J. Folonie*, *Mr. Lewis F. Mason*, and *Mr. John A. Nash*, all of Chicago, Ill., for defendants.

Before EVANS, MAJOR, and KERNER, Circuit Judges.

EVANS, *Circuit Judge*:

This is an emergency motion by defendants, for supersedeas, pending appeal from an order of the district court granting a preliminary injunction restraining defendants from disseminating false advertisements therein set forth.

The Federal Trade Commission instituted the suit pursuant to the statute which provides (title 15, U. S. C. A., sec. 53):

“(a) Whenever the Commission has reason to believe—

“(1) that any person, partnership, or corporation is engaged in, or about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title, and

“(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review \* \* \* the Commission \* \* \* may bring suit in a district court \* \* \* to enjoin \* \* \* the dissemination of such advertisement.”

The complaint filed by the Federal Trade Commission (January 8, 1940) is a lengthy one wherein it alleges that an injunction is necessary to prevent false advertising, the sale of cosmetics through a puzzle promotional scheme, which contemplated the purchase by the contestants of a quantity of cosmetics for which they would have no use, and which could not be resold without loss, and which were of inferior quality. The company's plan, so it is alleged, was initiated by a “puzzle” for which a prize of \$50 would be paid for a successful solution. On the contestant's sending in his solution, he was notified that his entry passed a preliminary check-up and was before the final judges, and that if three dollars were sent the participant would receive five dollars' worth of cosmetics, and if a

“promptness prize blank” were returned within a designated time, there would be a chance to win a \$1,250 cash prize and a Buick car, or a total cash prize of \$2,750.

The Commission charges that defendant corporation is but a reincarnation of a former corporation which promoted the identical sort of sales scheme, and which corporation dissolved in a short time, to be succeeded by another corporation, all of its practices being for the purpose of avoiding the provisions of the Federal laws, and more particularly of evading the reach of the arm of the Federal Trade Commission.

[518] The complaint was supported by affidavits of its attorney, in re activities of predecessor companies, and of persons deceived by former companies.

Notice of application for the temporary injunction was served upon the appellants who filed their appearances 3 days later. On the same day the district court issued its order for preliminary injunction, from which an appeal is here taken, and pending the hearing and determination of which, the instant motion for super-seedeas is directed. The order was predicated upon findings of fact: (a) Dissemination of false advertisements for the purpose of inducing the purchase of cosmetics; (b) such advertisements, unless stopped, will cause immediate and irreparable injury to the public.

Appellants challenge the soundness of the order on the ground that the alleged false advertisements are not stated to be in regard to the commodities sold, but as to extraneous matters; that the supporting affidavits do not concern the instant corporate defendant; there is no showing that any member of the public had been misled; the injunction will work irreparable injury to the defendants; the section of the act permitting the issuance of this injunction is unconstitutional because defendants are deprived of due process having no hearing; no showing of injury to the public health; the district court erred in failing to give the defendants an opportunity to answer.

Defendants are not in a position to assert the full strength of their fact protestations. In other words, they are attacking an order which is supported by a sworn complaint and sustaining affidavits, without anything on their side to dispute the facts therein set forth. Their fact assertions are not supported by pleading or affidavit.

Reversal of a temporary injunctive order involving discretion necessitates a clear abuse showing.<sup>2</sup>

A temporary injunctive order will ordinarily be affirmed if the controversy is factual and disputed.

<sup>2</sup> *Alabama v. United States*, 279 U. S. 229; *Myers v. Bethlehem Corp.*, 303 U. S. 41, 52; *Gibbs v. Buck*, 307 U. S. 60, 76; *Independent Cheese Co. v. Kraft Phenix Cheese Corp.*, 7 Cir., 56 F. (2d) 575.

Defendants contend that their application for a supersedeas presents a question quite different from that raised on an appeal from a temporary injunctive order. This may be so in the general run of appeals, but in the instant case we have a peculiar situation. The lifting of the injunction, if we accept the plaintiff's statement of facts as true, will effectually defeat the purpose of the suit. Theoretically the litigation may be continued, but the value of the decision will be purely academic.

We have then a factual situation where allegations are made on one side upon which the court made its finding with no factual dispute by the defendants. Defendants assert they were not permitted to offer any defense. They assert the district court "shut them off" "without a hearing."

This charge is unsupported by the record. There is nothing to show that they asked for more time within which to file an answer or to submit affidavits. Moreover, they could have applied for a modification of the order and presented their evidence together with their verified answer. They have seen fit to present their request for a supersedeas to this court, upon a record which leaves the plaintiff's statement of facts undisputed.

Defendants argue, however, that accepting these facts the plaintiff still was not entitled to the relief granted, for the reason that the district judge's jurisdiction in the matter is statutory and restricted to matters specifically covered by the statute. In other words, accepting the plaintiff's version of the facts, defendants challenge the district court's jurisdiction to issue an injunction before the Federal Trade Commission had issued its complaint against defendants, asserting dissemination of false advertisements.

We are unable to accept defendants' view that the court's jurisdiction under section 53 (a) (2) is dependent upon the pendency of proceedings before the Federal Trade Commission. Subsection (2) was written for a purpose which was to prevent the ineffectuality of proceedings before the Commission due to the offender's collecting the spoils incident to improper practices and liquidating or dissolving before the Commission can put a stop to its unfair practices.

[519] As we construe the expression "pending the issuance of a complaint" in subsection (2), it means that in the interim between "the causing of the dissemination of an advertisement" in violation of section 52 of title 15, U. S. C. A., and the action of the Commission, the latter may institute suit in the district court to enjoin the dissemination of such advertisement. The effectiveness of the Commission's action might be defeated unless this authority to invoke the district court's jurisdiction were given. It is a necessary part of the plan to prevent fraud and fraudulent commerce through fraudulent advertisements.

The other objections to the decree advanced by appellants to justify the issuance of a supersedeas until the appeal could be heard are all predicated upon factual bases. For example, it is stated that the advertisements complained of are not in regard to the sale of cosmetics but to the printing of a puzzle and of prize offerings for its solution, which prize offering gave the recipient the opportunity of a chance of securing an automobile.

Plaintiff's complaint and affidavits however, show these advertisements were but a part of a plan to enlist the interest of the public in the subsequent advertisements which were to deal with a contest where the winners were to be given prizes and these prizes were to be won by holders of certificates showing purchases of cosmetics. The first advertisement was merely to secure the names of prospective customers, somewhat derisively described in the affidavit as a "sucker list." The complaint alleges that defendants' efforts were successful, and a list of 330,000 was promptly obtained, to be increased when the final returns were "all in."

We are satisfied that none of the other objections advanced by appellants justifies the granting of the supersedeas. Only one will be given specific, though brief attention.

Appellants claim that their damages will be irreparable. This statement is justified by the disclosed facts. Plaintiff, on the other hand, asserts that if the injunction be lifted, the damage to the public will also be irreparable. Its statement is likewise fairly supported by the facts. In other words, the injunction will interrupt defendants' business for the period of its continuance. On the other hand, if the injunction be lifted until the appeal can be heard on its merits, the defendants will have extracted several millions of dollars from the more than 330,000 prospective buyers. The money will be obtained on the offer of a chance to win prizes although ostensibly the transaction deals with the sale of cosmetics. The amounts of the sales of cosmetics are not related to an ordinary person's needs, and are not affected by the absence of quality of the cosmetics.

Under the circumstances, we are to balance the gains and losses, and as we record the score, continue or lift the injunction in question. The vote is not even close. Our conclusion is in favor of continuing the injunction and denying the motion for supersedeas. In other words, defendants' losses through the interference (or destruction) of their business is not of such a character as to invite preventive orders by a court of equity who has no duty, irrespective of the Federal Trade Act, to protect illegitimate profits or advance business which is conducted by unfair business methods.

The application for a supersedeas is denied.

AMERICAN FIELD SEED COMPANY, ALSO DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF SUN-FIELD SEED SERVICE, AND STANDARD SEED COMPANY, AND ERNEST E. ELDER, AS PRESIDENT, AND J. F. SINN, AS VICE PRESIDENT OF AMERICAN FIELD SEED COMPANY, AND INDIVIDUALLY *v.* FEDERAL TRADE COMMISSION<sup>1</sup>

No. 6763

(Circuit Court of Appeals, Seventh Circuit. Feb. 8, 1940)

Decree dismissing, on stipulation and consent of parties, petition for review of cease and desist order of Commission in the matter of American Field Seed Co. et al., Docket 2872, July 29, 1938, 27 F. T. C. 583, 595, directing respondents, their officers, etc., and respondent individuals, in their official and individual capacities, to cease and desist, in connection with offer, etc., in interstate commerce, of agricultural seed, from representing, directly or by implication, that respondent corporation was founded or engaged in business prior to year in which it was incorporated, and that respondents' seed is free from weed seed and other foreign matter, is all cleaned by them with their own seed cleaning equipment, is analyzed and tested in their own seed testing laboratories, is all tagged and labeled in accordance with laws of State into which shipped, etc., as in said order in detail specified and set forth.

*Townley, Campbell, Clark & Miller*, of Chicago, Ill., for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. James W. Nichol* and *Mr. George Foulkes*, special attorneys, all of Washington, D. C., for Commission.

Before EVANS and MAJOR, *Circuit Judges*.

#### DECREE

Now this day come the parties by their counsel and present and file a petition to dismiss this petition for review, which said stipulation is in the words and figures following, to wit:

"It is hereby stipulated between American Field Seed Company, a corporation, Ernest E. Elder and J. F. Sinn, petitioners herein, and Federal Trade Commission, that the above entitled cause may be dismissed at petitioners' cost.

<sup>1</sup> Not reported in Federal Reporter.

"It is further stipulated that the Federal Trade Commission has incurred no costs which are taxable against the petitioners.

"AMERICAN FIELD SEED COMPANY,  
ERNEST E. ELDER AND J. F. SINN,  
*Petitioners.*

By J. ARTHUR MILLER,  
*Attorney for Petitioners.*

"FEDERAL TRADE COMMISSION,  
By W. T. KELLEY,  
*Attorney for Federal Trade Commission.*"

On consideration whereof, it is now here ordered, adjudged and decreed by this court that this petition for review be, and the same is hereby, dismissed at petitioners' cost, pursuant to the foregoing stipulation.

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BERRY SEED COMPANY, AND J. FRANK SINN, AS PRESIDENT OF BERRY SEED COMPANY AND INDIVIDUALLY, AND JOSEPH F. FAASSEN, AS SECRETARY OF BERRY SEED COMPANY AND INDIVIDUALLY v. FEDERAL TRADE COMMISSION.<sup>1</sup>

No. 423, Original

(Circuit Court of Appeals, Eighth Circuit. February 9, 1940)

Order per curiam dismissing, on stipulation and consent of parties, petition to review cease and desist order of Commission in the matter of Berry Seed Co. et al., Docket 2873, September 9, 1938, 27 F. T. C. 929, 941, directing respondent, its officers, etc., and respondent individuals, in their official and individual capacities, in connection with offer, etc., in interstate commerce or in the District of Columbia, of agricultural seed, to cease and desist from representing, directly or by implication, that respondent corporation was founded or engaged in business prior to the year it was incorporated under the laws of the State of Iowa, and that respondents' seed is free from weed seed and other foreign matter, is all cleaned by them with their own seed cleaning equipment, has high germinating power in case of all seed, and that every shipment has tags or labels attached showing purity and germination tests, etc., as in said order in detail specified and set forth.

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<sup>1</sup> Per curiam disposition of matter as set forth in text is reported in 109 F. (2d) 1012. Decree in the matter, dismissing such petition pursuant to stipulation of the parties follows:

DECREE

This matter came on to be heard on the stipulation of counsel to dismiss petition to review the Order of the Federal Trade Commission, at petitioners' costs.

In pursuance of said stipulation, It is now here ordered, adjudged and decreed by this court that the petition to review the order of the Federal Trade Commission entered on September 9, 1938, in this matter, be, and the same is hereby dismissed at the costs of the petitioners but that no attorneys' docket fee be taxed in favor of respondent.

And it is further ordered by this court that a certified copy of this order be forthwith transmitted to the Federal Trade Commission.

On petition to review order of Commission as above described, petition dismissed.

*Townley, Campbell, Clark & Miller*, of Chicago, Ill., for petitioners. *Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. James W. Nichol* and *Mr. George Foulkes*, special attorneys, all of Washington, D. C., for Commission.

PER CURIAM.

Petition to review order of Federal Trade Commission dismissed at costs of petitioners but that no attorneys' docket fee be taxed in favor of respondent, pursuant to stipulation.

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**BUNTE BROTHERS, INC. v. FEDERAL TRADE  
COMMISSION<sup>1</sup>**

No. 6792

(Circuit Court of Appeals, Seventh Circuit. February 20, 1940.)

**CEASE AND DESIST ORDERS—VALIDITY, IN GENERAL—PREREQUISITES—METHODS' UNFAIRNESS, INTERSTATE COMMERCE, AND PUBLIC INTEREST.**

A cease and desist order of the Federal Trade Commission, to be valid, must be supported by evidence which establishes that the methods used are unfair, that the methods are used in interstate commerce, and that the proceeding by the commission to prevent use of the methods is in the interest of the public. (Federal Trade Commission Act, sec. 5 (a), as amended, 15 U. S. C. A., sec. 45 (a)).

**PUBLIC INTEREST—LOTTERY MERCHANDISING—LOCAL MANUFACTURER'S PRACTICE AS HAMPERING EXTRASTATE SELLERS IN SELLING INTO—CANDY "BREAK AND TAKE" SELLING.**

Findings, sustained by evidence, that 48 candy manufacturers located in 13 different States, and shipping in excess of \$1,440,000 worth of "straight" candy from their factories to the State of Illinois annually, were handicapped in attempting to compete with local manufacturer which sold candy in "break and take" assortments, established that proceeding by Federal Trade Commission to prevent use of such selling was in the "public interest," as respects validity of cease and desist order.

**PUBLIC INTEREST—UNFAIR METHODS PROCEEDING UNDER SECTION 5—COMPETITION, EXISTING AND POTENTIAL—WHERE THREATENED.**

A proceeding by the Federal Trade Commission to prevent the use of unfair methods is in the "public interest" if the unfair methods threaten the

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<sup>1</sup> Reported in 110 F. (2d) 412. For case before Commission, see 27 F. T. C. 911.

existence of potential as well as existing competition, as respects validity of cease and desist order.

**METHODS, ACTS AND PRACTICES—COMMISSION LIMITATIONS—INTERSTATE COMMERCE.**

The only practices with which the Federal Trade Commission may concern itself are transactions in interstate commerce (Federal Trade Commission Act, secs. 4, 5 (a), as amended, 15 U. S. C. A., secs. 44, 45 (a)).

**FEDERAL TRADE COMMISSION ACT—SCOPE, IN GENERAL—AS SUPPLEMENTING SHERMAN ANTITRUST ACT IN PROHIBITION OF PRACTICES UNFAIR AND DESTRUCTIVE OF COMPETITION IN INTERSTATE COMMERCE.**

The purpose of the Federal Trade Commission Act is to supplement the Sherman Anti-Trust Act and to prohibit practices which are unfair and destructive of competition in interstate commerce (Sherman Anti-Trust Act, 15 U. S. C. A., secs. 1-7, 15 note).

**CEASE AND DESIST ORDERS—INTRASTATE SELLING—LOTTERY MERCHANDISING—CANDY—WHERE OTHER STATES' CANDY MAKERS' COMMERCE INTO OFFENDER'S, THEREBY AFFECTED.**

An order of the Federal Trade Commission commanding an Illinois candy manufacturer engaged in distributing its products in the State of Illinois to cease and desist from certain unfair practices in the sale and distribution of its candy in the State of Illinois is invalid because applying to practices not used "in interstate commerce," though the unfair methods affect the commerce which candy makers of other States carry on with retailers in Illinois.

(The syllabus, with substituted captions, is taken from 110 F. (2d) 412)

On petition for review of an order of Commission, directing petitioner to cease and desist from certain unfair trade practices, order vacated and set aside.

*Mr. Samuel G. Clawson*, of Chicago, Ill., for petitioner.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. P. C. Kolinski* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for Commission.

*Mr. Theodore E. Rein*, of Chicago, Ill., amicus curiae.

Before **EVANS, TREANOR, and KERNER**, Circuit Judges.

**EVANS, Circuit Judge:**

Petitioner seeks to set aside an order of the Federal Trade Commission directing it to cease and desist from certain unfair trade practices in the sale of its candy.

The order is based upon findings made by the Commission after hearings upon a formal complaint. The complaint charged, and the

Commission found, that petitioner [413] is an Illinois corporation, with its principal place of business in Chicago, Ill.,<sup>1</sup> and that for several years past it has been engaged in the manufacture, sale, and distribution of candies to wholesale dealers, jobbers, and retailers, located throughout the United States, but particularly in the State of Illinois.

The Commission found that petitioner's sales of candies involved the use of chance (commonly known as "break and take") in the sale and distribution to the ultimate consumers thereof. Typical of these assortments is one composed of a number of wrapped caramels, uniform in size, shape, and quality, a number of larger pieces of candy, and a box of candy. The majority of caramels in the assortment have the same color center, but a few are of a different color. The purchaser buys a caramel and breaks it open. If its center is of the same color as the majority of the caramels, he receives nothing extra, but if it is of a different color, he is given, without additional charge, one of the larger pieces of candy in the assortment. The purchaser of the last piece of candy of uniform size and shape in each assortment is entitled to receive, without additional charge, the box of candy in the assortment. This assortment was extensively sold in Illinois during the summer months of 1935, and was known as the "Summer Bar Assortment."

It was also found that petitioner manufactures and distributes in Illinois another assortment known as the "Ta-Ka Flyer Bar Assortment." The principle of this assortment is the same as that described above. There are 160 pieces of candy in all, 20 of which have differently colored centers. The pieces are sold to the consumer at a price of 1 cent each, whereupon they are broken open to ascertain the color of the center. Those who have selected a piece with a differently colored center receive, as a reward, a larger piece of candy, gratis.

Petitioner distributed its assortments to 95 percent of the candy jobbers in Illinois. During the year 1936, approximately 23 percent of its total candy business, or \$72,300 worth, consisted of the "break and take" variety. All candies are sold through the same type of merchandising channels. Jobbers who handle chance assortments also handle "straight" goods. Many retail dealers prefer to buy their candy from one jobber because of the convenience in dealing with a single salesman, handling only one order blank, and paying but one bill. The retail dealers who desire chance assortments are, therefore, prone to buy all of their candy from a jobber who sells chance assortments.

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<sup>1</sup> See *Bunte Bros. v. F. T. C.*, 104 F. (2d) 906, 7 Cir. [28 F. T. C. 1959.]

The Commission also found that the effect of the practice of petitioner substantially lessened competition to the detriment of its competitors, situated in other States, who also sold candy in the State of Illinois.

