FEDERAL TRADE COMMISSION DECISIONS

▽

FINDINGS, ORDERS, AND STIPULATIONS

JUNE 1, 1940, TO NOVEMBER 30, 1940

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MEMBERS OF THE FEDERAL TRADE COMMISSION AS OF NOVEMBER 30, 1940

EWIN L. DAVIS, *Chairman.*

Took oath of office May 26, 1933, and August 31, 1939.[1]

GARLAND S. FERGUSON.

Took oath of office November 14, 1927, January 9, 1928.[1] September 26, 1934,[2] and February 9, 1935.[3]

CHARLES H. MARCH.

Took oath of office February 1, 1929, and August 27, 1935.[1]

WILLIAM A. AYRES.

Took oath of office August 23, 1934, and September 24, 1940.[1]

ROBERT E. FREER.

Took oath of office August 26, 1935, and September 19, 1938.[2] Appointment for second term confirmed January 28, 1939.

OTIS B. JOHNSON, *Secretary.*

Took oath of office August 7, 1922.

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[1] Second term.

[2] Recess appointment.

[3] Third term.

ACKNOWLEDGMENT

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

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113 F. (2d) 437.

Alle-Rhume Remedy Co., Inc. et al ..... (C. C. A.) 30-1613.

Allied Pharmacal Co., Inc., etc ..... (D. C.) 31-1905.

Aluminum Co. of America ..... (C. C. A.) 5-529, 7-618.
284 Fed. 401; 299 Fed. 361.

Amber-Ita (Ward J. Miller) ..... (C. C. A.) 21-1223.

A. McLean & Son et al ..... (C. C. A.) 22-1149, 26-1501; 31-1828.
84 F. (2d) 910; 94 F. (2d) 802.

American Army and Navy Stores, Inc ..... (C. A. for D. C.) 23-1392.

American Candy Co ..... (C. C. A.) 27-1683.
97 F. (2d) 1001.

American College et al ..... (C. C. A.) 30-1674.

American Field Seed Co. et al ..... (C. C. A.) 30-1648.

American Medicinal Products, Inc., et al ..... (D. C.) 30-1683.

American Snuff Co ..... (C. C. A.) 13-607.
38 F. (2d) 547.

American Tobacco Co ..... (D. C.) 5-558; (S. C.) 7-599; (C. C. A.) 9-653; (S. C.) 11-668.
283 Fed. 999; 264 U. S. 298; (44 S. Ct. 336); 9 F. (2d) 570; 274 U. S. 543 (47 S. Ct. 663).

America's Medicine, etc. (Harry S. Benham) ..... (D. C.) 29-1629.

Antisepto Products Co., etc. (Edward L. Jenkins et al.) ..... (D. C.) 29-1637.

[1] Interlinear citations are to the reports of the National Reporter System and to the official United States Supreme Court Reports in those cases in which the proceeding, or proceedings, as the case may be, have been there reported. Such cases do not include the decisions of the Supreme Court of the District of Columbia, nor, in all cases, some of the other proceedings set forth in the above table, and described or reported in the Commission's Decisions and the Commission publications entitled "Statutes and Decisions—1914-1929," and "Statutes and Decisions—1930-1938," which also include cases here involved, for their respective periods.

Said publications also include Clayton Act cases bearing on those sections of said Act administered by the Commission during the aforesaid period, but in which Commission was not a party. "S. & D." refers to earlier publication, reference to later being "1938 S. & D." For "Memorandum of Court Action on Miscellaneous Interlocutory Motions" during the period covered by the second compilation, namely, 1930-1938, see said compilation at page 485 et seq.

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

Ardelle, Inc., Helen ..... (C. C. A.) 28-1894.
101 F. (2d) 718.
Arkansas Wholesale Grocers Ass'n ..... (C. C. A.) 11-646.
18 F. (2d) 866.
Armand Co., Inc., et al ..... (C. C. A.) 21-1202, 22-1155.
78 F. (2d) 707; 84 F. (2d) 973.
Armour & Co.[3] ..... (C. C. A.), "Memoranda" 20-745.
Army and Navy Trading Co ..... (C. A. of D. C.) 24-1601.
88 F. (2d) 776.
Arnold Stone Co.[4] ..... (C. C. A.) 15-606.
49 F. (2d) 1017.
Aronberg, Earl (Positive Products Co., etc.) .. (D. C.) 29-1634.
Arrow-Hart & Hegeman Electric Co ..... (C. C. A.) 17-658, 683; (S. C.) 18-691.
63 F. (2d) 108; 65 F. (2d) 336; 291 U. S. 587 (54 S. Ct. 532).
Artloom Corp.[5] ..... (C. C. A.) 18-680.
69 F. (2d) 36.
Artloom Corp. *v.* National Better Business Bureau et al. (D. C.), footnote, 15-597.
48 F. (2d) 897.
Atlantic & Pacific Tea Co., The Great ..... (C. C. A.) 29-1591.
106 F. (2d) 667.
Atlas Health Appliance Co. (Jacob L. Goldman). (D. C.) 31-1897.
Avery Salt Co ..... (C. C. A.) 30-1667.
Aviation Institute of U. S. A., Inc ..... (C. A. of D. C.) 21-1219.
Ayer, Harriet Hubbard, Inc.[6] ..... (C. C. A.) 10-754.
15 F. (2d) 274.
Balditt, Rene P. (Clito Co.) ..... (D. C.) 31-1894.
Balme, Paul ..... (C. C. A.) 11-717.
23 F. (2d) 615.
Baltimore Grain Co., et al ..... (D. C.) 5-578; (S. C.) 8-632.
284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).
Baltimore Paint & Color Works, Inc ..... (C. C. A.) 14-675.
41 F. (2d) 474.
Barager-Webster Co ..... (C. C. A.) 26-1495.
95 F (2d) 1000.
Basic Products Co ..... (D. C.) 3-542.
260 Fed. 472.
Battle Creek Appliance Co., Ltd ..... (C. C. A.) 21-1220.
Bayuk Cigars, Inc ..... (C. C. A.) 14-679 (footnote), 708; 28-1958; 29-1574.
Bear Mill Manufacturing Co., Inc ..... (C. C A.) 27-1685.
98 F. (2d) 67.
Beech-Nut Packing Co.[7] ..... (C. C. A.) 2-556; (S. C.) 4-583.
264 Fed. 885; 257 U. S. 441 (42 S. Ct. 150).
Belmont Laboratories, Inc ..... (C. C. A.) 28-1941.
103 F. (2d) 538.

[3] Interlocutory order. See also S. & D. 721.
[4] For interlocutory order, see "Memoranda," 28-1965=or 1938 S. & D. 485.
[5] For interlocutory matter, see "Memoranda," 28-1968 or 1938 S. & D. 489.
[6] For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.
[7] For order of Circuit Court of Appeals on mandate, see "Memoranda," 20-741 or S. & D. 189.

Bene & Sons, Inc., John ..... (C. C. A.) 7–612.
299 Fed. 468.
Benham, Harry S. (America's Medicine, etc.) .. (D. C.) 29–1629.
Benham, Leland F. (The Zelle Co.) ..... (D. C.) 29–1631.
Berkey & Gay Furniture Co., et al ..... (C. C. A.) 14–679.
42 F. (2d) 427.
Berry Seed Co. et al ..... (C. C. A.) 30–1649.
109 F. (2d) 1012.
Bethlehem Steel Co ..... (D. C.) (S. C. of D. C.), footnote, 3–543.
Biddle Purchasing Co. et al ..... (C. C. A.) 26–1511.
96 F. (2d) 687.
Block, Sol., et al. (Rittenhouse Candy Co.) ... (C. C. A.) 26–1497.
Blumenthal, Sidney, et al. (Rittenhouse Candy Co.). (C. C. A.) 26–1497.
Bonita Co., The, et al ..... (C. C. A.) 22–1149; 31–1834.
84 F. (2d) 910.
Bourjois, Inc., et al ..... (C. C. A.) 27–1706.
Brach & Sons, E. J ..... (C. C. A.) 29–1577.
Bradley, James J ..... (C. C. A.) 12–739.
31 F. (2d) 569.
Breakstone, Samuel [8] ..... (C. C. A.) "Memoranda," 20–745.
Brecht Candy Co ..... (C. C. A.) 25–1701.
92 F. (2d) 1002.
Brown & Haley ..... (C. C. A.) 28–1894.
101 F. (2d) 718.
Brown Fence & Wire Co ..... (C. C. A.) 17–680.
64 F. (2d) 934.
Bunte Brothers, Inc ..... (C. C. A.) 28–1959; 30–1650.
104 F. (2d) 996; 110 F. (2d) 412.
Butterick Co. et al.[9] ..... (S. C. of D. C.), footnote, 3–542, (C. C. A.) 8–602.
4 F. (2d) 910.
Butterick Publishing Co. et al ..... (C. C. A.) 23–1384.
85 F. (2d) 522.
B–X Laboratories and Purity Products Co. (John Petrie), U. S. *v.* (D. C.) 29–1643; 30–1727.
Caldwell, Inc., Dr. W. B ..... (C. C. A.) 30–1670.
111 F. (2d) 889.
California Lumbermen's Council et al ..... (C. C. A.) 28–1954; 29–1568; 31–1870.
103 F. (2d) 304; 104 F. (2d) 855; 115 F. (2d) 178.
California Rice Industry ..... (C. C. A.) 28–1912.
102 F. (2d) 716.
Canfield Oil Co ..... (C. C. A.) 4–542.
274 Fed. 571.
Cannon *v.* U. S ..... (C. C. A.), footnote, 11–677.
19 F. (2d) 823.
Canterbury Candy Makers, Inc ..... (C. C. A.) 28–1894.
101 F. (2d) 718.
Capital Drug Co. (Max Caplan) ..... (D. C.) 31–1900.
Caplan, Max (Capital Drug Co.) ..... (D. C.) 31–1900.

[8] Interlocutory order. See S. & D. 722.
[9] For interlocutory order, see "Memoranda," 20–743 or S. & D. 716.

Capon Water Co. et al ..... (C. C. A.) 29-1611.
107 F. (2d) 516.
Cardinal Co., The (Charles L. Klapp) ..... (D. C.) 29-1639.
Carey Mfg. Co., Philip, et al ..... (C. C. A.) 12-726.
29 F. (2d) 49.
Carter Carburetor Corp ..... (C. C. A.) 31-1793.
112 F. (2d) 722.
Cassoff, L. F ..... (C. C. A.) 13-612.
38 F. (2d) 790.
Century Metalcraft Corp ..... (C. C. A.) 30-1676.
112 F. (2d) 443.
Chamber of Commerce of Minneapolis et al.[10] ..... (C. C. A.) 4-604, 10-687.
280 Fed. 45; 13 F. (2d) 673.
Chapman Health Products Co, The, et al ..... (D. C.) 30-1687.
Charles N. Miller Co ..... (C. C. A.) 27-1678.
97 F. (2d) 563.
Chase & Sanborn (Moir, John, et al.)[11] ..... (C. C. A.) 10-674.
12 F. (2d) 22.
Chase Candy Co ..... (C. C. A.) 26-1499.
97 F. (2d) 1002.
Chicago Portrait Co ..... (C. C. A.) 8-597.
4 F. (2d) 759.
Chicago Silk Co ..... (C. C. A.) 25-1692.
90 F. (2d) 689.
Civil Service Training Bureau, Inc ..... (C. C. A.) 21-1197.
79 F. (2d) 113.
Claire Furnace Co., et al.[12] ..... (S. C. of D. C.), footnotes, 3-543, 4-539; (C. A. of D. C.) 5-584; (S. C.) 11-655.
285 Fed. 936; 274 U. S. 160 (47 S. Ct. 553).
Clito Co. (Rene P. Balditt) ..... (D. C.) 31-1894.
Consolidated Book Publishers, Inc.[13] ..... (C. C. A.) 15-637.
53 F. (2d) 942.
Cordes, J. V., et al. (Martha Beasley Associates). ..... (D. C.) 29-1621.
Cosner Candy Co ..... (C. C. A.) 25-1703.
92 F. (2d) 1002.
Counter Freezer Manufacturers, National Association of, et al. ..... (S. C. of D. C.) 22-1137.
Cox, S. E. J ..... (C. C. A.), "Memoranda," 20-739.
Crancer, L. A., et al ..... (C. C. A.), footnote, 20-722.
Cream of Wheat Co.[14] ..... (C. C. A.) 10-724.
14 F. (2d) 40.
Cubberley, U. S. ex. rel ..... (S. C. of D. C.), footnote, 18-663.
Curtis Publishing Co ..... (C. C. A.) 3-579; (S. C.) 5-599.
270 Fed. 881; 260 U. S. 568.
Deckelbaum, Howard (Sun Cut Rate Drug Store). ..... (D. C.) 31-1888.

[10] For interlocutory order, see "Memoranda," 20-744 or S. & D. 719.
[11] For interlocutory order, see "Memoranda," 20-744 or S. & D. 718.
[12] For final decree of Supreme Court of the District of Columbia, see footnote, 3-542 et seq., S. & D. 190
[13] For interlocutory order, see "Memoranda," 28-1966 or 1938 S. & D. 485.
[14] For interlocutory order, see "Memoranda," 20-744, or S. & D. 720.

Deran Confectionery Co., U. S. *v* ..... (D. C.) 30–1729.
Dietz Gum Co. et al ..... (C. C. A.) 29–1557.
104 F. (2d) 999.
D. J. Mahler Co., Inc ..... (D. C.) 31–1891.
Dodson, J. G ..... (C. C. A.) 20–737.
Dollar Co., The Robert ..... (C. C. A.), footnote, 16–684; "Memoranda," 20–739.
Douglas Fir Exploitation & Export Co ..... (S. C. of D. C.), footnote, 3–539; "Memoranda," 20–741.
Douglass Candy Co., etc. (Ira W. Minter et al.). (C. C. A.) 28–1885.
102 F. (2d) 69.
Dubinoff, Louis (Famous Pure Silk Hosiery Co.). (C. C. A.) 27–1673.
Eastman Kodak Co. et al ..... (C. C. A.) 9–642; (S. C.) 11–669.
7 F. (2d) 994; 274 U. S. 619 (47 S. Ct. 688).
Edison-Bell Co., Inc., et al ..... (D. C.), "Memoranda," 28–1969.
Educators Association, Inc., et al ..... (C. C. A.) 30–1614; 30–1658.
108 F. (2d) 470; 110 F. (2d) 72.
Edwin Cigar Co., Inc ..... (C. C. A.) 20–740.
E. J. Brach & Sons ..... (C. C. A.) 29–1577.
Electric Bond & Share Co. (Smith, A. E., et al.) .. (D. C.)13–563, 17–637.
34 F. (2d) 323; 1 F. Supp. 247.
Electrolysis Associates, Inc., et al ..... (D. C.) 30–1720.
Electro Thermal Co ..... (C. C. A.) 25–1695.
91 F. (2d) 477.
Elmer Candy Co.; U. S. *v* ..... (D. C.) 30–1729.
El Moro Cigar Co ..... (C. C. A.) 29–1616.
107 F. (2d) 429.
Englander Spring Bed Co., Inc ..... (D. C.), "Memoranda," 28–1969.
Erie Laboratories, Inc., etc ..... (D. C.) 31–1905.
Evans Fur Co. et al ..... (C. C. A.) 24–1600.
88 F. (2d) 1008.
Fairyfoot Products Co ..... (C. C. A.) 21–1224, 26–1507.
80 F. (2d) 684; 94 F. (2d) 844.
F. A. Martoccio Co. (Hollywood Candy Co.) .. (C. C. A.) 24–1608.
87 F. (2d) 561.
Famous Pure Silk Hosiery Co. (Louis Dubinoff.) (C. C. A.) 27–1673.
Fashion Originators Guild of America, Inc., et al. (C. C. A.) 31–1837.
114 F. (2d) 80.
Fioret Sales Co., Inc., et al ..... (C. C. A.) 27–1702; 28–1955.
100 F. (2d) 358.
Fluegelman & Co., Inc., N ..... (C. C. A.) 13–602.
37 F. (2d) 59.
Flynn & Emrich Co.[15] ..... (C. C. A.) 15–625.
52 F. (2d) 836.
Ford Motor Co ..... (C. C. A.) 31–1883.
Fox Film Corporation ..... (C. C. A.) 7–589.
296 Fed. 353.

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

Fruit Growers' Express, Inc. (C. C. A.) 3-628; footnote, 6-559..
274 Fed. 205; 261 U. S. 629 (42 S. Ct. 518).
Garment Mfrs. Assn., Inc., et al. (S. C. of D. C.); footnote, 18-663
General Motors Corp. et al. (C. C. A.) 31-1852.
114 F. (2d) 33.
George H. Lee Co. (C. C. A.) "Memoranda," 20-722; 31-1846.
113 F. (2d) 583.
George Ziegler Co. (C. C. A.) 24-1625.
90 F. (2d) 1007.
Glade Candy Co. (C. C. A.) 29-1584.
106 F. (2d) 962.
Goldman, Jacob L. (Atlas Health Appliance Co.). (D. C.) 31-1897.
Good-Grape Co. (C. C. A.) 14-695.
45 F. (2d) 70.
Goodyear Tire & Rubber Co. (C. C. A.) 25-1707, (S. C.) 26-1521, (C. C. A.) 28-1899.
92 F. (2d) 677; 304 U. S. 257 (58 S. Ct. 863); 101 F. (2d) 620.
Gotlieb, Lenard, et al. (Reed's Cut Rate Drug Store, etc.). (D. C.) 31-1885.
Grand Rapids Varnish Co.[16] (C. C. A.) 13-580.
41 F. (2d) 996.
Gratz et al. (C. C. A.) 1-571, 2-545; (S. C.) 2-564.
258 Fed. 314; 253 U. S. 421 (40 S. Ct. 572).
Great Atlantic & Pacific Tea Co., The (C. C. A.) 29-1591.
106 F. (2d) 667.
Guarantee Veterinary Co., et al. (C. C. A.) 5-567.
285 Fed. 853.
Gulf Refining Co. et al. (Sinclair Refining Co. et al.) (C. C. A.) 4-552; (S. C.) 6-587.
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).
Hall, James B., Jr. (C. C. A.) 20-740.
67 F. (2d) 993.
Hamilton-Brown Shoe Co., U. S. *v.* (D. C.); footnote, 26-1495.
Hammond Lumber Co. (C. C. A.); footnote, 16-684; "Memoranda," 20-739.
Hammond, Snyder & Co. (D. C.) 5-578; (S. C.) 8-632.
284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).
Harriet Hubbard Ayer, Inc. (C. C. A.) 10-754.
15 F. (2d) 274.
Hartman Wholesale Drug Co., Inc., et al. (D. C.) 27-1693.
Haynes & Co., Inc., Justin (C. C. A.) 29-1578.
105 F. (2d) 988.
Helen Ardelle, Inc. (C. C. A.) 28-1894.
101 F. (2d) 718.
Herbal Medicine Co. (George Earl McKewen et al.). (D. C.) 31-1913.
Heuser, Herman (C. C. A.) 8-628.
4 F. (2d) 632.
Heusner & Son, H. N. (C. C. A.) 29-1580.
106 F. (2d) 596.

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

Hills Bros. (C. C. A.) 10–653.
9 F. (2d) 481.
Hires Turner Glass Co. (C. C. A.) 21–1207.
81 F. (2d) 362.
Hoboken White Lead & Color Works, Inc. (C. C. A.) 14–711, 18–663.
67 F. (2d) 551.
Hoffman Engineering Co. (C. C. A.) 21–1221.
Holloway & Co., M. J., et al. (C. C. A.) 22–1149; 31–1829.
84 F. (2d) 910.
Hollywood Candy Co. (F. A. Martoccio Co.) (C. C. A.) 24–1608.
87 F. (2d) 561.
Holst Publishing Co. et al., U. S. v. (D. C.) 30–1728.
Hughes, Inc., E. Griffiths [17] (C. A. of D. C.) 17–660, 20–734.
63 F. (2d) 362.
Hurst & Son, T. C. (D. C.) 3–565.
268 Fed. 874.
Ice Cream Manufacturers, International Association of, et al. (S. C. of D. C.) 22–1137.
Illinois Lumber & Material Dealers Ass'n, Inc. (C. C. A.) 27–1682.
97 F. (2d) 1005.
Imperial Candy Co. (C. C. A.) 28–1894.
101 F. (2d) 718.
Indiana Quartered Oak Co. (C. C. A.) 12–721, 16–683.
26 F. (2d) 340; 58 F. (2d) 182.
Inecto, Inc.[18] (C. C. A.) 18–705, 20–722.
70 F. (2d) 370.
International Art Co. et al. (C. C. A.) 30–1635.
109 F. (2d) 393.
International Association of Ice Cream Manufacturers, et al. (S. C. of D. C.) 22–1137.
International Shoe Co.[19] (C. C. A.) 12–732; (S. C.) 13–593.
29 F. (2d) 518; 280 U. S. 291 (50 S. Ct. 89).
Ironized Yeast Co. (C. C. A.) 20–737.
Jenkins, Edward L., et al. (Antisepto Products Co., etc.). (D. C.) 29–1637.
Johnson Candy Co., Walter H. (C. C. A.) 21–1195.
78 F. (2d) 717.
Jones Co., Inc., H. C. (D. C.) 5–578; (S. C.) 8–632.
284 Fed. 886; 267 U. S. 586 (45 S. Ct. 461).
Justin Haynes & Co., Inc. (C. C. A.) 29–1578.
105 F. (2d) 988.
Juvenile Shoe Co. (C. C. A.) 6–594.
289 Fed. 57.
K. & S. Sales Co. et. al., U. S. *v.* (D. C.) 30–1727.
Kaplan, Blanche (Progressive Medical Co., etc.) (D. C.) 30–1690.
Kay, Abbott E. (C. C. A.) 13–575.
35 F. (2d) 160.
Kelley, James (C. C. A.) 24–1617.
87 F. (2d) 1004.

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

Keppel & Bro., Inc., R. F. ..... (C. C. A.) 17-651; (S. C.) 18-684.
63 F. (2d) 81; 291 U. S. 304 (54 S. Ct. 423).
Kinney-Rome Co. ..... (C. C. A.) 4-546.
275 Fed. 665.
Kirk & Co., Jas. S., et al.[20] ..... (C. C. A.) 16-671.
59 F. (2d) 179.
Kirschmann Hardwood Co. ..... (C. C. A.); footnote, 16-684; "Memoranda," 20-739.
Klapp, Charles L. (The Cardinal Co.) ..... (D. C.) 29-1639.
Klesner, Alfred (Shade Shop, etc.) ..... (C. A. of D. C.) 9-650, (S. C.) 11-661; (C. A. of D. C.) 12-717; (S. C.) 13-581.
6 F. (2d) 701; 274 U. S. 145 (47 S. Ct. 557); 25 F. (2d) 524; 280 U. S. 19 (50 S. Ct. 1).
Klimate-Pruf Manufacturing Co., U. S. v. ..... (D. C.) 30-1730.
Kobi & Co., J. W.[21] ..... (C. C. A.) 11-713.
23 F. (2d) 41.
L. & C. Mayers Co., Inc. ..... (C. C. A.) 27-1675.
97 F. (2d) 365.
Leader Novelty Candy Co., Inc. ..... (C. C. A.) 25-1701.
92 F. (2d) 1002.
Leavitt, Louis[22] ..... (C. C. A.) 11-635, 21-1228.
16 F. (2d) 1019.
Lee Co., George H. ..... (C. C. A.) "Memoranda," 20-722; 31-1846.
113 F. (2d) 583.
Lee, U. S. v. (Sherwin et al. v. U. S.) ..... (D. C.) (C. C. A.); footnote, 6-559.
290 Fed. 517; 297 Fed. 704 (affirmed 268 U. S. 369; 45 S. Ct. 517).
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.
Loose-Wiles Biscuit Co. ..... (C. C. A.) 7-603.
299 Fed. 733.
Lorillard Co., P. ..... (D. C.) 5-558, (S. C.) 7-599.
283 Fed. 999; 264 U. S. 298 (44 S. Ct. 336).
Macfadden Publications, Inc.[23] ..... (C. A. of D. C.) 13-605.
37 F. (2d) 822.
Mahler Co., Inc., D. J. ..... (D. C.) 31-1891.
Maisel Trading Post, Inc. ..... (C. C. A.) 20-725, 21-1212, 23-1381.
77 F. (2d) 246; 79 F. (2d) 127; 84 F. (2d) 768.
Maison Pichel ..... (D. C.); footnote, 18-663.
Maloney Oil & Mfg. Co. (Sinclair Refining Co. et al.). ..... (C. C. A.) 4-552; (S. C.) 6-587.
276 Fed. 686; 261 U. S. 463 (43 S. Ct. 450).
March of Time Candies, Inc. ..... (C. C. A.) 29-1557.
104 F. (2d) 999.