Among other matters the Commission found:

"Some out-of-state manufacturers experienced a marked decrease in their sales of straight goods in Illinois \* \* \* when the sale of chance assortments, particularly of the break and take variety, was active \* \* \*. A representative of a New York manufacturer suffered a marked decline in his sales of straight candies in the Illinois market in May and June of 1935 over sales of straight candies in the same market in May and June of 1934. \* \* \* The sales of a Pennsylvania manufacturer of a competing confection, chewing gum, in Illinois in September and October of 1935, were but 74 percent and 62 percent, respectively, of his sales in the same market during the same months in 1934. \* \* \* The presence in the Illinois market of 40,000 of respondent's (petitioner herein) break and take chance assortments during the year 1935 was a strong factor contributing to the sales declines these interstate competitors of respondent suffered. \* \* \* A competitor of respondent, located in the state of Wisconsin, who had been ordered, by this commission to cease and desist from the unfair practices which respondent was pursuing, suffered an 80 percent reduction of sales in Illinois from the \$60,000 business of the preceding year. Another Wisconsin competitor who had a \$100,000 yearly business was adversely affected 20 percent."

Upon these findings, the Commission entered its cease and desist order.

Almost identical practices have been condemned in *Federal Trade Commission v. R. F. Keppel & Bro.*, 291 U. S. 304, as unfair methods of competition within the meaning of section 5 of the Federal Trade Commission Act. [414] Following this decision, we, in *Bunte Bros. v. Federal Trade Commission*, 104 F. (2d) 996, upheld the Commission's order to desist from practices quite similar.

We are on secure and undisputed ground, when we assume that an order of the Commission to be valid must be supported by evidence which establishes: (1) The methods used are unfair; (2) The methods of competition condemned must be used in interstate commerce; (3) The proceeding by the Commission to prevent the use of the methods must be in the interest of the public (*Federal Trade Commission v. Royal Milling Co.*, 238 U. S. 212, 216).

That the practice complained of herein is unfair, is settled by the decisions. (See *Bunte Bros. v. Federal Trade Commission*, *supra*, and *Federal Trade Commission v. Keppel & Bro.*, *supra*.)

From the findings of the Commission sustained by the evidence, it is equally clear that the instant proceeding is in the public interest. A great percentage of the consuming public buys candy. The Commission found that 48 candy manufacturers located in 13 different States, and shipping in excess of \$1,440,000 worth of "straight" candy from their factories to the State of Illinois annually, were handicapped in attempting to compete with petitioner within the State.<sup>2</sup> It is sufficiently within the public interest, moreover, if the unfair method threatens the existence of potential, as well as existing, competition (*Federal Trade Commission v. Klesner*, 280 U. S. 19, 28. See also *Federal Trade Commission v. Keppel & Bro.*, *supra*.)

The only debatable question in the case is restricted to the asserted noninterstate character of the business affected by the order. Petitioner denies that its condemned business was or is interstate.

The order was directed against the methods used by petitioner in the State of Illinois. It reads:

"It is ordered that the respondent, Bunte Bros., Inc., \* \* \* in the offering for sale, sale, and distribution of candy, in the State of Illinois, do cease and desist from: \* \* \*"

Section 44, Title 15, U. S. C. A., provides:

"'Commerce' means commerce among the several States or with foreign nations, \* \* \*"

Section 45 (a) provides:

"Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

"The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, \* \* \* from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

Our question may be stated thus: Is an order directed to an Illinois candy manufacturer engaged in distributing its product in the State of Illinois, valid, which commands it to cease and desist from certain unfair practices in the sale and distribution of its candy in the State of Illinois?

Petitioner answers in the negative and cites:

*Schechter Corp. v. U. S.*, 295 U. S. 495; *Federal Trade Commission v. Algoma Lumber Company, et al.*, 291 U. S. 67; *Federal Trade Commission v. Maisel Trading Post, Inc.*, 77 F. (2d) 246; *Minnesota Rate Cases*, 230 U. S. 352; *Winslow v. Federal Trade Commission*, 277 Fed. 206; *Utah-Idaho Sugar Co. v. F. T. C.*, 22 Fed. 122; *California Rice*

<sup>2</sup>The Commission stated that there were outstanding against 127 competitors of petitioner, orders requiring them to cease and desist from the use of such methods in connection with their sales in interstate commerce.

*Industry v. Federal Trade Commission*, 102 F. (2d) 716; *Canfield Oil Co. v. Federal Trade Commission*, 274 Fed. 571; *Ward Baking Co. v. Federal Trade Commission*, 264 Fed. 330; *Federal Trade Commission v. American Tobacco Co.*, 264 U. S. 298; *Federal Trade Commission v. Claire Furnace Co.*, 285 Fed. 936 (reversed on another ground); *Leader v. Apex Hosiery Co.*, 3 Cir., 108 F. (2d) 71, November, 1939; *United Leather Workers International Union v. Herkert Co.*, 265 U. S. 457.

Its chief reliance seems to be the Schechter case.

[415] The respondent contends that "unfair methods of competition in commerce" extend not only to commerce between the States but to intrastate commerce where the unfair practices in the latter field affect the interstate commerce of the same industry. In other words, unfair methods adopted by one who makes and sells his candy in Illinois are subject to the act if such maker indulges in unfair trade methods and his unfair trade methods affect, and interfere with, interstate commerce in candy. In the instant case the respondent found that petitioner's unfair methods of trade did interfere with and affect the commerce which candy makers of Wisconsin and New York carried on with the retailers in Illinois. As supporting its view it cites:

*Loewe v. Lamlor*, 208 U. S. 274; *National Labor Relations Board v. Fainblatt*, 306 U. S. 601; *Federal Trade Commission v. Wallace*, 75 F. (2d) 733; *Currin v. Wallace*, 306 U. S. 1; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197; *Second Employers' Liability Cases*, 223 U. S. 1; *National Labor Relations Board v. Planters Mfg. Co.*, 105 F. (2d) 750; *Federal Trade Commission v. Keppel & Bro.*, 291 U. S. 304; *Ramsay Co. v. Associated Bill Posters, Etc.*, 260 U. S. 501; *National Labor Relations Board v. Jones and Laughlin Steel Corp.*, 301 U. S. 1; *Houston & Texas Ry. v. U. S.*, 234 U. S. 342; *Wis. R. R. Com. v. C. B. & Q. R. R. Co.*, 257 U. S. 563; *B. & O. R. R. Co. v. I. C. C.*, 221 U. S. 612; *Oklahoma v. Kansas Natural Gas Co.*, 221 U. S. 229; *Montague & Co. v. Lowry*, 193 U. S. 38; *Eastern States Retail Lumber Dealers Association v. U. S.*, 234 U. S. 600; *Coronado Coal Co. v. United Mine Workers*, 268 U. S. 295; *United Leather Workers v. Herkert*, 265 U. S. 457; *Carter v. Carter Coal Co.*, 298 U. S. 238; *Swift & Co. v. U. S.*, 196 U. S. 375; *Stafford v. Wallace*, 258 U. S. 495; *Chamber of Commerce v. F. T. C.*, 13 F. (2d) 673; *Blankenship v. Kurfman*, 96 F. (2d) 450; *Lake Valley Farm Products Inc. v. Milk Wagon Drivers' Union*, 108 F. (2d) 436, decided Nov. 29, 1939.

Numerous arguments press for consideration in the disposition of this close and troublesome question.

On the one side the fear is expressed that the more recent decisions of the courts, most noticeable of which are *National Labor Relations*

*Board v. Jones & Laughlin Steel Corporation, supra*, and *Electric Bond & Share Co. v. Securities & Exchange Commission*, 303 U. S. 419, have obliterated the heretofore well-defined and well-recognized distinctions between State and Federal Government activities and have perfected a well-nigh completely centralized government. The commonly entertained idea that it is judicial decisions which have led to the disappearance of the local governments as a controlling force in business is erroneous. The enlargement of Federal Government activity is traceable directly to the ever-increasing reach of commerce which has refused to remain static or local. It is this enormous growth in the field of commercial activities which has emphasized the commerce clause of the Federal Constitution and enlarged the scope of its application. This growth of commerce in turn has been the inevitable result of the inventive traits and qualities of our people, whose discoveries have improved old, and created new, instruments of transportation, so that now nearly all commerce is interstate.

Equally significant is the necessity, so apparent in some phases of commerce, for regulation by Congress of intrastate business because its control is essential or appropriate to the regulation of a similar phase of the same commerce but interstate in character. The close, intimate, essential, and inseparable relation of intrastate commerce to interstate commerce, in some fields, makes it necessary to include both, if the legislation is to be effective.

This fear of over-centralization, if real and well grounded, may be overcome either [416] through nonaction by Congress or by Federal legislation which discriminately restricts its scope so that our dual system of government is preserved. It is not within the field of judicial action.

Equally pressing has been the argument that when commerce, both state and interstate, is conducted by those who will not abide by "the rules of the game," and whose business ethics are such that they resort to unfair methods of trade in order to get an undue advantage of a competitor and to do so, hide behind the protection of state non-action and defy the Federal Government to stop a business thus builded on unfair methods, courts should sustain the efforts of the Federal Trade Commission to stop such unfair practices even though the business be wholly intrastate. The argument is strongly advanced to invoke the Federal commerce clause on the theory that it is both essential and appropriate to regulate the intrastate commerce in such cases because of its close relation to the interstate commerce.

Here, too, the fault lies not with judicial decisions, but is due to two other influences:

First. The unethical practices of so-called business men who believe all is legitimate and proper which is not condemned by statute. Not finding a prohibition "written in their bond," they proceed to take advantage of competitors who have a higher regard for the decencies of competitive efforts.

Petitioner's practices have been condemned by court decisions as unfair, unethical, and contrary to the laws which govern interstate commerce. Its persistence in continuing practices thus condemned may find legalistic but no moral support in this decision. An unfair business practice is still unethical, even though not included within the reach of a statute which prohibits it in interstate commerce. Petitioner limits its field of unethical practices to intrastate commerce where the Federal Government's statute does not apply. Its avoidance of legal liability in no way exculpates it from the charge of foul business practices.

Second. The absence of state legislation dealing with intrastate business, which condemns and prohibits the same unfair practices condemned by the Federal Trade Act.

These arguments for and against our applying the Federal Trade Commission Act to the case before us cannot, however, be taken too seriously. The only practices with which the Commission may concern itself are transactions "in interstate commerce." The Commission's authority is to be found in the act which created it, as amended. The purpose of the act was to supplement the Sherman Anti-Trust Act (*Federal Trade Commission v. Beechnut Packing Co.*, 257 U. S. 441, 453) and to prohibit practices which were unfair and destructive of competition "in interstate commerce." On this point there is no doubt. Both the intent and the language of the act are clear. But when it comes to the field of competition covered by the act it is less clear and "plain." The words, the meaning of which we are to construe, are definitely "in commerce" not "affecting interstate commerce."

We have been favored with briefs which cite, analyze, distinguish, criticize, or approve nearly all the cases which have been before the courts, involving this act, as well as many cases which have dealt extensively with the subject of interstate commerce. In view of the exhaustive discussions appearing in the opinions in these cases, further discussion is hardly appropriate. We must assume they state the law as it exists today and that legislation defining "commerce," "in commerce," and "affecting interstate commerce" must be applied in the light of said decisions.

Our conclusion (which is not free from doubt) is that the phase of petitioner's business wherein its practices are unfair is wholly intrastate. It is the phase of petitioner's business which is conducted

wholly in Illinois, by an Illinois corporation, which makes and sells its product in Illinois. It is not within the purview of section 5 of the Federal Trade Commission Act. If an extension of the Federal Trade Commission's jurisdiction be advisable so as to include practices affecting interstate commerce, it is for Congress, not the court to make the change.

The petitioner is entitled to the relief sought and to an order vacating and setting aside the order of the Federal Trade Commission.

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EDUCATORS ASSOCIATION, INC., ET AL. *v.* FEDERAL  
TRADE COMMISSION<sup>1</sup>

No. 97

(Circuit Court of Appeals, Second Circuit. Feb. 27, 1940)

CEASE AND DESIST ORDERS—SCOPE AND FORM—PROHIBITIONS' EXTENT—TRADE NAMES—WHERE CHARACTER OF SELLER AND NOT PRODUCT INVOLVED IN DECEPTIVE EMPLOYMENT—CONTINUED USE IF ACCOMPANYING QUALIFICATION ADEQUATE—“EDUCATORS ASSOCIATION” BY FOR PROFIT SELLER OF REFERENCE BOOKS.

Where deception in use of a trade-name is only as to the character of the seller and not of the product sold, continued use of the trade-name in business may be permitted if the name is accompanied by words revealing true character of the seller, so that “Educators Association” engaged in selling reference books for profit could continue to operate under such name if name were accompanied by suitable statement to the effect that association was only a trade-name under which books published by the association were distributed for profit.

(The syllabus, with substituted caption, is taken from 110 F. (2d) 72)

On petition for rehearing, petition denied.

*Townsend, Kindleberger & Campbell*, of New York City (*Mr. E. Crosby Kindleberger*, of New York City, of counsel), for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. William L. Pencke* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for Commission.

Before SWAN, CHASE and CLARK, Circuit Judges.

*Per Curiam:*

In a petition for rehearing the Federal Trade Commission has asked us to reconsider our modification of its order to permit Leo L. Tully to continue to do business under the trade name Educators Association provided the trade name is accompanied by words which reveal

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<sup>1</sup> Reported in 110 F. (2d) 72. See, for court's prior decision, *supra*, p. 1614, and for case before Commission, 28 F. T. C. 1006.

its true character. The main ground of the petition is that such a modification involves a complete contradiction which makes the elimination of the trade name itself necessary under the rule set forth in *Heusner & Son v. Federal Trade Commission*, 106 F. (2d) 596 and *El Moro Cigar Co. v. Federal Trade Commission*, 107 F. (2d) 429. But the difference between those cases and this one is that in them the offending word "Havana" was falsely descriptive of the product sold. Here the deception is only as to the character of the seller. We purposely left the needed modification indefinite before in order that the parties might have an opportunity to work that out unhampered by our decision. Without meaning to curtail their freedom of action in that respect now, we venture the suggestion that the modification might consist of a suitable statement, to accompany the use of the trade name in each instance, to the effect that Educators Association is only a trade name under which books published by Educators Association, Inc., are distributed for profit.

Petition denied.

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UNITED CORPORATION ET AL. v. FEDERAL TRADE  
COMMISSION <sup>1</sup>

No. 4547

(Circuit Court of Appeals, Fourth Circuit. Mar. 11, 1940)

JURISDICTION—OTHER STATUTES—PACKERS AND STOCKYARDS ACT—WHERE SELLER CANNED MEAT PRODUCTS STOCK OWNER IN TWO CORPORATE LICENSED PACKERS, PRODUCTS OF WHICH SOLD BY IT.

A corporation engaged in marketing of canned meat products which were packed for the corporation by two licensed corporate packers, upon the acquisition of 20 percent of capital stock of such corporate packers, became a "packer" whose business was subject to control of Secretary of Agriculture under Packers and Stockyards Act. Packers and Stockyards Act of 1921, sec. 201, 7 U. S. C. A. sec. 191.

JURISDICTION—OTHER STATUTES—PACKERS AND STOCKYARDS ACT AND MEAT INSPECTION ACT—BRANDING AND LABELING—MEAT FOOD PRODUCTS AND UNFAIR TRADE PRACTICES IN SALE THEREOF.

The provisions of Packers and Stockyards Act vesting in Secretary of Agriculture jurisdiction to deal with violations and to require a packer to cease and desist therefrom together with provisions of Meat Inspection Act vest Secretary of Agriculture with plenary power to regulate branding and labeling of meat food products and to forbid unfair trade practices in sale thereof. Packers and Stockyards Act of 1921, secs. 202, 203, 7 U. S. C. A. secs. 192, 193; Meat Inspection Act, 21 U. S. C. A. sec. 75.

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<sup>1</sup> Reported in 110 F. (2d) 473. For case before Commission, see 29 F. T. C. 451.

**JURISDICTION—OTHER STATUTES—AT OR PRECEDING COMPLAINT—WHETHER DIVESTED BY SUBSEQUENT CHANGE—REGULATORY AND NONPUNITIVE POWER OF COMMISSION AS DETERMINING.**

The power of Federal Trade Commission is purely regulatory and not punitive, and hence jurisdiction must exist at time of entry of its order, and jurisdiction at time of commission of acts objected to as unfair trade practices or at time of filing of complaint with regard thereto is not sufficient, since order to be entered does not relate to past practices or determine rights as of time of filing of complaint as in an action at law, but commands or forbids action in the future. Trade Commission Act, sec. 5, as amended by Act March 21, 1938, 52 Stat. 111; 15 U. S. C. A., sec. 45.

**JURISDICTION—OTHER STATUTES—PACKERS AND STOCKYARDS ACT AND MEAT INSPECTION ACT—WHERE SELLER CANNED MEAT PRODUCTS THEREAFTER BY ACQUIRING STOCK IN CORPORATE PACKERS, "PACKER" WITHIN PACKERS AND STOCKYARDS ACT.**

When a corporation engaged in marketing of canned meat products, by acquiring stock in corporate packers, became a "packer" within Packers and Stockyards Act and hence subject to jurisdiction of Secretary of Agriculture, the Federal Trade Commission had no further power of regulation over corporation notwithstanding commission might have been considering regulation under a complaint filed before corporation became a packer. Meat Inspection Act, 21 U. S. C. A. sec. 75; Packers and Stockyards Act of 1921, secs. 201-203, 406 (b), 7 U. S. C. A. secs. 191-193, 227; Trade Commission Act, sec. 5, as amended by Act March 21, 1938, 52 Stat. 111, 15 U. S. C. A. sec. 45.

**METHODS, ACTS, AND PRACTICES—MISBRANDING OR MISLABELING—SOURCE OR ORIGIN—PACKER BUSINESS—JURISDICTION.**

The practice of using brands in such way as to create a false impression as to origin of merchandise cannot be defended, but power to regulate business of packers rests with Secretary of Agriculture and not with Trade Commission or with the courts.

(The syllabus, with substituted captions, is taken from 110 F. (2d) 473)

On petition by United Corporation, trading as the Virginia Products Co., and another, against Commission, to review order of commission requiring named petitioner to cease and desist from representing that corned beef hash and deviled ham which it sold were made from products originating in Virginia, from using name "Virginia Products Company," from using labels containing the word "Virginia," and from invoicing sales from Richmond or other place within Virginia, reversed and order set aside.

*Mr. George F. Shea*, of Washington, D. C. (*Mr. Martin F. O'Donoghue* and *Mr. Thomas X. Duwin*, both of Washington, D. C., on the brief), for petitioners.

*Mr. Martin A. Morrison*, assistant chief counsel, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel,

and *Mr. Edward L. Smith* and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, all of Washington, D. C., on the brief), for Commission.

Before PARKER, SOPER, and DOBIE, Circuit Judges.

*PARKER, Circuit Judge:*

This is a petition to review and set aside an order of the Federal Trade Commission requiring petitioner, United Corporation, to [474] cease and desist from representing orally or by other means that the corned beef hash and deviled ham which it sells are made from products originating in Virginia, from using the trade name "Virginia Products Company," from using labels containing the word "Virginia," and from invoicing its sales from Richmond or other place within the State of Virginia. As we are of opinion that the Commission was without jurisdiction to enter the order, we shall confine our discussion to that phase of the case.

Petitioner is a Virginia corporation engaged in the marketing of canned meat products including corned beef hash and deviled ham, which are packed for it by two licensed packers, Montell, Inc. of Cambridge, Md., and Emmart Food Products Co. of Chicago, Ill. The meats used in these products, except in the case of the deviled ham packed by Montell, Inc., are not obtained from cattle or hogs grown in Virginia; but the labels containing the word "Virginia" have been approved by the Secretary of Agriculture under the Meat Inspection Act, 21 U. S. C. A. 75. Petitioner owns 20 percent of the capital stock of Montell, Inc., and of Emmart Food Products Co., and owned same at the time of the entry of the order by the Commission. Prior to the entry of the order, it had moved for the dismissal of the proceedings on the ground that it was a "packer" within the meaning of the Packers and Stockyards Act of 1921, 7 U. S. C. A. 191, and hence was not within the jurisdiction of the Commission.

The Commission, while virtually conceding that petitioner at the time of the entry of its order came within the definition of a packer as contained in the Packers and Stockyards Act, contends that it had jurisdiction because petitioner had not acquired that status at the time of the filing of the petition before it. The facts as to this are that the petition was filed March 31, 1937. Petitioner acquired 20 percent of the stock of Montell, Inc., April 12, 1937, and 20 percent of the stock of Emmart Food Products Co. May 1, 1937. The order was not entered until August 2, 1939. As early as 1936 petitioner had entered into a contract entitling it to a one-fifth interest in the business of Montell, which was then operating as a partnership.

There can be no question but that upon the acquisition of the stock of Montell, Inc., and the Emmart Food Products Co., peti-

tioner became a packer whose business was subject to the control of the Secretary of Agriculture under the Packers and Stockyards Act. It was engaged in the marketing of meat food products and it owned and controlled an interest in two corporations engaged in the business of "Manufacturing or preparing meats or meat food products for sale or shipment in commerce." 7 U. S. C. A. 191.

And we think it equally clear that, as a packer subject to the jurisdiction of the Secretary of Agriculture under the Packers and Stockyards Act, petitioner was excepted from the jurisdiction of the Federal Trade Commission. Section 406 (b) of that Act, 42 Stat. 169, 7 U. S. C. A. 227, provides: "(b) On and after the enactment of this act, and so long as it remains in effect, the Federal Trade Commission shall have no power or jurisdiction so far as relating to any matter which by this act is made subject to the jurisdiction of the Secretary, except in cases in which, before the enactment of this act, complaint has been served under section 5 of the act entitled 'An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914, \* \* \* and except when the Secretary of Agriculture, in the exercise of his duties hereunder, shall request of the said Federal Trade Commission that it make investigations and report in any case."

The exceptions to the general clause excluding jurisdiction by the Trade Commission manifestly do not preserve the jurisdiction of the Commission in this case, for the reason that the complaint herein had not been served at the time of the passage of the act, which was August 15, 1921, and no investigation and report has been requested of the Commission by the Secretary of Agriculture. And, on the other hand, there can be no question but that the general clause excluding jurisdiction by the Commission applies to unfair practices in the marketing of meat food products by a packer, since this was a matter made subject to the jurisdiction of the Secretary of Agriculture by sections 202 and 203 of the act, 42 Stat. 161, 7 U. S. C. A. secs. 192 and 193. Section 202 provides that it shall be unlawful for any packer to engage in or use any "unfair, unjustly discriminatory, or deceptive practice or device in commerce." And section 203 vests [475] in the Secretary of Agriculture jurisdiction to deal with violations of section 202 and to require a packer to cease and desist therefrom.

Any doubt as to the correctness of this conclusion is removed if consideration be given to section 5 of the Trade Commission Act, as amended by the act of March 21, 1938, 52 Stat. 111, 15 U. S. C. A. sec. 45. That section as so amended provides:

"Sec. 5. (a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

"The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the acts to regulate commerce, *and persons, partnerships, or corporations subject to the Packers and Stockyards Act, 1921*, except as provided in section 406 (b) of said act, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce." [Italics supplied.]

Section 203 of the Packers and Stockyards Act together with the provisions of the Meat Inspection Act of March 4, 1907, 34 Stat. 1262, 21 U. S. C. A. 75, undoubtedly vest the Secretary of Agriculture with plenary power to regulate the branding and labeling of meat food products and to forbid unfair trade practices in the sale thereof. The Secretary has promulgated elaborate regulations with respect to the branding and labeling of such products, in which the use of deceptive labels is forbidden and the use of geographical names regulated. Regulations of 1922, section 7, paragraphs 1 and 2 (b), are as follows:

"Section 7. Paragraph 1. No meat or product, and no container thereof, shall be labeled with any false or deceptive name; but established trade names which are usual to such articles and are not false or deceptive and which have been approved by the Secretary of Agriculture may be used.

"Paragraph 2. No statement, word, picture, design, or device which conveys any false impression or gives any false indication of origin or quality shall appear on any label. For example:

\* \* \* \* \*

"(b) Names of countries, States, and Territories, and such other geographical names as the department may approve, may be used on labels, only when followed by the word 'style', 'type', 'cut', or 'brand', in the same size and style of lettering as the geographical name, unless the products for which the labels are intended are prepared in the localities named: \* \* \*"

The Supreme Court has sustained this exercise of power on the part of the Secretary of Agriculture and has held that exclusive power has been delegated to him by Congress with respect thereto. *Brougham v. Blanton Mfg. Co.*, 249 U. S. 495. The Court said in that case:

"The test of the product is the meat inspection laws, not the trademark laws, and therefore we are concerned with the action of the Department of Agriculture and not with that of the Interior De-

partment. And so intimately is the case concerned with the action of the Department of Agriculture that the basic and dominant contention of the Government is that to the Department is committed the power of determining the fact of the influence of the name and label of the company. In other words, the power of determining whether a trade name is 'false or deceptive' given by the law to the Secretary of Agriculture is, when exercised, conclusive of the falsity or deception of the name. (*Bates & Guild Co. v. Payne*, 194 U. S. 106, and cases cited; *Fertilizing Co. v. Hyde Park*, 97 U. S. 659), and the power necessarily is a continuing one. The contention and the cited cases have been approved very lately in *Houston v. St. Louis Independent Packing Co.*, ante, 249 U. S. 479, in which it is declared that the decision of the department, unless arbitrary, is conclusive."

It was doubtless because plenary power over the unfair trade practices of packers had been vested in the Secretary of Agriculture by the Packers and Stockyards Act and the Meat Inspection Act, that Congress withheld jurisdiction over packers from the Federal Trade Commission. Only confusion could result from an overlapping jurisdiction, as this case well illustrates.

And since the power of the Federal Trade Commission is purely regulatory and not punitive, it is clear that jurisdiction must exist at the time of the entry of its order. Jurisdiction at the time of the commission of acts objected to as unfair trade practices or at the time of the filing of the complaint with regard thereto is not sufficient; for the order to be entered does not relate to past practices or determine rights [476] as of the time of the filing of the complaint, as in an action at law, but commands or forbids action in the future. The Commission cites a number of cases holding that the jurisdiction of a court attaches upon the filing of the complaint and that subsequent changes cannot confer or divest jurisdiction; but these cases, we think, have no bearing upon the question here involved and furnish no analogy to be applied in the case of a regulatory commission whose orders operate in futuro. An analogy is furnished, however, by the rule prevailing in equity to the effect that the court, in making its decree, is governed by the situation existing at the time the decree is entered, and not by that which existed at the inception of the litigation. 10 R. C. L. 559; 21 C. J. 664; *Stonega Coke & Coal Co. v. Price*, 4 Cir. 106 F. (2d) 411, 419; *Randel v. Brown*, 2 How. 406. And relief will not be afforded in equity when during the pendency of the suit, even on appeal, an event occurs making it impossible to grant effective relief. *Tennessee v. Condon* 189 U. S. 64; *Mills v. Green* 159 U. S. 651. When petitioner here, by acquiring stock in Montell, Inc., and Emmart Food Products Co., became a packer

within the meaning of the Packers and Stockyards Act and subject to the jurisdiction of the Secretary of Agriculture, the Trade Commission had no further power of regulation over it; and the fact that the Commission may have been considering regulation under a complaint theretofore filed is immaterial.

A case directly in point is *Chamber of Commerce v. Federal Trade Commission*, 8 Cir. 13 F. (2d) 673, 685. It appeared in that case that, while a proceeding against the Minneapolis Chamber of Commerce was pending before the Trade Commission, Congress passed the Grain Futures Act regulating a number of matters involved in the proceeding. In holding that as to these matters the Commission ceased to have jurisdiction, notwithstanding that the proceeding had been filed before the passage of the Grain Futures Act, the Court said:

"The above act was passed after this complaint was filed but before the order was made herein. As the orders of the Commission are purely remedial and preventative, the effect thereof is entirely in the future. Therefore, the jurisdiction of the Commission should, in this respect, be measured as of the time of the order rather than as of the filing of the complaint or as of the hearing thereon."

In the very recent case of *Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U. S. 134, 60 S. Ct. 437, the Supreme Court held that it was error for the United States Court of Appeals for the District of Columbia, in remanding a cause to the Federal Communications Commission, to require that it make its decision on the record theretofore made before it, saying that, after the Commission had corrected the error pointed out by the Court of Appeals, its responsibility was to enforce the legislative policy committed to its charge, that the practice followed in courts was not controlling and that, after remand, the Commission was again charged with the duty of judging the application before it in the light of "public convenience, interest and necessity." This, of course, is entirely inconsistent with any idea that the power of the Commission is to be determined as of the date of the filing of the complaint before it.

If the jurisdiction of the Commission over the petitioner should be determined as of the date of the filing of the complaint, interesting questions would arise as to whether petitioner did not then own a sufficient interest in the Montell partnership to bring it within the Packers and Stockyards Act, and, if not, whether the regulatory power of the Commission could be exercised to prevent the sale by petitioner of meat food products which had been packed by a duly licensed packer and bore labels approved by the Secretary of Agriculture under the Meat Inspection Act. If it was lawful, as there can be no doubt it was, for Montell, Inc., and Emmart Food Products Co. to sell under

these labels, it is rather difficult to see how the sale by petitioner of products which he had purchased from these packers under such labels could be held an unfair trade practice. We need not decide these questions, however, as we are of opinion, for the reasons stated, that the jurisdiction of the Commission over petitioner must be judged as of the date of its order, and that at that time it had no jurisdiction, since prior thereto petitioner had become a packer within the meaning of the Packers and Stockyards Act and its business had become subject to the exclusive regulation of the Secretary of Agriculture.

We are not to be taken as in any sense approving the position of petitioner [477] on the merits. The practice of using brands in such way as to create a false impression as to the origin of merchandise is one which, in our opinion, cannot be defended. *El Moro Cigar Co. v. Federal Trade Commission*, 4 Cir. 107 F. (2d) 429; *Federal Trade Com'n v. Walker's New River Mining Co.*, 4 Cir. 79 F. (2d) 457. The power to regulate the business of packers, however, rests with the Secretary of Agriculture, not with the Trade Commission or with the courts.

For the reasons stated, the order of the Federal Trade Commission will be set aside for lack of jurisdiction over the business of petitioner. Reversed and order set aside for lack of jurisdiction.

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MORTON SALT COMPANY *v.* FEDERAL TRADE  
COMMISSION <sup>1</sup>

No. 7166

(Circuit Court of Appeals, Seventh Circuit. Mar. 18, 1940)

Decree dismissing, on motion for petitioner and without objection thereto, petition for review of cease and desist order of Commission in the matter of Morton Salt Co., docket 2150, October 17, 1939, 29 F. T. C. 1128, requiring respondent, its officers, etc., in proceeding in question (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 set forth.

*Mr. H. H. Shelton and Sanders, Gravelle, Whitlock & Howrey*, of Washington, D. C., for petitioner.

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<sup>1</sup> Not reported in Federal Reporter.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission; *Mr. Martin A. Morrison*, assistant chief counsel; and *Mr. James W. Nichol* and *Mr. Jay L. Jackson*, special attorneys, all of Washington, D. C., for Commission.

Before *EVANS, Circuit Judge*:

DECREE

On motion of counsel for petitioner, counsel for respondent not objecting thereto, it is ordered, adjudged, and decreed that this petition for review of an order of the Federal Trade Commission, entered therein on October 17, 1939, be, and the same is hereby, dismissed.

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AVERY SALT COMPANY v. FEDERAL TRADE  
COMMISSION <sup>1</sup>

No. 4586

(Circuit Court of Appeals, Fourth Circuit. Mar. 23, 1940)

Decree, on joint motion of the parties and on petition for review of cease and desist order of Commission in the matter of Avery Salt Co., docket 2248, October 17, 1939, 29 F. T. C. 1132, which required 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 (1) 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 (2) 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 set forth. Modifying first prohibition of such order as above described, through adding thereto provision that nothing therein shall prohibit respondent from using terms "condensed smoke" or "liquid smoke" in enumeration of ingredients of its salt when there has been added thereto refined concentrate resulting from destructive distillation of wood, and in sufficient quantity to impart to such salt flavor of smoke, as below set forth, and by striking in its entirety second prohibition of order in question, as above set forth; and, as thus modified, commanding obedience to order in question, as in detail below set forth.

*Putney, Twombly & Hall*, of New York City, for petitioner.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission; *Mr. Martin A. Morrison*, assistant chief counsel; and *Mr. James W.*

<sup>1</sup> Not reported in Federal Reporter.

*Nichol* and *Mr. Jay L. Jackson*, special attorneys, all of Washington, D. C., for Commission.

Before *PARKER, SOPER, and DOBIE, Circuit Judges.*

#### DECREE

The petitioner herein, having filed with this court on, to wit, December 12, 1939, its petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of October 17, 1939, under the provisions of section 5 of the Federal Trade Commission Act, and a copy of said petition having been served upon the respondent herein, and said respondent having thereafter certified and filed herein, as required by law, a transcript of the entire record in the proceeding lately pending before it, in which said order to cease and desist was entered, including all the evidence taken and the report and order of said respondent, and excluding only, by stipulation of the parties, certain physical exhibits retained for convenience in the office of the respondent, at Washington, D. C.; and brief and appendix on behalf of the petitioner having been filed herein on March 11, 1940; and the respondent having agreed that paragraph 1 of its said order to cease and desist, issued on October 17, 1939, may, by this honorable court, be modified by adding thereto the following proviso, to wit:

*Provided*, That nothing in this order shall prohibit the respondent from using the terms "condensed smoke" or "liquid smoke" in enumerating or stating the ingredients of such salt when there has been added thereto a refined concentrate resulting from the destructive distillation of wood, and where the application of such product is in sufficient quantity to impart to such salt the flavor of smoke \* \* \*

and that paragraph 2 of said order may, by this honorable court, be stricken out in its entirety; and said modifications being acceptable to the petitioner herein; and said parties having filed herein their joint motion asking this honorable court to enter a decree modifying said order, affirming said order as so modified, and commanding obedience to the terms thereof:

*Now, therefore, it is hereby ordered, adjudged, and decreed*, That said order to cease and desist be modified by adding to paragraph 1 thereof the following proviso, to wit:

*Provided*, That nothing in this order shall prohibit the respondent from using the terms "condensed smoke" or "liquid smoke" in enumerating or stating the ingredients of such salt when there has been added thereto a refined concentrate resulting from the destructive distillation of wood, and where the application of such product is in sufficient quantity to impart to such salt the flavor of smoke \* \* \*

and by striking out in its entirety paragraph 2 of said order, as follows, to wit:

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.

and that said order, as so modified, be, and the same hereby is, affirmed.

*And it is hereby further ordered, adjudged, and decreed,* That the petitioner, 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, forthwith cease and desist from—

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: *Provided,* That nothing in this order shall prohibit the petitioner from using the terms "condensed smoke" or "liquid smoke" in enumerating or stating the ingredients of such salt when there has been added thereto a refined concentrate resulting from the destructive distillation of wood, and where the application of such product is in sufficient quantity to impart to such salt the flavor of smoke.

*And it is hereby further ordered, adjudged, and decreed,* That the petitioner, Avery Salt Co., shall, within 90 days after the entry of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

*And it is hereby further ordered, adjudged, and decreed,* That the Federal Trade Commission, respondent herein, shall modify its said order to cease and desist as hereinabove set forth in this decree.

**DR. W. B. CALDWELL, INC. v. FEDERAL TRADE  
COMMISSION<sup>1</sup>**

No. 6945

(Circuit Court of Appeals, Seventh Circuit. May 7, 1940)

**PUBLIC INTEREST—COMPETITORS, PRESENT OR POTENTIAL—METHODS HAVING  
CAPACITY AND TENDENCY TO INJURE USER'S.**

Preventing the use of methods that have a tendency and capacity to injure unfairly the user's present or potential competitors is in the "public interest" and such practice may be restrained (Federal Trade Commission Act, sec. 5; 15 U. S. C. A. sec. 45).

**PUBLIC INTEREST—DETERMINATION—COMMISSION DISCRETION.**

In determining whether a proceeding is in the public interest, the Federal Trade Commission exercises a broad discretion.

**METHODS, ACTS AND PRACTICES—MISBRANDING OR MISLABELING—CUSTOMERS'  
ATTRACTION BY FRAUD OF—AS TRADE DIVERTING FROM GOODS TRUTHFULLY  
MARKED.**

When misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods, so as to justify action by the Federal Trade Commission.

**METHODS, ACTS AND PRACTICES—FALSE AND MISLEADING ADVERTISING—MEDICINAL  
PREPARATIONS—THERAPEUTIC QUALITIES—PEPSIN CONTENT'S LAXATIVE VALUE.**

Proceeding by the Federal Trade Commission to restrain false and misleading advertising which represented that use of pepsin in preparation had a therapeutic value as a laxative was in the "public interest."

**EVIDENCE—COURT LIMITATIONS—WEIGHT—FINDINGS OF COMMISSION—OPINION  
EVIDENCE—WHERE BASED ON WITNESSES' GENERAL MEDICAL AND PHARMA-  
COLOGICAL KNOWLEDGE.**

The Circuit Court of Appeals may not pass upon the weight of the evidence, and if findings of the Federal Trade Commission are supported by the evidence, they are conclusive and must be accepted by the court though witnesses base their opinions upon their general medical and pharmacological knowledge.

**EVIDENCE—FINDINGS OF COMMISSION—FALSE AND MISLEADING ADVERTISING—  
MEDICINAL PREPARATIONS—THERAPEUTIC PROPERTIES—PEPSIN CONTENT'S LAXA-  
TIVE VALUE.**

Evidence sustained findings of Federal Trade Commission in support of cease and desist order, respecting false and misleading advertising which represented that use of pepsin in preparation had a therapeutic value as a laxative.

**CEASE AND DESIST ORDERS—SCOPE AND FORM—DEFINITIONS AND COMPLETENESS—  
IN GENERAL.**

A cease and desist order of the Federal Trade Commission which may subject one to a contempt proceeding should not be sanctioned if the order is not definite and complete.

<sup>1</sup> Reported in 111 F. (2d) 889. The case is published as amended on denial of rehearing, May 29, 1940. For case before Commission see 28 F. T. C. 934.

CEASE AND DESIST ORDERS—SCOPE AND FORM—DEFINITENESS AND COMPLETENESS—NAMES, DESIGNATIONS AND TERMS—MEDICINAL PREPARATIONS—THERAPEUTIC QUALITIES—NAMES, ETC., ATTRIBUTING QUALITIES NOT POSSESSED OR MINIMIZING OTHERS—"PEPSIN."