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

Marietta Mfg. Co. (C. C. A.) 15–613.
50 F. (2d) 641.
Martha Beasley Associates (J. V. Cordes et al.). (D. C.) 29–1621.
Martoccio Co., F. A. (Hollywood Candy Co.). (C. C. A.) 24–1608.
87 F. (2d) 561.
Masland Duraleather Co., et al. (C. C. A.) 13–567.
34 F. (2d) 733.
Mayers Co., Inc., L. & C. (C. C. A.) 27–1675.
97 F. (2d) 365.
Maynard Coal Co.[24] (S. C. of D. C.) 3–555, 6–575; (C. A. of D. C.) 11–698.
22 F. (2d) 873.
May's Cut Rate Drug Co. (D. C.) 30–1713.
May's Cut Rate Drug Co. of Charleston. (D. C.) 30–1710.
McKewen, George Earl, et al. (Herbal Medicine Co.). (D. C.) 31–1913.
McLean & Son, A., et al. (C. C. A.) 22–1149; 26–1501; 31–1828.
84 F. (2d) 910; 94 F. (2d) 802.
Mennen Co.[25] (C. C. A.) 6–579.
288 Fed. 774.
Mid West Mills, Inc. (C. C. A.) 25–1688.
90 F. (2d) 723.
Miller Co., Charles N. (C. C. A.) 27–1678.
97 F. (2d) 563.
Miller Drug Co. (D. C.) 31–1908.
Miller, Ward J. (Amber-Ita). (C. C. A.) 21–1223.
Millers National Federation, et al. (S. C. of D. C.) 10–739 (C. A. of D. C.) 11–705 (S. C. of D. C.) 14–675 (footnote); (C. A. of D. C.) 14–712.
23 F. (2d) 968; 47 F. (2d) 428.
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.[26] (C. C. A.) 4–604, 10–687.
280 Fed. 45; 13 F. (2d) 673.
Minter Brothers, etc. (C. C. A.) 28–1885.
102 F. (2d) 69.
Mishawaka Woolen Mfg. Co. (C. C. A., S. C.) 5–557.
283 Fed. 1022; 260 U. S. 748 (43 S. Ct. 247).
M. J. Holloway & Co., et al. (C. C. A.) 22–1149; 31–1829.
84 F. (2d) 910.
Moir, John, et al. (Chase & Sanborn)[27] (C. C. A.) 10–674.
12 F. (2d) 22.
Morrissey & Co., Chas. T., etc. (C. C. A.) 14–716.
47 F. (2d) 101.
Morton Salt Co. (C. C. A.) 30–1666.
National Association of Counter Freezer Manufacturers et al. (S. C. of D. C.) 22–1137.

[24] For order of the Supreme Court of the District of Columbia on mandate from Court of Appeals of the District of Columbia, see "Memoranda," 20–742 or S. & D., footnote, 650.
[25] For interlocutory order, see "Memoranda," 20–743 or S. & D. 715.
[26] For interlocutory order, see "Memoranda," 20–744 or S. & D. 719.
[27] For interlocutory order, see "Memoranda," 20–744 or S. & D. 718.

National Biscuit Co.[28] ..... (C. C. A.) 7-603; (D. C.) 24-1618.
299 Fed. 733; 18 F. Supp. 667.
National Biscuit Co., U. S. *v* ..... (D. C.) 27-1697.
25 F. Supp. 329.
National Candy Co ..... (C. C. A.) 29-1557.
104 F. (2d) 999.
National Harness Mfrs. Assn ..... (C. C. A.) 4-539, 3-570.
261 Fed. 170; 268 Fed. 705.
National Kream Co., Inc., and National Foods, Inc. (C. C. A.) 27-1681.
National Optical Stores Co., et al ..... (D. C.). "Memoranda," 28-1970.
National Silver Co ..... (C. C. A.) 24-1627; 28-1957; 30-1675.
88 F. (2d) 425.
New Jersey Asbestos Co ..... (C. C. A.) 2-553.
264 Fed. 509.
Non-Plate Engraving Co.[29] ..... (C. C. A.) 15-597.
49 F. (2d) 766.
Norden Ship Supply Co., Inc., et al. (Winslow et al.). (C. C. A.) 4-578.
277 Fed. 206.
Northam Warren Corp ..... (C. C. A.) 16-687.
59 F. (2d) 196.
Nulomoline Co ..... (C. C. A.), footnote, 3-542; "Memoranda," 20-740.
254 Fed. 988.
Oberlin, Robert C. (Research Products Co.) .. (D. C.) 29-1626.
Ohio Leather Co.[30] ..... (C. C. A.) 4-699.
45 F. (2d) 39.
Oliver Brothers, Inc., et al ..... (C. C. A.) 28-1926.
102 F. (2d) 763.
Omega Manufacturing Co., Inc., et al ..... (D. C.) 30-1717.
Oppenheim, Oberndorf & Co. (Sealpax Co.) [31] (C. C. A.) 9-629.
5 F. (2d) 574.
Ostermoor & Co., Inc.[32] ..... (C. C. A.) 11-642.
16 F. (2d) 962.
Ostler Candy Co ..... (C. C. A.) 29-1584.
106 F. (2d) 962.
Ozment, C. J., etc ..... (C. C. A.) 22-1135.
Pacific States Paper Trade Assn. et al ..... (C. C. A.) 8-608; (S. C.) 11-636; (C. C. A.) 24-1631.
4 F. (2d) 457; 273 U. S. 52 (47 S. Ct. 255); 88 F. (2d) 1009.
Paramount Famous-Lasky Corp.[33] ..... (C. C. A.) 16-660.
57 F. (2d) 152.
Pearsall Butter Co., B. S.[34] ..... (C. C. A.) 6-605.
292 Fed. 720.
Petrie, John (B-X Laboratories and Purity Products Co.), U. S. *v.* (D. C.) 29-1643; 30-1727.

[28] For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.
[29] For interlocutory order, see "Memoranda," 28-1965 or 1938 S. & D. 485.
[30] For interlocutory order, see "Memoranda," 20-745 or S. & D. 724.
[31] For interlocutory order, see "Memoranda," 20-743 or S. & D. 717.
[32] For interlocutory order, see "Memoranda," 20-744 or S. & D. 720.
[33] For interlocutory order, see "Memoranda," 28-1967 or 1938 S. & D. 487.
[34] For interlocutory order, see "Memoranda," 20-743 or S. & D. 716.

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 Kaplan). (D. C.) 30–1690.
Pure Silk Hosiery Mills, Inc. (C. C. A.) 8–595.
3 F. (2d) 105.
Q. R. S. Music Co.[35] (C. C. A.) 10–683.
12 F. (2d) 730.
Quality Bakers of America et al. (C. C. A.) 31–1858.
114 F. (2d) 393.
Queen Anne Candy Co. et al. (C. C. A.) 22–1149; 31–1832.
84 F. (2d) 910.
Radio Wire Television, Inc. of New York et al. (C. C. A.) 31–1882.
Raladam Co.[36] (C. C. A.) 14–683; (S. C.) 15–598.
42 F. (2d) 430; 51 F. (2d) 587; 283 U. S. 643 (51S. 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.
Reed's Cut Rate Drug Store, etc. (Lenard Gotlieb et al). (D. C.) 31–1885.
Republic Iron & Steel Co. (D. C.) (S. C. of D. C.), footnote, 3–543.
Research Products Co. (Robert C. Oberlin) (D. C.) 29–1626.
Ritholz, Benjamin D. et al. (C. C. A.) 22–1145; (D. C. of D. C.) 27–1696; (C. A. of D. C.) 29–1569.
105 F. (2d) 937.
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.[37] (C. C. A.) 4–614; (S. C. of D. C.) 11–677, 701; (C. A. of D. C.) 12–740.
281 Fed. 744; 32 F. (2d) 966.
Royal Milling Co. et al.[38] (C. C. A.) 16–679; (S. C.) 17–664.
58 F. (2d) 581; 288 U. S. 212 (53 S. Ct. 335).

[35] For interlocutory order, see "Memoranda," 20–744 or S. & D. 719.

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

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

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

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

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

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.)[39] (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; 31-1826.
98 F. (2d) 676.
Sherry's Cut Rate Drug Co., Inc (D. C.) 31-1903.
Sherwin et al. *v.* U. S. (Lee, U. S. *v.*) (D. C.); (C. C. A.), footnote, 6-559.
290 Fed. 517; 297 Fed. 704 (affirmed, 268 U. S. 369); (45 S. Ct. 517).
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; (S. C.) 25-1715; (C. C. A.) 26-1524; (C. C. A.), 27-1680.
14 F. (2d) 974; 86 F. (2d) 692; 302 U. S. 112 (58 S. Ct. 113); 97 F. (2d) 513.
Standard Oil Co. of New Jersey et al (C. C. A.) 5-542, 6-587.
282 Fed. 81; 261 U. S. 463 (43 S. Ct. 450).
Standard Oil Co., of New York (C. C. A.) 3-622.
273 Fed. 478.
Startup Candy Co (C. C. A.) 28-1951.
102 F. (2d) 1015.
Sun Cut Rate Drug Store (Howard Deckelbaum) (D. C.) 31-1888.

[39] 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; (C. D.) 30–1692.
109 F. (2d) 516.
Thyrole Products Co. (I. Ralph Weinstock) (D. C.) 30–1722.
Toledo Pipe-Threading Machine Co.[40] (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. Leisenring et al.). (D. C.) 30–1701.
U. S. ex rel. Cubberley (S. C. of D. C.), footnote, 18–66
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.* McKewen et al. (D. C.) 31–1913.
U. S. *v* National Biscuit Co. (D. C.) 27–1697.
25 F. Supp. 329.
Utah–Idaho Sugar Co. (C. C. A.) 11–692.
22 F. (2d) 122.
Viscose Co. et al. (D. C.) "Memoranda," 28–1970.
Vivaudou, Inc., V. (C. C. A.) 15–631.
54 F. (2d) 273.
Walker's New River Mining Co. (C. C. A.) 21–1213.
79 F. (2d) 457.
Wallace, E. J.[41] (C. C. A.) 20–713.
75 F. (2d) 733.
Ward Baking Co. (C. C. A.) 2–550.
264 Fed. 330.
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.

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

Western Meat Co. ..... (C. C. A.) 8-589, 623; (S. C.) 11-629; (C. C. A.) 13-559.
1 F. (2d) 95; 4 F. (2d) 223; 272 U. S. 554 (47 S. Ct. 175); 33 F. (2d) 824.
Western Sugar Refinery Co. et al. ..... (C. C. A.) 4-557.
275 Fed. 725.
Wholesale Grocers' Assn. of El Paso et al. ..... (C. C. A.) 4-495.
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.[42] ..... (C. C. A.) 3-618; (S. C.) 4-610.
272 Fed. 957; 258 U. S. 483 (42 S. Ct. 184).
Winston Co., John C.[43] ..... (C. C. A.) 8-625.
3 F. (2d) 961.
Woolley, E. R. ..... (C. C. A.) 11-692.
22 F. (2d) 122.
Wrisley Co., Allen B., et al. ..... (C. C. A.) 31-1815.
113 F. (2d) 437.
Yardley of London, Inc. ..... (C. C. A.) 31-1869.
Zelle Co., The (Leland F. Benham) ..... (D. C.) 29-1631.
Ziegler Co., George ..... (C. C. A.) 24-1625.
90 F. (2d) 1007.

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

FEDERAL TRADE COMMISSION DECISIONS

FINDINGS AND ORDERS, JUNE 1, 1940, TO NOVEMBER 30, 1940

IN THE MATTER OF

FRANK E. GAIRING, TRADING AS GAIR MANUFACTURING COMPANY

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

Docket 3672. Complaint, Dec. 22, 1938—Decision, June 5, 1940

Where an individual engaged in sale and distribution of watches and other merchandise to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of other or similar articles in commerce among the various States and in said District; in soliciting the sale of and selling his said watches—

(*a*) Furnished various push cards or punch cards, together with plans for merchandising his products, which involved operation of games of chance, gift enterprises, or lottery schemes, and distribution to purchasing public of literature and instructions for operation of cards in distribution of his said watches and suggestions for use of said plan in selling such merchandise and allotting premiums and prizes to operators of such cards under scheme by which selection from list of feminine names displayed of name corresponding to that concealed under card's master seal entitled person making such selection to watch, and under which amount of money paid for chance was dependent upon number disclosed by punching disk below feminine name selected; and

Supplied thereby to and placed in the hands of others means of conducting lotteries through the sale of his merchandise by persons to whom he furnished such push cards and who made use thereof in selling and distributing merchandise in question in accordance with such sales plan, under which watches in question were sold and distributed to purchasing public wholly by lot or chance and amount which each customer was required to pay was similarly determined, contrary to an established public policy of the United States Government and in violation of criminal laws; and

(*b*) Represented and implied, through use of trade name employed by him and including word "Manufacturing," that he was the manufacturer of the product which he sold, facts being he was at no time manufacturer of products sold by him;

With tendency and capacity to mislead and deceive purchasers and prospective purchasers of his product into belief that he was the manufacturer

thereof and that by buying direct from the manufacturer middle man's profits would be saved, and with result that many competitors who are unwilling to employ in sale and distribution of watches and other merchandise any similar method or plan involving gift enterprise, game of chance, or lottery scheme and refrain therefrom and from representing themselves as the manufacturer of their product were placed at a disadvantage in competition with him, and purchasers of watches which he sold and distributed were deceived by an erroneous belief that he was the manufacturer thereof and were attracted by element of chance involved in the sale and distribution of such products by use of push cards furnished by him, and thereby induced to purchase his said products in preference to similar watches offered and sold by his competitors who do not furnish such push cards or similar devices for use in the sale of their products and from whom as a result thereof trade was unfairly diverted:

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. Clark Nichols 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 Frank E. Gairing, an individual, trading as Gair Manufacturing Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent Frank E. Gairing, is an individual doing business under the trade name and style of Gair Manufacturing Co., with his principal place of business located at 1446 Summerdale Avenue, Chicago, Ill. He is now and for some time last past has been engaged in the sale and distribution of watches and other 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 Chicago, Ill., to purchasers thereof located in the various States of the United States and in the District of Columbia. There is now, and has been for some time last past, a course of trade 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 competi-

tion with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent, in soliciting the sale of and in selling and distributing his merchandise in commerce, furnishes and has furnished various devices and plans of merchandising which involves the operation of games of chance, gift enterprises, or lottery schemes, by which said merchandise is distributed to the ultimate consumer thereof wholly by lot or chance. The method and sales plan adopted and used by respondent was and is substantially as follows:

Respondent distributes, and has distributed, to the purchasing public in commerce, certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said products, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to operators of said punch cards. One of respondent's push cards bears 32 girls' names. Beneath each name is a hidden number which shows the amount the persons selecting this particular name is to pay for participating in this opportunity. The hidden numbers range from 1 to 52, but the customers pay only 1 cent to 29 cents, according to the number shown under the name punched. For instance, if a customer punches 1, he pays 1 cent; if 21 is punched, he pays 21 cents; if 28 is punched, he pays 28 cents; but if 30, 31, or any number over 29 is punched, he only pays 29 cents.

The circulars distributed contain the following matter explaining the proposed plan for the sale of the watches, as follows:

HOW TO OBTAIN YOUR WRIST WATCH FREE OR BIG CASH COMMISSIONS

Rare indeed is the occasion that offers you the opportunity to secure such a valuable gift, absolutely without cost.

The enclosed sales card consists of 32 girls' names. Beneath each name is a hidden number which shows the amount the person selecting that particular name is to pay for participating in this opportunity.

These hidden numbers range from Number 1 to Number 52, but your customers pay only 1¢ to 29¢, according to the number shown under the name punched. For instance, if the customer punches 1 he pays 1¢. If 21 is punched, he donates 21¢. If 28 is punched, he donates 28¢, but if 30, 31, 32 or any number over 29 is punched, he only pays 29¢. Nothing Higher Than 29¢ * * * 29¢ is the maximum cost for any punch.

There are actually only 28 sales to make as Four of the numbers are Free. These free numbers make the sales cards a very attractive and fast-selling proposition, as you will find that most folks who are lucky enough to punch free numbers will always take more chances.

When all names have been punched and collections made, you then remove the large seal and disclose the winner. The person who punched the corresponding name is awarded choice on One Wrist Watch as shown and described herewith.

To compensate you for your efforts in disposing of the card, we award you, absolutely Free, your choice of one wrist watch as shown and described herewith.

When payment is received for all the numbers sold on the card, the amount collected will be $7.64. Keep 14¢ to cover your postage expense, and send us a Postal or Express Money Order for $7.50.

Upon receipt of your order with the $7.50 remittance, we will at once send you Two Wrist Watches, one of which you will deliver to the holder of the name under the large seal. The other watch is Yours.

Or if you would rather have cash instead of a Wrist Watch simply send us $4.25 and we will send you One Wrist Watch which is to be given to your customer entitled to it, and you can keep the balance of the money in payment for your efforts.

Isn't this an easy way to obtain one of these beautiful wrist watches? Or a nice big cash commission? Nothing hard about this . . . nothing complicated. You merely show the wrist watch or the illustration to your friends, neighbors, co-workers in the office or shop, etc., and explain to them how they may obtain one of these valuable wrist watches for the small sum of 1¢ to 29¢.

In order to secure the services of agents, and customers, the respondent inserts advertisements in publications having a circulation in the different States of the United States other than Illinois, and also in the District of Columbia, which advertisements read as follows:

GIVEN TO YOU

Let us tell you how to obtain one of these gorgeous, Guaranteed Wrist Watches absolutely FREE OF ALL COST * * * or How to Earn Some Money. Write today. A postal will do.

GAIR MANUFACTURING COMPANY

1916 Sunnyside Chicago, Ill.

Sales of respondent's product by means of said push cards are made in accordance with the above described plan or instructions, and its business is aided by the use of the above advertising. The fact as to whether the customer pays nothing or a sum of money ranging from 1 cent to 29 cents for an article of merchandise, and the fact as to whether the customer or purchaser receives nothing or an article of merchandise, and the fact as to which article of merchandise the purchaser is to receive, are determined wholly by lot or chance.

Respondent furnishes, and has furnished, various types of push cards accompanied by said order blanks, instructions and other printed matter, for use in the sale and distribution of his merchan-

dise by means of a game of chance, gift enterprise, or lottery scheme. All of said push cards are similar to the push cards hereinabove described and vary 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 a means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said methods in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and which is 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 secure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent as above alleged, are unwilling to adopt and use said methods or any methods 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 methods employed by respondent in the sale or distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to the respondent from his said competitors not using the same or equivalent method.

PAR. 5. The literature and printed matter used by the respondent in connection with the sale of his products in commerce, features the trade name "Gair Manufacturing Co." By the use of said name the respondent represents and implies that he is the manufacturer of the products sold by him.

PAR. 6. The respondent during all the time above mentioned and referred to was not a manufacturer of the products he offered for sale, and the statements and representations above mentioned, that he was a manufacturer of the products he offered for sale, had the capacity and tendency to deceive and mislead dealers and members of the public who purchased his products for use or consump-

tion into the belief that the respondent was the manufacturer of the articles and products offered for sale by him, and that when purchasing respondent's articles and products from respondent they obtained a direct from the factory price and saved a middleman's profit; and in reliance upon such belief in the purchasing of respondent's articles and products, in place of articles and products sold by respondent's competitors, the dealers and members of the purchasing public were deceived and misled thereby into purchasing respondent's articles and products in preference to and in place of articles and products sold by respondent's competitors and trade in said articles and products was thereby diverted from respondent's competitors to respondent.

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 creditors 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 22d day of December A. D. 1938, issued and thereafter served its complaint on respondent Frank E. Gairing, trading as "Gair Manufacturing 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. Respondent filed no answer to the complaint. Thereafter, hearings were held and testimony and other evidence introduced before Miles J. Furnas, a duly appointed trial examiner of the Commission. The proceedings thereafter came on for final hearing before the Commission on the complaint, the testimony and other evidence adduced at the hearings, and brief of attorney for the Commission. 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, Frank E. Gairing, is an individual trading under the name Gair Manufacturing Co., with his principal place of business located at Chicago, Ill. Respondent is now, and for more than 3 years last past has been, engaged in the sale and distribution of watches and other merchandise. Respondent causes

his products, when sold, to be transported from his 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 for more than 3 years last past has maintained, a course of trade in his products in commerce among and between the various States of the United States and in the District of Columbia.

In the course and conduct of his business the respondent is in substantial competition with other individuals and with partnerships and corporations engaged in the sale and distribution of similar articles of merchandise in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent, in the course of his business as described in paragraph 1 hereof, in soliciting the sale of and selling his watches, has furnished various devices described as "push cards" or "punch cards," together with plans for merchandising his product, which involve the operation of games of chance, gift enterprises, or lottery schemes, by which said watches were to be distributed to the consuming public wholly by lot or chance. The usual method or plan adopted by said respondent was to distribute to the purchasing public, literature and instructions for the operation of said cards in the distribution of his products, and suggestions for using said plan in selling merchandise and allotting premiums or prizes to operators of said push cards. Respondent's push cards contain 32 small, partially perforated disks, over each of which is printed a feminine name; concealed within each disk is a number which is not disclosed until the disk is punched or separated from the card, and which determines the amount of money to be paid by the person punching the disk below the feminine name selected. To illustrate: If the figure disclosed is No. 1, only 1 cent is to be paid for the punch; if it is 21, then 21 cents must be paid, and so on; but under no circumstance is more than 29 cents to be paid for a punch. There is also a master seal on the face of the card, which conceals one of the feminine names printed above said disks, and which is not to be broken or removed until all the disks have been punched. The purchaser who has punched the disk under the name which appears also under the master seal when broken, receives a watch which is offered as a prize. On the reverse of the card is a list of the feminine names appearing above the disks on the face of the card, with a line opposite each feminine name for recording the name of the customer who had punched the disk indicated.

The Commission finds that said watches were sold and distributed to the purchasing public wholly by lot or chance, and that the

amount which each customer was required to pay was determined wholly by lot or chance.

PAR. 3. The Commission finds that the persons to whom the respondent furnishes his push cards use such cards in selling and distributing respondent's merchandise in accordance with such sales plan. Respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of his merchandise. The Commission further finds that the use by the respondent of such methods in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The Commission finds that the use of the name "Gair Manufacturing Co." by said respondent in the conduct of his said business, represented and implied that respondent was the manufacturer of the products sold by him, and the Commission finds that respondent was not the manufacturer of the products offered for sale and sold by him, during any of the times herein mentioned and referred to; that the representation made and conveyed by use of the name Gair Manufacturing Co. had the capacity and tendency to mislead and deceive purchasers and prospective purchasers of respondent's products into the belief that respondent was the manufacturer of the products offered for sale and sold by him, and that by buying direct from the manufacturer, the middleman's profit would be saved,

PAR. 5. There are among the competitors of respondent many who are unwilling to employ in the sale and distribution of watches, or other merchandise, any similar method or plan which involves a gift enterprise, game of chance, or lottery scheme, and who refrain from such practice, and from representing themselves as the manufacturers of their products, when they are not such in fact, and as a result they are placed at a disadvantage in competition with respondent. Purchasers of watches sold and distributed by the respondent were and are deceived by the erroneous belief that respondent is the manufacturer of his said products, and were attracted by the element of chance involved in the sale and distribution of said watches by the use of the push cards furnished by respondent, and thereby induced to purchase said watches sold by respondent in preference to similar watches offered for sale and sold by respondent's competitors who do not furnish such push cards or similar devices for use in the sale of their products, and as a result trade has been unfairly diverted to 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 heard by the Federal Trade Commission upon the complaint of the Commission (the respondent having elected to file no answer), and testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, a brief filed by Clark Nichols, counsel for the Commission (no brief having been filed by respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Frank E. Gairing, individually and trading as Gair Manufacturing Co., 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 watches and 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 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, or any other merchandise, to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Mailing, shipping or transporting to agents or to distributors, or to members of the public punchboards, push or pull cards, or other lottery devices, which said punchboards, push or pull cards, or other lottery devices are so prepared or printed that said devices are to be used, or may be used, in selling or distributing said merchandise or any other merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

4. Using the word "manufacturing," or any other word of similar import or meaning in his trade name, or representing through any

other means or device, or in any manner, that the products sold and distributed by respondent are made or manufactured by him, unless and until the respondent actually owns and operates or directly and absolutely controls a manufacturing plant or factory wherein said products are manufactured by him.

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

IN THE MATTER OF

MEYER R. EISENBROCK, TRADING AS MARHAR 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 3773. Complaint, Apr. 26, 1939—Decision, June 5, 1940

Where an individual engaged in sale and distribution of blankets, bedspreads and other articles of merchandise to churches, fraternal organizations, clubs, and other purchasers, in other States, for resale and distribution to the purchasing public in competition with others engaged in the sale and distribution of like or similar articles of merchandise in commerce among the various States and in the District of Columbia—

Sold his aforesaid products to purchasers as above set forth along with sales plan or method for resale thereof to purchasing public through use of a game of chance, gift enterprise, or lottery scheme in such sale and distribution of such purchases, and under which various club plans, as advertised by him, along with his said goods, through printed cards, circulars, samples, and by personal solicitation, members of particular club, as determined by weekly drawings, were singly relieved or failed to be relieved of further weekly dues undertaken, in accordance with chance selection in such weekly drawings of money or number of particular member; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with such sales plan under which amount paid by ultimate purchaser for article was determined wholly by lot or chance, and involving game of chance, or sale of a chance to procure an article 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 any method involving game of chance or sale of a chance to win something by chance or any other method or sales plan contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of merchandise and element of chance therein, and were thereby induced to buy and sell his said products in preference to those offered and sold by said 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 diverting unfairly trade to him from his competitors aforesaid who do not use same or equivalent method; 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. Randolph Preston*, trial examiner.

Mr. L. P. Allen, Jr., for the Commission.