Order of the Federal Trade Commission requiring corporation to cease and desist from representing through use of word "pepsin" that preparation owed its laxative property to its pepsin content, from using the word "pepsin" to describe any preparation which did not contain a sufficient quantity thereof to possess substantial therapeutic value by reason of the pepsin content, or from using any term to describe preparation by names which minimized the presence of its active ingredients held not vague, indefinite or ambiguous.

EVIDENCE—FALSE AND MISLEADING ADVERTISING PROCEEDINGS—MEDICINAL PREPARATIONS—ADMISSION EVIDENCE AS TO ADVERTISING DISCONTINUED IN ADVANCE OF CHARGES—WHETHER SETTING ASIDE GROUND.

In proceedings on charges of employing false and misleading advertising in marketing of a medicinal preparation, admission of evidence dealing with advertising which had been discontinued and had not been resumed prior to filing of the charges was not ground for setting aside cease and desist order.

(The syllabus, with substituted captions, is taken from 111 F. (2d) 889)

On petition to review and set aside order of Commission, order affirmed.

[890] *Mr. Edward S. Rogers, Mr. William T. Woodson, Mr. James H. Rogers and Rogers, Woodson & Rogers*, all of Chicago, Ill., for petitioner.

*Mr. W. T. Kelley, Mr. Martin A. Morrison, Mr. William L. Taggart, and Mr. James W. Nichol*, all of Washington, D. C., for Commission.

Before TREANOR and KERNER, Circuit Judges, and LINDLEY, District Judge.

KERNER, *Circuit Judge:*

This is a petition by Dr. W. B. Caldwell, Inc., to review the proceedings and to set aside a cease and desist order of the Federal Trade Commission, upon complaint charging that petitioner's advertising was false and misleading and constituted unfair methods of competition in commerce, in violation of the Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45.

Dr. W. B. Caldwell graduated from a medical college in 1875 and immediately engaged in the practice of medicine. In the course of his practice he originated a medicinal preparation which was marketed by a company with which he was connected up to the time of his death. Petitioner is the successor of this company. It manufactured, sold, and distributed this preparation in interstate commerce, selling and distributing it in bottles placed in a carton wrapper, and pamphlets containing representations relative to the preparation were wrapped around each bottle.

The words "Dr. Caldwell's Syrup Pepsin combined with Laxative Senna Compound" are printed on the label. In smaller letters are the words "Alcohol 4½ percent" and in still smaller letters the words "Syrup Pepsin composed of Senna Cascara Sagrada Peppermint Oil Aromatics." In larger letters appear the words "A Laxative For Constipation."

The gist of the complaint as amended charged that petitioner's advertising was false and misleading in that it represented that the use of pepsin in the preparation had a therapeutic value as a laxative and in the treatment of constipation.

The Commission entered an order that the petitioner, among other things, cease and desist from—

"(4) Representing through the use of the word 'pepsin' alone or in association with any other word or words in the designation or description of such preparation \* \* \* that said preparation owes its laxative and cathartic properties to its pepsin contents.

"(5) Using the word 'pepsin' alone or in association with any other word or words to designate, describe or refer to any preparation which does not contain a sufficient quantity of pepsin, as an active ingredient, to possess substantial therapeutic value by reason of such pepsin content.

"(6) Using any term or name to describe, designate or refer to such preparation containing senna and cascara sagrada as its active ingredients, which name or names conceal or deceptively minimize the presence of such ingredients."

In substance the pertinent facts found by the Commission are that pepsin has no therapeutic value as a laxative or as a relief from constipation; that the pepsin in the preparation is used as a vehicle for the senna and cascara sagrada; that the use of the words Syrup Pepsin and Syrup of Pepsin to describe and designate the preparation in which the active ingredients are senna and cascara sagrada is deceptive and misleading and has the tendency to cause the purchasing public who are uninformed as to the therapeutic value of pepsin to have the mistaken belief that the pepsin in such preparation has therapeutic value in the treatment of constipation; that the use of the aforesaid terms has the tendency to cause the purchasing public who are informed as to the value and purpose of the use of pepsin to have the mistaken belief that said preparation is a pepsin preparation designed and used for the purposes for which a preparation in which pepsin is the principal active ingredient would be used; that senna and cascara sagrada are very powerful drugs and the use of said preparation in a sufficient dosage will produce a cathartic effect; that the use of the aforesaid terms to describe a preparation in which pepsin serves as a vehicle for senna and cascara sagrada is

misleading and deceptive, and has the capacity and tendency to conceal the presence of the senna and cascara sagrada and to mislead and deceive the purchasing public as to the active ingredients in the preparation.

The Commission also found as a fact that these false, deceptive, and misleading statements had a tendency and capacity unfairly to divert trade to petitioner from its competitors.

At the outset it is insisted that this proceeding is not in the interest of the public. No one can gainsay it is in the public interest to prevent the use of methods [891] that have a tendency and capacity to injure unfairly the user's present or potential competitors and that such practice may be restrained. In determining whether a proceeding is in the public interest the Commission exercises a broad discretion (*Federal Trade Commission v. Klesner*, 280 U. S. 19, 28), and each case must be determined upon its own facts (*Federal Trade Commission v. Beech-Nut Co.*, 257 U. S. 441, 453), and when misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods (*Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 493. See also *Federal Trade Commission v. Real Products Corporation et al.*, 90 F. (2d) 617, 619; *Federal Trade Commission v. Artloom Corporation*, 69 F. (2d) 36, 38; and *Armand Company v. Federal Trade Commission*, 78 F. (2d) 707, 710). We conclude that under the circumstances in the instant case the proceeding was in the interest of the public.

Counsel also argues that the findings of fact are not supported by substantial evidence, and he insists there is nothing in the record which proves the ultimate facts necessary to support the Commission's findings.

A chemist testified for the petitioner to the effect that if the preparation is placed in a bottle with meat and left there 2½ hours, the pepsin content of the preparation will demonstrate its effectiveness as a digestant. This witness, petitioner's sole expert, also stated that pepsin has no cathartic qualities. The Commission's expert witnesses, 10 qualified physicians, testified that pepsin possesses no therapeutic value as a laxative or in the treatment of constipation. On this evidence the Commission made its finding that pepsin has no therapeutic value as a laxative. This court is not permitted to pass upon the weight of the evidence, and if the findings of the Commission are supported by the evidence, they are conclusive and must be accepted by us (*Federal Trade Commission v. Standard Education Society et al.*, 302 U. S. 112; *Federal Trade Commission v. Algoma Lumber Co. et al.*, 291 U. S. 67; *Federal Trade Commission v. Pacific States, etc., Ass'n.*, 273 U. S. 52; and *Indiana Quartered Oak Co. v.*

*Federal Trade Commission*, 26 F. (2d) 340). This is true even though witnesses base their opinions upon their general medical and pharmacological knowledge. *Justin Haynes & Co., Inc., v. Federal Trade Commission*, 105 F. (2d) 988; certiorari denied, 308 U. S. 616).

We now address ourselves to the contention that the order is vague and indefinite. It is claimed that a cease and desist order must be definite and certain and complete in itself, and the argument is that to understand provisions 5 and 6 of the order the reader must refer back to the findings to which they relate. While it is true that we ought not to sanction an order which may subject petitioner to the possibility of contempt proceeding where the order is not definite and complete, the order in our case, we believe, is not ambiguous.

We have considered petitioner's contentions that evidence presented by the Commission dealt with advertising which had been discontinued and not resumed prior to the filing of the charges and that the Commission had not accorded petitioner a fair hearing. From our examination of the record we are unable to find any grounds which would justify us in holding that petitioner did not have a fair hearing, and the admission of the evidence referred to furnishes no grounds to set aside the order (*United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274; *Consolidated Edison Co. et al. v. National Labor Relations Board et al.*, 305 U. S. 197, 230).

The order of the Commission is affirmed.

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AMERICAN COLLEGE, AMERICAN UNIVERSITY, AND  
DENTON N. HIGBE *v.* FEDERAL TRADE COMMISSION <sup>1</sup>

No. 6772

(Circuit Court of Appeals, Seventh Circuit. May 10, 1940)

Order dismissing, on motion of Commission, petition for review of cease and desist order of Commission in the matter of American College et al., docket 2048, Aug. 5, 1938, 27 F. T. C. 699, 708, requiring respondent American College, its officers, etc., and respondent Higbe, and their agents, etc., in connection with offer, etc., among the various States and in the District of Columbia, of courses of instruction or textbooks, to cease and desist from representing, through use of word "College" in corporate name or otherwise, that said respondent corporation conducts a college or institution of higher learning, and requiring respondent American University, its officers, etc., and said Higbe, and their agents, etc., in connection with offer, etc., of courses, etc., as above described, to cease and desist from representing, through use of word "University" in corporate name or in any other manner, that said respondent conducts a university or institution of higher learning, as in detail set forth in order in question.

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<sup>1</sup> Not reported in Federal Reporter. For case before Commission, see 27 F. T. C. 699.

*Mr. Leo Conlon*, of Chicago, Ill., for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, of Washington, D. C., for the Commission.

Before *KERNER*, *Circuit Judge*:

ORDER

This matter coming on to be heard upon the motion of respondent, and the court being fully advised in the premises:

*It is ordered*, That the motion of the respondent to dismiss the petition for review herein be, and the same hereby is, granted, and that this petition for review be, and the same is hereby, dismissed.

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NATIONAL SILVER COMPANY v. FEDERAL TRADE COMMISSION<sup>1</sup>

(Circuit Court of Appeals, Second Circuit. May 13, 1940)

Order dismissing, on motion of counsel for petitioner, as in said order set forth, petition for review of cease and desist order of Commission in the matter of National Silver Co. et al., docket 3162, July 29, 1938, 27 F. T. C. 596, and which, as thereafter modified on November 3, 1938 (27 F. T. C. 609), directed respondent corporation, its officers and directors, and their successors, representatives, etc., in connection with offer, etc., of silver-plated ware in interstate commerce or in the District of Columbia, to cease and desist from representing that any price at which such ware is offered or sold is a special or reduced price, or that such ware is of a certain specified quality or standard, and from aiding, abetting, or assisting retailers of such silverware in making such misrepresentations with respect to price, quality, or standard of such ware, and from representing or authorizing others to represent that it is a manufacturer of such ware, contrary to the fact, or that such corporation was established in 1890; as in detail set forth therein.

*Brill, Bergenfeld & Brill*, of New York City, for petitioners.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Daniel J. Murphy*, special attorney, both of Washington, D. C., for the Commission.

Before *SWAN*, *Circuit Judge*:

ORDER

This matter having come on to be heard, and upon the motion of *Brill, Bergenfeld & Brill*, attorneys for the petitioner National Silver Co., a corporation, and upon the approval of the respondent Federal

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<sup>1</sup> Not reported in Federal Reporter. For case before Commission, see 27 F. T. C. 596.

Trade Commission, as appears from the letter of said Federal Trade Commission dated May 7, 1940, attached hereto, it is hereby

*Ordered*, That the petition for review heretofore filed herein on September 24, 1938, be, and the same hereby is, withdrawn and the said proceeding be, and the same hereby is, dismissed.<sup>2</sup>

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CENTURY METALCRAFT CORPORATION *v.* FEDERAL  
TRADE COMMISSION<sup>1</sup>

No. 7001

(Circuit Court of Appeals, Seventh Circuit. May 18, 1940)

CEASE AND DESIST ORDERS—SCOPE AND FORM—PROHIBITIONS' EXTENT—NAMES, DESIGNATIONS, AND TERMS—USE NAME, ETC., TO MISREPRESENT QUALITIES—WHERE MISREPRESENTATION OTHERWISE OF COMPOSITION OF PRODUCT ONLY, ALLEGED AND FOUND—"SILVER" FOR KITCHEN UTENSILS SOLD AS CONTAINING NO ALUMINUM.

Where complaint of Federal Trade Commission alleged and Commission found that corporation sold and distributed kitchen utensils under a specified trade name and represented that the utensils contained no aluminum but implied that they contained silver, provision in order requiring corporation to cease and desist from representing through use of trade name or other terms that utility or value of utensils was enhanced by their silver content was unauthorized to extent that it prohibited use of trade name. Federal Trade Commission Act. 15 U. S. C. A., sec. 41 et seq.

ANSWERS—ADMISSIONS—SCOPE.

A corporation filing its answer admitting material allegations of complaint by Federal Trade Commission was entitled to have scope of its admissions limited by a normal and reasonable construction of the language of the complaint.

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<sup>1</sup> Reported in 112 F. (2d) 443. For case before Commission, see 28 F. T. C. 1526.

<sup>2</sup> Letter referred to by court, omitting heading, was as follows:

In re National Silver Company

Docket No. 3162

DEAR MR. BILL: It has been called to my attention that the petition for review filed by you in the circuit court in relation to the above-entitled matter is still pending.

It was my understanding that after the order in the above-entitled matter had been modified you were to withdraw your said petition. Will you please let me hear from you in regard to the same.

With kind personal regards, I remain,

Yours very truly,

DANIEL J. MURPHY,  
*Trial Attorney.*

CEASE AND DESIST ORDERS—SCOPE AND FORM—PROHIBITIONS' EXTENT—USE NAME, ETC., TO MISREPRESENT COMPOSITION—WHERE MISREPRESENTATION OTHERWISE OF COMPOSITION OF PRODUCT ONLY, ALLEGED AND FOUND—"SILVER" FOR KITCHEN UTENSILS SOLD AS CONTAINING NO ALUMINUM.

Where complaint of Federal Trade Commission alleged that corporation in selling kitchen utensils under specified trade name represented that the utensils contained no aluminum and implied that they contained silver, and Commission [444] found merely that corporation in selling the utensils represented that utensils sold under the trade name contained no aluminum, cease and desist order should not have been extended beyond requiring corporation to refrain from making representations which in view of trade name and appearance of utensils would represent that such utensils contained an appreciable amount of silver.

CEASE AND DESIST ORDERS—DECREES OF COURT ENFORCING, SETTING ASIDE, OR MODIFYING—CONTINUING POWER OF COURT WHERE CHANGED CONDITIONS.

The grant of original jurisdiction to the Circuit Court of Appeals to enforce, set aside, or modify orders of the Federal Trade Commission carries with it the power to vacate or modify its own decree whenever good cause is shown to exist as a result of changed conditions.

CEASE AND DESIST ORDER—DECREES OF COURT ENFORCING, SETTING ASIDE, OR MODIFYING—CONTINUING POWER OF COURT WHERE CHANGED CONDITIONS—SCOPE OF PRESENT AS THUS AFFECTED—KITCHEN UTENSILS' POSSIBLE FUTURE CONFORMANCE TO REPRESENTATIONS NOT CURRENTLY WITHIN FACTS.

The Circuit Court of Appeals has continuing power to make any modifications of its decree enforcing cease and desist order of the Federal Trade Commission that may be required to protect rights which may result from changed conditions, and hence order based on existing state of facts and warranted by allegations of complaint and admissions of corporation would not be modified because the utensils sold and distributed by corporation might in the future satisfy requirements of representations which corporation was prohibited from making by cease and desist order.

(The syllabus, with substituted captions, is taken from 112 F. (2d) 443)

On petition by Century Metalcraft Corporation to review and set aside order of Federal Trade Commission, order modified and affirmed as modified.

*Mr. E. H. McDermott* and *Mr. Richard S. Oldberg*, both of Chicago, Ill. (William M. Emery, of Chicago, Ill., of counsel), for petitioner.

*Mr. W. T. Kelley*, chief counsel; *Mr. Martin A. Morrison*, assistant chief counsel; *Mr. Donovan R. Divet* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for Commission.

Before SPARKS, MAJOR, and TREANOR, Circuit Judges.

TREANOR, *Circuit Judge*:

This case comes before us on a petition to review and set aside an order of the Federal Trade Commission. The petitioner is a corporation of the State of Delaware with its principal office and place of business in Chicago, Ill. The petitioner is engaged in interstate commerce and its business consists of the sale and distribution of kitchen utensils.

The Federal Trade Commission issued its complaint against petitioner for violation of the Federal Trade Commission Act,<sup>1</sup> and petitioner filed its answer in which it admitted all the material allegations of fact and waived all intervening procedure and further hearing in respect to said facts. Respondent made findings of fact and entered the usual cease and desist order.

The petitioner's contentions may be stated as follows:

1. Item 5 of the Commission's order is unlawful because it enjoins the petitioner's use of its trade name, although the complaint did not allege, nor did the Commission find as a fact, nor did petitioner agree or stipulate that the trade name or petitioner's use thereof was unlawful.

2. The first clause of item 7 of the order should be modified by appending thereto "manufactured by competitors" for the reason that without these words the order goes beyond the scope of the complaint.

3. The first clause of item 7 of the order substantially exceeds the scope of the complaint in respect both to its present and future operation.

The allegations of the complaint, which are material to petitioner's contentions, are disclosed by the following quoted excerpts:

"Paragraph 1. \* \* \* Respondent (petitioner) is now and since 1933 has been engaged in the sale and distribution of kitchen utensils under the trade name 'Silver Seal.' \* \* \*"

"Paragraph 3. \* \* \* The method chiefly employed by \* \* \* (petitioner in advertising and selling) is the giving of manual demonstrations \* \* \* These demonstrations are given generally before groups \* \* \* and are accompanied by [445] various statements and representations as to the character, nature, and quality of respondent's (petitioner's) said product and their effectiveness in use as hereinafter set forth."

"Paragraph 4. Among and typical of the statements and representations so made \* \* \* in connection with the offering for sale, sale, and distribution of said products in commerce as hereinbefore alleged are those to the effect that said utensils, offered for sale and sold under the trade name 'Silver Seal,' contain no aluminum

<sup>1</sup> 15 U. S. C. A. § 41, et seq.

\* \* \*; that the method of cooking made possible by said utensils is new and revolutionary; that said utensils are more durable and more easily cleaned than are aluminum or granite utensils manufactured by competitors; \* \* \*”

“By the means and in the manner aforesaid respondent (petitioner) further represents and implies that it manufactures the utensils offered for sale and sold by it and that said utensils contain an appreciable amount of silver. \* \* \*”

“Paragraph 5. \* \* \* The utensils offered for sale and sold by the respondent (petitioner) are not manufactured by the respondent (petitioner), and said utensils do not contain an appreciable amount of silver metal. \* \* \*”

In paragraph 4 of its findings the Commission finds, in harmony with the allegations of paragraph 4 of the complaint, that among and typical of the statements and representations made by petitioner are those to the effect that the utensils offered for sale and sold under the trade name “Silver Seal” contain no aluminum, or such a small amount of aluminum that the presence of such metal is not noticeable, etc. And it is further found that “by the means and in the manner aforesaid” petitioner represents and implies that it “manufactures the utensils offered for sale and sold by it and that said utensils contain an appreciable amount of silver.”

Item 5 of the cease and desist order is based upon paragraph 4 of the complaint and paragraph 4 of the Commission’s finding. By item 5 of the order the petitioner is ordered to cease and desist from “representing through the use of the term ‘Silver Seal,’ or any other term or terms of similar import or meaning, as the trade name for said utensils, or in any other manner, that the usefulness, durability, or value of such utensils is enhanced or affected by reason of silver metal contained in such utensils.” Petitioner construes item 5 of the order to require it to cease and desist from the use of the words “Silver Seal” as its trade name.

It is clear that the complaint did not allege, and that the Commission did not find, that the use of the trade name “Silver Seal,” apart from verbal statements and representations, constituted a representation that “the usefulness, durability, or value” of the utensils in question was “enhanced or affected by reason of silver metal contained in such utensils.” And since there is no allegation in the complaint that the use of the trade name “Silver Seal” constitutes a representation that the utensils bearing such trade name contain an appreciable amount of silver, and since there is no finding to that effect, there is no justification in law for an order which prohibits the use by petitioner of its trade name, since such order must be predicated on the assumption that by the use of such trade name

petitioner does in fact represent that the utensils bearing the trade name contain an appreciable amount of silver.

When petitioner filed its answer admitting the material allegations of the complaint it was entitled to have the scope of its admissions limited by a normal and reasonable construction of the language of the complaint. It cannot be charged with having admitted that the mere use of the trade name "Silver Seal" constitutes a representation that utensils bearing such name contain an appreciable amount of silver, which enhances their virtue, when there is no such allegation in the complaint; and when the only use made of the trade name "Silver Seal" in the complaint is to designate the class of utensils in respect to which typical representations have been made.

Respondent suggests that the only words which conceivably may represent or imply that the utensils contain an appreciable amount of silver are the words "Silver Seal." But this ignores petitioner's alleged statements and representations. We have stated that there is no allegation in the complaint, and no finding of fact, to the effect that the mere use of the trade name "Silver Seal" did represent or imply the existence of such silver content. We are of the opinion, however, that the display of a utensil of the appearance of silver or aluminum, which bears the trade name [446] "Silver Seal," when such display is accompanied by representations that the utensil contains no appreciable amount of aluminum, that it is more durable and more easily cleaned than aluminum or granite utensils, and is superior in other respects to competing aluminum or granite utensils, reasonably could be understood to represent that the utensils with the trade name "Silver Seal" contain silver and that the presence of the silver in some way makes it superior to aluminum or granite utensils. It clearly would be a necessary inference that a representation was being made that some metal ingredient or metal plating of the appearance of silver or aluminum contributed special virtue to the utensils and that such metal was not aluminum. The representations plus the use of the trade name "Silver Seal" reasonably would suggest that this metal was silver or some silver alloy. For, obviously, representations as to the character, nature, and quality of the "Silver Seal" utensils reasonably could be interpreted to represent that the utensils contain some silver metal, although the same representations might not carry such an inference when made in reference to a utensil which does not have the appearance of being made of silver metal and which does not bear a trade name suggestive of silver content.

Petitioner, on the basis of the complaint and the findings, is not under a duty to cease and desist from the use of "Silver Seal" as a trade name for the particular utensils, although it is under a duty to refrain from making statements or representations respecting such

utensils which could be construed to represent that the utensils contain an appreciable amount of silver, which gives them a superior utility and value; and in determining whether the statements and representations do amount to such a representation, it would be proper to take into consideration the fact that they are made in respect to utensils which are made of a material which resembles silver metal and which bear the suggestive name of "Silver Seal." An order would be proper which, in substance, would require petitioner to refrain from making any statements or representations which in view of the trade name and appearance of the utensils in question would represent that such utensils contain an appreciable amount of silver.

We think that if item 5 of the cease and desist order is changed to read as follows it will state the duty of petitioner and give effect to the material allegations of the complaint and the corresponding finding of fact: (Cease and desist from) Representing by statements or in any other manner that the usefulness, durability, or value of the utensils offered for sale and sold under the trade name "Silver Seal," or any other term or terms of similar import or meaning as a trade name for said utensils, is enhanced or affected by reason of silver metal contained in such utensils. By the foregoing the significance of the trade name "Silver Seal" is adequately recognized, since, as indicated above, statements or representations respecting "Silver Seal" utensils must be appraised in the light of the silverlike appearance of the utensils and the suggestiveness of the trade name.

The respondent, Federal Trade Commission, does not oppose petitioner's requested second modification of item 7 of the order, and in our opinion such modification should be made in order to avoid uncertainty. Item 7 should be modified by inserting in the third line of the item, immediately following the word "utensils," the additional words "manufactured by competitors."

Petitioner's third requested modification is based upon the argument that the order which prohibits petitioner's representing that its utensils are "more durable or more easily cleaned than are aluminum or granite utensils manufactured by competitors" does not take into account "the fact that petitioner's utensils may *in the future* actually be more durable and more easily cleaned than competitors'." Petitioner suggests that the language of item 7 be further modified by inserting the additional words "unless it be the fact." The language of item 7 modified in both particulars as urged by petitioner would read "representing that the utensils designated as 'Silver Seal' are more durable or more easily cleaned than are aluminum or granite utensils manufactured by competitors, unless it be the facts \* \* \*."

We are of the opinion that this court should not require the Commission to make the suggested modification. The order is based upon a present existing state of facts, and is warranted by the allegations of the complaint and the admissions of the petitioner. It is true that the Commission has no authority to require the petitioner to cease and desist from representing that its wares are more durable or more easily cleaned than those of its competitors, if such a representation is true; and it is possible, by reason of improvements in the quality of petitioner's utensils or by reason of deterioration in the quality of utensils of competitors, that the representation which is prohibited by the order may be made truthfully at some time in the future. But we are of the opinion that this court has continuing power to make any modifications of our enforcement decree that may be required to protect rights which may result from changed conditions. The grant of original jurisdiction to this court to enforce, set aside, or modify orders of the Federal Trade Commission carries with it the power to vacate or modify its own decree whenever good cause is shown to exist as a result of changed conditions.<sup>2</sup>

Respondent is entitled to a decree broad enough to take care of the present situation, and we are of the opinion that item 7 does not go beyond the present need and does not foreclose the assertion of any rights of petitioner which may arise by reason of future changes.

We conclude that items 5 and 7 of the Commission's order should be modified as indicated; and the order is so modified and, as modified, is affirmed.

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SWEET CANDY COMPANY *v.* FEDERAL TRADE  
COMMISSION <sup>1</sup>

No. 1714

(Circuit Court of Appeals, Tenth Circuit. May 27, 1940)

Order dismissing, on motion of petitioner, petition for review of cease and desist order of Commission in the matter of Sweet Candy Co., Docket 2621, December 31, 1938, 24 F. T. C. 343, 353, directing respondent, its officers, etc.,

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<sup>1</sup> Per curiam disposition of matter as set forth in text is reported in 112 F. (2d) 168. Order of court in the matter follows:

ORDER

This cause came on to be heard on the motion of petitioner to dismiss the petition herein and was submitted to the court.

On consideration whereof, and for good cause shown, it is now here ordered by the court that the said motion be and the same is hereby granted and that the petition to review and set aside the decision of the Federal Trade Commission in this cause be and the same is hereby dismissed out of this court at the costs of petitioner.

It is further ordered by the court that the clerk of this court forthwith transmit to the clerk of the Federal Trade Commission a certified copy of this order.

<sup>2</sup> *United States v. Swift & Co.*, 288 U. S. 106, 119; *Indiana Quartered Oak Co. v. Federal Trade Commission*, 58 F. (2d) 182.

in connection with offer, etc., in interstate commerce, of candy and candy products, to cease and desist from using lottery merchandising schemes in connection with such offer and sale, and involving sale and distribution to wholesalers of candy so packed and assembled that sales thereof to the general public may be made by means of a lottery, etc., and the supplying of push cards or punchboards for use in such sale, etc., as in order in question in detail set forth.

On petition to review and set aside order of Commission as above described, petition dismissed.

*DeY, Hoppaugh, Mark & Johnson*, and *Mr. F. W. James*, of Salt Lake City, Utah, for petitioner.

*Mr. W. T. Kelley*, Chief Counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, Assistant Chief Counsel, and *Mr. James W. Nichol* and *Mr. P. C. Kolinski*, Special Attorneys, for Commission.

Before LEWIS and PHILLIPS, *Circuit Judges*.

PER CURIAM.

Petition to review dismissed, at petitioner's costs, on motion of petitioner.

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FEDERAL TRADE COMMISSION v. AMERICAN  
MEDICINAL PRODUCTS, INC., ET AL.<sup>1</sup>

File No. 956-H

(District Court, Southern District of California, Central Division.  
May 27, 1940)

On application for preliminary injunction to restrain the defendants from disseminating certain alleged false advertisements, pending issuance of complaint by Commission and determination of proceeding thus instituted before it, it appearing, among other things, that defendants had filed a verified answer placing in issue all the material allegations of the bill, excepting only jurisdictional facts pertaining to interstate commerce, and the corporate existence of the principal defendant, and that defendants had also filed a considerable number of affidavits, sworn to by apparently reputable physicians, categorically denying material charges set forth in the opposing affidavits, and that in some of the affidavits submitted on behalf of the defense it was asserted that preparation in question had been made and sold to general public for many years, and that during such period no one, as far as known to defense or to subscribing physicians, had suffered any ill effects therefrom, and also that advertising matter had been submitted to outstanding authorities on subject of medicinal advertising, as set forth, application denied.<sup>2</sup>

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<sup>1</sup> Not reported in Federal Reporter.

<sup>2</sup> Complaint issued in the matter of American Medicinal Products, Inc., et al., Docket 4159, and is now pending.

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, *Mr. Richard P. Whiteley*, assistant chief counsel and *Mr. Abner E. Lipscomb*, special attorney, all of Washington, D. C., for the Commission.

*Mr. Carl B. Sturzenacker*, of Los Angeles, Calif., and *Hall & Cotten*, of Oklahoma City, Okla., for defendants.

#### MEMORANDUM OF CONCLUSIONS

*HOLLZER, District Judge:*

This is an application for an injunction to restrain the defendants from disseminating certain alleged false advertisements pending the issuance of a complaint by plaintiffs and the determination of the latter proceeding before the Commission. The complaint filed in this cause alleges facts, and is supported by affidavits, which if uncontradicted, might warrant the issuance of such injunctive relief.

However, the defendants have filed a verified answer placing in issue all of the material allegations of the bill with the exception of the jurisdictional facts pertaining to interstate commerce and the corporate existence of the principal defendant. In addition, the defendants have filed a considerable number of affidavits, sworn to by apparently reputable physicians, who categorically deny the material charges set forth in the opposing affidavits.

Furthermore, in some of the affidavits submitted on behalf of the defense, it is asserted that the preparation in question has been manufactured and sold to the general public for a great many years, that during that period in excess of 40 million capsules of said product have been sold and distributed, that never to the knowledge of the defense, or of any of the physicians subscribing to the affidavits submitted on behalf of the defense, has any person complained of having suffered in any respect any unpleasantness, sickness, illness, or had any bad results from the taking or using of said product, either temporarily or continually. Likewise, in the affidavit sworn to by the president of the corporate defendant, this official has asserted that prior to the printing of any advertising matter, publication, or printing of circulars, he submitted the same to the most outstanding authorities in the United States on the subject of advertising medicinal products, for their approval, naming these experts. None of these affirmative allegations submitted by the defense has been denied.

Under this state of the record the well established rule is that on such an application for a temporary injunction, there being a verified answer filed denying the equities of the bill, such answer being supported by affidavits fully rebutting the charge complained of, the

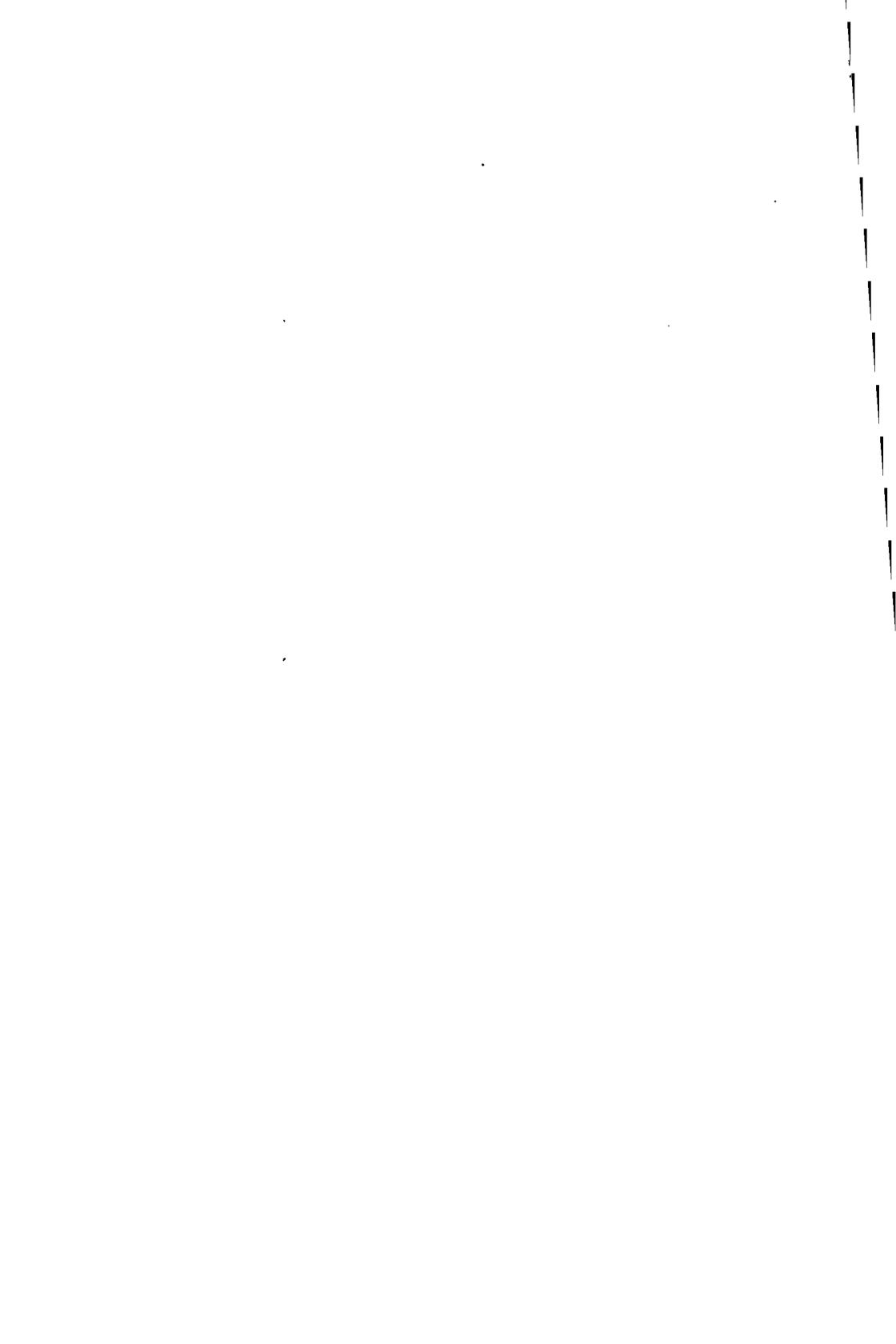
temporary injunction will not issue. (*Water Co. etc. v. Public Service Commission, etc.* 250 Fed. 304; *Demarest v. Winchester Repeating Arms Co.* 257 Fed. 162; *City of Sacramento v. Southern Pacific Co.* 155 Fed. 1022; *Decorative Stone v. Bldg. Trades Council*, 13 F. (2d) 123.)

During the oral argument counsel for plaintiff relied particularly on a ruling made by another judge of this court in action No. 806-Y, *Federal Trade Commission v. Sekov Corporation, et al.*, and it was contended that the decision in the latter case was on all fours with the present suit. However, an examination of the minutes of the court show that at the hearing on the application for an injunction in the case cited, the defendants interposed no answer nor any counter affidavits, and likewise their counsel stated that while they would not consent to the issuing of the requested injunction they would not oppose the same.

For the foregoing reasons, defendants are entitled to an order herein denying plaintiff's application for a temporary injunction.

#### MINUTE ORDER

For the reasons set forth in the memorandum of conclusions this day filed, it is ordered that plaintiff's application for a temporary injunction be denied.



# RESTRAINING AND INJUNCTIVE ORDERS OF THE COURTS UNDER THE PROVISIONS OF SECTION 13 OF THE FEDERAL TRADE COMMISSION ACT <sup>1</sup>

FEDERAL TRADE COMMISSION *v.* THE CHAPMAN  
HEALTH PRODUCTS COMPANY, AND JOHN W. CHAP-  
MAN AND NELLIE C. CHAPMAN, INDIVIDUALLY AND  
AS OFFICERS THEREOF.<sup>2</sup>

File No. 20120

(District Court, Northern District of Ohio, December 18, 1939)

Decree of preliminary injunction, by District Judge Jones, 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 preparation for obesity, under designations Faid, otherwise known as Daintee, and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may effect nausea, severe vomiting, gastro-intestinal irritation, and bring about numerous other serious results and conditions, including irreparable injury to heart and health; pending issuance of complaint by Commission against defendants under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>3</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and  
*Mr. James 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

<sup>1</sup> In this connection, attention should be invited to case of *Thomsen-King & Co. et al.*, in which temporary injunction issued (see *infra*, p. 1692), and in which Circuit Court of Appeals refused application for supersedeas (see *supra*, p. 1642), and to case of *American Medicinal Products, Inc., et al.*, in which District Court for Southern District of California, Central Division, on May 27, 1940, for reasons set forth in the court's memorandum of conclusions, denied Commission's application for temporary injunction or restraining order (see *supra*, p. 1683).

<sup>2</sup> Not reported in Federal Reporter.

<sup>3</sup> Such complaint duly issued in the matter of *The Chapman Health Products Co. et al.*, Docket 4004, and was followed by order to cease and desist issued as of May 2, 1940. See *ante*, p. 1199.

against the defendants, The Chapman Health Products Co., a corporation, John W. Chapman and Nellie C. Chapman, as individuals and as officers of said corporation, and

*It appearing to the Court,* That the defendants have waived hearing herein, and have consented that this decree be entered forthwith, and

*It appearing to the Court,* That the defendants are domiciled and transact 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 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 a medicinal preparation containing drugs for the treatment of obesity, designated as Faid, otherwise known as Daintee, 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 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 defendants have falsely represented that the use of said preparation is a competent, safe, and scientific treatment for obesity and that its use will have no ill effects upon the human body, and

*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 effect nausea, severe vomiting, gastro-intestinal irritation, diarrhea, and serious bowel trouble, headaches, muscular debility and muscular and articular pains, vertigo, insomnia, raised temperature, irregular pulse, physical exhaustion, tremor, tachycardia and collapse, and may result in chronic poisoning, thyroid toxicosis, permanent injury to tissues, organic functions and the entire body of mechanism, irreparable injury to the heart muscle with auricular fibrillation and other serious and 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 defendants The Chapman Health Products Co., a corporation, John W. Chapman and Nellie C. Chapman, as individuals and as officers of said corporation, 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 preparation designated as Faid, otherwise known as Daintee, 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 obesity, 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 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. BLANCHE KAPLAN,  
TRADING AS PROGRESSIVE MEDICAL COMPANY AND  
AS LADIES AID COMPANY**<sup>1</sup>

File No. 1194

(District Court, Northern District of Illinois, Eastern Division.  
Dec. 20, 1939)

Decree of preliminary injunction, by District Judge Barnes, 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 "Ladies' Aid No. 2, Ordinary Strength" and "Ladies' Aid No. 3, Extra Strength," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may result in gastro-intestinal disturbances and other serious conditions leading to excessive uterine hemorrhage in nonpregnant women, and, where used to interfere with normal course of pregnancy, may result in abortion and in uterine infections causing condition known as septicemia or blood poisoning, and constitute, in use thereof, a menace to health and life of pregnant women, as more particularly below set forth; pending issuance of complaint by Commission against defendants under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. James 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 Blanche Kaplan, an individual, trading as the Progressive Medical Co. and as the Ladies Aid Co., and

*It appearing to the Court*, That the defendant has waived hearing herein, and has consented that this decree be entered forthwith, 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 medicinal preparations containing drugs for

<sup>1</sup> Not reported in Federal Reporter.