Mr. Leonard J. Schwartz, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Meyer R. Eisenbrock, individually and trading as Marhar Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Meyer R. Eisenbrock is an individual trading as Marhar Sales Co., with his principal office and place of business located at 1322 West Girard Avenue, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the sale and distribution of blankets, bedspreads, and other articles of merchandise to churches, fraternal organizations, clubs, and others for resale and distribution to the purchasing public. Respondent causes and has caused said merchandise, when sold, to be transported from his said place of business in Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his 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 has sold his said merchandise to said purchasers, along with a sales plan or method by which the said merchandise is to be, and is, resold to the purchasing public. Said plan or method involves the use of a game of chance, gift enterprise, or lottery scheme in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised his said merchandise and his said sales plan or method by means of printed cards, circulars, samples of said merchandise, and by personal solicitation. The sales plan or method as suggested and advertised by respondent is substantially as follows:

The sales plan or method is described as the "Club Plan." Each club has a fixed number of members, usually either 30, 50, 60, 80, 100

or 125. Each member of a club pays a fixed amount each week, usually 25 cents, for a period not to exceed a given number of weeks, usually 22 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives one of the articles of merchandise being distributed, for the payment of one week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed and thus one member receives an article of merchandise being distributed for the payment of 1 week's dues, another for 2 weeks' dues, another for 3 weeks' dues, and so on to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the face value of such merchandise. Thus, the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

Respondent furnishes and has furnished various "Club Plans" 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 "Club Plans" is the same at that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent sells his said articles of merchandise expose for sale and sell the same to the purchasing public 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 hereinabove set forth. The use by repondent of said method in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States, and is 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 and distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance, or the sale of a chance to win something by a chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise, and the element of chance involved therein, and are thereby

induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to the respondent from his said competitors who do not use the same or an equivalent method. As a result 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. 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 April 26, 1939, issued, and on April 27, 1939, served its complaint in this proceeding upon respondent Meyer R. Eisenbrock, an individual trading as Marhar 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. 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 Meyer R. Eisenbrock, otherwise known as Meyer Eisenbrock, is an individual trading as Marhar Sales Co., with his principal office and place of business located at 1322 West Girard Avenue, Philadelphia, Pa. Respondent was for more than

1 year prior to December 1937, engaged in the sale and distribution of blankets, bedspreads, and other articles of merchandise to churches, fraternal organizations, clubs, and others for resale and distribution to the purchasing public. Respondent caused said merchandise, when sold, to be transported from his place of business in Pennsylvania to purchasers thereof located in the various other States of the United States and in the District of Columbia, at their respective points of location. There was for more than 1 year prior to December 1937, 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 said business, respondent was 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 sold his said merchandise to said purchasers, along with a sales plan or method by which the said merchandise was resold to the purchasing public. Said plan or method involved the use of a game of chance, gift enterprise or lottery scheme in the sale and distribution of said merchandise to the ultimate purchasers thereof. Respondent has advertised his said merchandise and his said sales plan or method by means of printed cards, circulars, samples of said merchandise, and by personal solicitation. The sales plan or method as suggested and advertised by respondent was substantially as follows:

The sales plan or method is described as the "Club Plan." Each club has a fixed number of members, usually either 30, 50, 60, 80, 100, or 125. Each member of a club pays a fixed amount each week, usually 25 cents, for a period not to exceed a given number of weeks, usually 22 weeks. At the end of the first week a drawing is held and the member whose name or number is drawn receives one of the articles of merchandise being distributed, for the payment of 1 week's dues, and such winner or member then is dropped from the club. Each succeeding week the same procedure is followed and thus one member receives an article of merchandise being distributed for the payment of 1 week's dues, another for 2 weeks' dues, another for 3 weeks' dues, and so on to the end of the fixed period. At that time all remaining members receive one of the articles of merchandise, but such members have paid the face value of such merchandise. Thus, the amount which an ultimate purchaser pays for an article of merchandise is determined wholly by lot or chance.

Respondent furnished various "Club Plans" 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 "Club Plans" was the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent sold his said articles of merchandise exposed for sale and sold the same to the purchasing public in accordance with the aforesaid sales plan or method. While respondent did not directly participate in such resale, or in the profits therefrom, he 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 plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States; and is 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 and distribute merchanadise in competition with the respondent, are unwilling to adopt and use said method or any method involving a game of chance, or the sale of a chance to win something by chance or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons were 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 were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, had a tendency and capacity to and did unfairly divert trade to the respondent from his said competitors who do not use the same or an equivalent method. As a result thereof 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.

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, Meyer R. Eisenbrock, otherwise known as Meyer Eisenbrock, individually and trading as Marhar 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, bedspreads, 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 any merchandise, together with a sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme by which said merchandise is to be, or may be, sold to the purchasing public.

2. Selling, or otherwise disposing of, any merchandise by the use 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

BELMONT SALES COMPANY, ROBERT C. BUNDY, INDIVIDUALLY AND TRADING AS JACKSON SALES COMPANY AND AS AN OFFICER OF BELMONT SALES COMPANY; AND MILDRED BUNDY, INDIVIDUALLY AND AS AN OFFICER OF BELMONT 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 3422. Complaint, May 13, 1938—Decision, June 6, 1940

Where an individual engaged in offer and sale of bedspreads, blankets, silverware, and other various articles to purchasers in various States of the United States—

Furnished various devices and plans of merchandising, which involved operation of games of chance, gift enterprises, or lottery schemes through which his merchandise was distributed to ultimate consumer by lot or chance wholly, and included distribution to purchasing public of certain advertising literature embracing push cards, order blanks, depictions of merchandise and explanation of his plan or method of selling same and alloting it as premiums or prizes to operators of said push cards under plan, among others, in accordance with which person securing by chance certain numbers as disclosed through separation of card's discs received specified articles, and person selecting from list of girls' names displayed on card name corresponding to that concealed under card's master seal received article, and under which amount paid for chance was dependent upon numbers selected as disclosed under card's tabs, and value of various articles was greater than cost of any single number and under which person selecting name or numbers other than those above indicated received nothing for his money, and made use of various other assortments, along with push cards for sale and distribution thereof by means of a game of chance, gift enterprise, or lottery scheme, similar in principle of operation 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 his merchandise in accordance with aforesaid sales plan or method by persons to whom he furnished said devices and who used same in selling and distributing his said products in accordance with such plans or methods, involving a game of chance or sale of a chance to procure articles without cost or 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 statutes, and in competition with many who were and are unwilling to adopt and use said or any method involving element of chance or sale of a chance to win something by chance or any other method contrary to public policy, and have refrained therefrom;

With result that many persons were attracted by his said method or sales plans and by element of chance involved in sale and distribution of his said merchandise as above described, and were thereby induced to buy and sell

his products in preference to those offered and sold by his said competitors who do not use such or equivalent methods, and with effect, through use of said methods and because of said game of chance, of unfairly diverting trade and custom to him from his said competitors who are unwilling to and do not use same or equivalent methods as unlawful; 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. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel for the Commission.

Nash & Donnelly, of Chicago, Ill., for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Belmont Sales Co., a corporation, and Robert C. Bundy, individually and trading as Jackson Sales Co. and as an officer of Belmont Sales Co., and Mildred Bundy, individually and as an officer of Belmont 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 issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent Belmont Sales 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 53 West Jackson Boulevard, Chicago, Ill. Respondents Robert C. Bundy, and Mildred Bundy are president and secretary respectively, of the corporate respondent. Robert C. Bundy is also individually trading under the name of Jackson Sales Co. All of said respondents have their principal offices at the same address as said respondent corporation. Respondents also operate a shipping department at 422 South Dearborn Street, in said city and State. The individual respondents direct and control the sales policies and business activities of the corporate respondent, and all of said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been engaged in offering for sale, and selling bedspreads, blankets, silverware, cosmetics, quilts, toilet sets, shirts, princess slips, clocks, roller skates, manicure sets, pocketbooks, and other articles of novelty merchandise, to purchasers thereof located in the various States of the United States and in the District of Columbia. Respondents cause and have caused said merchandise, when sold, to be

shipped or transported from their said places 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 in such merchandise so sold and distributed 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 business, respondents are in competition with other corporations and individuals, and with partnerships engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents in soliciting the sale of and in selling and distributing their merchandise, 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 distributed to the ultimate consumers thereof wholly by lot or chance. The method and sales plan adopted and used by respondents were and are substantially as follows: Respondents cause and have caused to be distributed to the purchasing public, in commerce as herein described, certain advertising literature, including, among other things, push cards, order blanks, advertisements containing illustrations of merchandise, catalogs, and circulars explaining respondents' plan of selling such merchandise and of alloting it as premiums or prizes to operators of the push cards.

One of said push cards has a number of partially perforated discs, and when a push is made and the disk removed from the card a number is disclosed. There are as many separate numbers as there are disks on the card, but the numbers are varied or assorted and are not arranged in numerical sequence. The numbers printed within said disks are effectively concealed from the purchasers and prospective purchasers until a selection has been made and the disk separated from the card. The price varies, depending upon the number obtained. For numbers from 1 to 29 the purchaser pays the amount of the number in cents, and for all numbers over 29 the purchaser pays 29 cents, with the exception of numbers 1, 16 and 44, which said numbers are received without cost by the persons selecting the same. Directly below each disk there is printed a girl's name, and the card has a space prepared for recording the name of each purchaser of a push from the card opposite the corresponding girl's name. The card also has a master seal which, when removed, exposes a girl's name corresponding to one of the names appearing directly

below said disks. The persons selecting numbers 1, 16, and 44 are entitled to and receive, without cost, specified articles of merchandise, and the purchaser selecting the name corresponding to the name under the master seal is entitled to and receives an article of merchandise. The name under the master seal is effectively concealed from purchasers and prospective purchasers until after all of said numbers have been pushed and the master seal removed from the card. Persons selecting names other than the name appearing under the master seal or numbers other than numbers 1, 16, and 44 receive nothing for their money other than the privilege of pushing a number from said card. Each of said articles of merchandise is of greater value than the cost of any single push from said card.

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, or whether a person shall receive an article of merchandise without cost, is thus determined wholly by lot or chance.

Respondents sell and distribute various assortments of merchandise, and furnish various push cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish said devices use same in purchasing, selling, and distributing respondents' merchandise in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their 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 the established public policy of the Government of the United States, and which is in violation of criminal statutes.

PAR. 4. The sale or distribution of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise without cost or at a price much less than the normal retail price thereof. Many persons, firms, and corporations who make or sell merchandise in competition with respondents as above alleged, are unwilling to adopt and use said method, or any method involving the element of chance, or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and said competitors refrain

therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale and distribution of said merchandise in the manner above alleged, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has the tendency and capacity to and does unfairly divert trade and custom to respondents from their said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 13th day of May 1938, issued and thereafter served its complaint on the respondents, Belmont Sales Co., a corporation; Robert C. Bundy, individually and trading as Jackson Sales Company, and as an officer of Belmont Sales Co., and on Mildred Bundy, individually and as an officer of Belmont Sales 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 having filed no answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel, attorney for the Commission, before Miles J. Furnas, a trial examiner of the Commission theretofore duly designated by it, which testimony and other evidence were duly recorded and filed in the office of the Commission. No testimony was introduced on behalf of said respondents other than a letter from the Secretary of State of the State of Illinois, dated December 6, 1938, in which letter it is stated that said corporate respondent filed articles of dissolution on January 4, 1938.

Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the testimony and other

evidence, and brief in support of the complaint. No brief was filed by or on behalf of respondents, and oral argument was waived by counsel for respondents. 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, Belmont Sales Co., was a corporation, organized and doing business under the laws of the State of Illinois, with its principal office and place of business located at 53 West Jackson Boulevard, in the city of Chicago, State of Illinois, but was dissolved on January 6, 1938, and had ceased doing business some time prior thereto. Respondents Robert C. Bundy and Mildred Bundy were, respectively, president and secretary of said corporate respondent. Respondent Robert C. Bundy was also individually trading under the name Jackson Sales Co. All of said respondents had their principal office at the same address as said respondent corporation.

There is not sufficient evidence in the record to support the allegations of the complaint against respondent Mildred Bundy, individually and as an officer of the corporate respondent, or Robert C. Bundy as an officer of said corporation. In view thereof, the findings as to the facts hereinafter will refer only to the acts and practices of Robert C. Bundy individually and trading as Jackson Sales Co.

PAR. 2. Respondent Robert C. Bundy, for more than 1 year last past, has been engaged in offering for sale and selling bedspreads, blankets, silverware, cosmetics, quilts, toilet sets, shirts, princess slips, clocks, roller skates, manicure sets, pocketbooks, and other articles of novelty merchandise to purchasers thereof located in various States of the United States. Respondent has caused said merchandise, when sold, to be shipped or transported from his said place of business in the State of Illinois to purchasers thereof at their respective points of location in various other States of the United States. There has been, for more than 1 year last past, a course of trade in said merchandise by respondent in commerce between and among various States of the United States and in the District of Columbia. In the course and conduct of his business respondent was and is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondent Robert C. Bundy, in the course and conduct of his business, furnishes and has furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprise, or lottery schemes, by which said merchandise was and is distributed to the ultimate consumer thereof wholly by lot or chance. Respondent causes and has caused to be distributed to the purchasing public, as aforesaid, certain advertising literature, including among other things push cards, order blanks, advertisements containing illustrations of said merchandise and explaining respondent's plans or methods of selling such merchandise and of allotting premiums or prizes to the operators of said push cards. One of said push cards had a number of partially perforated disks, and when a purchase was made, one of said disks was separated or removed from the card and a number was disclosed. There were as many separate numbers as there were disks on the card, but the numbers were varied or assorted and were not arranged in numerical sequence. The numbers printed in said disks were effectively concealed from purchasers and prospective purchasers until a selection was made and the disk separated from the card. The prices varied, depending on the number revealed when the disk had been punched. For the number 1 to 29 the purchaser paid the amount of the number in cents, and for all numbers over 29 the purchaser paid 29 cents, with the exception of numbers 1, 16, and 44, which said numbers were received without cost by the persons who selected the same. Directly below each disk was printed a girl's name, and the card had a space prepared for recording the name of each purchaser opposite the corresponding girl's name. Said push card also had a master seal which, when removed, disclosed a girl's name corresponding to one of the names that appeared directly below said disks. The persons selecting numbers 1, 16, and 44 were entitled to and did receive without cost specified articles of merchandise, and the person who selected the name which corresponded to the name of the master seal was entitled to and did receive an article of merchandise. The name under the master seal was effectively concealed from purchasers and prospective purchasers until after all of said numbers had been pushed and the master seal removed from the card. Persons who selected names other than the name which appeared under the master seal and numbers other than 1, 16, and 44 received nothing for their money. Each of said articles of merchandise was of greater value than the cost of any single number pushed from said card. The facts as to whether a purchaser received an article of merchandise or nothing for the amount of money paid; which of said articles of

merchandise the purchaser did receive, if any; and whether a person received an article of merchandise without cost, were thus determined wholly by lot or chance.

Said respondent sold and distributed various assortments of merchandise and furnished various push cards for use in the sale and distribution of merchandise by means of a game of chance, gift enterprise, or lottery scheme. All of said cards were and are operated on the same principle as the one hereinabove described, varying only in detail.

PAR. 4. The persons to whom respondent has furnished or supplied said devices have 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 set forth. The use by the respondent of said methods in the sale of his merchandise and the sale of such merchandise by and through the use thereof, and by the aid of said methods, is a practice of the sort which is contrary to an established public policy of the Government of the United States and is in violation of criminal statutes.

PAR. 5. The sale or distribution of merchandise to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure articles of merchandise without cost, or at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute and have sold and distributed merchandise in competition with respondent, as above described, were and are unwilling to adopt and use said methods or any method involving the element of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and said competitors have refrained therefrom. Many persons were attracted by respondent's said methods or sales plans and by the element of chance involved in the sale and distribution of said merchandise in the manner above described, and were thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent, because of said game of chance has the tendency and capacity to, and does, unfairly divert trade and custom to said respondent from said competitors who are unwilling to, and who do not, use the same or equivalent methods, because the same are unlawful. As a result thereof, substantial injury has been and is being done by respondent to competition in commerce between and among 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 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 (respondents not having filed an answer thereto), testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondents having offered no testimony or other evidence in opposition to the allegations of the complaint), brief of counsel for the Commission filed herein (respondents having filed no brief) and oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that respondent Robert C. Bundy, individually and trading as Jackson Sales Co., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Robert C. Bundy, individually and trading as Jackson 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 bedspreads, blankets, silverware, cosmetics, quilts, toilet sets, shirts, princess slips, clocks, roller skates, manicure sets, pocketbooks, 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, which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling and distributing said articles of merchandise or any other merchandise to the general public by means of a game of chance, gift enterprise, or lottery scheme.

2. Mailing, shipping or transporting to his agents or distributors, or to members of the public, push or pull cards, punchboards or other lottery devices so prepared and printed that sales of said merchandise or any other merchandise are to be made or may be made by the use thereof to the general public.

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.

It is further ordered, That the case growing out of the complaint herein insofar as it relates to Belmont Sales Co., corporate respondent, and Mildred Bundy, individually and as an officer of said corporate respondent be, and the same hereby is, closed without prejudice because said corporate respondent has been dissolved and the evidence is not sufficient to sustain the allegations of the complaint relating to respondent Mildred Bundy.

IN THE MATTER OF

HERB JUICE-PHENOL COMPANY, INC., TRADING AS POW-O-LIN LABORATORIES

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

Docket 4067. Complaint, Mar. 20, 1940—Decision, June 6, 1940

Where a corporation engaged in sale and distribution of its "Pow-O-Lin" medicinal preparation, for treatment of certain ailments, to purchasers in various other States and in the District of Columbia; in advertisements of its said product, which it disseminated and caused to be disseminated, through the mails and by various other means in commerce and otherwise, and including advertisements in newspapers and periodicals and radio continuities, and circulars, leaflets, pamphlets, and other advertising literature in which were reproduced, among other things, testimonials or purported testimonials—

Represented directly and indirectly that "constipation and faulty elimination" are characterized by, and associated with, following among other symptoms, namely, biliousness, indigestion, gas pains, headaches, dizziness, pains in back and chest, stiffness of the joints, swollen feet and ankles, nervousness, insomnia, loss of appetite and lack of energy, and that said preparation possessed beneficial therapeutic properties with respect to curing or remedying and competently treating constipation and "faulty elimination," and with respect to removing or overcoming symptoms hereinabove set forth, by reason of its use serving to eliminate tendency toward constipation;

Facts being its said product possessed no therapeutic properties in excess of those of a cathartic or laxative, and served no purpose other than to assist in the temporary evacuation of the intestinal tract, symptoms set out are not generally or usually characteristic or typical of any particular type or group of disorders and are not necessarily due to, and do not generally persist because of, constipation or "faulty elimination," use of said preparation would not serve as a remedy or cure for or eliminate or in any way affect any tendency to constipation, had no beneficial value in overcoming or removing specific symptoms set forth or in treating such symptoms other than to extent such symptoms might be temporarily relieved by evacuation of intestinal tract when due to, or persisting because of, constipation, and in those cases in which said symptoms are due to causes other than constipation, preparation in question would be of no value in treatment thereof;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false advertisements were true and with result, as consequence of such belief thus engendered, that substantial portion of purchasing public had been and were induced to buy its said 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.

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 Herb Juice-Penol Co., Inc., a corporation, doing business under the trade name of Pow-O-Lin Laboratories, 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 Herb Juice-Penol Co., Inc., doing business under the trade name of Pow-O-Lin Laboratories, is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business located in the city of Danville, State of Virginia.

Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a certain medicinal preparation designated "Pow-O-Lin," recommended as a treatment for certain ailments of the human body.

Respondent causes said medicinal preparation, when sold, to be transported from respondent's place of business in the State of Virginia to the purchasers thereof located in the 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 between and among the various States of the United States and in the District of Columbia.

Par. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said preparation, by United States mails and by various 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 preparation; and respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be

disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

No one can deny the fact that this marvelous vegetable preparation (Pow-O-Lin) is all that is claimed for it—that it will relieve bilious attacks, indigestion, stomach gas pains, headaches, dizzy spells and a tired let-down miserable condition brought on by constipation.

All Richmond heralds Pow-O-Lin as a blessing to suffering humanity—by the hundreds, people who have never been relieved by any medicine or treatment are finding Pow-O-Lin a boon, a reliable and trustworthy remedy for ills due to faulty elimination and the temporary clogging of the intestinal tract.

If you'll try this splendid medicine so many of your neighbors recommend, you'll find it the most pleasant, prompt and efficient medicine you ever used for the relief of faulty elimination and resulting ills!

For about a year I hardly knew a well day, suffered continually with headaches, pains in back and chest, was very pervious, feet and ankles often badly swollen and I was always nervous, due to faulty elimination. Some time ago I went all to pieces and was hardly able to be up. * * * Pow-O-Lin * * * has simply done wonders for me. I have a wonderful appetite, food agrees with me. No more gas pains or headaches, bowels act regular. I rest well at night and I am relieved of the trouble with my feet and ankles swelling.

If your days and nights are miserable,—you can't eat,—your food sours and ferments causing gas,—you can't sleep,—you get up in the morning feeling as though you have had no rest at all,—this condition is very often brought on by nerve pressure on the walls of the intestines, because of improper elimination,—Pow-O-Lin must bring relief * * *.

* * * They allow a temporarily clogged intestinal tract to bring on agonizing, miserable sufferings and discomforts such as indigestion, gas pains, dull, throbbing headaches, nervousness, biliousness and dizzy spells. * * * This pleasant-tasting vegetable medicine (Pow-O-Lin), extracted from roots and herbs, absolutely must bring the relief you need. * * *.

Are you the same person you were six months or a year ago, or has biliousness, nervousness, stiffness of the joints, made a different person of you? Are you tired and let down even though you have just gotten out of bed? Do you feel like working or do you have to use all your energy just to get out of bed * * *. If that is the way you feel then why don't you try Pow-O-Lin?

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 and therapeutic properties of its preparation, the respondent has represented and does now represent, directly, and indirectly, that constipation and "faulty elimination" are characterized by and associated with the following, among other, symptoms: biliousness, indigestion, gas pains, headaches, dizziness, pains in the back and chest, stiffness of the joints, swollen feet and ankles, nervousness, insomnia, loss of appetite, and lack of energy; and that said preparation possesses beneficial therapeutic properties with respect to curing or remedying and compe-

tently treating constipation and "faulty elimination" and with respect to removing or overcoming the symptoms hereinabove set forth by reason of its use serving to eliminate tendency toward constipation.

PAR. 4. The aforesaid representations are grossly exaggerated, false, and misleading. In fact, respondent's preparation possesses no therapeutic properties in excess of those of a cathartic or laxative and serves no purpose other than to assist in the temporary evacuation of the intestinal tract. The symptoms set out in paragraph 3 are not generally or usually characteristic or typical of any particular type or group of disorders and such symptoms are not necessarily due to, and do not generally persist because of, constipation or "faulty elimination." The use of said preparation will not serve as a remedy or cure for or eliminate or in any way affect any tendency to constipation. It has no beneficial value in overcoming or removing the specific symptoms herein set forth or in treating such symptoms other than to the extent such symptoms may be temporarily relieved by the evacuation of the intestinal tract when they are due to, or persist because of, constipation, when such symptoms are due to causes other than constipation, said preparation will be of no value in the treatment thereof.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading advertisements with respect to its 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 false advertisements are true. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public, have been and are induced 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 the 20th day of March 1940, issued and thereafter served its complaint in this proceeding upon respondent, Herb Juice-Penol Co., Inc., a corporation, trading as Pow-O-Lin Laboratories, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 23, 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 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 Herb Juice-Penol Co., Inc., doing business under the trade name of Pow-O-Lin Laboratories, is a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of Virginia, with its principal office and place of business located in the city of Danville, State of Virginia.

Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a certain medicinal preparation designated "Pow-O-Lin," recommended as a treatment for certain ailments of the human body.

Respondent causes said medicinal preparation, when sold, to be transported from respondent's place of business in the State of Virginia to the purchasers thereof located in the 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 between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, the respondent has disseminated and is now disseminating and has caused and is now causing the dissemination of false advertisements concerning its said preparation, by the United States mails and by various 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 preparation; and respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and

periodicals, by radio continuities and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

No one can deny the fact that this marvelous vegetable preparation (Pow-O-Lin) is all that is claimed for it—that it will relieve bilious attacks, indigestion, stomach gas pains, headaches, dizzy spells and a tired let-down miserable condition brought on by constipation.

All Richmond heralds Pow-O-Lin as a blessing to suffering humanity—by the hundreds, people who have never been relieved by any medicine or treatment are finding Pow-O-Lin a boon, a reliable and trustworthy remedy for ills due to faulty elimination and the temporary clogging of the intestinal tract.

If you'll try this splendid medicine so many of your neighbors recommend, you'll find it the most pleasant, prompt and efficient medicine you ever used for the relief of faulty elimination and resulting ills!

For about a year I hardly knew a well day, suffered continually with headaches, pains in back and chest, was very nervous, feet and ankles often badly swollen and I was always nervous, due to faulty elimination. Some time ago I went all to pieces and was hardly able to be up. * * * Pow-O-Lin * * * has simply done wonders for me. I have a wonderful appetite, food agrees with me. No more gas pains or headaches, bowels act regular. I rest well at night and I am relieved of the trouble with my feet and ankles swelling.

If your days and nights are miserable—you can't eat,— your food sours and ferments causing gas,—you can't sleep,—you get up in the morning feeling as though you have had no rest at all,—this condition is very often brought on by nerve pressure on the walls of the intestines, because of improper elimination,—Pow-O-Lin must bring relief * * *.

* * * They allow a temporarily clogged intestinal tract to bring on agonizing, miserable sufferings and discomforts such as indigestion, gas pains, dull, throbbing headaches, nervousness, biliousness and dizzy spells. * * * This pleasant-tasting vegetable medicine (Pow-O-Lin), extracted from roots and herbs, absolutely must bring the relief you need * * *.

Are you the same person you were six months or a year ago, or has biliousness, nervousness, stiffness of the joints, made a different person of you? Are you tired and let down even though you have just gotten out of bed? Do you feel like working or do you have to use all your energy just to get out of bed * * *. If that is the way you feel then why don't you try Pow-O-Lin!

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, and therapeutic properties of its preparation, the respondent has represented and does now represent, directly and indirectly, that constipation and "faulty elimination" are characterized by and associated with the following, among other, symptoms; biliousness, indigestion, gas pains, headaches, dizziness, pains in the back and chest, stiffness of the joints, swollen feet and ankles, nervousness, insomnia, loss of appetite and lack of energy; and that said preparation possesses beneficial therapeutic properties with respect to curing or remedying and com-

petently treating constipation and "faulty elimination" and with respect to removing or overcoming the symptoms hereinabove set forth by reason of its use serving to eliminate tendency toward constipation.

PAR. 4. The aforesaid representations are grossly exaggerated, false, and misleading. In fact, respondent's preparation possesses no therapeutic properties in excess of those of a cathartic or laxative and serves no purpose other than to assist in the temporary evacuation of the intestinal tract. The symptoms set out in paragraph 3 are not generally or usually characteristic or typical of any particular type or group of disorders and such symptoms are not necessarily due to, and do not generally persist because of, constipation or "faulty elimination." The use of said preparation will not serve as a remedy or cure for or eliminate or in any way affect any tendency to constipation. It has no beneficial value in overcoming or removing the specific symptoms herein set forth or in treating such symptoms other than to the extent such symptoms may be temporarily relieved by the evacuation of the intestinal tract when they are due to, or persist because of, constipation. When such symptoms are due to causes other than constipation, said preparation will be of no value in the treatment thereof.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading advertisements with respect to its 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 false advertisements are true. As a result of such erroneous and mistaken belief, engendered as herein set forth, a substantial portion of the purchasing public, have been and are induced 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 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 Herb Juice-Penol Co., Inc., a corporation, trading as Pow-O-Lin Laboratories, or trading under any other name or names, 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 preparation now designated by the name "Pow-O-Lin" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under the same name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said medicinal preparation, which advertisements represent directly or by implication:

1. That respondent's preparation is a cure or remedy for biliousness, indigestion, gas pains, headaches, dizziness, pains in the back or chest, stiffness of the joints, swollen feet or ankles, nervousness, insomnia, loss of appetite, or lack of energy.

2. That respondent's preparation is a competent or effective treatment for such symptoms as biliousness, indigestion, gas pains, headaches, dizziness, pains in the back or chest, stiffness of the joints, swollen feet or ankles, nervousness, insomnia, loss of appetite, or lack of energy, in excess of temporarily relieving such symptoms when they are due to, or persist because of, constipation.

3. That respondent's preparation is a cure or remedy for constipation or that the use of said preparation will serve to eliminate or affect the tendency to constipation.

4. That respondent's preparation constitutes a competent or effective treatment for constipation in excess of assisting in the temporary evacuation of the intestinal tract.

5. That respondent's preparation possesses any therapeutic properties beyond those of a cathartic or laxative.

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

HYGIENIC CORPORATION OF AMERICA, HYGIENIC COMPANY OF AMERICA, MERRILL-SAUNDERS COMPANY, LTD., AND HAROLD L. DEBAR, TRADING AS AMERICAN HEALTH ASSOCIATION OF WASHINGTON, D. C., WOMEN'S ADVISORY BUREAU, ETC.

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

Docket 3303. Complaint, Jan. 17, 1938—Decision, June 8, 1940

Where a corporation and two subsidiaries thereof, and an individual, who was principal stockholder of all three and directed and controlled their business activities and sales policies, and did business under the names of American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Co-Operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, engaged in the manufacture, sale, and distribution to purchasers in various other States and in the District of Columbia, of certain medicinal preparations and appliances which they recommended for so-called feminine hygiene and for use in the treatment of diseases and ailments peculiar to women and for use in preventing pregnancy, and which they designated generally as "Protex-U" and "Surete," and which consisted substantially of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, and were sold in sets and separately, and, as thus engaged, in substantial competition with others engaged in sale and distribution of products designed and intended for legitimate hygienic use by women and for use in the treatment and prevention of diseases peculiar to women, in commerce among the various States and in said District; and acting in conjunction and cooperation with each other in carrying on the acts and practices below set forth;

In advertising their said products through newspapers and other periodicals, and booklets, pamphlets, circulars, and other advertising material distributed among prospective purchasers, and also through set of six booklets entitled "The Happy Family Series," and booklets entitled "New Knowledge for Women" and "Feminine Secrets," dealing directly or by implication with prevention of conception—

(*a*) Represented, directly and by implication, that their said various products constituted competent and effective preventives of conception, facts being they did not constitute competent and effective preventives of conception;

(*b*) Represented, as aforesaid, that their said products possessed substantial therapeutic value in the treatment of ailments and diseases peculiar to women, particularly delayed menstruation, and destroyed bacteria and were competent and effective prophylactics, facts being such products possessed no therapeutic value in the treatment of delayed menstruation or any other ailments or diseases peculiar to women, did not serve to destroy bacteria, and were not effective or competent prophylactics; and

(*c*) Represented, as aforesaid, that their said appliances, and particularly that designated vaginal diaphragm, would fit all female anatomies, and that

appliance designated "Health Shield" (vaginal syringe) might be used with safety by all women, facts being none of their said appliances would fit all such anatomies, and last-named appliance, known generally by physicians as a "ballooning douche" and regarded by them as possessing dangerous potentialities, in that use thereof results in the forcing of bacteria from the vagina into the uterus, could not be used with safety; and

Where said corporations and individual, in advertising in newspapers and other periodicals for solicitors and in their dealings with prospective solicitors, and in offer and sale thereafter of their said products through such solicitors and through advertisements thereof, as the case might be—

(*d*) Made use of words "Nurse-Membership Application" and "American Health Association, Washington, D. C.," in blank forms which they sent in response to inquiry from prospective solicitor, for use of such prospective solicitor in addressing an application to aforesaid "association" for "Nurse Membership and appointment as Visiting Nurse in the American Health Association," with further provision, in such application, that "It is understood that I shall be employed in work tending to elevate the healthful conditions and hygienic standards of our nation. I pledge myself to fully cooperate with the association in its aims of more healthful living through public education and to this end I will devote a definite portion of my time to this cause";

(*e*) Made use of terms and legends "Certificate of Membership" and "American Health Association, Visiting Nurse Division" on cards which it issued to solicitors and which certified that solicitor was enrolled as a "Nurse Member, Class A, in the American Health Association and has been appointed Visiting Nurse while engaged in Health Extension Activities * * *," and made use also of badges of identification reading "American Health Association—Visiting Nurse Division—Washington, D. C.," which they issued to their solicitors as above described, and who, upon receiving such cards and badges, undertook sale of their said products through house-to-house solicitation and exhibition, in their contacts and solicitation, of such cards and badges and use of circulars, pamphlets, and other advertising material supplied as aforesaid; and

(*f*) Represented, and led prospective purchasers to believe, that their business activities were conducted under the auspices or with the approval of the public health service, and that their products had the approval of such service, and that the American Health Association was a benevolent, nonprofit organization engaged in promoting the public health, and that their solicitors were nurses and qualified to advise women with respect to matters of health and sex hygiene, through their advertising literature and through their solicitors, and through such typical statements as "* * * Why, it was only a few years ago that our Congress was appropriating millions to educate our farmers how to raise and care for their cattle, sheep and hogs, * * *. Finally Congress woke up to the tremendous need and the fact that the family and home were more important than animals and recently enacted legislation authorizing the educating and assisting of wives, mothers, and prospective mothers. In full sympathy with this splendid, if belated, movement the American Health Association is carrying on this special campaign to bring the vital sex truths regarding herself to every wife and mother as soon as possible," and "But, what troubles me most is the fact that the need throughout the entire

country is so great, so huge, so tremendous, that it is impossible for the American Health Association, as for any other benevolent nonprofit organization, to equip enough of us nurses who are just as needy but who are living on a farm, in a small town or even in a larger city where no staff of visiting nurses has yet been organized. To those women we have to bring this message, which we two are privileged to talk over in person, by mail to the best of our ability * * *.";

Facts being their said representations were false in their entirety, neither said corporations' activities nor their products were sponsored or approved by any public health service, there was, in fact, no such organization as their said "American Health Association," which was merely fictitious name used by them as one of their trade names, their business was in no sense a benevolent or nonprofit enterprise, but was conducted solely as a commercial enterprise and for their profit, and their solicitors were not nurses nor qualified to advise women as to matters of health or sex hygiene, but were merely saleswomen, without training or experience as nurses;

With effect of misleading and deceiving substantial portion of purchasing public into mistaken and erroneous belief that their said false and misleading statements and representations were true, and into purchase of substantial quantities of their products, and with result, as consequence of such mistaken and erroneous belief, that trade was diverted unfairly to them 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.

Before *Mr. Arthur F. Thomas* and *Mr. Randolph Preston*, trial examiners.

Mr. William L. Taggart for the Commission.

Mr. A. P. Coviello, 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 Hygienic Corporation of America, Hygienic Co. of America, Merrill-Saunders Co., Ltd., corporations, and Harold L. DeBar, individually and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Co-operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent Hygienic Corporation of America is a corporation organized and operating under the laws of California.

Respondent Hygienic Co. of America is a Delaware corporation and markets products known as "Protex-U."

Respondent Merrill-Saunders Co. is a Delaware corporation and markets products known as "Surete" and "Surete Laboratories."

The Hygienic Co. of America and the Merrill-Saunders Co. are operated as subsidiaries of the Hygienic Corporation of America and respondent Hygienic Corporation of America also uses the names of these two corporations, as well as other names, as trade names for the carrying on of portions of its business activities. The principal place of business of these respondents is 5256–58 South Hoover St., Los Angeles, Calif.

Respondent Harold L. DeBar is an individual trading under the names American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Co-operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, Surete Laboratories and Surete Products at 5256–58 South Hoover Street, Los Angeles, Calif. He is the principal stockholder of the aforesaid corporate respondents and directs and controls the business activities and sales policies of the corporate respondents Hygienic Corporation of America and its subsidiaries, the Hygienic Co. of America and the Merrill-Saunders Co.

The respondents are all engaged in a general combination and confederation for the purpose of manufacturing, advertising, distributing, and selling certain products and preparations hereafter named to the public or to customers in the various States of the United States and the District of Columbia and in carrying out the acts and practices herein charged.

The respondents have been, and are now engaged in the business of manufacturing, advertising, distributing, and selling certain medical preparations and appliances for so-called feminine hygiene use and for use in preventing pregnancy and diseases common to the female anatomy. The respondents cause these products, when sold, to be transported from their aforesaid places of business in the State of California or from some other point to the purchasers thereof located at points in various States other than the States from which said shipments of said products originate and in the District of Columbia, and maintain a course of trade and commerce in said products so distributed and sold by them in commerce among and between the various States of the United States.

In the course and conduct of said business, respondents have been, and are, in substantial competition with other corporations and with firms, individuals, and partnerships engaged in the distribution and sale of smiliar products and other products intended and

designed for similar use by women, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. The products marketed by respondents, and sold to customers in commerce, as herein set out, are variously known and described as "Protex-U" and "Surete." An assortment of said products consists of douche powder, ointment, jelly, syringe (called health shield), applicator and vaginal diaphragm (called medicator) and are sold in sets and otherwise.

PAR. 3. In the operation of their business and for the purpose of inducing the purchase of said products by the members of the public, the respondents have made use of various means and ways of advertising said products, among which are the distribution of booklets, pamphlets, show window displays, and circulars bearing the names of various ones of the aforesaid respondents and in some instances all of them. Some of the advertising literature describes and makes certain representations as to the efficacy of the products of respondents.

PAR. 4. For the purpose of selling and distributing their products, respondents publish and cause to be published as a part of their combination, as herein described, six booklets entitled "Happy Family Series," and named as follows:

1. The Ten Commandments of Happy Marriage
2. How to Hold Your Husband's Love
3. How to Remain Your Husband's Pal
4. How to Beat the Divorce Court
5. How to Win Back a Husband, and
6. The Woman Desired.

These pamphlets are purported to be published by the Educational Publishing Corporation; and other pamphlets entitled "New Knowledge for Women," copyrighted by American Health Association, Washington, D. C., "Feminine Secrets" and a circular entitled "The Protex-U System" are distributed with said pamphlets.

In referring to their products in their aforesaid pamphlets and other advertising, as aforesaid, such statements as the following are made:

"Surete Antiseptic Ointment"—" * * * Germ life is positively arrested by its presence. * * * A valuable aid in preventing delayed menstruation. * * * Preserve the Body Beautiful Thru Feminine Hygiene * * * by use of the Protex-U System * * * every woman is assured that she is fortified against all conditions * * * The Health Shield assures absolute cleanliness and also relief from congestion, delayed or painful menstruation. The Vaginal Antiseptic combats infection. * * * The distending douche as-

sists the organs to regain their normal position and causes that tired depressed feeling to disappear. The after-rest adds to the permanency of the treatment. As a result, you will arise feeling like a young woman in the full bloom of youth. * * *".

"* * * Frequent douches are very essential in every married woman's life to keep the numerous creases and wrinkles of the vaginal passage clean and healthy. * * * It absolutely assures every part of the vaginal lining being contacted by the douche. Germs cannot get away from it. * * * Protex-U Health Shield * * * Prevents Delayed Menstruation. If for any reason women appreciate Protex-U more than for any other, it is because of its ability to hold a hot douche or "hot pack" around the womb, which is extremely helpful in preventing delayed menstruation. * * * it eliminates the uncertainties of the usual douche, is nonpoisonous and absolutely harmless to the most sensitive body membrane. * * * wonderful germicide "Glyquinol" * * * Germ life cannot thrive in its presence * * * So effective, so safe, so reliable has it proved itself that within a few short years it has become known * * * There is nothing else like it. It works where other preparations fail. * * * It also has the peculiar property of drawing infected secretions from the mucous membrane. * * *"

The Three Point Scientific Method. The Protex-U System is based on the well-known "Three Point Scientific Method of Marriage Hygiene." This requires:

1. An effective antiseptic, effectively applied before exposure to prevent infection (pathogenic).

2. A vaginal syringe (Health Shield) far more effective than the ordinary in cleansing and preventing many menstrual disorders.

3. A douche powder that promotes healing and is not an irritant or merely a perfume carrier. These requirements are fully met in the Protex-U Ointment, Protex-U Health Shield and Protex-U Douche Powder, the following illustrations and simple directions fully explain their use.

Using the Protex-U Medicator. The use of a medicator (vaginal diaphragm) and antiseptic ointment is the method outstandingly approved by physicians and Marriage Hygiene Clinics. First, it is necessary to obtain the correct size, which is easily done by the following table:

In classifying oneself as to "under average," "average," or "over average," disregard the amount of flesh and consider bony frame alone. Note.—A woman does not need a large size because she is fleshy.

In said statements, together with other similar statements not herein set out with respect to their products and in their general advertising, respondents directly and through implication represent that their products form safe, competent, and effective preventatives against conception; that the use of said products is a guarantee against pregnancy that said products are composed, in whole or in part, of agents which are fully effective, among other things, in insuring health and youth to wives and mothers; that said products keep the body perfectly clean and sanitary and the mind free from worry and anxiety, and keep the bloom of youth in the user; that use of said products prevents disease, insures health and strength,

causes the rapid elimination of bacteria, including leucorrhea (whites) and disagreeable discharges, and acts as a preventative of female irregularities; and that said products are effective as prophylactics and heal the delicate membranes and tissues in the vaginal tract; and form competent and effective treatments for subnormal or unhealthful conditions of the uterus and vagina, venereal diseases, nervousness, pain and discomfort, burning sensation, and mental depression.

PAR. 5. In truth and in fact said products do not form or constitute safe and competent remedies against conception and are not a guarantee against pregnancy. Said products do not contain ingredients or medicinal agents which are fully effective, among other things, to insure health and youth to wives and mothers. They do not keep the body perfectly clean and sanitary; or the mind free from worry and anxiety. Said products are not effective as preventatives against disease; are not effective to keep the bloom of youth, or to insure health and strength; and will not cause the rapid elimination of bacteria, including leucorrhea (whites) or disagreeable discharge; neither are they preventatives of female irregularities generally. They do not act as prophylactics or heal the delicate membranes or tissues of the vaginal tract; and are not competent and effective treatments for subnormal or unhealthful conditions of the uterus or vagina, venereal diseases, nervousness, pain or discomfort, burning sensations, and mental depression.

PAR. 6. Statements and representations such as the following are made under the name of the American Health Association:

"* * * Why, it was only a few years ago that our Congress was appropriating millions to educate our farmers how to raise and care for their cattle, sheep and hogs, but spending practically nothing on the more important task of educating us wives and mothers—human beings, mind you, on how to take care of ourselves and our families. Finally Congress woke up to the tremendous need and the fact that the family and the home were more important than animals and recently enacted legislation authorizing the educating and assisting of wives, mothers and prospective mothers. In full sympathy with this splendid, if belated, movement the American Health Association is carrying on this special campaign to bring the vital sex truths regarding herself to every wife and mother as soon as possible.

But, what troubles me most is the fact that the need throughout the entire country is so great, so huge, so tremendous, that it is impossible for the American Health Association, as for any other benevolent non-profit organization, to equip enough of us nurses to reach the millions and millions of wives who are just as needy but who are living on a farm, in a small town or even in a larger city where no staaff of visiting nurses has yet been organized. To those women we have to bring this message, which we two are privileged to talk over in person, by mail to the best of our ability * * *

The solicitors who are employed by the respondents in calling upon prospective purchasers for the purpose of making the claims herein set out in said advertising, and selling the products herein named, exhibit to them a visiting nurse's button and certificate of membership, together with the following paper called:

NURSE-MEMBERSHIP APPLICATION

AMERICAN HEALTH ASSOCIATION,
Suite 402 Baltic Bldg., Washington, D. C.

Date _____ Feb. ____ 24 _____ 192 ____.

I hereby apply for nurse-membership and appointment as visiting nurse in the AMERICAN HEALTH ASSOCIATION.

It is understood that I am now employed in work tending to elevate the healthful conditions and hygienic standards of our nation. I pledge myself to fully cooperate with the association in its aims of more healthful living through public education and to this end will devote a definite portion of my time to this cause.

Signed Address City State

_____ _____

Employing Company Vouched for by

I am enclosing 30 cents (stamps accepted) to pay the expense of issuing CERTIFICATE OF MEMBERSHIP and VISITING NURSES BUTTON. It is understood that there are no initiation or membership fees.

In said statements, and in other statements not herein set out, respondents represent, directly and through implication, that their products have been put to a successful scientific test by the American Health Association, an independent nonprofit organization devoted to scientific research; that they are a part of, or in some manner connected with the American Public Health Association, whose object is to protect and promote public and personal health and whose membership consists of several prominent officials of the United States and State Public Health Services; that they are a part of the United States Public Health Service; that the United States Government has appropriated money for their work; that they are organized and do business under the educational laws of the District of Columbia, and are licensed to train and school nurses and that their representatives are trained and schooled in accordance with the educational laws of the District of Columbia and are trained nurses.

PAR. 7. In truth and in fact the American Health Association of Washington, D. C., does not actually exist but is a fictitious name used by respondents to further the fraudulent sale of their products by their solicitors. No such association or organization known as the American Health Association is in any manner connected with

the Public Health Service of the United States; nor is it a part of or connected in any manner with the American Public Health Association of the United States. Further, no such organization has ever been organized or chartered to do business such as training and schooling of nurses under the educational laws of the District of Columbia. None of the respondents are connected in any way with the Public Health Service of the United States, nor the American Public Health Association.

Such articles and drugs, named herein, when manufactured, advertised, and distributed are then and there misrepresented in that the statements, designs, and devices regarding the therapeutic, curative, and other benefits and effects thereof borne on the directions slip, circulars, and in the advertising, as aforesaid, are false and fraudulent and the same are applied to said articles knowingly and in reckless and wanton disregard of their truth or falsity.

There are among the respondents' competitors in commerce, as herein set out, those who do not in any way misrepresent the character and nature of their respective businesses and who do not misrepresent in any way the nature, character, and efficacy of their respective products, and do not make use of any of the misleading representations herein set out or others similar thereto.

PAR. 8. The aforesaid false and misleading statements and representations used by the respondents, in offering for sale and selling their various products as herein described, in commerce as herein set out, have had, and do now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken beliefs that said representations are true and into the purchase of substantial quantities of respondents' various products on account of said erroneous and mistaken beliefs induced as aforesaid. As a result thereof trade is unfairly diverted to respondents from competitors of respondents who do not, in the sale and distribution of their respective products, make use of the same or similar misrepresentations. In consequence thereof injury has been, and is now being, done by respondents to competition in commerce among and between the various States of the United States.

PAR. 9. The methods, acts and practices of respondents herein set forth 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 on January 17, 1938, issued and thereafter served its complaint upon respondents, Hygienic Corporation of America, Hygienic Co. of America, Merrill-Saunders Co., Ltd.; corporations, and Harold L. DeBar, individually and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Co-operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Laboratories, charging respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by William L. Taggart, an attorney for the Commission, before Arthur F. Thomas and Randolph Preston, examiners of the Commission theretofore duly designated by it (no evidence being offered by the respondents) and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, and brief in support of the complaint (no brief having been filed on behalf of the respondents, 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 Hygienic Corporation of America is a corporation organized under the laws of the State of California. Respondents Hygienic Co. of America and Merrill-Saunders Co., Ltd., are corporations organized under the laws of the State of Delaware. The Hygienic Co. of America and the Merrill-Saunders Co. are operated as subsidiaries of the Hygienic Corporation of America, and the Hygienic Corporation of America uses the names of these two corporations, as well as other names, as trade names for the carrying on of its business activities.

Respondent Harold L. DeBar is an individual trading under the names of American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Co-operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene, and Surete Lab-

oratories. He is the principal stockholder of all of the corporate respondents and directs and controls the business activities and sales policies of the corporate respondents.

All of the respondents have their office and principal place of business at 5256–5258 South Hoover Street, Los Angeles, Calif. All have acted in conjunction and cooperation with each other in carrying on the acts and practices herein set forth.

PAR. 2. The respondents are now and for more than 4 years last past have been engaged in the manufacture, sale, and distribution of certain medicinal preparations and appliances recommended by respondents for so-called feminine hygiene and for use in the treatment of diseases and ailments peculiar to women and for use in preventing pregnancy. The products are designated generally by respondents as "Protex-U" and "Surete," and consist substantially of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm. They are sold in sets and separately.

The respondents cause their products, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents maintain and for more than 4 years last past have maintained a course of trade in their products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The respondents have been and are now in substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale and distribution of products designed and intended for legitimate hygienic use by women and for use in the treatment and prevention of diseases peculiar to women, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, and for the purpose of promoting the sale of their products, the respondents have made use of various means of advertising their products, among which are advertisements inserted in newspapers and other periodicals, and booklets, pamphlets, circulars, and other advertising material distributed among prospective purchasers. As a further part of their advertising campaign and in order to create interest among prospective purchasers, the respondents distribute a set of six booklets entitled "The Happy Family Series," also booklets entitled "New Knowledge for Women" and "Feminine Secrets." All of these booklets deal directly or by implication, with the prevention of conception.

Among and typical of the representations made by respondents in their advertising material are the following:

The Three Point Scientific Method. The Protex-U System is based on the well-known "Three Point Scientific Method of Marriage Hygiene." This requires:

1. An effective antiseptic, effectively applied before exposure to prevent infection (pathogenic).

2. A vaginal syringe (Health Shield) far more effective than the ordinary in cleansing and preventing many menstrual disorders.

3. A douche powder that promotes healing and is not an irritant or merely a perfume carrier. These requirements are fully met in the Protex-U-Ointment, Protex-U-Health Shield and Protex-U-Douche Powder, the following illustrations and simple directions fully explain their use.

Using the Protex-U-Medicator. The use of a medicator (vaginal diaphragm) and antiseptic ointment is the method outstandingly approved by physicians and Marriage Hygiene Clinics. First, it is necessary to obtain the correct size, which is easily done by the following table:

In classifying one's self as to "under average," "average," or "over average," disregard the amount of flesh and consider bony frame alone. Note: A woman does not need a large size because she is fleshy.

"Surete Antiseptic Ointment"—"* * * Germ life is positively arrested by its presence. * * * A VALUABLE AID IN PREVENTING DELAYED MENSTRUATION. * * * Preserve the Body Beautiful Thru Feminine Hygiene * * * BY use of the Protex-U-System * * * every woman is assured that she is fortified against all conditions * * * The Health Shield assures absolute cleanliness and also relief from congestion, delayed or painful menstruation. The Vaginal Antiseptic combats infection. * * *. The distending douche assists the organs to regain their normal position and causes that tired depressed feeling to disappear. The after-rest adds to the permanency of the treatment. As a result you will arise feeling like a young woman in the full bloom of youth!" * * *

"* * * Frequent douches are very essential in every married woman's life to keep the numerous creases and wrinkles of the vaginal passage clean and healthy. * * * It absolutely assures every part of the vaginal lining being contacted by the douche. Germs cannot get away from it. * * * Protex-U-Health Shield * * * Prevents Delayed Menstruation. If for any reason women appreciate Protex-U more than for any other, it is because of its ability to hold a hot douche or "hot pack" around the womb, which is extremely helpful in preventing delayed menstruation. * * * It eliminates the uncertainties of the usual douche, is non-poisonous and absolutely harmless to the most sensitive body membrane. * * * wonderful germicide 'Glyquinol' * * * Germ life cannot thrive in its presence * * * so effective, so safe, so reliable has it proved itself that within a few short years it has become known. * * * There is nothing else like it. It works where other preparations fail. * * * It also has the peculiar property of drawing infected secretions from the mucuous membrane. * * *"

PAR. 5. Through the use of these representations, together with many other representations of a similar nature, the respondents represent directly and by implication that their products constitute competent

and effective preventives of conception; that they possess substantial therapeutic value in the treatment of ailments and diseases peculiar to women, particularly delayed menstruation; that they destroy bacteria and are competent and effective prophylactics; that respondents' appliances, particularly the appliance designated vaginal diaphragm, will fit all female anatomies; that the appliance designated "Health Shield" (vaginal syringe) may be used with safety by all women.