<sup>2</sup> Such complaint duly issued in the matter of Blanche Kaplan, trading as Progressive Medical Co. and as Ladies Aid Co., Docket 4002, and was followed by order to cease and desist issued as of April 15, 1940. See *ante*, p. 989.

the relief of delayed menstruation designated as Ladies' Aid No. 2, Ordinary Strength and Ladies' Aid No. 3, Extra Strength, 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 the United States mails or 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 safe, competent, efficient and specific 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 such conditions as are customary or 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 in nonpregnant women; that in those cases where Ladies' Aid No. 2, Ordinary Strength and Ladies' Aid No. 3, Extra Strength are used to interfere with the normal course of pregnancy, their use may result in abortion and 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 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 Blanche Kaplan, an individual, trading as the Progressive Medical Co. and as the Ladies Aid Co., her agents, servants, representatives, employees and assigns and all other persons participating with her 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 Ladies' Aid No. 2, Ordinary Strength and Ladies' Aid No. 3, Extra Strength, 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 preparations in commerce, as commerce is defined in the Federal Trade Commission Act, and which advertisements represent that said preparations constitute safe, competent, efficient and specific treatments 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 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.

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FEDERAL TRADE COMMISSION *v.* THOMSEN-KING & CO.,  
INC., AND GEORGE THOMSEN AND MERROLD JOHN-  
SON, INDIVIDUALLY AND IN THEIR RESPECTIVE CA-  
PACITIES FOR SAID CORPORATION<sup>1</sup>

File No. 1247

(District Court, Northern District of Illinois. Jan. 11, 1940)

Decree of preliminary injunction, by District Judge Barnes, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisements to induce, directly or indirectly, purchase of defendants' "Margaret King" cosmetics, which represent, infer, or imply, as in detail below set forth, that they are conducting a contest or contests confined to a picture puzzle

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<sup>1</sup> Not reported in Federal Reporter. See, for refusal of supersedeas, *supra*, p. 1642.

or naming of a soap, etc., and involving only competition in skill and promptness in submitting solutions by parties responding thereto, and which, as below in detail set forth, contain some 30 or more representations with respect to the nature of the contest, their undertakings, contestants' positions or special consideration, results accomplished by others, respondents' standing, etc., and with respect to the qualities and results of their said products; pending issuance of complaint by Commission against defendants under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.\*

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Curtis Shears*, special attorney, both of Washington, D. C., and *Mr. Wm. F. Dinnen* and *Mr. James McKeag*, special attorneys, both of Chicago, Ill., for the Commission.

*Nash & Donnelly* (John A. Nash of counsel), and *Mr. Lewis F. Mason*, both of Chicago, Ill., and *Mr. Richard E. Williams*, of Des Moines, Ia., for defendants.

#### 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 against the defendants, Thomsen-King & Co., Inc., a corporation; George Thomsen, its president; and Merrold Johnson, its office manager, individually and in their respective capacities for said corporation, after due notice to each of said defendants to appear on January 8, 1940, said motion having been continued until this day, and the plaintiff appearing by its attorneys, Curtis Shears, Wm. F. Dinnen, and James McKeag, and the said defendants appearing by their respective attorneys, namely Nash & Donnelly by John A. Nash of counsel, and Lewis F. Mason of Chicago, Ill., and Richard E. Williams of Des Moines, Iowa, and the court having read the sworn pleadings and the affidavits filed with and in support thereof, and having heard and duly considered the arguments of counsel, and now being fully advised in the premises, now finds:

1. That the defendants are domiciled and transact business in the Northern District of Illinois, Eastern Division.
2. That it has jurisdiction over the parties and the subject matter hereof.
3. That the said defendants are engaged in the sale and distribution of face powders, cleansing cold cream, cold cream, complexion soap, lipstick, tooth powder, and other commodities, all or most of which are known as "Margaret King" cosmetics, and are cosmetics

\* Such complaint duly issued in the matter of Thomsen-King & Co., Inc., et al., Docket 3998, on January 24, 1940, and is now pending.

within the meaning and definition of said term in section 15 of the Federal Trade Commission Act.

4. That said defendants and each of them 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 said Federal Trade Commission Act, for the purpose of inducing and which is likely to induce, directly or indirectly, the purchase of said cosmetics, and by various 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 said Federal Trade Commission Act, of said cosmetics, in violation of the said Federal Trade Commission Act, by means of which said advertising the defendants and each of them have disseminated or caused to be disseminated advertisements misleading in a material respect, for the purposes aforesaid, as alleged and set forth in the said sworn bill of complaint.

5. 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 said 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.

6. That the plaintiff is entitled to the issuance of a preliminary injunction as prayed for in said bill of complaint.

*It is therefore hereby ordered, adjudged, and decreed,* That the defendants, Thomsen-King & Co., Inc., a corporation; George Thomsen, its president; and Merrold Johnson, its office manager, individually and in their respective capacities for said corporation, their officers, employees, servants, representatives, agents, and assigns, and all other persons participating with the said defendants, either directly or through corporations, trade names, or any other devices, 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 cosmetics known as Margaret King Cosmetics, whether sold under the same name or under other names, or disseminating and 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 of said cosmetics in commerce as "commerce" is defined in the Federal Trade Commission Act, and which advertisements represent, infer, imply, or are to the effect:

1. That respondents are conducting a contest or contests confined to a picture puzzle or naming of a soap, toothpaste, or tooth powder, and involving only competition in skill and promptness in submitting solutions thereof by parties responding thereto.

2. That respondents are giving away a substantial sum of money, in the form of prizes, in which a certain or limited number of members of the public are to share, as a means of advertising the products of said company and of gaining publicity for the products of said company in various communities.

3. That a money prize or reward is guaranteed for simply mailing a so-called Promptness Certificate as requested.

4. That a money prize or reward is guaranteed to that person who becomes a member of one of the so-called "Prize Clubs."

5. That not one penny of contestant's own money is needed to win a money prize under said Prize Club Plan.

6. That by the simple act of responding to the advertising of respondents and to literature received from respondents and to the requests therein made by respondents, any person may receive or win a specified grand prize, or various other prizes.

7. That the grand prizes and other prizes offered will be given free without the expenditure of either money or work on the part of contestants.

8. That the elements or conditions incident to the winning of prizes are easy and simple.

9. That hundreds have already won big cash prizes in similar friendship campaigns conducted by the same prize company which is conducting the current contest.

10. That the trade names used by respondents represent big responsible concerns, endorsed by certain Des Moines banks and the Des Moines Chamber of Commerce.

11. That the contest conducted by respondents, and the sale of products by contestants therein, is for the purpose of advertising said products to the general public.

12. That the preparations and products sold to persons who enter said contest are sold at reduced prices and at less than an established retail price and value.

13. That the recipient of so-called booster points in the form of a certificate of award, is the subject of a special favor or advantage not generally extended to other individual contestants, and that the said booster points substantially enhance the chance of recipient toward the winning of one or more of the prizes offered by respondent.

14. That certain points offered or given, designated in large numbers, and awarded in connection with first and second orders for merchandise, have a material and substantial value, giving the recipient thereof a substantial advanced standing over that of others toward the winning of one or more prizes offered, and that such points are given or offered exclusively to the individual addressed or to a group of individuals selected and restricted in number.

15. That the recipient of a so-called "Grand Prize Promptness Certificate" has gained an advantage for himself, by virtue of skill in solving a puzzle or special favor on the part of respondents, with respect to the purchase of an assortment of cosmetics or toilet preparations, and with respect to the acquisition of points and chances toward the winning of one or more of the prizes being offered by respondents.

16. That respondents, under each of the trade names used by them, have been in business for a long period of years and have an established reputation with respect to their products and for business success.

17. That the interest of the respondents in the contestant is personal and superior to that of other contestants in general.

18. That the person addressed is sure to be the recipient of the grand prize or other prizes offered.

19. That the giving of a certain order for goods, and the payment of a specified amount therefor, will assure the contestant addressed of securing a money prize.

20. That so-called advice and suggestions given in letters to contestants are due to a personal interest in the contestant addressed and that such advice and suggestions are given exclusively to the one addressed.

21. That the contestant or person addressed stands in a position equal to that of any other contestant having a favorable chance of winning the grand prize or any other of the prizes offered.

22. That the contestant or person addressed stands in a position superior to that of all or the majority of other contestants having a favorable chance of winning the grand prize or any other of the prizes offered.

23. That the participant is among the leaders in said prize club for the grand prize or extra prizes, and that one more order may win the prize referred to.

24. That the advertising matter discloses all of the terms and conditions that must be met by the contestant when said terms and conditions so set out are not, in fact, the only terms and conditions that must be met in order to be successful in winning a prize or an award in said contest.

25. That the advertising matter sets out the terms and conditions the contestants will be required to meet without stating that said terms and conditions so specified and set out are, in fact, only a portion of the requirements that must be met by a contestant.

26. That a contestant has achieved a more advanced position toward success in said contest than said contestant has in fact achieved.

27. That a form letter mailed in said contest to an addressee therein refers to his actual position or relative standing, when such is not the fact.

28. That respondent corporation is a manufacturing concern and that it originates, compounds and prepares the preparations and products sold by it.

29. That the opening offer of goods at a certain price is merely for advertising purposes.

30. That so-called advice and suggestions given in letters to contestants are due to personal interest in the contestant addressed and that such advice and suggestions are given exclusively to the one addressed.

31. That there is no element of lottery in connection with the contest or the sale of the merchandise.

32. That there is nothing to buy or sell in connection with the grand prize.

33. That any of said preparations will restore a youthful condition of the skin, produce a youthful appearance, or make the skin younger, remove wrinkles and worry lines, tone and strengthen the muscles or help make the gums healthy.

Pending the issuance of a complaint by the Federal Trade Commission against the said defendants under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by the 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.

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FEDERAL TRADE COMMISSION v. WINSHIP CORPORATION AND F. W. FITCH COMPANY, AND DON W. PARMELEE<sup>1</sup>

File No. 66

(District Court, Southern District of Iowa, January 19, 1940)

Decree of preliminary injunction, by District Judge Chas. A. Dewey, restraining, for the reasons and as below set forth, including immediate and irreparable

<sup>1</sup> Not reported in Federal Reporter.

injury to public in further dissemination of such false advertisements, advertisements to induce, etc., as below set forth, purchase of defendants' "Eve Martin" cosmetics, and which advertisements represent, infer, imply, or are to the effect that defendants are giving away a substantial sum of money in the form of prizes, in which a certain or limited number of members of the public are to share, as a means of advertising the products of said company and of gaining publicity for the products of said company in various communities, and which, in numerous other particulars as hereinafter set forth, contain various representations as to the nature, terms, and conditions of such supposed contests, results accomplished by others, defendants' sole interest therein, individual prospect's particular standing in the contest, etc.; pending issuance of complaint by Commission against defendants under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Curtis Shears*, special attorney, both of Washington, D. C., and *Mr. John K. Valentine*, special attorney, of Des Moines, Iowa, for the Commission.

*Williams & Shaw*, of Des Moines, Iowa, for defendants, and, along with—

*Mr. Frank J. Comfort*, of the firm of Comfort, Comfort & Irish, of Des Moines, Iowa, for F. W. Fitch Co.

#### 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 against the defendants, Winship Corporation and F. W. Fitch Co., corporations, and Don W. Parmelee, an individual, after due notice to each of them to appear on January 19, 1940, and the plaintiff appearing by its attorneys, Curtis Shears of Washington, D. C., and John K. Valentine of Des Moines, Iowa, and the said defendants appearing by their respective attorneys, namely, Richard E. Williams for defendants Winship Corporation and Don W. Parmelee, Frank J. Comfort for defendant F. W. Fitch Co., and Prentice W. Shaw for all defendants; and the Court having read the sworn pleadings, the sworn bill of complaint and the affidavits filed with and in support thereof, and having had before it a certified copy of the stipulation, testimony and exhibits introduced and made a part of the record in the Commission's Docket No. 3833, entitled "In the Matter of Richard E. Williams, et al.," and having considered such portions of said sworn testimony and exhibits from this and other dockets of the Federal Trade Commission as were offered herein, and having heard and duly considered the motions and the

<sup>2</sup> Such complaint duly issued in the matter of Thomsen-King & Co., Inc., Winship Corporation, et al., Docket 3998, on January 24, 1940, and is now pending.

arguments of counsel and now being fully advised in the premises, it now appears to this Court, as to defendants Winship Corporation and Don W. Parmelee:

1. That the defendants are domiciled and transact business in the Southern District of Iowa.

2. That it has jurisdiction over the parties and the subject matter hereof.

3. That said defendants are engaged in the sale and distribution of certain beauty preparations and toiletries, consisting of face powders, cleansing and other cold creams, astringent lotions, perfumery, and other preparations and toiletries which are designated and known under the name of "Eve Martin," and all or most of which are cosmetics within the meaning and definition of said term in section 15 of the Federal Trade Commission Act.

4. That said defendants and each of them have disseminated or have caused the dissemination of false advertisements by United States mails and by other means in commerce, as commerce is defined in said Federal Trade Commission Act, for the purpose of inducing and which is likely to induce, directly or indirectly, the purchase of said cosmetics, and by various means, for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in said Federal Trade Commission Act, of said cosmetics in violation of said Federal Trade Commission Act, and that said false advertisements so disseminated or caused to be disseminated are misleading in a number of material respects, for the purposes aforesaid, as alleged and set forth in the said sworn bill of complaint.

5. 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 advertisements pending the issuance of a complaint by the Federal Trade Commission under section 5 of said 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 the said Federal Trade Commission Act.

6. That the plaintiff is entitled to the issuance of a preliminary injunction as prayed for in the said bill of complaint.

*It is therefore hereby ordered, adjudged, and decreed,* That the defendants, Winship Corporation, a corporation, and Don W. Parmelee, an individual, their officers, agents, servants, employees, attorneys, and assigns, and all other persons participating in said defendants' business, either directly or through corporations, trade names, or any other devices, 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 cosmetics known as "Eve Martin" cosmetics, whether sold under the same name or under other names, or disseminating and 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 of the same or similar cosmetics in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisements represent, infer, imply, or are to the effect:

1. That defendants are giving away a substantial sum of money, in the form of prizes, in which a certain or limited number of members of the public are to share, as a means of advertising the products of said company and of gaining publicity for the products of said company in various communities.

2. That the mere returning of a so-called "Qualification Blank" before a given date as instructed will entitle said recipient to a promptness prize of money.

3. That the returning of said "Qualification Blank" is the one thing left to do to win a cash award.

4. That the elements or conditions incident to the winning of prizes are easy and simple.

5. That hundreds have already won big cash prizes in similar friendship campaigns conducted by the same prize company which is conducting the current contest.

6. That the contest conducted by defendants, and the sale of products to contestants therein, is for the purpose of advertising said products to the general public.

7. That the preparations and products sold to persons who enter said contest are sold at reduced prices and at less than an established retail price and value.

8. That the recipient of so-called prize credits in the form of a certificate of award, is the subject of a special favor or advantage not generally extended to other individual contestants, and that the said prize credits substantially enhance the chance of said recipient toward the winning of one or more of the prizes offered by defendants.

9. That certain points offered or given, designated in large numbers, and awarded for answering the first advertisement received and for sending in an order for merchandise, have a material and substantial value, giving the recipient thereof a substantial advanced standing over that of others toward the winning of one or more prizes offered, and

that such points are given or offered exclusively to the individuals selected and restricted in number.

10. That the interest of the defendants in the contestant addressed is personal and superior to that of other contestants in general.

11. That the giving of a certain order for goods, and the payment of a specified amount therefor, will assure the contestant addressed of securing a money prize.

Pending the issuance of a complaint by the Federal Trade Commission against the said defendants under section 5 of the Federal Trade Commission Act, and until such complaint is dismissed by the Commission or set aside by the 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, or until there has been a final determination of this cause upon its merits by this Court.

*It is further ordered*, That this order of injunction be issued without bond.

*It is further ordered*, That temporary injunction shall not issue as to the defendant F. W. Fitch Co. at this time, but leave is granted to the Federal Trade Commission to file another application for a temporary injunction as to the defendant F. W. Fitch Co. at any time.

*It is further ordered*, That the motion of the defendant F. W. Fitch Co. to dismiss the complaint as to it is hereby denied, and overruled,

To all of which adverse to the parties hereto said parties are given an appropriate exception.

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FEDERAL TRADE COMMISSION v. EDWIN L. LEISENRING,  
TRADING AS U. S. DRUG & SALES COMPANY, U. S. DRUG  
LABORATORIES AND U. S. DRUG COMPANY, AND GOR-  
DON LEISENRING<sup>1</sup>

File No. 152

(District Court, District of Colorado. February 13, 1940)

Decree of preliminary injunction, by District Judge J. Foster Symes, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisements of defendants' drug-containing preparations advertised as "Man's Pep Tonic" and as "Man's Tonic," and as "Man's Pep Tonic" (Double Str. Capsule) and as "Man's Tonic" (Double Str. Capsule), and sold as "U. S. Special Tablets" and as "Sextogen Capsules for Men or Women," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may produce a congestion affecting mucous membrane of organs

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<sup>1</sup> Not reported in Federal Reporter.

particularly concerned, and lead, as below set forth, to various other serious conditions and results, and constitute, in use thereof, a menace to health of men and women; pending issuance of complaint by Commission against defendants under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Abner E. Lipscomb*, special attorney, both of Washington, D. C., for the Commission.

#### 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 against the defendants, Edwin L. Leisenring, an individual, trading as U. S. Drug & Sales Co., U. S. Drug Laboratories, and U. S. Drug Co., and Gordon Leisenring, an individual, and the plaintiff appearing by its attorney, Abner E. Lipscomb, and the defendants appearing and having waived hearing herein, and having consented that this decree be entered forthwith, and the Court having read the sworn pleadings and the affidavits filed with and in support thereof, and having duly considered the same and now being fully advised in the premises, and

*It appearing to the Court*, That the defendants are domiciled and transact business in the District of Colorado, 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 drug preparations advertised as "Man's Pep Tonic" and as "Man's Tonic," and as "Man's Pep Tonic" (Double Str. Capsule) and as "Man's Tonic" (Double Str. Capsule), and sold as "U. S. Special Tablets" and as "Sextogen Capsules For Men or Women," 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 drug preparations, and by various means for the purpose of inducing or

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<sup>2</sup> Such complaint duly issued in the matter of Edwin L. Leisenring, trading as U. S. Drug & Sales Co., etc., et al., Docket 4053, and was followed by order to cease and desist issued as of June 11, 1940.

which are likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said drug 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 an effective, safe and scientific aphrodisiac, and an effective, safe and scientific treatment for strengthening and rejuvenating the sexual organs of man or woman, and

*It appearing to the Court,* That the use of the said preparation, advertised as "Man's Pep Tonic" and as "Man's Tonic," and sold as "U. S. Special Tablets," as a tonic, as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce a congestion affecting the mucous membrane of the sexual organs and other epithelial structures of the urogenital tract, including those of the kidney, prostate gland, and bladder; may also aggravate any existing disturbance in the aforesaid organs such as nephritis, prostatitis, and cystitis, and may even originate such disturbances or produce a hemorrhage of the bladder; may result in nervous irritability, severe frontal headaches and fainting; and that the use of said preparation is a menace to the health of men and women, and

*It appearing to the Court,* That the use of said preparation, advertised as "Man's Pep Tonic" (Double Str. Capsule) and as "Man's Tonic" (Double Str. Capsule), and sold as "Sextogen Capsules For Men or Women," as a tonic, as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may result in nervous irritability and insomnia, headaches, muscular and auricular pains, nausea, vomiting, vertigo, physical exhaustion, tremor, tachycardia, thyroid toxicosis, permanent injury to tissues, organic functions and the entire body mechanism, irreparable injury to the heart muscle with auricular fibrillation, and premature death; and that the use of said preparation is a menace to the health of men and 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 thereupon has become final within the meaning of section 5 of said act:

*It is hereby ordered, adjudged, and decreed,* That the defendants, Edwin L. Leisenring, an individual, trading as U. S. Drug & Sales Co., U. S. Drug Laboratories, and U. S. Drug Co., and Gordon Leisenring, an individual, 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 the said drug preparation advertised as "Man's Pep Tonic" and as "Man's Tonic," and sold as "U. S. Special Tablets," and the drug preparation advertised as "Man's Pep Tonic" (Double Str. Capsule) and as "Man's Tonic" (Double Str. Capsule), and sold as "Sextogen Capsules For Men or Women," whether sold under the same names 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 drug preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisement represents directly, indirectly or by implication that said preparations, or either of said preparations, are effective, safe, and scientific aphrodisiacs, and effective, safe, and scientific treatments for the strengthening and rejuvenating of the sexual organs of man or woman, or which advertisements fail to reveal that said preparations, or either preparation, if used as a tonic as prescribed in the aforesaid advertisements, or if used under such conditions as are customary or usual, may result in serious or irreparable injury to the health 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 said complaint is dismissed by the Commission, or set aside by a United States Circuit Court of Appeals, or by 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.* SEKOV CORPORATION,  
AND EDWIN H. VOKES AND HAZEL RUTH VOKES, AS  
OFFICERS THEREOF, AND AS INDIVIDUALS TRADING  
AS SEKOV REDUCING STUDIOS<sup>1</sup>

File No. 806 Y Civil

(District Court, Southern District of California, Central Division,  
February 17, 1940)

Decree of preliminary injunction, by District Judge Wm. P. James, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisements of defendants' drug-containing preparations for obesity or reducing, under designations "Sekov Reducer" and "Sekov," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may produce headaches, muscular and auricular pains, nausea, vomiting, and various other serious conditions and symptoms, including irreparable injury to the heart muscle and premature death; pending issuance of complaint by Commission against defendants under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and  
*Mr. Abner E. Lipscomb*, special attorney, both of Washington, D. C.,  
for the Commission.

*Mr. Harold E. Prudhon*, of Los Angeles, Calif., for defendants.

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 against the defendants, Sekov Corporation, a corporation, and Edwin H. Vokes, and Hazel Ruth Vokes, as officers of said corporation, and as individuals trading as Sekov Reducing Studios, and the plaintiff appearing by its attorney, Abner E. Lipscomb, and the defendants appearing by their attorney, Harold E. Prudhon, and the Court having read the sworn pleadings and the affidavits filed with and in support thereof, and having heard and duly considered the argument of counsel, and now being fully advised in the premises, and

*It appearing to the Court*, That the defendants are domiciled and transact business in the Southern District of California, 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

<sup>1</sup> Not reported in Federal Reporter.

<sup>2</sup> Such complaint duly issued in the matter of Sekov Corporation et al., Docket 4061, and was followed by order to cease and desist issued as of September 18, 1940.

*It appearing to the Court,* That said defendants are engaged in the sale and distribution of drug preparations advertised and sold as "Sekov Reducer" and as "Sekov," 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 drug 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 drug preparations in violation of the Federal Trade Commission Act, by means of which advertising the defendants have falsely represented that said preparation advertised and sold as "Sekov Reducer" and as "Sekov" is a scientific reducer or remedy for the treatment of obesity, and

*It appearing to the Court,* That the use of the said preparation, advertised and sold as "Sekov Reducer" and as "Sekov," as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce headaches, muscular and auricular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor, tachycardia, thyroid toxicosis, permanent injury to tissues, organic functions and the entire body mechanism, irreparable injury to the heart muscle with auricular fibrillation, and premature death, 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 defendants, Sekov Corporation, a corporation, and Edwin H. Vokes, and Hazel Ruth Vokes, as officers of said corporation, and as individuals trading as Sekov Reducing Studios, 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 the said drug preparation advertised and sold as "Sekov Reducer" and as "Sekov," whether sold under the same names or 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 drug preparation in commerce, as commerce is defined in the Federal Trade Commission Act, and which advertisements represent directly, indirectly or by implication that said preparation is a safe, competent and scientific treatment for obesity or that such treatment is designed to guard the health of the user, or that it acts entirely on a corrective principle, or that it is unlike harsh methods of reducing in that it does not contain cathartics or dangerous drugs, or that it does not reduce by merely tearing down fatty cells, or that it is made for reaching the glands whose faulty function is the cause of most overweight, or that it regulates the action of the glands gently and gradually, or that it takes off the fat without weakening the body, or that it is specially prepared to be effective in reducing practically all cases of overweight, or that it reduces by normalizing the body, or which advertisements fail to reveal that said preparation, if used as prescribed in the aforesaid advertisements, or if used under such conditions as are customary or usual, may result in serious or irreparable injury to the health 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 said complaint is dismissed by the Commission, or set aside by a United States Circuit Court of Appeals, or by 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.

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FEDERAL TRADE COMMISSION v. PITTSBURGH CUT  
RATE DRUG CO.<sup>1</sup>

File No. 878

(District Court, Western District of Pennsylvania. May 4, 1940)

Decree of preliminary injunction, by District Judge F. P. Schoonmaker, restraining, for the reasons and as below set forth, including immediate and irrepara-

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<sup>1</sup>Not reported in Federal Reporter.

ble injury to public in further dissemination of such false advertisements, advertisements of defendant's drug-containing preparation for women, under designations "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also as "Genuine Mayco English Crown Female Capsules (Double Strength)" and "Genuine Mayco English Crown Female Capsules (Triple Strength)," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may produce, when used by nonpregnant women, gastrointestinal disturbances and numerous other serious results and conditions, and, when used by pregnant women, may produce an abortion which may be followed by pelvic infection and other serious conditions, including serious or irreparable injury to health; pending issuance of complaint by Commission against defendant under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Abner E. Lipscomb*, special attorney, both of Washington, D. C., for the Commission.

*Mr. David D. Blumenstein*, of Pittsburgh, Pa., 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 against the defendant, Pittsburgh Cut Rate Drug Co., a corporation, and the plaintiff appearing by its attorney, Abner E. Lipscomb, and the defendant appearing by its attorney, David D. Blumenstein, and the defendant having waived hearing herein, and having consented that this decree be entered forthwith and the Court having read the sworn pleadings, and the affidavits filed with and in support thereof, and having duly considered the same, and being now fully advised in the premises, and

*It appearing to the Court*, That the defendant is domiciled and transacts business in the Western 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 a drug preparation advertised as Genuine Mayco English Crown Female Capsules for Delayed Periods, also designated as Genuine Mayco English Crown Female Capsules (double strength) and as Genuine Mayco English Crown Female Capsules (triple strength), in commerce between and among the various States of the United States and in the District of Columbia, and

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<sup>2</sup> Such complaint duly issued in the matter of Pittsburgh Cut Rate Drug Co., Docket 4154, and was followed by order to cease and desist issued as of July 6, 1940.

*It appearing to the Court,* That said defendant has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation 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 drug 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 drug 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 safe, competent and effective treatment for delayed menstruation, and

*It appearing to the Court,* That the use of the said preparation, advertised as Genuine Mayco English Crown Female Capsules for Delayed Periods, also designated as Genuine Mayco English Crown Female Capsules (double strength) and as Genuine Mayco English Crown Female Capsules (triple strength), as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce, when used by non-pregnant women, a gastrointestinal disturbance such as catharsis, enteritis, nausea and vomiting, with pelvic congestion, and may lead to excessive uterine hemorrhages, and

*It appearing to the Court,* That the use of said preparation, advertised as Genuine Mayco English Crown Female Capsules for Delayed Periods, also designated as Genuine Mayco English Crown Female Capsules (double strength) and as Genuine Mayco English Crown Female Capsules (triple strength), as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce in pregnant women an abortion which may be followed by pelvic infection and an infection of the abdominal structures resulting in 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 thereupon has become final within the meaning of section 5 of said Act:

*It is hereby ordered, adjudged, and decreed,* That the defendant, Pittsburgh Cut Rate Drug Co., a corporation, its officers, agents, servants, representatives, employees, and assigns, and all other persons 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 the said drug preparation advertised as Genuine Mayco English Crown Female Capsules for Delayed Periods, also designated as Genuine Mayco English Crown Female Capsules (double strength) and as Genuine Mayco English Crown Female Capsules (triple strength), whether sold under the same names 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 drug preparation in commerce, as "commerce" is defined in the Federal Commission Act, and which advertisement represents directly, indirectly, or by implication that said preparation is a safe, competent, and effective preparation for use in the treatment of delayed menstruation, or which advertisement fails to reveal that said preparation, if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious or irreparable injury to the health of the user; 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 said complaint is dismissed by the Commission, or set aside by a United States Circuit Court of Appeals, or by 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.

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FEDERAL TRADE COMMISSION *v.* MAY'S CUT RATE  
DRUG CO. OF CHARLESTON<sup>1</sup>

File No. 98

(District Court, Southern District of West Virginia. May 7, 1940)

Decree of preliminary injunction, by District Judge Geo. W. McClintic, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false

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<sup>1</sup> Not reported in Federal Reporter.

advertisements, advertisements of defendant's drug-containing preparation for women, under designations "Mayco" and "Genuine Mayco English Crown Female Capsules for Delayed Periods," also designated as "Genuine Mayco English Crown Female Capsules (Double Strength)" and as "Genuine Mayco English Crown Female Capsules (Triple Strength)," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may produce, when used by nonpregnant women, gastrointestinal disturbances and numerous other serious results and conditions, and, when used by pregnant women, may produce an abortion which may be followed by pelvic infection and other serious conditions, including serious or irreparable injury to health; pending issuance of complaint by Commission against defendant under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Abner E. Lipscomb*, special attorney, both of Washington, D. C., for the Commission.

*Mr. David D. Blumenstein*, of Pittsburgh, Pa., 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 against the defendant, May's Cut Rate Drug Co. of Charleston, a corporation, and the court having read the pleadings and the affidavits filed in connection therewith, and having heard and considered the argument of counsel, and

*It appearing to the Court*, That the defendant is domiciled and transacts business in the Southern District of West Virginia, and

*It appearing to the Court*, That it has jurisdiction over the party 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 a drug preparation advertised as "Mayco" and as "Genuine Mayco English Crown Female Capsules for Delayed Periods," also designated as "Genuine Mayco English Crown Female Capsules (double strength)" and as "Genuine Mayco English Crown Female Capsules (triple strength)," 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 is now causing the dissemination of, false advertisements concerning its said preparation by United States mails and by other means in commerce, as

<sup>2</sup> Such complaint duly issued in the matter of May's Cut Rate Drug Co. of Charleston, Docket 4153, and was followed by order to cease and desist issued as of July 6, 1940.

"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 drug 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 drug preparation in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that the said preparation is a safe, dependable, certain, harmless preparation and the only safe preparation for use in the treatment of delayed menstruation, and

*It appearing to the Court,* That the use of the said preparation, advertised as "Mayco" and as "Genuine Mayco English Crown Female Capsules for Delayed Periods," also designated as "Genuine Mayco English Crown Female Capsules (double strength)" and as "Genuine Mayco English Crown Female Capsules (triple strength)" as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, when used by nonpregnant women, may result in gastrointestinal disturbances, such as catharsis, enteritis, nausea, and vomiting, with pelvic congestion, leading to excessive uterine hemorrhages, and

*It appearing to the Court,* That the use of said preparation, advertised as "Mayco" and as "Genuine Mayco English Crown Female Capsules for Delayed Periods," also designated as "Genuine Mayco English Crown Female Capsules (double strength)" and as "Genuine Mayco English Crown Female Capsules (triple strength)," as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, when used by pregnant women, may result in abortion, which may be followed by pelvic infection and an infection of the abdominal structures resulting in 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 thereupon has become final within the meaning of section 5 of said act:

*It is hereby ordered, adjudged, and decreed,* That the defendant, May's Cut Rate Drug Co. of Charleston, a corporation, its officers, agents, servants, representatives, employees, and assigns, and all other

persons 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 the said drug preparation advertised as "Mayco" and as "Genuine Mayco English Crown Female Capsules for Delayed Periods," also designated as "Genuine Mayco English Crown Female Capsules (double strength)" and as "Genuine Mayco English Crown Female Capsules (triple strength)," whether sold under the same names 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 drug preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisement represents directly, indirectly, or by implication that said preparation is a safe, dependable, certain, or harmless preparation for use in the treatment of delayed menstruation, or which advertisement fails to reveal that said preparation, if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious or irreparable injury to the health of the user; 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 said complaint is dismissed by the Commission, or set aside by a United States Circuit Court of Appeals, or by 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, and it is ordered that a copy of this order be served upon the defendant named herein.

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FEDERAL TRADE COMMISSION v. MAY'S  
CUT RATE DRUG CO.<sup>1</sup>

File No. 101-C

(District Court, Northern District of West Virginia, May 8, 1940)

Decree of preliminary injunction, by District Judge Harry E. Watkins, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisements of defendant's drug-containing preparation for wom-

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<sup>1</sup> Not reported in Federal Reporter.

en, under designations "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also "Genuine Mayco English Crown Female Capsules (double strength)" and "Genuine Mayco English Crown Female Capsules (triple strength)," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may produce, when used by nonpregnant women, gastrointestinal disturbances and numerous other serious results and conditions, and, when used by pregnant women, may produce an abortion which may be followed by pelvic infection and other serious conditions, including serious or irreparable injury to health; pending issuance of complaint by Commission against defendant under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>3</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. Abner E. Lipscomb*, special attorney, both of Washington, D. C., for the Commission.

*Mr. Howard L. Robinson*, of Clarksburg, W. Va., 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 against the defendant, May's Cut Rate Drug Co., a corporation and the plaintiff appearing by its attorney, Abner E. Lipscomb, and the defendant appearing by its attorney, Howard L. Robinson, and the defendant having waived hearing herein, and having consented that this decree be entered forthwith, and the court having read the sworn pleadings, and the affidavits filed with and in support thereof, and having duly considered the same and now being fully advised in the premises, and

*It appearing to the Court*, That the defendant is domiciled and transacts business in the Northern District of West Virginia, 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 a drug preparation advertised as Genuine Mayco English Crown Female Capsules For Delayed Periods, also designated Genuine Mayco English Crown Female Capsules (double strength) and as Genuine Mayco English Crown Female Capsules (triple strength), in commerce between and among the various States of the United States and in the District of Columbia, and

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<sup>3</sup> Such complaint duly issued in the matter of May's Cut Rate Drug Co., Docket 4152, and was followed by order to cease and desist issued as of July 6, 1940.

*It appearing to the Court,* That said defendant has disseminated or is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparation 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 drug 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 drug preparation in violation of the Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that said preparation advertised as Genuine Mayco English Crown Female Capsules For Delayed Periods, also designated Genuine Mayco English Crown Female Capsules (double strength) and as Genuine Mayco English Crown Female Capsules (triple strength), is a safe, competent, and effective preparation for use in the treatment of delayed menstruation, and

*It appearing to the Court,* That the use of the said preparation, advertised as Genuine Mayco English Crown Female Capsules For Delayed Periods, also designated Genuine Mayco English Crown Female Capsules (double strength) and as genuine Mayco English Crown Female Capsules (triple strength), as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce in nonpregnant women gastrointestinal disturbances such as catharsis, enteritis, nausea, and vomiting, with pelvic congestion, and may lead to excessive uterine hemorrhages, and

*It appearing to the Court,* That the use of the said preparation, advertised as Genuine Mayco English Crown Female Capsules For Delayed Periods, also designated Genuine Mayco English Crown Female Capsules (double strength) and as Genuine Mayco English Crown Female Capsules (triple strength), as prescribed in said advertisements or its use under such conditions as are customary or usual, may produce in pregnant women an abortion, which may be followed by pelvic infection and an infection of the abdominal structures, resulting in 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 com-

plaint 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, May's Cut Rate Drug Co., a corporation, its officers, agents, servants, representatives, employees and assigns, and all other persons 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 the said drug preparation advertised as "Genuine Mayco English Crown Female Capsules For Delayed Periods," also designated Genuine Mayco English Crown Female Capsules (double strength) and as Genuine Mayco English Crown Female Capsules (triple strength), 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 drug preparation in commerce, as "commerce" is defined in the Federal Trade Commission Act, and which advertisement represents, directly, indirectly, or by implication that said preparation is a safe, competent, and effective preparation for use in the treatment of delayed menstruation, or which advertisement fails to reveal that said preparation, if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious or irreparable injury to the health of the user; 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 said complaint is dismissed by the Commission, or set aside by a United States Circuit Court of Appeals, or by 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, and it is ordered that a copy of this order be served upon the defendant named herein.

FEDERAL TRADE COMMISSION v. OMEGA MANUFACTURING COMPANY, INC., TRADING AS OMEGA ELECTROLYSIS INSTITUTE, AND MILTON L. BROWNSHIELD, INDIVIDUALLY AND AS OFFICER OF SAID CORPORATION.<sup>1</sup>

File No. 8-443

(District Court, Southern District of New York. May 10, 1940)

Decree of preliminary injunction, by District Judge Edward A. Conger, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisements of defendants' device or apparatus for use in the electrolytic removal of superfluous hair by individual self-application in the home, under designation "Omega Home Use Portable Machine," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may result in local infections, skin burns, scarring, and other conditions and disfigurement, and, under certain conditions, as below set forth, in infection so serious that fatal consequences may result therefrom; pending issuance of complaint by Commission against defendants under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. James 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 defendants Omega Manufacturing Co., Inc., a corporation, trading as Omega Electrolysis Institute, and Milton L. Brownshield, individually and as an officer of said corporation, and the plaintiff appearing by its attorney, James L. Baker, and

*It appearing to the Court*, That the defendants have waived hearing herein, and have consented that this decree be entered forthwith, and

*It appearing to the Court*, That the defendants are domiciled and transact business in the Southern District of New York, 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

<sup>1</sup> Not reported in Federal Reporter.