PAR. 6. The Commission finds that there is no basis in fact for the foregoing representations and that such representations are false, deceptive and misleading. Respondents' products do not constitute competent or effective preventives of conception. They possess no therapeutic value in the treatment of delayed menstruation or any other ailments or diseases peculiar to women. They do not serve to destroy bacteria nor are they competent or effective prophylactics. The appliance designated vaginal diaphragm or any other of respondents' appliances will not fit all female anatomies. The appliance designated "Health Shield" (vaginal syringe) cannot be used with safety. This appliance is known generally by physicians as a "ballooning douche" and is regarded by physicians as possessing dangerous potentialities, in that its use results in the forcing of bacteria from the vagina into the uterus.

PAR. 7. Much of the respondents' selling activity is through solicitors or saleswomen who call on prospective purchasers. In order to obtain such solicitors the respondents advertise in newspapers and other periodicals, and upon receiving inquiries from prospective solicitors the respondents send to such persons a blank form designated "Nurse-Membership Application." Such application is addressed to the "American Health Association, Washington, D. C." and by means of this application the prospective solicitors apply for "Nurse Membership and appointment as Visiting Nurse in the American Health Association." The application further provides that—"It is understood that I shall be employed in work tending to elevate the healthful conditions and hygienic standards of our nation. I pledge myself to fully cooperate with the association in its aims of more healthful living through public education and to this end I will devote a definite portion of my time to this cause."

The respondents, upon receiving such application, issue to the solicitor a card designated "Certificate of Membership" in the "American Health Association, Visiting Nurse Division." This card certifies that the solicitor is enrolled as a "Nurse Member, Class A, in the American Health Association and has been appointed Visiting Nurse while engaged in Health Extension Activities * * *." The respondents also issue to their solicitors badges of identification

reading "American Health Association—Visiting Nurse Division—Washington, D. C." Upon receiving the identification card and badge the solicitors undertake the work of selling respondents' products by making house to house calls on prospective purchasers. In contacting prospective purchasers and soliciting sales the solicitors exhibit the card and badge, and use circulars, pamphlets and other advertising material supplied by the respondents.

PAR. 8. The respondents, both in their advertising literature and by means of solicitors, make other representations with respect to their business activities and products. Of such representations the following are typical:

* * * Why, it was only a few years ago that our Congress was appropriating millions to educate our farmers how to raise and care for their cattle, sheep and hogs, but spending practically nothing on the more important task of educating us wives and mothers—human beings, mind you, on how to take care of ourselves and our families. Finally Congress woke up to the tremendous need and the fact that the family and home were more important than animals and recently enacted legislation authorizing the educating and assisting of wives and mothers and prospective mothers. In full sympathy with this splendid, if belated, movement the American Health Association is carrying on this special campaign to bring the vital sex truths regarding herself to every wife and mother as soon as possible.

But, what troubles me most is the fact that the need throughout the entire country is so great, so huge, so tremendous, that it is impossible for the American Health Association, as for any other benevolent non-profit organization, to equip enough of us nurses who are just as needy but who are living on a farm, in a small town or even in a larger city where no staff of visiting nurses has yet been organized. To those women we have to bring this message, which we two are privileged to talk over in person, by mail to the best of our ability * * *.

Through the use of these representations and others of a similar nature, the respondents lead prospective purchasers to believe that respondents' business activities are conducted under the auspices or with the approval of the public health service, and that respondents' products have the approval of the public health service; that the American Health Association is a benevolent, nonprofit organization engaged in promoting the public health; that respondents' solicitors are nurses and are qualified to advise women with respect to matters of health and of sex hygiene.

PAR. 9. The Commission finds that these representations are false in their entirety. Neither respondents' activities nor their products are sponsored or approved by any public health service. There is, in fact, no such organization as respondents' "American Health Association." This name is merely a fictitious name used by the respondents as one of their trade names. Respondents' business is in no sense a benevolent or nonprofit enterprise, but is a business con-

ducted solely as a commercial enterprise and for the profit of respondents. The respondents' solicitors are not nurses and are not qualified to advise women as to matters of health or sex hygiene. They are merely saleswomen and have no training or experience as nurses.

PAR. 10. The use by the respondents of the false and misleading statements and representations herein set forth, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations are true, and into the purchase of substantial quantities of respondents' products. As a result thereof trade has been diverted unfairly to the 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 the respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence taken before Arthur F. Thomas and Randolph Preston, examiners of the Commission theretofore duly designated by it, in support of the allegations of the complaint (no evidence having been offered by the respondents) and brief filed herein by William L. Taggart, attorney for the Commission (no brief having been filed on behalf of the respondents and oral argument not having been requested), 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, Hygienic Corporation of America, a corporation; Hygienic Co. of America, a corporation; Merrill-Saunders Co., Ltd., a corporation; and Harold L. DeBar, individually, and trading as American Health Association of Washington, D. C., Women's Advisory Bureau, Women's Co-operative Service, Protex-U-Hygienic Service, American Bureau of Hygiene and Surete Laboratories; or trading under any other name or names; 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of respondents' so-called feminine hygiene preparations and appliances now designated as "Protex-U" and "Surete" and consisting substantially of douche powder, ointment, jelly, syringe, applicator, and vaginal diaphragm, whether sold together or separately, or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, or any other appliance possessing substantially similar characteristics, whether sold under the same name or under any other name or names, do forthwith cease and desist from:

1. Representing that any of said preparations or appliances, whether used alone or in conjunction with any other of said preparations or appliances, will prevent conception.

2. Representing that any of said preparations or appliances, whether used alone or in connection with any other of said preparations or appliances, possess any therapeutic value in the treatment of delayed menstruation or any other ailment or disease peculiar to women.

3. Representing that any of said preparations or appliances destroy bacteria or are competent or effective prophylactics.

4. Representing that respondents' appliances will fit all female anatomies.

5. Representing, through failure to reveal that the use of the appliance designated by respondents as "Health Shield" (vaginal syringe) is not wholly safe, or through any other means or device, or in any other manner, that such appliance may be used with safety or without injurious effects.

6. Representing that the respondents or their business activities are connected in any way with any public health service, or that any of the respondents' products are approved by any public health service.

7. Using the name "American Health Association" or "American Health Association of Washington, D. C." or any other name of similar import or meaning to designate or describe the respondents or their business.

8. Using the word "Nurse" or "Visiting Nurse" or "Nurse Membership" or any other term of similar import or meaning to designate or describe respondents' solicitors or saleswomen, or otherwise representing that respondents' solicitors or saleswomen are nurses.

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

NATIONAL SURE-FIT QUILTING 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 3728. Complaint, Mar. 1, 1939.—Decision, June 10, 1940

Where a corporation engaged in manufacture of bed quilts, comforters and related quilt products and in sale and distribution thereof to various purchasers and retailers in various States and in the District of Columbia, and including among aforesaid products a certain comforter, which, made by it under patent process, was composed of 95 percent cotton and of 5 percent down, included between two cotton bats—

Made use in advertising, offering and selling its said comforter of its registered trade mark "Villadown," which, as advertised by it generally and by local distributors in several States, was featured in large display type, with small lettering setting forth 95 percent cotton composition and 5 percent down, and notwithstanding fact said comforter was not one filled entirely with down, or undercoating of waterfowl as understood by industry and substantial portion of purchasing public when used in the bedding industry;

With effect, through its said practice of using or permitting use by local distributors of said word "Villadown," in advertising, describing or representing article in question, in larger lettering or type or in any wise different than lettering or type used in descriptive words showing and describing real content or consistency of article, i. e., 95 percent cotton and 5 percent down, of misleading and deceiving substantial number of retailers and members of public into erroneous and mistaken belief that said article was manufactured from down, without intermixture of cotton in proportion as aforesaid, and into purchase of a substantial number of said comforters 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.

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

Mr. Randolph W. Branch, for the Commission.

Mr. Louis Schumacher, 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 National Sure-Fit Quilting Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, National Sure-Fit Quilting Co., 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 40–20 Twenty-second Street, Long Island City, N. Y.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing bed quilts, comforters and related quilted products, including a certain comforter to which it has given the name of "Villadown." Respondent sells its "Villadown" comforters to various jobbers and retail dealers in such articles situated in various States of the United States and in the District of Columbia and causes them, when sold by it, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said comforters among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the bedding trade and in the feather and down industry, "down" is and for a long time has been generally understood to refer to the undercoating of the waterfowl consisting of light and fluffy filaments grown from one quill point but without any quill shaft, and a "down" or "down-filled" article is and for a long time has been generally understood to be one containing not less than 90 percent pure down, and for many years past has had, and still has, in the mind of the consuming public, a definite and specific meaning, to wit: fluffy and soft portions of coats of birds other than feathers. Comforters filled wholly with "down" have for many years held, and still hold, great public esteem because they combine buoyancy and lightness with great warmth in a manner not possessed by other fillers. In the mind of the consuming public a "down" article means one filled so far as manufacturing conditions permit exclusively with "down."

PAR. 4. Respondent has caused the word "Villadown" to be registered as a trade-mark and has used the same with the design of identifying its article to the trade and to the public and of establishing and preserving such good-will and popularity as the article may acquire from its public acceptance. For such good-will to be engendered, the name "Villadown" in connection with the articles, must be brought to the attention of the purchasing public, and in order for those who distribute them either at wholesale or at retail to take advantage of the existence of such good-will, the articles are normally advertised, offered and sold by them under the aforesaid trade-mark or name "Villadown."

PAR. 5. The designation by respondent of its comforters as "Villadown" and the representations and statements of respondent and its

customers that such articles were "Villadown" Comforters have served as representations to prospective purchasers that the filler was composed substantially of "down."

PAR. 6. The aforesaid representations are grossly exaggerated, misleading and untrue. In truth and in fact, respondent's "Villadown" comforters are manufactured by a process of combining two layers of cotton with one layer of "down" over which is sewn a covering of some fabric appropriate for the purpose and the whole stitched or quilted in the manner usual in such articles for the prevention of shifting or matting of the filler. The filler is composed of approximately 95 percent of cotton and 5 percent of "down." The nature of the filler is not apparent from an inspection or examination of the exterior and the quantity of down is insufficient to impart to the comforter any qualities not possessed by one filled entirely with cotton.

PAR. 7. The use of the foregoing false, deceptive, and misleading representations with respect to the said "Villadown" comforters has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false representations are true, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase substantial numbers of the said comforters.

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 March 3, 1939, issued and served its complaint in this proceeding upon respondent National Sure-Fit Quilting Co., Inc., a corporation, charging respondent with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 22, 1939, the respondent filed an answer in the proceeding. Thereafter, testimony and other evidence in support of the allegations of said complaint were introduced by Randolph W. Branch, attorney for the Commission, and in opposition to the allegations of the complaint by Louis Schumacher, 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, 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, National Sure-Fit Quilting Co., 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 40–20 Twenty-second Street, Long Island City, N. Y.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of manufacturing, selling, and distributing bed quilts, comforters, and related quilted products, including a certain comforter to which it has given the name of "Villadown." Respondent sells its "Villadown" comforters to various jobbers and retail dealers situated in various States of the United States and in the District of Columbia, and causes them, when sold by it, to be transported from its aforesaid place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said comforters in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 3. Respondent has caused the word "Villadown" to be registered as a trade-mark and has used the same with the design of identifying its article to the trade and to the public and of establishing and preserving such good will and popularity as the article may acquire from its public acceptance. For such good will to be engendered, the name "Villadown" in connection with the articles, must be brought to the attention of the purchasing public, and in order for those who distribute them either at wholesale or at retail to take advantage of the existence of such good will, the articles are normally advertised, offered and sold by them under the aforesaid trade-mark or name "Villadown."

PAR. 4. Respondent's product "Villadown" is a comforter, the filler of which is composed of 95 percent cotton and 5 percent down; the cover of the comforter has a weight of from 1¾ to 2 pounds. In its

construction two cotton bats, each weighing about 2 pounds, are used, between which the 5 percent, or approximately 4 ounces of down is placed. The cotton bats are each 1¼ to 1½ inches in thickness. The comforter as a finished product is approximately 6 feet by 7 feet. The respondent's article, "Villadown" is manufactured by a patented process of respondent, and has been on the market since 1937. The article is advertised generally by the respondent, and by local distributors in several States, by featuring the word "Villadown" in large display type, and the real composition thereof, to wit, 95 percent cotton, and 5 percent down, in small lettering.

PAR. 5. The word "down" as used in the bedding industry is understood by the industry and a substantial portion of the purchasing public to mean, and is, the undercoating of the waterfowl. There is a substantial portion of the purchasing public which believes the word "Villadown" when used in advertising, or as descriptive of comforters, to mean a pure down comforter, or one filled entirely with down.

PAR. 6. The practice of respondent of using or permitting the use by local distributors of the word "Villadown" in advertising, describing, or representing the article, in larger lettering or type, or in any wise different from the lettering or type used in the descriptive words showing and disclosing the real content or consistency of the article, to wit, 95 percent cotton, and 5 percent down, as above set forth, has the capacity and tendency to, and does, mislead and deceive a substantial number of retail dealers and members of the public into the erroneous and mistaken belief that said article is manufactured from "down," without the intermixture of cotton in the proportion of 95 percent cotton, with only 5 percent down, and into the purchase of a substantial number of said comforters because of such erroneous and mistaken belief.

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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission, duly designated by it in support of the

allegations of said complaint and in opposition thereto and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, National Sure-Fit Quilting 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 comforters or similar products in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the term Villadown or any other term which includes the word "down" or any colorable simulation thereof or using any other term of similar import or meaning, to describe or designate any quilt, comforter, or other similar product, the filler of which is not composed wholly of "down," the light fluffy undercoating of the waterfowl, provided that if said term is used to describe a filler composed in part of down and in part of materials other than down such term must be immediately accompanied by a word or words of equal size or conspicuousness designating the substance, fiber or material of which said filler is composed with designation of each constituent fiber or material thereof in the order of its predominance by weight beginning with the largest single constituent.

It is further ordered, That the respondents shall, within 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 FACTORIES, INC.

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

Docket 3797. Complaint, May 31, 1939—Decision, June 10, 1940

Where a corporation engaged in sale and distribution of its so-called automotive engine reconditioner or "Micaseal" to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of preparations designed for similar uses in commerce among the various States and in said District; in advertisements of its said product in newspapers, periodicals, circulars, and other printed matter circulated and distributed among prospective purchasers in various States and in said District, and in continuities broadcast from radio stations of extra-State audience—

(*a*) Represented, directly and by implication, that use of its said preparation would effect substantial economies in operation of an automobile through lessening gasoline and oil consumption, and that, put into the motor through the spark plug openings, it filled scores and scratches on cylinder walls and formed a cushion seal which increased compression, checked excessive carbon formation, added speed, power, and smoothness to operation of old motors, and, in fact, reconditioned a motor at a saving of 95 percent over ordinary mechanical methods of reboring cylinders and refitting pistons therein, facts being preparation in question was not essentially different in chemical composition from various other substances or products or preparations or "engine improvers," scientific principle of which was based on action of vermiculite in the expanded or unexpanded form, and in all of which, claims for products were based upon action of expended vermiculite as in said "Micaseal," and said product would not effect substantial economies or accomplish other results above claimed for it, and use thereof in automobile engine would not produce equivalent of mechanical reconditioning job, nor any of the beneficial results produced by such reconditioning nor improve motor performance, as claimed by it; and

(*b*) Represented that nationally known laboratories had made impartial tests of said "Micaseal" and had certified to the truth and accuracy of its aforesaid representations through such statements as "Tested and Approved by these Laboratories: Kansas City Testing Laboratories, Inc. * * * Automotive Test Laboratories of America * * * Nationally known laboratories put Micaseal to rigid test * * * The Kansas City Testing Laboratory is known in the United States and abroad for its honesty and reliability—and for the carefully conservative statements it makes in its findings * * * We went to a laboratory that would give us only the impartial truth, which was what we wanted, so that our representatives would know the facts about Micaseal," etc., facts being no nationally known laboratory had made an impartial test of said product or issued a certificate certifying to the truth and accuracy of the representations made by it with respect thereto as hereinbefore indicated;

With effect through use of such false and misleading statements and representations in describing its product as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such representations were true and with result, as consequence of such belief, that number of consuming public purchased substantial volume of its said product, and trade was thereby diverted unfairly to it from competitors engaged in sale and distribution of preparations designed for similar use and who do not misrepresent the same or their effectiveness:

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. R. A. McOwat for the Commission.

Borders, Warrick & Hazard, 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 United Factories, 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, United Factories, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its office and principal place of business at 1302 McGee Street, Kansas City, Mo.

Respondent is now, and has been for more than 2 years last past, engaged in the business of selling and distributing a preparation known as Micaseal, designated and described by the respondent as a reconditioner of automotive engines. During the times herein mentioned respondent has caused said preparation, when sold or ordered, to be transported from its place of business in the State of Missouri to the purchasers thereof at their respective points of location in various States of the United States other than the State of Missouri, in the District of Columbia, and in foreign nations. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between various States of the United States, in the District of Columbia, and with foreign nations.

PAR. 2. Respondent is now and has been in competition with other corporations and with individuals, firms, and partnerships engaged in the business of selling and distributing preparations designed for similar usage in commerce among and between the various States of the United States, in the District of Columbia, and with foreign nations. Among said competitors in said commerce are many who do not in any manner misrepresent their said preparations or the effectiveness in use thereof.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing the purchase of Micaseal, respondent has caused statements and representations relative to the effectiveness in use of said preparation to be inserted in advertisements in newspapers, periodicals, circulars and other printed matter circulated and distributed among prospective purchasers located in the various States of the United States, in the District of Columbia, and in foreign nations, and in continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto located in various States of the United States and in the District of Columbia. Among and typical of the statements and representations contained in said advertisements so distributed and broadcast as aforesaid are the following:

New Way to Recondition Auto Engines for 95% Less.

No Reboring or New Rings; Saves Gas, Oil—Increases Power; Costs Less than Spark Plugs.

Tested and Approved by These Laboratories: Kansas City Testing Laboratories, Inc.

* * * * * * *

Automotive Test Laboratories of America,

* * * * * * *

Nationally known laboratories put Micaseal to rigid test * * * The Kansas City Testing Laboratory is known in the United States and abroad for its honesty and reliability—and for the carefully conservative statements it makes in its findings. * * * We went to a laboratory that would give us only the impartial truth, which was what we wanted, so that our representatives would know the facts about Micaseal. Micaseal is not an experiment. It has made good both by the most exacting technical laboratory test and the motorists themselves. Users of Micaseal are protected by our iron-clad guarantee.

This paste-like substance when put into the motors through the spark plug openings, spreads and works itself around leaky pistons and rings, has an affinity for metal, and is not affected by heat of the motor.

While filling up the scores, scratches and scars in cylinder walls and leaky pistons and rings, it literally forms a mirror surfaced mineral plating and a cushion seal which increases compression, adds speed, pep, power and smoothness to the operation of old motors, saves oil and gas and does it at a fraction of the cost of new rings and new bore reconditioning.

Stop excessive oil pumping and gasoline waste of old motors with worn pistons and rings by simply removing spark plugs and injecting Micaseal, a new discovery, into the motor through spark plug openings. Here is the result:

1. Compression is increased;
2. Checks excessive oil pumping;
3. Gasoline mileage increased;
4. Checks excessive carbon formation;
5. New pep and power.

The aforesaid statements and representations, together with others of similar import and meaning not herein set out, purport to be descriptive of respondent's preparation and its effectiveness in use. In the manner and by the means aforesaid the respondent represents directly and by implication that the use of said preparation will effect substantial economies in the operation of an automobile through the lessening of the gasoline and oil consumption of the automobile motor; that Micaseal when put into motors through the spark plug openings fills scores and scratches on cylinder walls and forms a cushion seal which increases compression, checks excessive carbon formation, adds speed, power, and smoothness to the operation of old motors, and in fact reconditions a motor at a saving of 95 percent over the ordinary mechanical methods of reboring the cylinders and refitting the pistons in an automobile engine; that nationally known laboratories have made impartial tests of Micaseal and have certified as to the truth and accuracy of the above representations. Respondent represents, in effect, that the use of said preparation in an automobile engine produces the equivalent of a mechanical reconditioning job.

PAR. 4. In truth and in fact the statements and representations disseminated by respondent as aforesaid are deceptive, misleading, exaggerated and untrue. The use of this preparation will not effect substantial economies in the operation of an automobile by decreasing the gasoline and oil consumption of a motor. It does not cause the formation of a cushion seal which increases compression. Respondent's preparation does not check excessive carbon formation. Its use does not add speed, power, and smoothness to the operation of old motors. It does not recondition a motor, nor refit the pistons in the cylinders in an automobile engine. The use of said preparation in an automobile engine does not produce the equivalent of a mechanical reconditioning job nor does its use produce any of the beneficial results produced by a mechanical reconditioning of an automobile engine. No nationally known laboratory has made an impartial test of Micaseal, nor given a certificate as to the truth and accuracy of the above representations.

PAR. 5. The use by the respondent of the aforesaid statements and representations, disseminated as aforesaid, has, and had, the tendency and capacity to and does, and did, mislead and deceive members of the purchasing public, situated in various States of the United States, in the District of Columbia, and in foreign nations, into the erroneous and mistaken belief that the aforesaid statements and representations are and were true and into purchasing substantial quantities of respondent's preparation 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, in the District of Columbia, and with foreign nations has been diverted unfairly to the respondent from its said competitors engaged in selling and distributing preparations designed for similar usages who do not misrepresent their preparations or their effectiveness in use. In consequence thereof, substantial injury has been done by the respondent to competition in commerce among and between the various States of the United States, in the District of Columbia, and with foreign nations.

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 May 31, 1939, issued and thereafter served its complaint upon the respondent, United Factories, Inc., charging it with the use of unfair methods of competition in commerce, and unfair and deceptive acts in commerce in violation of the provisions of said act. Respondent filed an answer, and thereafter, beginning August 11, 1939, testimony and other evidence in support of the allegations of the complaint were introduced by R. A. McOuat, attorney for the Commission, and in opposition to the allegations of the complaint by Borders, Warrick & Hazard, attorneys for respondent, before A. F. Thomas, a trial examiner for the Commission, theretofore duly designated by it, 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, briefs in support of said complaint, and in opposition thereto, and the Commission, having duly considered the matter, and being now fully advised in

the premises, finds that the proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent United Factories, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Missouri having its office and principal place of business located in Kansas City, Mo., and is, and has been for more than 2 years last past, engaged in the business of the sale and distribution of a preparation known as "Micaseal," described by respondent as a "reconditioner of automotive engines." During the times herein mentioned, respondent has caused said preparation, or product, when sold, to be transported from its place of business in the State of Missouri, to the purchasers thereof located in various States of the United States other than the State of Missouri, and in the District of Columbia. The respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between various States of the United States, and in the District of Columbia. Respondent is now, and has been, in competition with other persons engaged in the business of selling and distributing preparations designed for similar uses in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, and for the purpose of inducing the purchase of its preparation "Micaseal," respondent has caused statements and representations relative to the effectiveness in use of said preparation to be inserted in advertisements in newspapers, periodicals, circulars, and other printed matter, circulated and distributed among prospective purchasers located in various States of the United States, and in the District of Columbia, and in continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto located in various States of the United States, and in the District of Columbia. Among and typical of the statements and representations contained in said advertisements so distributed and broadcast, as aforesaid, are the following:

New way to reconditioning auto engines for 95% less.

No reboring or New Rings; Saves Gas, Oil—Increases Power; Costs Less than Spark Plugs.

Tested and Approved by These Laboratories: Kansas City Testing Laboratories, Inc.

* * * * * * *

Automotive Test Laboratories of America.

* * * * * * *

Nationally known laboratories put Micaseal to rigid test * * * The Kansas City Testing Laboratory is known in the United States and abroad for its honesty and reliability—and for the carefully conservative statements it makes in its findings. * * * We went to a laboratory that would give us only the impartial truth, which was what we wanted, so that our representatives would know the facts about Micaseal. Micaseal is not an experiment. It has made good both by the most exacting technical laboratory test and the motorists themselves. Users of Micaseal are protected by our iron-clad guarantee.

This paste-like substance when put into the motors through the spark plug openings, spreads and works itself around leaky pistons and rings, has an affinity for metal, and is not affected by heat of the motor.

While filling up the scores, scratches and scars in cylinder walls and leaky pistons and rings, it literally forms a mirror surfaced mineral plating and a cushion seal which increases compression, adds speed, pep, power and smoothness to the operation of old motors, saves oil and gas and does it at a fraction of the cost of new rings and new bore reconditioning.

Stop excessive oil pumping and gasoline waste of old motors with worn pistons and rings by simply removing spark plugs and injecting Micaseal, a new discovery, into the motor through spark plug openings. Here is the result:

1. Compression is increased;
2. Checks excessive oil pumping;
3. Gasoline mileage increased;
4. Checks excessive carbon formation;
5. New pep and power.