<sup>2</sup> Such complaint duly issued in the matter of Omega Manufacturing Co., Inc., trading as Omega Electrolysis Institute, and Milton L. Brownshield, Docket 4146, on May 31, 1940, and is now pending.

*It appearing to the Court,* That said defendants are engaged in the sale and distribution of a device or apparatus designated as the Omega Home Use Portable Machine, for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home, 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 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 device or apparatus and by various means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of said device in commerce, as commerce is defined in the Federal Trade Commission Act, in violation of the Federal Trade Commission Act, by means of which advertising the defendants have falsely represented that the use of said device or apparatus, designated as the Omega Home Use Portable Machine, for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home, is an effective and efficient, modern method for the permanent removal of superfluous hair from the human body; that it is safe, foolproof, and pleasant to use and that its use will have no ill effects upon the human body, and

*It appearing to the Court,* That the use of said device, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in local infections, skin burns, scarring, metallic stains, permanent pitting, and disfigurement; that when infection occurs in the nose, on the upper lip or over the glabella, it may be so serious as to cause death, and in those instances where the device and method are applied to cancerous or syphilitic lesions, which are not recognizable as such by the layman, fatal consequences may result from infection, 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 Omega Manufacturing Co., Inc., a corporation, trading as Omega Electrolysis Institute, and its officers, and Milton L. Brownshield, individually, and as an officer of said corporation, their respective 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 device or apparatus, designated as the Omega Home Use Portable Machine, for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home, 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 device or apparatus in commerce, as commerce is defined in the Federal Trade Commission Act, and which advertisements represent that the use of said device or apparatus by individual self-application in the home is an effective and efficient, modern method for the permanent removal of superfluous hair from the human body; that it is safe, foolproof, and pleasant to use or that its use will have no ill effects upon the human body, or which advertisements fail to reveal that the use of said device and method by persons not trained in the technique of removing superfluous hair from the human body by electrolysis, 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, physical injury, or permanent disfigurement; 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.* ELECTROLYSIS ASSOCIATES, INC., AND LOUIS ZINBERG, AS OFFICER OF SAID CORPORATION AND TRADING AS BEAUTIDERM COMPANY<sup>1</sup>

File No. 8-442

(District Court, Southern District of New York. May 10, 1940)

Decree of preliminary injunction, by District Judge Edward A. Conger, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisements of defendants' device or apparatus for use in the electrolytic removal of superfluous hair by individual self-application in the home, under designation "Beautiderm Midget," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may result in local infections, skin burns, scarring and other conditions and disfigurement, and, under certain conditions, as below set forth, in infection so serious that fatal consequences may result therefrom; pending issuance of complaint by Commission against defendants under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. James L. Baker*, special attorney, both of Washington, D. C., for the Commission.

DECREE

This cause coming on to be heard upon the order to show cause dated May 9, 1940, and upon the complaint of the Federal Trade Commission for the issuance of a preliminary injunction against the defendants, Electrolysis Associates, Inc., a corporation, and Louis Zinberg, as an officer of said corporation and as an individual trading as Beautiderm Co., and the plaintiff appearing by its attorney, James L. Baker, and

*It appearing to the Court*, That the defendants have failed to appear and show cause why a preliminary injunction should not be issued without bond, and

*It appearing to the Court*, That the defendants have been duly served and are domiciled and transact business in the Southern District of New York, 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 a device or apparatus, designated as the Beau-

<sup>1</sup>Not reported in Federal Reporter.

<sup>2</sup>Such complaint duly issued in the matter of *Electrolysis Associates, Inc., et al.*, Docket 4144, and was followed by order to cease and desist issued as of September 27, 1940, which order was later vacated on October 25, 1940.

tiderm Midget, for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home, 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 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 device, and by various means for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of said device in commerce, as commerce is defined in the Federal Trade Commission Act, in violation of the Federal Trade Commission Act, by means of which advertising the defendants have falsely represented that the use of said device or apparatus, designated as the Beautiderm Midget, for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home is an effective, efficient, easy, safe, and scientific method for the permanent removal of superfluous hair from the human body, and that its use will have no ill effects upon the human body, and

*It appearing to the Court*, That the use of said device, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in local infections, erysipelas, skin burns, scarring, metallic tattoo marks, pitting, or permanent disfigurement; that when infection occurs in the nose, on the upper lip or over the glabella, it may be so serious as to cause death, and in those instances where the device and method are applied to cancerous or syphilitic lesions, which are not recognizable as such by the layman, fatal consequences may result from infection, 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 defendants, Electrolysis Associates, Inc., a corporation, and its officers and Louis Zinberg, as an officer of said corporation and as an individual trading as Beautiderm Co., their respective 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 device or apparatus, designated as the Beautiderm Midget, for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home, 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 device in commerce, as commerce is defined in the Federal Trade Commission Act, and which advertisements represent that the use of said device or apparatus by individual self-application in the home is an effective, efficient, easy, safe and scientific method for the permanent removal of superfluous hair from the human body; or that its use will have no ill effects upon the human body, or which advertisements fail to reveal that the use of said device by persons not trained in the technique of removing superfluous hair from the human body by electrolysis, 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, physical injury or permanent disfigurement; 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.

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FEDERAL TRADE COMMISSION *v.* I. RALPH WEINSTOCK,  
TRADING AS THYROLE PRODUCTS COMPANY <sup>1</sup>

File No. 896

(District Court, Eastern District of Pennsylvania. May 14, 1940)

Decree of preliminary injunction, by District Judge Welsh, restraining, for the reasons and as below set forth, including immediate and irreparable injury to public in further dissemination of such false advertisements, advertisements of defendant's drug-containing preparation for obesity,

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<sup>1</sup> Not reported in Federal Reporter.

under designation "O. B. C. Reducing Capsules," otherwise known as "O. B. C. Capsules," and which it appears, as below set forth, under conditions prescribed in such advertisements or under such conditions as are customary or usual, may produce nausea, vomiting, headache, muscular and articular pains, and other serious conditions and symptoms, including irreparable injury to heart muscle and other serious and irreparable injury to health; pending issuance of complaint by Commission against defendant under section 5 of the Federal Trade Commission Act and disposition of such complaint, as in said decree set forth.<sup>2</sup>

*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, and *Mr. James L. Baker*, special attorney, both of Washington, D. C., for the Commission.

*Mr. I. Ralph Weinstock*, of Philadelphia, Pa., 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, I. Ralph Weinstock, an individual, trading as Thyrole Products Co.; the plaintiff appearing by its attorney, James L. Baker, and the defendant appearing in person, 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 a medicinal preparation containing drugs for the treatment of obesity, designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, 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

<sup>2</sup> Such complaint duly issued in the matter of I. Ralph Weinstock, trading as Thyrole Products Co., Docket 4160, and was followed by order to cease and desist issued as of November 19, 1940.

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 mild and an effective treatment for obesity; that it will restore vim, vigor, and mental alertness and that its use will have no ill effects upon the human body, and

*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 produce nausea, vomiting, headache, muscular and articular pains, vertigo, insomnia, physical exhaustion, tremor, tachycardia, and angina pectoris, and may result in thyroid toxicosis, permanent injury to tissues, organic functions and the entire body mechanism, irreparable injury to the heart muscle with auricular fibrillation and other serious and irreparable injury to health, and

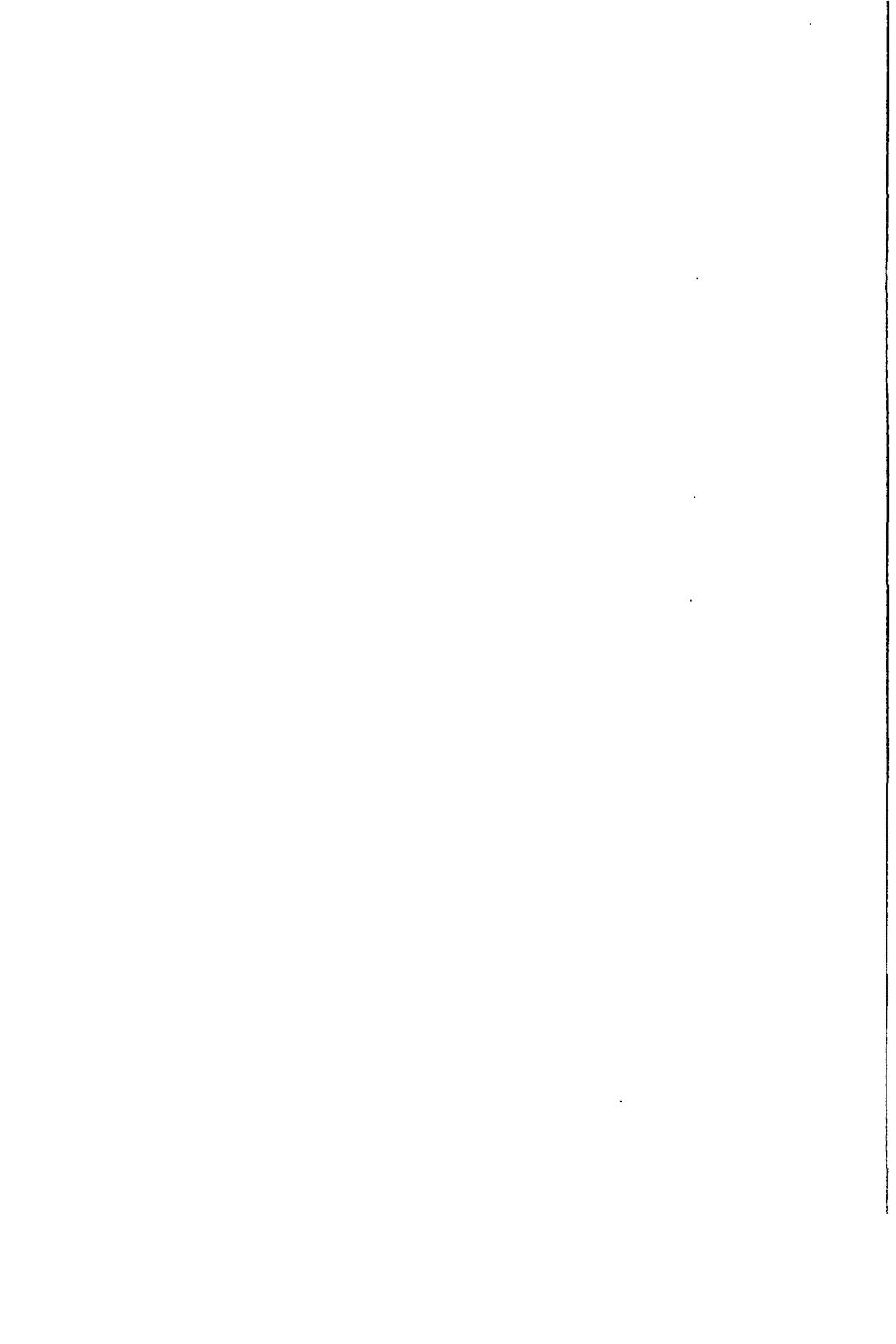
*It appearing to the Court,* That the further dissemination of such advertisements would cause immediate and irreparable injury to the public and that it would be in the public interest to enjoin and restrain the further dissemination of said advertising pending the issuance of a complaint by the Federal 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 I. Ralph Weinstock, an individual, trading as Thyrole 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 preparation designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, 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 con-

stitutes a mild and an effective treatment for obesity; that it will restore vim, vigor, and mental alertness and that its use will have no ill effects 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., December 1, 1939, to May 31, 1940, six of the alleged violations of its cease and desist orders certified by the Commission to the Attorney General under the provisions of section 5 (1), Federal Trade Commission Act, were settled in the district courts and civil penalties in the sum of \$12,000 were collected. The cases so disposed of are as follows:

*United States v. John Petrie, trading as B-X Laboratories, and Purity Products Company*; United States District Court for the Northern District of Illinois; agreed judgment of \$2,500 satisfied December 19, 1939.

The Commission had ordered John Petrie, his representatives, etc., in connection with the offer, etc., in interstate commerce or in the District of Columbia, of his medical preparations for internal use for various troubles of the female anatomy, to cease and desist from representing, directly or by implication:

1. That said products "Menstra" 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.<sup>1</sup>

*United States v. K. & S. Sales Company et al.*; United States District Court for the Northern District of Illinois; agreed judgment for \$4,500 entered and satisfied December 19, 1939.

Respondent, the K. & S. Sales Co., its representatives, etc., in connection with offer, etc., in interstate commerce or in the District of Columbia, of various articles of merchandise, including hosiery,

<sup>1</sup> Docket 2123, July 25, 1938, 27 F. T. C. 541, 554.

clocks, cameras, etc., were ordered by the Commission forthwith to cease and desist from:

1. Supplying to or placing in the hands of others push cards, punchboards, or similar devices so as to enable such persons to dispose of or sell by the use thereof such articles of merchandise.

2. Mailing, shipping, or transporting to the members of the public or to dealers push cards, punchboards, or similar devices so prepared or printed as to enable said persons or dealers by the use thereof to sell or distribute merchandise being offered for sale and sold by respondent.

3. Selling or otherwise disposing of various articles of merchandise by the use of push cards, punchboards, or similar devices.<sup>2</sup>

*United States v. Holst Publishing Company et al.*; United States District Court for the Southern District of Iowa, Central Division; judgment of \$2,000 entered and satisfied January 18, 1940.

Respondent Bernhart P. Holst, doing business as Holst Publishing Co., his representatives, etc., in connection with the offer, etc., of certain books or reference work designated and sold under the name "Progressive Reference Library," together with a loose-leaf extension service, or substantially the same books or reference work under any other name, in interstate commerce or in the District of Columbia, were ordered to cease and desist from representing—

(a) That the purchaser or prospective purchaser is being given or will be given a set of the said reference work now designated as "Progressive Reference Library" free by reason of the exceptional ability of the purchaser or prospective purchaser in his or her chosen trade, profession, or avocation and standing in his or her community, or for any other reason.

(b) That any purchaser or prospective purchaser is on a preferred list to receive a 10-volume set of the said reference work now designated as "Progressive Reference Library" free.

(c) That the purchaser or prospective purchaser is being given or will be given a set of the reference work now designated as "Progressive Reference Library" free, on condition that such purchaser or prospective purchaser writes respondent a letter of commendation concerning the said reference work now designated as "Progressive Reference Library," after such purchaser or prospective purchaser has had an opportunity to study the same.

(d) That any purchaser or prospective purchaser is being given or will be given a set of the reference work now designated as "Progressive Reference Library" free, on condition that such purchaser or prospective purchaser subscribes to a 10-year loose-leaf extension service or any extension service covering any period of time.

(e) That any purchaser or prospective purchaser is receiving, or will receive, any benefit, discount, or concession, in any manner or form, or by any pretense; and that any purchaser or prospective purchaser, in paying the sum of \$49.50, is paying other than the usual selling price of said reference work now designated as "Progressive Reference Library."

<sup>2</sup> Docket 1857, January 13, 1938, 26 F. T. C. 328, 342.

(f) That the reference work now designated as "Progressive Reference Library" has been revised, enlarged, and brought down to date, until and unless said reference work has in truth and in fact been substantially revised, enlarged, and brought down to date.

(g) That Bernhart P. Holst, or any other of said respondents, or any other person, firm, or corporation, is a bona fide purchaser for value without notice of the contracts executed by purchasers in connection with the purchase of said reference work now designated as "Progressive Reference Library" and the accompanying extension service, when such is not the fact.

(h) That the purchaser or prospective purchaser of said reference work now designated as "Progressive Reference Library" is only buying or paying for an extension service intended to keep the set of books up to date.<sup>3</sup>

*United States v. Deran Confectionery Co.*; United States District Court for the District of Massachusetts; agreed judgment in the sum of \$1,000 entered February 8, 1940.

Such order directed defendant corporation, respondent before the Commission, its representatives, etc., in connection with the offer, etc., of candy in interstate commerce or in the District of Columbia, forthwith to cease and desist from:

1. Selling and distributing to dealers, candy so packed and assembled that sales of such candy to the general public are to be made, or are designed to be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to and placing in the hands of dealers assortments of candy which are used, or which are designed to be used, without alteration or rearrangement of the contents of such packages or assortments, to conduct a lottery, gaming device, or gift enterprise in the sale and distribution of candy contained in said assortments to the public.

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail individually wrapped pieces of candy of uniform size and shape with different colored centers, together with packages or boxes of candy or any other merchandise, which said packages or boxes of candy or other merchandise are to be given as prizes to the purchasers procuring pieces of candy with centers of a particular color.<sup>4</sup>

*United States v. Elmer Candy Co.*; United States District Court; Eastern District of Louisiana; judgment in the sum of \$1,000 entered February 14, 1940.

Respondent manufacturer, his representatives, etc., in connection with the sale and distribution in interstate commerce of candy and candy products were ordered to cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers for resale to retail dealers, or to retail dealers direct, candy so packed and assembled that sales of such candy to the general public are by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of wholesale dealers and jobbers, or retail dealers, packages or assortments of candy which are used without alteration or rearrangement of the contents of such packages or assortments, to con-

<sup>3</sup> Docket 2052, January 12, 1937, 24 F. T. C. 404, 416.

<sup>4</sup> Docket 3111, August 3, 1938, 27 F. T. C. 41, 49.

duct a lottery, gaming device, or gift enterprise in the sale or distribution of the candy or candy products contained in said package or assortment to the public.

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of chocolate-covered candy of uniform size, shape, and quality, having centers of different colors, together with larger pieces of candy or articles of merchandise, which said larger pieces of candy, or articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color,

4. Furnishing to wholesale dealers, jobbers, and retail dealers display cards, either with packages or assortments of candy or candy products, or separately, bearing a legend, or legends, or statements, informing the purchaser that the candy products are being sold to the public by lot or chance, or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.\*

*United States v. Klimate-Pruf Manufacturing Company*; United States District Court for the Middle District of North Carolina; agreed judgment of \$1,000 entered March 23, 1940.

The Commission's order directed the defendant, Max Klein, doing business as Klimate-Pruf Manufacturing Co., his representatives, etc., in connection with the sale and distribution of waterproofing compounds, roof coatings, paints, and similar products in interstate commerce, to cease and desist:

1. From conducting business under the name Klimate-Pruf Manufacturing Co., or under any other trade or corporate name containing the word "Manufacturing."

2. From using the phrases "Manufactured exclusively by the Klimate-Pruf Manufacturing Co.," "Factory and warehouse, Kingsland, N. J.;" or any phrase, slogan, or pictorial representation of similar import; or any statement or representation whatsoever that respondent is the manufacturer of said commodities; or any statement or representation or pictorial representation importing or implying that respondent is selling and distributing said commodities direct from the manufacturer or factory to his customer purchasers without the intervention of middlemen.<sup>6</sup>

<sup>6</sup> Docket 1788, April 2, 1934, 18 F. T. C. 278.

<sup>7</sup> Docket 1579, 13 F. T. C. 104, 107.

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