The aforesaid statements and representations, together with others of similar import and meaning not herein set out, purport to be descriptive of respondent's preparation and its effectiveness in use. In the manner and by the means aforesaid, the respondent represents directly and by implication that the use of said preparation will effect substantial economies in the operation of an automobile through the lessening of the gasoline and oil consumption of the automobile motor; that "Micaseal," when put into motors through the spark plug openings, fills scores and scratches on cylinder walls and forms a cushion seal which increases compression, checks excessive carbon formation, adds speed, power, and smoothness to the operation of old motors, and in fact reconditions a motor at a saving of 95 percent over the ordinary mechanical methods of reboring the cylinders and refitting the pistons in an automobile engine; that nationally known laboratories have made impartial tests of "Micaseal" and have certified as to the truth and accuracy of the above representations. Respondent represents, in effect, that the use of said preparation in an automobile engine produces the equivalent of a mechanical reconditioning job.

PAR. 3. "Micaseal" is a mixture or preparation of mineral and vegetable oils in which is incorporated finely divided dry, expanded

vermiculite. Vermiculite is a mica which possesses the property of expanding to many times its initial volume when it is heated, and when it has been so treated it is known as "expanded" or "exfoliated" vermiculite. In "Micaseal" the vermiculite is presented in the expanded form; in other similar products the vermiculite is presented in its original unexpanded form, and is introduced into the engine in the unexpanded form in the hope that it will find its way into small crevices and the heat of the engine will cause it to expand in place. There is no essential difference in the chemical composition of these various substances or products or preparations or "engine improvers," the scientific principle of which is based on the action of vermiculite in the expanded or unexpanded form. In all cases the claims made for the products are based upon the action of expanded vermiculite.

PAR. 4. The statements and representations disseminated by respondent as herein set forth, are deceptive, misleading, exaggerated, and untrue. The use of this preparation will not effect substantial economies in the operation of an automobile by decreasing the gasoline and oil consumption of a motor. It does not cause the formation of a cushion seal which increases pressure. It does not check excessive carbon formation. Its use does not add speed, power and smoothness to the operation of old motors. It does not recondition a motor nor refit the pistons in the cylinders in an automobile engine. The use of said preparation in an automobile engine does not produce the equivalent of a mechanical reconditioning job, nor does its use produce any of the beneficial results produced by the mechanical reconditioning of an automobile engine. "Micaseal" will not improve the performance of the motor engine in the manner represented by respondent in its advertising as hereinabove quoted.

PAR. 5. No nationally-known laboratory has made an impartial test of "Micaseal" or has issued a certificate which certifies to the truth and accuracy of the foregoing representations made by respondent.

PAR. 6. 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 do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that 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 said product with the result that trade has been diverted unfairly to respondent from competitors engaged in selling and distributing preparations designed for similar use, who do not misrepresent their preparations or their effectiveness in use.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence taken before Arthur F. Thomas, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, United Factories, 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 preparations known as Micaseal, or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the name or under any other name in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the use of respondent's preparation will decrease the oil or gas consumption of a motor, increase engine compression or check excessive oil pumping.

2. Representing that the use of respondent's preparation will check excessive carbon formation or add speed, power, or smoothness to the operation of old motors.

3. Representing that the use of respondent's preparation will recondition a motor or produce results equal to or comparable with a mechanical reconditioning of an automobile engine.

4. Representing that nationally known laboratories have made impartial tests of Micaseal and have certified that Micaseal has merit when used in an automobile engine.

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

IN THE MATTER OF

C. I. LEVIN AND EDWARD JOHNSON, TRADING AS MIDWEST MERCHANDISE COMPANY

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

Docket 4058. Complaint, Mar. 12, 1940—Decision, June 10, 1940

Where two individuals engaged in sale and distribution of knives, watches, radios, cameras, and various other articles of merchandise to dealer purchasers in various States and in the District of Columbia, in competition with others engaged in the sale and distribution of like and similar merchandise in commerce as aforesaid—

Sold and distributed to dealers certain assortments of said merchandise which were so packed and assembled as to involve use of game of chance, gift enterprise, or lottery scheme when such merchandise was sold and distributed to the consumer thereof, and which included (1) replica of "Ferdinand the Bull" together with punchboard for use in sale and distribution of said replica, and number of packages of cigarettes, supplied by dealer, under plan by which person punching certain numbers received in return for 2 cents paid said replica or cigarettes, value of which was in excess of amount paid for chance, and others receive nothing, and (2) other assortments, together with various punchboards and push card devices for use in sale and distribution of merchandise in question by means of game of chance, gift enterprise, or lottery scheme involving sales plan and method similar to that described and varying therefrom in detail only; and

Supplied thereby to and placed in the hands of others means of conducting chasers by whom they were exposed and sold to purchasing public in accdise in accordance with such sales plans or methods by retail dealers who purchased or secured said assortments, together with said punchboards or push cards, either directly or indirectly, and exposed said devices and merchandise to purchasing public and sold and distributed same in accordance with such sales plans or methods as above described, involving 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 chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With tendency and capacity to induce a substantial number of purchasing public to buy their said merchandise in preference to similar merchandise offered by competitors, and with result that many dealers and ultimate purchasers of merchandise similar to that distributed by them were attracted by their said sales plans or methods, and by element of chance involved in sale thereof as above described, and were thereby induced to purchase said merchandise from them in preference to similar products

offered and sold by competitors who do not use same or similar methods, and with capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to divert unfairly to them trade in commerce from the said competitors who do not use same or equivalent methods, and to deprive purchasing public of free competition in such merchandise:

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. D. C. Daniel for the Commission.

Mr. H. R. Brandt, of Kansas City, Mo., 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 C. I. Levin and Edward Johnson, individually, and trading under the name of Midwest Merchandise 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 C. I. Levin and Edward Johnson are individuals trading under the name of Midwest Merchandise Co., with their principal office and place of business located at 1006 Broadway, Kansas City, Mo. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of knives, watches, radios, cameras, clocks, lamps, and various other articles of merchandise to dealers located in various States of the United States and in the District of Columbia. Respondents cause, and have caused, their said merchandise, when sold, to be shipped or transported from their aforesaid place of business in the State of Missouri to purchasers thereof in various 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 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 their business respondents are and have been in competition with other partnerships and individuals and with 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 their business as described in paragraph 1 hereof, respondents sell and have 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 consists of a replica of "Ferdinand the Bull" together with a device commonly known as a punchboard. To this assortment the retail dealer who purchases same adds a number of packages of cigarettes. Said punchboard has printed on the top thereof various instructions or legends showing the method or sales plan by which said merchandise is to be sold or distributed to the purchasing or consuming public. Sales are 2 cents each and said punchboard has a number of sealed tubes in which have been inserted slips of paper with numbers appearing thereon. Each purchaser is entitled to punch one of said slips from said board. The said numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the slip of paper punched or removed from said board. The person who punches a certain specified number is entitled to and receives the replica of "Ferdinand the Bull." Purchasers who punch other specified numbers are entitled to and receive a specified number of packages of cigarettes. Persons obtaining numbers not so specified receive nothing for their money. Said replica of "Ferdinand the Bull" and said packages of cigarettes are each worth more than the amount to be paid therefor. Said replica and said packages of cigarettes are thus sold and distributed to the consuming or purchasing public wholly by lot or chance. Respondents sell and distribute various assortments of said merchandise and furnish or sell various punchboard and push-card devices for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme, but the sales plans or methods involved in the sale and distribution of all of said assortments of merchandise are similar to the sales plan or method hereinabove set out, varying only in detail.

PAR. 3. Retail dealers who purchase or procure respondents' said assortments of merchandise, together with said punchboards or push cards, either directly or indirectly, expose said devices and merchandise to the purchasing public and sell and distribute such merchandise in accordance with the above-described sales plan or

methods. 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 of said merchandise in accordance with the sales plans or methods hereinabove set forth. Such sales plans or methods have the tendency and capacity to induce the consuming or purchasing public to purchase respondents' said merchandise in preference to similar merchandise offered for sale and sold by their competitors.

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 an article of merchandise at a price much less than the normal retail price thereof. The use by respondents of said sales plans or methods in the sale of their 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. The use by respondents of said sales plans or methods has the tendency and capacity to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondents as above described are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of merchandise similar to that distributed by respondents are attracted by respondents' said sales plans or methods and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said merchandise from respondents in preference to similar merchandise offered for sale and sold by said competitors of respondents who do not use the same or similar methods. The use of said methods by respondents has the capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to unfairly divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods and has the tendency and capacity to deprive the purchasing public of free competition in said merchandise.

PAR. 6. The aforesaid acts and practices of the 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 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 thereafter served its complaint in this proceeding upon respondents C. I. Levin and Edward Johnson, individually and trading as Midwest Merchandise Company, 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 C. I. Levin and Edward Johnson are individuals trading under the name of Midwest Merchandise Company, with their principal office and place of business located at 1006 Broadway, Kansas City, Mo. Respondents are now and for more than 1 year last past have been engaged in the sale and distribution of knives, watches, radios, cameras, clocks, lamps, and various other articles of merchandise to dealers located in various States of the United States and in the District of Columbia. Respondents cause, and have caused, their said merchandise, when sold, to be shipped or transported from their aforesaid place of business in the State of Missouri to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now, and for more than 1 year last past has been, 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 their business respondents are and have been 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 their business as described in paragraph 1 hereof, respondents sell and have 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 consists of a replica of "Ferdinand the Bull" together with a device commonly known as a punchboard. To this assortment the retail dealer who purchases same adds a number of packages of cigarettes. Said punchboard has printed on the top thereof various instructions or legends showing the method or sales plan by which said merchandise is to be sold or distributed to the purchasing or consuming public. Sales are 2 cents each and said punchboard has a number of sealed tubes in which have been inserted slips of paper with numbers appearing thereon. Each purchaser is entitled to punch one of said slips from said board. The said numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the slip of paper punched or removed from said board. The person who punches a certain specified number is entitled to and receives the replica of "Ferdinand the Bull." Purchasers who punch other specified numbers are entitled to and receive a specified number of packages of cigarettes. Persons obtaining numbers not so specified receive nothing for their money. Said replica of "Ferdinand the Bull" and said packages of cigarettes are each worth more than the amount to be paid therefor. Said replica and said packages of cigarettes are thus sold and distributed to the consuming or purchasing public wholly by lot or chance. Respondents sell and distribute various assortments of said merchandise and furnish or sell various punchboard and push card devices for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme, but the sales plans or methods involved in the sale and distribution of all of said assortments of merchandise are similar to the sales plan or method hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase or procure respondents' said assortments of merchandise, together with said punchboards or push cards, either directly or indirectly, expose said devices and merchandise to the purchasing public and sell and distribute such merchandise in accordance with the above described sales plans or methods. 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 of said merchandise in accordance with the sales plans or methods hereinabove described. Such sales plans or methods have the ten-

dency and capacity to induce the consuming or purchasing public to purchase respondents' said merchandise in preference to similar merchandise offered for sale and sold by their competitors.

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 an article of merchandise at a price much less than the normal retail price thereof. The use by respondents of said sales plans or methods in the sale of their 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. The use by respondents of said sales plans or methods has the tendency and capacity to unfairly hinder competition. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondents as above described are unwilling to adopt and use said methods or any methods involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, merchandise similar to that distributed by respondents are attracted by respondents' said sales plans or methods and by the element of chance involved in the sale thereof in the manner above described and are thereby induced to purchase said merchandise from respondents in preference to similar merchandise offered for sale and sold by said competitors of respondents who do not use the same or similar methods. The use of said methods by respondents has the capacity and tendency, because of said game of chance, gift enterprise, or lottery scheme, to unfairly divert to respondents trade and custom from their said competitors who do not use the same or equivalent methods and has the tendency and capacity to deprive the purchasing public of free competition in said merchandise.

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, C. I. Levin and Edward Johnson, individually and trading under the name of Midwest Merchandise Co., or trading under any other 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 knives, watches, radios, cameras, clocks, lamps, 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 merchandise or any other merchandise so packed and assembled that sales of said merchandise or other merchandise are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others 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 said merchandise or any other merchandise, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used or may be used in selling or distributing said merchandise or any other merchandise to the public.

4. Selling or otherwise distributing any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF

E. T. JAMES, JR., TRADING UNDER THE NAME OF UNITED 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 4060. Complaint, Mar. 12, 1940—Decision, June 10, 1940

Where an individual engaged in manufacture of candy and in sale and distribution of assortments thereof, which were so packed and assembled as to involve use of a lottery scheme, when sold and distributed to consumers thereof, and included (1) number of candy bars, value of each of which was in excess of a cent, and push card for use in sale and distribution of said assortment to purchasing public, under a plan in accordance with which chance selection of certain numbers determined whether customer paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents for candy bar, and (2) various other assortments involving lot or chance feature and sales plans or methods for distribution thereof similar to that above described and varying therefrom in detail only—

Sold such assortments, along with said push cards, to dealers or retailer purchasers by whom they were exposed and sold to purchasing public in accordance with aforesaid sales plan, under which amount to be paid by each customer for a bar of candy was determined wholly by lot or chance, and involving game of chance or sale of a chance to procure candy bars at prices much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his products in accordance with sales plans or methods above set forth, contrary to an established public policy of the United States Government and in competition with many who are unwilling to offer or sell their products so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public so as to involve game of chance or any other method contrary to public policy and refrain therefrom;

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

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.
McDougle & Erwin, of Charlotte, N. Car., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that E. T. James, Jr., individually and trading under the name of United 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 would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, E. T. James, Jr., is an individual doing business under the trade name of United Candy Co., with his principal office and place of business located at 1507 West Trade Street, Charlotte, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused his products when sold to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective places of business. There is now and for more than 1 year last past has been, a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States 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 various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of bars of candy, together with a device called a push card. The card contains a number of partially perforated disks with the word "push" appearing on the face of each of said disks

and printed within each of said disks is either 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents. Each purchaser is entitled to punch one number from said card. Each purchaser is entitled to and receives one bar of candy and pays therefor the amount indicated within the disk removed from said card. All of said bars are worth more than 1 cent. The said amounts are effectively concealed from the purchasers and prospective purchasers until a push or selection has been made and the selected disk removed or separated from the card. Thus the amount to be paid by each customer for a bar of candy is determined wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy, involving a lot or chance feature, and such assortments and the sales plans or methods by which said assortments are distributed are similar to the one hereinabove described varying only in detail.

PAR. 3. Retail dealers who purchase respondent's assortments of candy directly or indirectly expose and sell the same to the purchasing public 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 products in accordance with the sales plans or methods hereinabove set forth. Said sales plans or methods have a tendency and capacity to induce purchasers of said candy to purchase respondent's candy in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of his candy and the sale of such candy 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 the criminal laws. The use by respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent as above alleged are unwilling to offer for sale or to sell their products so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method which is contrary to public policy and such competitors refrain therefrom.

PAR. 5 Many dealers in, and ultimate consumers 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 methods by respondent has a tendency and capacity, because of said game of chance to unfairly divert to respondent trade from his competitors who do not use the same or equivalent methods; to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in the candy trade; to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition. The use of said methods by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or equivalent methods.

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 March 12, 1940 issued and thereafter served its complaint in this proceeding upon respondent, E. T. James, Jr., individually and trading under the name of United Candy Co., charging him 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. After the issuance of said complaint and the filing of respondent's answer the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission.

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, E. T. James, Jr., is an individual doing business under the trade name of United Candy Co., with his principal office and place of business located at 1507 West Trade Street, Charlotte, N. C. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused his products when sold to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof located in the various other States of the United States and in the District of Columbia at their respective places of business. There is now and for more than 1 year last past has been, a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States 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 various assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to consumers thereof. One of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a number of bars of candy, together with a device called a push card. The card contains a number of partially perforated disks with the word "push" appearing on the face of each of said disks and printed within each of said disks is either 1 cent, 2 cents, 3 cents, 4 cents or 5 cents. Each purchaser is entitled to punch one number from said card. Each purchaser is entitled to and receives one bar of candy and pays therefor the amount indicated within the disk removed from said card. All of said bars are worth more than one cent. The said amounts are effectively concealed from the purchasers and prospective purchasers until a push

or selection has been made and the selected disk removed or separated from the card. Thus the amount to be paid by each customer for a bar of candy is determined wholly by lot or chance.

The respondent manufactures, sells and distributes various assortments of candy, involving a lot or chance feature, and such assortments and the sales plans or methods by which said assortments are distributed are similar to the one hereinabove described varying only in detail.

PAR. 3. Retail dealers who purchase respondent's assortments of candy directly or indirectly expose and sell the same to the purchasing public 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 products in accordance with the sales plans or methods hereinabove set forth. Said sales plans or methods have a tendency and capacity to induce purchasers of said candy to purchase respondent's candy in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of his candy and the sale of such candy 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 the criminal laws. The use by respondent of said methods has a tendency unduly to hinder competition or to create a monopoly in that the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not use and adopt the same or equivalent methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with respondent as above described are unwilling to offer for sale or to sell their products so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method which is contrary to public policy and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate consumers 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 methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade from his competitors who do not use the same or equivalent methods; to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in the candy trade; to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition. The use of said methods by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or equivalent methods.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, E. T. James, Jr., individually and trading under the name of United Candy Co., or trading under any other name, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of 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 public are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others assortments of candy or other merchandise together with push or pull cards, punchboards or other lottery devices, which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said candy or any other 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 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 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 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

R. L. JACKSON, TRADING AS CAPITAL CITY 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 4092. Complaint, Apr. 17, 1940—Decision, June 10, 1940

Where an individual engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof and included (1) assortments together with pushcards for use in sale and distribution to purchasing or consuming public of a number of candy bars of uniform size and shape, under a plan in accordance with which customer or purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents in accordance with particular number secured by chance, and purchaser making last push in each of two sections into which card was divided received two of said bars, and included assortments (2) together with various other pushcards for use in sale and distribution thereof by means of game of chance, gift enterprise, or lottery scheme and similar to that above described and varying therefrom in detail only—

Sold said assortments along with such pushcards to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of, other means of conducting lotteries in the sale of his products, in accordance with such plan as above set forth, involving game of chance or sale of a chance to procure candy bars at prices much less than normal retail prices thereof or additional bars 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 his said sales plan or method employed in sale and distribution of his candy and in element of chance involved therein, and were thereby induced to buy and sell his said product in preference to that of competitors who do not use same or equivalent method, and with result through use of said method and because of said game of chance of diverting unfairly trade in commerce to himself from his competitors as aforesaid who do not use such methods:

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

McElreath, Scott, Duckworth & DuVall, 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 R. L. Jackson, an individual trading as Capital City Candy Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent R. L. Jackson is an individual trading as Capital City Candy Co., with his principal office and place of business located at 506–508 Decatur Street, Southeast, in the city of Atlanta, Ga. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his place of business in the city of Atlanta, Ga., 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 more than 1 year last past, a course of trade by respondent in said candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States 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 wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 42 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 40 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4 and 5 pay 1¢, 2¢, 3¢, 4¢ and 5¢, respectively. The card is also divided into two sections, and the purchaser making the last push in each section receives two of said bars of candy. The numbers are effectively concealed

from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of his candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof or additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy 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 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 candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said 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 equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in com-

merce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 17, 1940, issued and thereafter served its complaint in this proceeding upon respondent R. L. Jackson, individually and trading as Capital City Candy Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 8, 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 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, R. L. Jackson is an individual trading as Capital City Candy Co., with his principal office and place of business located at 506–508 Decatur Street, Southeast, in the city of Atlanta, Ga. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his place of business in the city of Atlanta, Ga., 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 more than 1 year last past, a course of trade by respondent in said candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States 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 wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 42 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 40 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4 and 5 pay 1¢, 2¢, 3¢, 4¢ and 5¢, respectively. The card is also divided into two sections, and the purchaser making the last push in each section receives two of said bars of candy. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of his candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove found. The use by respondent of said sales plan or method in the sale of his 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 or plan hereinabove found involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof or additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with 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 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 candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said 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 equivalent methods.

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 hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, R. L. Jackson, individually and trading as Capital City Candy Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy, or any other merchandise, so packed and assembled that sales of such candy, or other merchandise, to the general public are to be made, or may be made, by means of a lottery scheme, gaming device, or gift enterprise.

2. Supplying to, or placing in the hands of, others assortments of candy, or other merchandise, together with push or pull cards, punchboards, or other lottery devices, which said push or pull cards, punchboards, or other lottery devices, are to be used, or may be used, in selling or distributing such candy, or other merchandise, to the general public.

3. Supplying to, or placing in the hands of, others push or pull cards, punchboards or other lottery devices, either with assortments of candy, or other merchandise, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used, in selling or distributing such candy, or other merchandise, to the general public;

4. Selling, or otherwise disposing of, any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

It is further ordered, That the respondent shall, within 60 days after service upon 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

EDWIN L. LEISENRING, TRADING AS U. S. DRUG & SALES COMPANY, U. S. DRUG LABORATORIES, AND U. S. DRUG COMPANY; AND GORDON LEISENRING

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

Docket 4053. Complaint, Mar. 8, 1940—Decision, June 11, 1940

Where two individuals engaged, as case might be, under certain trade names, or otherwise, in sale and distribution to purchasers in various other States and in the District of Columbia of a drug preparation advertised as "MAN'S PEP TONIC" and "MAN'S TONIC," and sold as "U. S. SPECIAL TABLETS," and another advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and "MAN'S TONIC" (Double Str. Capsule), and sold as "SEXTOGEN CAPSULES FOR MEN OR WOMEN"; in advertisements of their said products which they disseminated and caused to be disseminated through the mails and through insertion in newspapers of general circulation, and by other means in commerce, and otherwise, and which were intended and likely to induce purchase of their said products in commerce—

(*a*) Represented, directly and by implication, among other things, that their said preparations were safe, competent, and scientific tonics and aphrodisiacs, and strengthened and rejuvenated the glands and sexual organs of man or woman, and that they possessed therapeutic value in the treatment of debility; facts being said products were practically without value as tonics in view of very small amounts therein contained of drugs possessed of tonic properties, and said products possessed no value for strengthening or rejuvenating glands or organs above referred to, or any therapeutic value in treatment of debility;

(*b*) Failed to reveal in said advertisements of their said products designated as "MAN'S PEP TONIC" or "MAN'S TONIC" and sold as "U. S. SPECIAL TABLETS" facts material in light of representations therein or material with respect to consequences which might result from use of commodity in question under conditions prescribed in said advertisements or under such conditions as are customary or usual, in that such product contained dangerous drugs extract of nux vomica, which, even in small doses, is dangerous to man, and yohimbine hydrochloride, very powerful drug and dangerous one, not officially recognized by United States Pharmacopoeia, the national formulary, and one which, affecting particularly mucous membranes of certain organs and having similar effect upon other epithelial structures of urogenital tract, may, in large doses, produce psychic disturbances and vertigo, together with cerebral congestion; and

(*c*) Failed to reveal in said advertisements of its product advertised as "MAN'S PEP TONIC" (Double Str. Capsule) and as "MAN'S TONIC" (Double Str. Capsule) and sold as "SEXTOGEN CAPSULES FOR MEN AND WOMEN" facts material in the light of its said representations or material with respect to consequences which might result from the use of said commodity under conditions prescribed in said advertisements or under such conditions as are customary or usual in that said product above referred to contained,

in addition to dangerous drugs extract of nux vomica and extract of yohimbine, as above described, dangerous drug extract of thyroid which, taken in excess of the body's needs, may produce, among other things, headaches, muscular and articular pains, nausea, vomiting, vertigo, and other symptoms or ailments and may result, among other things, in permanent injury to tissues and organic functions and the entire body mechanism and in irreparable injury to heart muscles and premature death;

With effect, through use by them of such false and misleading statements, claims, representations, and advertisements disseminated as aforesaid with respect to their said products, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, etc., were true, and that their said preparations constituted effective, safe, and scientific tonics and aphrodisiacs, and effective, safe, and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman, and possessed therapeutic values in the treatment of debility, and to induce, directly or indirectly, the purchase by the public of their said 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. A. E. Lipscomb for the Commission.

Mr. Felix L. O'Neill, of Denver, Colo., 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 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, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent Edwin L. Leisenring is an individual with his office and principal place of business located at 1534 Lawrence Street, Denver, Colo.

Respondent Gordon Leisenring is an individual with his office and principal place of business located at 1534 Lawrence Street, Denver, Colo.

Respondents are now, and for several years past have been, engaged in the sale and distribution of various medicinal preparations, including among others, a drug preparation advertised as "Man's Pep Tonic" and as "Man's Tonic," and sold as "U. S. Special Tablets"; and a 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." Respondents cause said

preparations when sold by them, to be transported from their aforesaid place of business in the State of Colorado to the purchasers thereof located in various other States of the United States, and the District of Columbia. Respondents maintain and at all times herein mentioned have maintained, a course of trade in said preparations in commerce among and between the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of their aforesaid business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said preparations, by United States mails, and by insertion in newspapers having a general circulation, all of which are distributed in commerce among the various States of the United States, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their preparations, and 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, claims, and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

MAN'S PEP TONIC

New improved formula with gland substance Ext. Passion Flower, Damiana and other ingredients. Used by thousands, $1 box 3 for $2.50. Double str. capsule, $2; 3 for $5. Postpaid. Plain wrap. Write or call

U. S. Drug Co., 1534 Lawrence St.

MAN'S TONIC

New improved formula with gland substance. Ext. Passion Flower, Damiana and other ingredients. Used by thousands, $1 box, 3 for $2.50. Double str. capsules, $2; 3 for $5. Postpaid. Plain wrap. Write or call

U. S. Drug Co., 1534 Lawrence St.

MAN'S TONIC

New improved formula with gland substance. Iron, damiana and other tonic ingredients. Also for women, $1 box, 3 for $2.50. Double str. capsules, $2; 3 for $5. Postpaid. Plain wrap. Write or call

U. S. Drug Co., 1534 Lawrence St.

By the use of the statements and representations heretofore set forth, and others similar thereto not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of respondents' preparations and their effectiveness, respondents have represented, directly and by implication, among other things, that said preparations are safe, competent and reliable tonics; that said preparations are effective, safe and scientific aphrodisiacs; that said preparations are effective, safe and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman; and that said preparations possess therapeutic value in the treatment of debility.

PAR. 3. The aforesaid statements and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue.

In truth and in fact said preparations are practically without value as tonics, as the drugs contained therein which possess tonic properties are present only in very small amounts and are not present in such amounts as to give said preparations any value as tonics. Said preparations possess no value for the strengthening or rejuvenating of the glands or the sexual organs of man or woman. Said preparations do not possess any therapeutic value in the treatment of debility.

Furthermore, said statements and representations concerning said drug preparations advertised as "MAN'S PEP TONIC" and as "MAN'S TONIC" and sold as "U. S. SPECIAL TABLETS" constitute false advertisements in that they fail to reveal the fact that said preparation contains the dangerous drugs, extract nux vomica and yohimbine hydrochloride, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions which are customary or usual.

The drug, extract of nux vomica, is a dangerous drug the active ingredient of which is the poisonous alkaloid strychnine. Said drug is, even when taken in small doses, dangerous to many users. Mild toxic symptoms following the use of said drug include nervous irritability and insomnia, whereas convulsions may result from a more severe intoxication.

The drug yohimbine hydrochloride is a dangerous drug not officially recognized by the United States Pharmacopoeia or The National Formulary. Its action depends upon intense vasodilation, or congestion affecting particularly the mucous membrane of the sexual organs and it would also have a similar effect upon other

epithelial structures of the urogenital tract, including those of the kidney, prostate, and bladder. Said drug is a very powerful drug and in large doses yohimbine hydrochloride may produce psychic disturbances and vertigo, together with cerebral congestion.

Furthermore, said statements and representations concerning said 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 AND WOMEN" are misleading and deceptive in that they fail to reveal the fact that said preparation contains the dangerous drugs, extract nux vomica, yohimbine, and extract of thyroid, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions which are customary or usual.

In addition to the dangerous drugs, extract of nux vomica and extract of yohimbine described above, said preparation, "SEXTOGEN CAPSULES FOR MEN AND WOMEN," contains the dangerous drug extract of thyroid. Extract of thyroid is a dangerous drug which, when taken in excess of the body's need, may produce headaches, muscular and articular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor and tachycardia, and may result in a 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.

PAR. 4. The use by the respondents of the foregoing false, deceptive, and misleading statements, claims, representations, and advertisements, disseminated as aforesaid, with respect to respondents' 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, claims, representations, and advertisements are true and that said preparations are effective, safe, and scientific tonics; that said preparations are effective, safe, and scientific aphrodisiacs; that said preparations are effective, safe, and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman, and that said preparations possess therapeutic values in the treatment of debility, and to induce, directly or indirectly, the purchase by the public or respondents' said preparations.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts 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 March 8, 1940, issued, and on March 11, 1940, served its complaint in this proceeding upon respondents, 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, charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 4, 1940, the respondents filed their answer, in which they 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 Edwin L. Leisenring is an individual with his office and principal place of business located at 1534 Lawrence Street, Denver, Colo.

Respondent Gordon Leisenring is an individual with his office and principal place of business located at 1534 Lawrence Street, Denver, Colo.

Par. 2. Respondents are now, and for several years past have been engaged in the sale and distribution of various medicinal preparations, including among others, a drug preparation advertised as "MAN'S PEP TONIC" and as "MAN'S TONIC," and sold as "U. S. SPECIAL TABLETS"; and a 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." Respondents cause said preparations when sold by them, to be transported from their aforesaid place of business in the State of Colorado to the purchasers thereof located in various other States of the United States and the District of Columbia. Respondents maintain and at all times herein mentioned have maintained, a course of trade in said preparations 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 their aforesaid business, respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements

concerning their said preparations, by United States mails, and by insertion in newspapers having a general circulation, all of which are distributed in commerce among the various States of the United States, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparations, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their 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, claims, and representations contained in said advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

"MAN'S PEP TONIC

New improved formula with gland substance Ext. Passion Flower, Damiana and other ingredients. Used by thousands, $1 box 3 for $2.50. Double str. capsule, $2; 3 for $5. Postpaid. Plain wrap. Write or call U. S. Drug Co., 1534 Lawrence St."

"MAN'S TONIC

New improved formula with gland substance. Ext. Passion Flower, Damiana and other ingredients. Used by thousands, $1 box, 3 for $2.50. Double str. capsules, $2; 3 for $5. Postpaid. Plain wrap. Write or call U. S. Drug Co., 1534 Lawrence St."

"MAN'S TONIC

New improved formula with gland substance. Iron, damiana and other tonic ingredients. Also for women, $1 box, 3 for $2.50. Double str. capsules, $2; 3 for $5. Postpaid. Plain wrap. Write or call. U. S. Drug Co., 1534 Lawrence St."

PAR. 4. By the use of the statements and representations heretofore set forth, and others similar thereto not specifically set out herein all of which purport to be descriptive of the therapeutic properties of respondents' preparations and their effectiveness, respondents have represented, directly and by implication, among other things, that said preparations are safe, competent, and reliable tonics; that said preparations are effective, safe and scientific aphrodisiacs; that said preparations are effective, safe, and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman; and that said preparations possess therapeutic value in the treatment of debility.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents in the manner above decribed are grossly exaggerated, misleading, and untrue.

In truth and in fact said preparations are practically without value as tonics, as the drugs contained therein which possess tonic properties are present only in very small amounts and are not present in such amounts as to give said preparations any value as tonics. Said preparations possess no value for the strengthening or rejuvenating of the glands or the sexual organs of man or woman. Said preparations do not possess any therapeutic value in the treatment of debility.

Furthermore, said statements and representations concerning said drug preparation advertised as "MAN'S PEP TONIC" and as "MAN'S TONIC" and sold as "U. S. SPECIAL TABLETS" constitute false advertisements in that they fail to reveal the fact that said preparation contains the dangerous drugs, extract nux vomica, and yohimbine hydrochloride, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The drug, extract of nux vomica, is a dangerous drug the active ingredient of which is the poisonous alkaloid strychnine. Said drug is, even when taken in small doses, dangerous to many users. Mild toxic symptoms following the use of said drug include nervous irritability and insomnia, whereas convulsions may result from a more severe intoxication.

The drug yohimbine hydrochloride is a dangerous drug not officially recognized by the United States Pharmacopoeia of The National Formulary. Its action depends upon intense vasodilation, or congestion affecting particularly the mucous membrane of the sexual organs and it would also have a similar effect upon other epithelial structures of the urogenital tract, including those of the kidney, prostate, and bladder. Said drug is a very powerful drug and in large doses yohimbine hydrochloride may produce psychic disturbances and vertigo, together with cerebral congestion.

Furthermore, said statements and representations concerning said 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 AND WOMEN" are misleading and deceptive in that they fail to reveal the fact that said preparation contains the dangerous drugs, extract nux vomica, yohimbine, and extract of thyroid, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

In addition to the dangerous drugs, extract of nux vomica and extract of yohimbine described above, said preparation, "SEXTOGEN CAPSULES FOR MEN AND WOMEN," contains the dangerous drug extract of thyroid. Extract of thyroid is a dangerous drug which, when taken in excess of the body's need, may produce headaches, muscular and articular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor and tachycardia, and may result in a 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.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements, claims, representations, and advertisements, disseminated as aforesaid, with respect to respondents' 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, claims, representations, and advertisements are true and that said preparations are effective, safe and scientive tonics; that said preparations are effective, safe, and scientific aphrodisiacs; that said preparations are effective, safe, and scientific treatments for strengthening and rejuvenating the glands and sexual organs of man or woman, and that said preparations possess therapeutic values in the treatment of debility, and to induce, directly or indirectly, the purchase by the public of respondent's said 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Edwin L. Leisenring, an individual, trading as U. S. Drug & Sales Co., U. S. Drug Laboratories,

and U. S. Drug Co., or trading under any other name or names, and Gordon Leisenring, an individual, their respective agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of their medicinal preparations advertised as "Man's Pep Tonic" and as "Man's Tonic" and sold under the name "U. S. Special Tablets" or of their medicinal preparation advertised as "Man's Pep Tonic" (Double Str. Capsule) and as "Man's Tonic" (Double Str. Capsule) and sold under the name "Sextogen Capsules for Men and Women," or of any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparations are safe, competent or reliable tonics; that said preparations are effective, safe, or scientific aphrodisiacs; that said preparations are safe or scientific treatments for strengthening or rejuvenating the glands or sexual organs of men or women; or that said preparations possess any value in the treatment of debility; or which advertisements fail to reveal that the use of said preparations may result in serious and irreparable injury to the health of the user.

2. 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 any of said preparations, which advertisements contain any of the representations prohibited in paragraph 1 hereof or which fail to reveal that the use of said preparations may result in serious and irreparable injury to the health of the user.

It is further ordered, That the respondent shall, within 10 days after service upon them of this order file with the Commission an interim report in writing stating whether they intend to comply with this order and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, said respondents shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

WILLIAM C. EVANS, TRADING AS EVANS CANDY HOUSE

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

Docket 4102. Complaint, Apr. 23, 1940—Decision, June 11, 1940

Where an individual engaged in sale and distribution of candy including assortments thereof which were so packed and assembled as to involve use of game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and included (1) a number of candy bars, together with push card for use in sale and distribution of said bars under a plan by which customer purchaser paid 1 cent, 2 cents, 3 cents, 4 cents, or 5 cents for bar, retail value of which was greater than many of the prices to be paid therefor, in accordance with number secured by chance from disk of card, and (2) various other assortments for distribution to consumers by methods involving lottery or chance features, similar to that hereinabove described and varying therefrom in detail only—

Sold to dealers such assortments and boards involving game of chance or sale of a chance to procure candy bars 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 and in competition with many who are unwilling to offer and sell candy so packed and assembled as above described or candy 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 refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by his said method and manner of packing same and by element of chance involved in sale thereof as above described, and were thereby induced to purchase said product, thus packed and sold by him, in preference to candy offered and sold by his said competitors, who do not use such or equivalent methods, and with tendency and capacity, through use of said method and because of such game of chance, to divert unfairly to himself, trade from his said competitors who do not use same or equivalent methods, exclude from candy trade all competitors who are unwilling to and do not use such methods because unlawful, lessen competition in said trade and create monopoly thereof in him and such other distributions of candy as do use same or equivalent methods, and deprive purchasing public of benefit of free competition in trade in question, and to eliminate from said trade all actual, and exclude therefrom all potential, competitors who do not adopt and use said or equivalent methods:

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. C. D. Stewart, 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 William C. Evans, individually and trading as Evans Candy House, 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 C. Evans is an individual trading under the name of Evans Candy House with his principal office and place of business located at 309 Marietta Street, Atlanta, Ga. Respondent is now, and for more than one year last past, has been, engaged in the sale and distribution of candy to dealers. Respondent causes, and has caused, his products when sold to be shipped or transported from his aforesaid principal place of business in the State of Georgia to purchasers thereof in various other States of the United States 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 candy in commerce between and among various States of the United States. In the course and conduct of his business, respondent is, and has been, in competition with other individuals and partnerships, and with corporations engaged in the sale and distribution of like or similar products in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy together with a device commonly called a push card. The said bars of candy are sold and distributed to the consumers thereof by means of said push cards in substantially the following manner:

Said push card contains a number of partially perforated disks with the word "Push" appearing on the face of each of said disks. Printed within each of said disks is either the number 1, 2, 3, 4, or 5. Each purchaser selects and removes one of said disks from the card, pays in cents the amount of the number contained in said disk, and receives a bar of said candy. Each of said bars of candy has a retail value greater than many of the prices to be paid therefor. The said numbers are effectively concealed from purchasers and prospec-

tive purchasers until the disks have been selected and removed from said card. The amounts to be paid for said bars of candy are thus determined wholly by lot or chance. The respondent sells and distributes various assortments of candy to be distributed to the consumers thereof by methods involving lot or chance features, but such assortments and the methods of sale thereof are similar to the one hereinabove described, varying only in detail.

PAR. 3. 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 bars of candy at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of candy and the sale of candy by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws. The use by respondent of said methods has the tendency unduly to hinder competition or to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy trade competitiors who do not adopt and use the same or equivalent methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above alleged, are unwilling to offer for sale and sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 4. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said methods and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade from its said competitors who do not use the same or equivalent methods, to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or equivalent or similar methods because the same are unlawful, to lessen competition in said candy trade, to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition in said candy trade. The use

of said methods by respondent has a tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and used said methods or equivalent methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 23, 1940, issued and thereafter served its complaint in this proceeding upon respondent William C. Evans, individually and trading as Evans Candy House, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 17, 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 William C. Evans is an individual trading under the name of Evans Candy House with his principal office and place of business located at 309 Marietta Street, Atlanta, Ga. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of candy to dealers. Respondent causes, and has caused his products when sold to be shipped or transported from his aforesaid principal place of business in the State of Georgia to purchasers thereof in various other States of the United States 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 candy in commerce between and among various States of the United States. In the course and conduct of his

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 products in commerce between and among the various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells, and has sold, to dealers certain assortments of said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy together with a device commonly called a push card. The said bars of candy are sold and distributed to the consumers thereof by means of said push cards in substantially the following manner:

Said push card contains a number of partially perforated disks with the word "Push" appearing on the face of each of said disks. Printed within each of said disks is either the number 1, 2, 3, 4, or 5. Each purchaser selects and removes one of said disks from the card, pays in cents the amount of the number contained in said disks, and receives a bar of said candy. Each of said bars of candy has a retail value greater than many of the prices to be paid therefor. The said numbers are effectively concealed from purchasers and prospective purchasers until the disks have been selected and removed from said card. The amounts to be paid for said bars of candy are thus determined wholly by lot or chance. The respondent sells and distributes various assortments of candy to be distributed to the consumers thereof by methods involving lot or chance features, but such assortments and the methods of sale thereof are similar to the one hereinabove described, varying only in detail.

PAR. 3. The sale of said candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail prices thereof. The use by respondent of said methods in the sale of candy and the sale of candy by and through the use thereof and by the aid of said methods is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws. The use by respondent of said methods has the tendency unduly to hinder competition or to create a monopoly in this, to wit: that the use thereof has the tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same or equivalent methods involving the same or an equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who make and sell candy in competition with the respondent, as above described,

are unwilling to offer for sale and sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance, or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 4. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said methods and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent has a tendency and capacity, because of said game of chance, to unfairly divert to respondent trade from its said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or equivalent or similar methods because the same are unlawful; to lessen competition in said candy trade; to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or equivalent methods; and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondent has a tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use said methods or equivalent methods.

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 the 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 William C. Evans, individually and trading as Evans Candy House, or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of 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 are to be made or may be made by means of a lottery, gaming device, or gift enterprise,

2. Supplying to or placing in the hands of others assortments of candy or other merchandise together with push or pull cards, punchboards or other lottery devices, which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said candy or any other 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 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 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 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

WARREN WATKINS, TRADING AS SQUARE DEAL 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 3405. Complaint, May 6, 1938—Decision, June 12, 1940

Where an individual engaged in manufacture of candy and in sale and distribution of certain assortments thereof, which were so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers, and included assortments of one dozen boxes of candy together with push or punch card for use of retailer in disposing thereof in accordance with said card's explanatory legend, under which amount paid by purchaser for box secured ranged from 1 cent to 47 cents or from 1 cent to 39 cents, depending on number secured by chance from card and on particular scheme employed;

Sold such assortments along with said push or punch cards to brokers, wholesalers, jobbers, department stores, and retail dealers, by whom, as direct or indirect purchasers, such assortments were exposed and sold to public in accordance with aforesaid sales plan involving game of chance or sale of a chance to secure box of candy at much less than normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his product in accordance with sales plan above set forth, contrary to an established public policy of the United States Government and in violation of its criminal laws, and in competition with many who are unwilling to offer and sell candy so packed and assembled as above described or otherwise arranged and packed for sale to purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and refrained therefrom;

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

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

Before *Mr. Charles P. Vicini* and *Mr. John J. Keenan*, trial examiners.

Mr. D. C. Daniel for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Warren Watkins, individually and trading as Square Deal 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 would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent, Warren Watkins, is an individual trading under the name of Square Deal Candy Co., with its principal office and place of business located at 768 Merchant Street, Los Angeles, Calif. Respondent is now, and for some time last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused his products, when sold, to be transported from his principal place of business in the city of Los Angeles, Calif., to purchasers thereof located in the various States of the United States other than the State of California and in the District of Columbia at their respective places of business. There is now, and has been for some time last past, a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business, respondent is in competition with other individuals and with partnerships and corporations likewise engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent sells and has sold to dealers certain assortments of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. One of said assortments consists of a number of boxes of candy and a device commonly called a push card. Said boxes of candy are distributed to the purchasing public by means of a push card in the following manner: The push card contains a number of partially perforated disks. Within each of said disks is printed a number. The card bears statements informing purchasers and prospective purchasers that each purchaser will receive a box of candy. The prices of sales vary from 1 cent to 39 cents. The purchaser pays in cents the amount of the number pushed. Said boxes of candy are worth more than many of the prices to be paid therefor, but are received by the purchasers thereof for the sums indicated by the pushes from said card. Said numbers are effectively concealed from

the purchasers and prospective purchasers until a purchase has been made and the disk separated from the push card. Whether or not a purchaser receives a box of candy of a value greatly in excess of the amount to be paid therefor is determined wholly by lot or chance.

The respondent manufactures, sells, and distributes various assortments of candy involving the 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. 3. Retail dealers who purchase respondent's candy directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting a lottery in the sale of his products in accordance with the sales plan hereinabove set forth. Said sales plan has a tendency and capacity to induce purchasers of said candy to purchase respondent's candy in preference to candy offered for sale and sold by his competitors.

PAR. 4. The sale of said candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a box of candy at a price much less than the normal retail value thereof. The use by respondent of said method in the sale of candy and the sale of candy by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States, and which is in violation of criminal laws. The use by respondent of said method has a tendency unduly to hinder competition and to create a 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 equivalent or similar methods involving the same or equivalent elements of chance or lottery. Many persons, firms, and corporations who make and sell candy in competition with the respondent as above alleged, are unwilling to offer for sale and sell their products so packaged and assembled for sale as above alleged or otherwise arranged or packed for sale to the purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in and ultimate purchasers of candy are attracted by respondent's said method and manner of packing said candy, and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy offered for sale and sold by said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent has the tendency and capacity, because of said game

of chance, to unfairly divert to respondent trade and custom from his competitors who do not use the same or equivalent methods, to exclude from the candy trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful, to lessen competition in the candy trade, to create a monopoly of said candy trade in respondent and in such other distributors of candy as use the same or similar or equivalent methods, and to deprive the purchasing public of the benefit of free competition. The use of said method by respondent has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the same or equivalent methods.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 6, 1938, issued, and thereafter served its complaint in this proceeding upon the respondent Warren Watkins, an individual, trading as the Square Deal Candy Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, no answer having been filed by the respondent, testimony and other evidence in support of the allegations of the complaint were introduced by DeWitt T. Puckett, Esq., and Reuben J. Martin, Esq., attorneys for the Commission, before C. P. Vicini and John J. Keenan, trial examiners of the Commission, theretofore duly designated by it. The respondent appeared in his own behalf. The said testimony and other evidence were duly recorded and filed in 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, 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, Warren Watkins, doing business individually and as Square Deal Candy Co., with offices and principal

place of business located at 768 Merchant Street, Los Angeles, Calif., has been for more than 4 years last past engaged in the manufacture, sale, and distribution of candy to brokers, wholesalers, jobbers, department stores, etc.

Respondent causes, and has caused, his products, when sold to be shipped or transported from his aforementioned principal place of business in California to purchasers thereof in the State of California and in Arizona and in other States of the United States at their respective places of business. There is now, and has been for some time last past, a course of trade by said respondent in such candy in commerce between and among the various States of the United States. In the course and conduct of said business respondent is in competition with other individuals, and with partnerships and corporations engaged in the sale and distribution of candy in commerce between and among the various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in Paragraph 1 hereof, respondent sells and has sold to brokers, wholesalers, jobbers, department stores, etc., certain assortments of pound boxes of candy so packed and assembled as to involve the use of a lottery scheme when sold and distributed to the consumers thereof. The said assortments are sold and distributed to the purchasing public in the following manner:

A push or punch card is packed with each dozen boxes of candy for use of the retail dealer in disposing of said candy. The said punch or push cards contain the following representations:

EVERY PUNCH WINS
1¢ TO 47¢
PAY WHAT YOU PUNCH
FROM 1¢ TO 47¢

NUMBERS OVER 47 PAY ONLY 47¢
EVERY PLAY RECEIVES
A FULL LB. BOX OF
CHOCOLATES

REMEMBER
YOUR VALENTINE
WITH A BRIGHT RED
CANDY HEART

PAY WHAT YOU PULL
FROM 1¢ TO 39¢
NOTHING HIGHER
EVERY NUMBER GETS A HEART

The punch or push cards contain a number of partly perforated discs and on the face of each disc is printed the word "push." Within each of said discs is printed a number; said numbers run from 1 to 39, and 1 to 47, and indicate in cents the price to be paid by the consumer or the person pushing the disc. The said numbers printed within the said discs are effectively concealed from purchasers and prospective purchasers until a push has been made and the disc separated or removed from said card. The fact as to whether a customer pays 1 cent or any price up to 39 cents, or 1 cent or any price up to 47 cents, is determined wholly by lot or chance.

PAR. 3. Retail dealers who purchase these assortments of respondent directly or indirectly expose and sell the same to the public in accordance with the aforesaid sales plan. The respondent thus supplies to and places in the hands of others a means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. Said sales plan has the tendency and capacity to induce purchasers of candy to purchase respondent's product in preference to the candy offered for sale and sold by his competitors.

PAR. 4. The sale of the said candy to the purchasing public in the manner above found involves a game of chance or the sale of a chance to secure a box of candy at a price much less than the normal retail price thereof. The use by respondent of said method in the sale of his candy, and the sale of the candy by and through the use thereof, and by the aid of said method, is a practice of a sort which is contrary to an established policy of the Government of the United States and in violation of its criminal laws. The use by respondent of said method in the sale of his products has the tendency unduly to hinder competition and to create a 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 respondent, as above found, are unwilling to offer for sale and sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 5. Many dealers in, and ultimate purchasers of, candy are attracted by respondent's said method and manner of packing said candy and by the element of chance involved in the sale thereof in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondent in preference to candy

offered for sale and sold by his competitors, 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 his competitors who do not use the same or an equivalent or similar method, to exclude from said candy 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 candy trade, to create a monopoly of said candy trade in respondent and such other distributors of candy as use the same or an equivalent or similar method, and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said method by respondent in the sale of his products has the tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not adopt and use the said method or an equivalent or similar method.

CONCLUSION

The aforesaid acts and practices of the respondent, Warren Watkins, individually and trading as Square Deal Candy Co., as herein found, are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of competition in commerce 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 (no answer having been filed by the respondent), testimony and other evidence taken before C. P. Vicini and John J. Keenan, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no proof in opposition to the allegations of said complaint) brief filed by counsel for the Commission (respondent having filed no brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Warren Watkins, individually and trading as Square Deal Candy Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for

sale, sale, and distribution of 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 are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others assortments of candy or other merchandise together with push or pull cards, punchboards or other lottery devices, which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said candy or any other 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 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 public.

4. Selling or otherwise distributing any merchandise by means of a game or 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

GENERAL AMERICAN SALES CORPORATION, AND DAVID C. BASKIN, ARNOLD SIMON, AND FAYE SIMON

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

Docket 3706. Complaint, Feb. 11, 1939—Decision, June 14, 1940

Where a corporation and an individual who was its president, general manager, and director, and controlling stock owner and in charge of the active management thereof, engaged in offer and sale of electric razors, cameras, radios, pencils, pencil sets, and other articles of merchandise to purchasers in various other States, in course and conduct of their said business and acting together and in cooperation with each other in doing acts and things here set forth, and in competition with others engaged in sale or distribution of like or similar articles of merchandise in commerce among the various States and in the District of Columbia—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes by which such merchandise was distributed to ultimate consumer thereof wholly by lot or chance, and distribution to purchasing public of certain advertising literature including, among other things, push cards, order blanks, and advertisements containing illustrations of products in question and explaining their plan or method of selling and distributing such merchandise and allotting it as premiums or prizes to operators of said push cards under plans including (1) assortments of articles such as Eversharp pencils and Spartus Candid Cameras for sale and distribution under a plan in accordance with which person selecting by chance from list of girls' names displayed on push card that corresponding to name concealed under card's master seal received said camera, and persons selecting by chance three certain numbers received Eversharp Pencil, and others received nothing for money paid, and under which plan amount paid by customer or purchaser for chance was dependent upon particular number pushed by chance and certain numbers were free, and including (2) various other assortments of merchandise and push cards supplied therewith for use in sale and distribution of their merchandise by means of games of chance, gift enterprises, or lottery schemes; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in sale and distribution of their said products in accordance with said sales plan or method as above set forth by persons to whom they furnished or supplied said devices and who made use thereof in selling or distributing their said merchandise in accordance with such sales plan or method, under which fact as to whether purchaser received any of said articles of merchandise, value of each of which was greater than cost of pushing any one disk, or anything for amount of money paid, or which of said articles, if any, purchaser would receive, or whether purchaser received article of merchandise without cost was determined wholly by lot or chance, and involving game of chance, or sale of chance, to procure, as aforesaid, articles of merchandise without cost or at price much less than normal retail price thereof, con-

trary to an established public policy of the United States Government and in violation of criminal statutes, and in competition with many who are unwilling to adopt and use such or any method involving element of chance or sale of a chance to win something by chance or any other methods contrary to public policy, and have refrained therefrom;

With result of diverting unfairly trade and custom to themselves from their competitors aforesaid who are unwilling to and do not use such or equivalent methods because unlawful, 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 of 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.

Nash & Donnelly, of Chicago, Ill., for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that General American Sales Corporation, a corporation, and David C. Baskin, Arnold Simon, and Faye Simon, 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, General American 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 32 West Randolph Street, Chicago, Ill. Respondent David C. Baskin, an individual, is principal stockholder, President and a director of the corporate respondent. Respondents Arnold Simon and Faye Simon are individuals and are directors and officers of the corporate respondent. Respondents David C. Baskin, Arnold Simon, and Faye Simon formulate, control, and direct the practices and policies of the corporate respondent. All of the individual respondents have their offices at the same address as corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for some time last past have been engaged in the sale and distribution of electric razors, cameras, radios, pencils, pen and pencil sets, and other articles of merchandise in commerce between and

among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia at their respective points of location. There is now and has been for some time last past a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondents are and have been in competition with other corporations and individuals, and with partnerships engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof respondents, in soliciting the sale of and in selling and distributing their merchandise in commerce, as commerce is hereinabove described, furnish and have furnished various devices and plans of merchandising which involve the operation of games of chance, gift enterprises, or lottery schemes by which said merchandise is sold and distributed to the ultimate consumers thereof wholly by lot or chance. The method or sales plan adopted and used by respondents was and is substantially as follows:

Respondents distribute and have distributed to the purchasing public in commerce, as commerce is hereinabove described, certain literature and instructions including, among other things, push cards, order blanks, illustrations of their said products, and circulars explaining respondents plan of selling merchandise and of alloting it as premiums or prizes to the operators of said push cards. One of respondents' push cards bears 63 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 63 small partially perforated disks and on the face of each of said disks is printed one of the feminine names appearing alphabetically on the reverse side of the card. Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. Such number indicates the amount to be paid by the person selecting the feminine name appearing under said disk. The push card also has a large master seal and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The purchaser receiving the chance bearing the name corresponding to the name appearing under the master seal receives the

merchandise offered as a prize. The name concealed under the master seal is not disclosed until after all chances have been sold. The push card bears legends or instructions as follows:

NAME UNDER SEAL RECEIVES

A SPARTUS CANDID CAMERA

(cut)

Numbers 31–41–51
Each receives a guaranteed

EVERSHARP PENCIL

Nos. 1 to 25 pay 1 to 25
Nos. over 25 pay only 25

THE WINNER

(cut)

Do not remove seal until all sold

Write your name opposite name you select on reverse side.

(63 perforated disks)

Numbers 9, 10, 11, 12, 13, 14, 15, 16 are free

Sales of respondents' products 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 said articles of merchandise are thus distributed to the purchasing public wholly by lottery or chance.

Respondents furnish and have furnished various push cards, accompanied by said order blanks, instructions, and other printed matter, for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push cards is the same as the one hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondents furnish the said push cards use the same in purchasing, selling, and distributing respondents' merchandise, in accordance with the aforesaid sales plan. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale of their merchandise in accordance with the sales plan hereinabove set forth. The use by respondents of said sales plan or method in the sale of their merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondents as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondents' merchandise in preference to merchandise offered for sale and sold by said competitors of respondents who do not use the same or an equivalent method. The use of said method by respondents, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondents from their said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 11th day of February 1939, issued and thereafter served its complaint on the respondents, General American Sales Corporation, a corporation, and on David C. Baskin, Arnold Simon, and Faye Simon, 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 in violation of the provisions of said act. Respondents filed no answer to the complaint.

Thereafter, on the 10th day of April 1939, Miles J. Furnas, an examiner of said Commission, was designated and appointed to take testimony and receive evidence in said proceeding, which said testimony was reduced to writing and filed in the office of the Commission, together with numerous items of documentary evidence received as exhibits. No testimony was introduced on behalf of respondents.

Thereafter the proceeding regularly came on for final hearing before the Commission on the testimony and other evidence adduced at the hearing and briefs in support of the complaint and in opposition thereto; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent General American Sales Corporation is an Illinois corporation, organized and doing business under the laws of said State, with its principal office and place of business located at 32 West Randolph Street, Chicago, Ill. Respondents David C. Baskin, Arnold Simon, and Faye Simon are respectively president, secretary, and treasurer of the corporate respondent; all of said respondents have their principal office and place of business at the same address as the respondent corporation.

There is not sufficient evidence in the record to support the allegations of the complaint as against Arnold Simon and Faye Simon, individually and as officers of the corporate respondent. In view of this, the findings of fact hereinafter set out will refer only to the acts and practices of the respondents General American Sales Corporation and David C. Baskin. The respondent David C. Baskin, an individual, is president, general manager, and director, and owner of 98 shares of the hundred shares of stock of the General American Sales Corporation outstanding and is in charge of the active management of the corporate respondent. The respondents General American Sales Corporation and David C. Baskin act together and in cooperation with each other in doing the acts and things herein found.

PAR. 2. Respondents, for more than 1 year last past have been engaged in the business of offering for sale and selling electric razors, cameras, radios, pencils, pencil sets, and other articles of merchandise, in commerce, to purchasers thereof located in various States of the United States. Respondents have caused said merchandise, when sold, to be shipped or transported from their said place of business in the State of Illinois to purchasers, at their respective points of location, in various States of the United States other than the State of Illinois, and there has been, for more than 1 year last past, a course of trade in said merchandise by respondents, 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 individuals, part-

nerships, and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among various States of the United States and in the District of Columbia.

PAR. 3. Respondents, General American Sales Corporation and David C. Baskin, in the course and conduct of their business, 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 was and is distributed to the ultimate consumer thereof wholly by lot or chance. Respondents cause and have caused to be distributed to the purchasing public, as aforesaid, certain advertising literature, including, among other things, push cards, order blanks, and advertisements which contain illustrations of said merchandise and explain respondents' plan or method of selling and distributing such merchandise and allotting it as premiums or prizes to the operators of said push cards. One of said push cards contains 63 partially perforated disks, and when a punch or push is made on any one of said disks it is separated from the card, disclosing a number. There are as many different numbers as there are disks on the cards, but these numbers are varied or assorted and are not arranged in numerical sequence, and they are effectively concealed within said disks from purchasers and prospective purchasers until a selection is made and a disk pushed or separated from the card. The charge for making a punch varies and depends upon the number revealed when the disk is punched. On the disks with numbers from 1 to 25, the purchaser pays for each disk pushed, the amount of the number thus disclosed, in cents. For all numbers over 25 only 25 cents is paid for each, and for the numbers 9, 10, 11, 12, 13, 14, 15, and 16, the pushes are made without cost to the persons making them. Directly below each disk is printed a girl's name, each differing from the others; on the reverse of said push card is a list of all the feminine names printed below the disks, and opposite each name in said list is a space prepared for recording the name of the purchaser following the girl's name corresponding to the one under the disk punched. Said push card also has a master seal which, when removed, exposes a girl's name corresponding to one of the names appearing below said disks. The persons whose pushes disclosed the numbers 31, 41, and 51 are entitled to and do receive without additional cost, a guaranteed Eversharp Pencil, and the person who has selected the name which corresponds to the name hidden within the master seal is entitled to receive, and does receive, without additional cost, the capital prize such as a Spartus Candid Camera. The name

under the master seal is effectively concealed from purchasers and prospective purchasers until all the disks have been pushed and their numbers revealed; then the master seal is removed from the card and the winning name disclosed. Persons who have selected names other than the name which appears under the master seal, and who obtained numbers other than the numbers 31, 41, and 51, receive nothing for the money they have paid. Each of said articles of merchandise is of greater value than the cost of pushing any one disk on said card. The fact as to whether a purchaser receives any article of merchandise, or anything, for the amount of money paid, or which of said articles of merchandise, if any, the purchaser does receive, or whether the purchaser receives an article of merchandise without cost, are thus determined wholly by lot or chance.

Said respondents sell and distribute various assortments of merchandise and furnish various push cards for use in the sale and distribution of their said merchandise by means of games of chance, gift enterprises, or lottery schemes.

PAR. 4. The persons to whom respondents have furnished or supplied such devices have used the same in selling or distributing respondents' merchandise in accordance with said sales plan or method. Respondents thus supply to and place in the hands of others the means of conducting lotteries in the sale and distribution of their merchandise in accordance with the sales plan or method as hereinabove set forth. The use by respondents of said method in the sale and distribution of their merchandise, and the distribution of such merchandise by and through the use thereof and by the aid of such method, is a practice of a sort which is contrary to the established public policy of the Government of the United States and in violation of criminal statutes.

PAR. 5. The sale or distribution of merchandise to the purchasing public in the manner above described involves a game of chance, or the sale of a chance to procure articles of merchandise without cost, or at a price much less than the normal retail price thereof. Many persons, partnerships, and corporations sell and distribute merchandise in commerce, in competition with respondents, as above described, who are unwilling to adopt such method or any method involving the element of chance or the sale of a chance to win something by chance, or any other method which is contrary to public policy, and said competitors have refrained therefrom.

The use of said method by respondents, because of said game of chance, has the tendency and capacity to and does unfairly divert

trade and custom to said respondents from said competitors who are unwilling to use, and who do not use the same or equivalent methods because the same are unlawful. As a result thereof, substantial injury is being and has been done by respondents to competition in commerce between and among various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondents, General American Sales Corporation and David C. Baskin, 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 respondents having filed no answer), testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and briefs filed herein, and the Commission having made its findings as to the facts and its conclusion that respondents General American Sales Corporation and David C. Baskin have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent General American Sales Corporation, a corporation, its officers, and the respondent David C. Baskin, individually and as president and director of General American Sales 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 electric razors, cameras, radios, pencils, pen and pencil sets, and 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 any merchandise together with punch boards, 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 any 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.

It is further ordered, That the respondents General American Sales Corporation and David C. Baskin 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 respondents Arnold Simon and Faye Simon without prejudice to the right of the Commission to reopen the same and resume proceedings in the case in accordance with the Commission's regular procedure should future facts so warrant.

IN THE MATTER OF

LENOIR WOODFINISHING COMPANY, INC., AND ARTHUR G. SPENCER, TRADING AS LENOIR SOLVENT COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 4048. Order, June 18, 1940

Order modifying prior order to cease and desist, made as of April 17, 1940, 30 F. T. C. 1027, 1032, in certain respects, so as to require respondent company, its officers, etc., and respondent individual, in his individual capacity and trading as hereinabove set forth, and their representatives, etc., in connection with offer of paints, etc., in commerce, to cease and desist from giving sums of money or other things of value to officials or employees of respondents' customers or prospective customers, without their knowledge or consent, as inducements to purchase or recommend respondents' said materials, or as payments for having done so, as in order below specifically set forth.

Mr. Gerard A. Rault for the Commission.
Mr. Don A. Walser, of Lexington, N. C., for respondents.

MODIFIED ORDER TO CEASE AND DESIST

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 com-

merce, 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.

IN THE MATTER OF

MARVIN ALAN KOOLISH, TRADING AS CROWN DISTRIBUTING COMPANY AND CROWN 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 4041. Complaint, Feb. 28, 1940—Decision, June 18, 1940

Where an individual engaged in sale and distribution of radios, cameras, pen and pencil sets, and 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 and similar articles of merchandise in commerce as aforesaid; in soliciting sale of and in selling and distributing his merchandise—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes in sale and distribution to ultimate consumers of products in question, and distribution to purchasing public of certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said merchandise, and circulars explaining his plan of selling same and of allotting it as premiums or prizes to operators of such push cards and to purchasing and consuming public, through use (1) of push cards under plan and in accordance with card's explanatory legend by which customer or purchaser selecting by chance from list of feminine names displayed on card name corresponding to that concealed under card's master seal, received specified candid camera, with roll of film, or article of merchandise being thus disposed of, and person securing by chance from numbers concealed in disks under said feminine names certain number received pen and pencil combination, and amount paid for such chances was dependent upon numbers secured by chance as announced, or through use of (2) various other push cards accompanied by order blanks, instructions and other printed matter for use in sale and distribution of merchandise by means of game of chance, gift enterprise, or lottery scheme and sales plan or method similar to that hereinabove 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 his merchandise in accordance with sales plan hereinabove set forth by persons to whom he furnished said push cards for use in purchasing, selling, and distributing his said products and who made use thereof in so doing in accordance with said plan, under which fact as to whether purchaser received article of merchandise or nothing for amount of money paid, and which of said articles of merchandise, if any, purchaser was to receive was thus determined wholly by lot or chance, and involving game of chance, or sale of a chance, to procure one of said articles at a 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 method involving a game of chance or a sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

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

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

Mr. L. P. Allen, Jr. 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 Marvin Alan Koolish, individually and trading as Crown Distributing Co. and Crown Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent Marvin Alan Koolish is an individual trading as Crown Distributing Co. and the Crown Sales Co. with his principal office and place of business located at 8742 Holloway Drive, Los Angeles, Calif. The respondent is now and for more than 10 months last past has been engaged in the sale and distribution of radios, cameras, pen and pencil sets, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of California to purchasers thereof, at their respective points of location, in the various States of the United States other than California and in the District of Columbia. There is now and has been for more than 10 months 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 his business, respondent is and has been in competition with other individuals, 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 when said merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to operators and the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said merchandise and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 15 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 15 partially perforated disks on the face of which is printed the word "push." Each of such disks is set over one of the aforementioned feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a pen and pencil set. The push card bears a legend or instructions as follows:

NAME UNDER SEAL RECEIVES A

PICKWIK

CANDID CAMERA

WITH ROLL OF FILM

No. 19 Receives a Pen & Pencil Combination
No. 1 pays 1¢; No. 19 pays 19¢;
No. 27 pays 27¢; No. 29 pays 29¢;
All others pay 29¢. NONE HIGHER.

Sales of respondent's merchandise by means of said push cards 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-described legend or instructions. The fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which

of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards accompanied by 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 other 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 one of the said articles 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. 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 February 28, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Marvin Alan Koolish, individually and trading as Crown Distributing Co. and Crown 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 May 20, 1940, the respondent filed his answer, in which answer he admitted all the material allegation 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 Marvin Alan Koolish is an individual trading as Crown Distributing Co. and Crown Sales Co., with his principal office and place of business located at 8742 Holloway Drive, Los Angeles, Calif. The respondent is now and for more than 10 months last past has been engaged in the sale and distribution of radios, cameras, pen and pencil sets, and other articles of merchandise. Respondent causes and has caused said merchandise, when sold, to be transported from his aforesaid place of business in the State of California to purchasers thereof, at their respective points of location, in the various States of the United States other than California and in the District of Columbia. There is now and has been for more than 10 months 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 his 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 when said merchandise is sold and distributed to the ultimate consumer thereof. The method or sales plan adopted and used by respondent is substantially as follows:

Respondent distributes and has distributed to operators and the purchasing public certain literature and instructions, including among other things push cards, order blanks, illustrations of his said merchandise, and circulars explaining respondent's plan of selling merchandise and of allotting it as premiums or prizes to the operators of said push cards and to the purchasing and consuming public. One of respondent's push cards bears 15 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 15 partially perforated disks on the face of which is printed the word "push." Each of such disks is set over one of the aforesaid feminine names. Concealed within each disk is a number which is disclosed only when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the face of said card. The person selecting the feminine name corresponding to the one under the master seal receives a camera. The person selecting a certain designated number set out in the legend at the top of said card also receives a pen and pencil set. The push card bears a legend or instructions as follows:

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PICKWIK

CANDID CAMERA

WITH ROLL OF FILM

No. 19 Receives a Pen & Pencil Combination

No. 1 pays 1¢; No. 19 pays 19¢;

No. 27 pays 27¢; No. 29 pays 29¢;

All others pay 29¢. NONE HIGHER.

Sales of respondent's merchandise by means of said push cards 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-described legend or instructions. The

fact as to whether a purchaser receives an article of merchandise or nothing for the amount of money paid, and which of said articles of merchandise the purchaser is to receive, if any, is thus determined wholly by lot or chance.

Respondent furnishes and has furnished various other push cards accompanied by 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 other 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 one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Marvin Alan Koolish, individually and trading as Crown Distributing Co. and Crown 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, cameras, and pen and pencil 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 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.

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

FRANK SPORS, TRADING AS SPORS COMPANY

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

Docket 3165. Complaint, June 29, 1937—Decision, June 19, 1940

Where an individual engaged in sale and distribution of drugs, cosmetics, foods, and other merchandise, including household notions and other novelties, to dealers, specialty salesmen, house-to-house peddlers and others in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar merchandise in commerce, as aforesaid, and, as thus engaged, in soliciting through advertisements in various periodicals and specialty magazines prospective agents and salesmen to apply for copies of his catalog, and in forwarding to those requesting it such copies, containing descriptions and prices of some four thousand items sold by him, and also in sending therewith leaflets and circulars describing other items—

(*a*) Represented that he manufactured or imported all or a major portion of the products sold by him through use of legend "Wholesale Importers and Manufacturers," set forth without further qualification on his catalogs and in some of the other advertising material above referred to, and that his business was larger than was the fact, through depiction on said catalogs of what purported to be building housing his said business;

Facts being that major portion of articles sold by him was purchased in domestic open market, and volume of business in certain items which he did make constituted not more than 15 percent of his total volume of business, nearly all of his items were of domestic rather than foreign origin, and structure which housed his business was building with only basement and first floor rather than two stories depicted in advertising material referred to, and his concern or business was not a manufacturing or importing one, and one doing large volume of business, and one for dealing with which, as such, there is preference on part of substantial portion of purchasing public as offering, in their belief, lower prices, superior quality, and other advantages; and

(*b*) Sold and distributed various devices, assortments, and plans of merchandising which involved operation of gift enterprises, gaming devices, or lottery schemes in sale and distribution of merchandise to ultimate consumers and included various pull cards, punchboards, push cards, and sale boards for use in sale and delivery to purchasing public, in accordance with method suggested, of specified articles of merchandise wholly by lot or chance and, among others, assortments of number of articles, together with push cards, for use in sale and distribution of said articles and in accordance with card's explanatory legend, by which those securing by chance, for 2 cents paid, or nothing, depending on number punched, received a table lighter and certain other numbers became entitled to Scotty Dog Novelty, and last punch on card also received such a lighter, and which included also various other assortments, together with which it supplied such boards and devices for use in sale thereof and involving

sales plans or methods similar to that above described and varying therefrom in detail only; and—

Supplied thereby to and placed in hands of others means of conducting lotteries in sale of his merchandise in accordance with such sales plans or methods above described by retailers and peddlers who, as direct or indirect purchasers of his said products, sold same to purchasing public in accordance with such plans or methods involving 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 criminal laws and in competition with many who are unwilling to adopt in sale of their goods such or any methods contrary to public policy and refrain therefrom;

With effect of causing substantial portion of purchasing public to buy his merchandise in preference to that of his competitors and with result that substantial trade was diverted to him from competitors 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. Arthur F. Thomas*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Mr. Edwin C. Kraus and *Mr. George T. Havel*, of Le Center, Minn., for respondent.

Complaint

Pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Frank Spors, an individual, trading as Spors Co., 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, Frank Spors, is an individual having his principal office and place of business in the city of Le Center, State of Minnesota. He has been for more than 1 year last past engaged in the sale and distribution of cosmetics, perfumes, manicure sets, mercurochrome, shaving creams, thread, tape measures, can openers, egg beaters, knife sharpeners, and general line of drug sundries and household notions to retail dealers and peddlers purchasing for resale, and also to the public direct. In the course and conduct of his business he offers said products for sale and sells the same in commerce between the State of Minnesota and the several States of the United States and the District of Columbia.

PAR. 2. When said products are sold respondent transports or causes them to be transported from his place of business in the State of Minnesota to purchasers thereof located in States of the United States other than the State of Minnesota and in the District of Columbia.

There has been for more than 1 year last past and there still is a constant current of trade and commerce in said products so sold by respondent between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now and for more than 1 year last past has been engaged in substantial competition with other individuals and firms, partnerships, and corporations, engaged in the manufacture, sale, and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent in soliciting the sale and in the selling of his products and for the purpose of creating a demand on the part of the consuming public, has advertised his products through the media of newspaper and magazine advertisements, catalogs, price lists, and other printed matter, all of which are published, issued, and circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia.

PAR. 5. In the aforesaid ways and by the aforesaid means respondent makes, and has made, to the general public false and misleading statements with reference to the commodities offered for sale by him. Many articles and items of merchandise listed in said catalogs, price lists, and in newspaper and magazine advertisements, are described as possessing retail values and prices greatly in excess of the actual selling prices of respondent to retailers or other purchasers, and greatly in excess of the actual retail values or prices thereof. A number of the said items and articles of merchandise described in the aforesaid advertisements, catalogs, and price lists have retail prices stamped or printed on the labels attached thereto or on the containers in which they are offered for sale and sold to the public.

PAR. 6. Representative of such statements and representations referred to in paragraph 5, made by the respondent on the containers regarding the selling price and value of the commodities offered for sale by him are the following:

"William A. Woodbury Milk of Magnesia Dental Cream—Selling Price 50¢" whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 13¢ per unit.

"Super-pure Palm and Olive Oil Shaving Cream—Selling Price 25¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 8¢ per unit.

"Pine Tar Soap—Selling Price per package 15¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 8¢ per package.

"Cedo Pad—Selling Price 10¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 4¢ per unit.

"Zipper Billfold—Selling Price 95¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 45¢ per unit.

"Lever Style Self Filling Fountain Pen—Selling Price 59¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 26¢ per unit.

"Baby Calculator—Selling Price 98¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 49¢ per unit.

"Utility Cake Turner—Selling Price 15¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 7¢ per unit.

"New Dunbar Duplex Razor and Blade Set—Selling Price 25¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 9¢ per unit.

"Prophyson Tooth Brushes—Selling Price 15¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 7¢ per unit.

"The Little Scientist Microscope Set—Selling Price 95¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 39¢ per unit.

"Deluxe Two-way Stretch Combination Girdle and Brassiere—Selling Price $1.25," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 79¢.

"Mother of Pearl Cross—Selling Price 59¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 39¢.

"Ear Drops Made of Imitation Pearls—Selling Price 19¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 8¢.

"Baby Pearl Necklaces—Selling Price 10¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 5¢.

"Three-Strand Imitation Pearl Necklaces—Selling Price 69¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 25¢.

"Imitation Vanilla Flavor—Selling Price 75¢," whereas this article is sold to purchasers for use and to peddlers and retailers purchasing for resale for 19¢.

PAR. 7. Said catalogs of respondent contain representations relative to several hundred other articles of various kinds and descriptions where fictitious retail prices are imprinted upon the labels or cartons thereof.

PAR. 8. Over a period of many years manufacturers in many trades have adopted and followed the custom of marking or stamping on

the article or item of manufacture or on the container thereof the retail price at which the said manufacturers suggest that the retailer should sell the item, or article to the ultimate consumer.

This suggested retail price so stamped or marked is intended to represent the cost of the manufacture of the article, plus a reasonable profit for the manufacturer and the retailer and, consequently, to represent the approximate retail sale value of the item. The public generally understands this custom and has been led to, and does, place its confidence in the price markings so stamped and the representations so made as to the quality of the product to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom.

PAR. 9. For many years a substantial portion of the consuming public has had, and has expressed, a marked preference for cosmetics, perfumes, manicure sets, mercurochrome, shaving creams, thread, tape measures, can openers, egg beaters, knife sharpeners, and general line of drug sundries and household notions which are composed of superior ingredients or materials, and which are produced by the manufacturer thereof with the intent and design of selling said products for prices in excess of the general and usual range of prices for similar products, or for products made of inferior ingredients or materials. Said manufacturers, following the custom herein detailed, have marked or stamped the suggested retail price on said products as indicating the superior quality and character of the product and its higher value.

PAR. 10. Whenever a genuinely superior product so stamped or marked with the retail price thereon is offered for sale at a substantially reduced price, the general purchasing public is led to believe, and does believe, that in purchasing said product it is securing a bargain not ordinarily obtainable in the usual course of trade. The purchasing public has a preference for purchasing genuinely superior products sold at less than the customary retail price thereof over ordinary products sold for their regular price, which is lower than the normal retail value of the superior product in the customary course of trade.

PAR. 11. The retail prices so stamped or printed as aforesaid upon respondent's products are greatly in excess of the actual selling price of the said items or articles of merchandise by the retailer to the consuming public, and are in excess of their true and actual values. The retail prices so stamped or printed as aforesaid are false and fictitious and in no sense represent either the true value or the true selling price of the articles so price marked.

PAR. 12. The respondent in soliciting the sale and in the selling of his products, and for the purpose of creating a demand on the part of the consuming public for such products, now causes, and for more than 1 year last past has caused, himself to be represented through his letterheads, circulars, order blanks, and general business stationery, and by pictorial representations of his place of business as an importer and manufacturer of the goods, wares, and merchandise herein set out.

PAR. 13. The respondent further represents, through the use of an exaggerated pictorial representation of his place of business appearing in his catalogs as well as pictorial representations of the alleged various departments of his place of business, that his business is larger and more extensive than is actually the fact.

PAR. 14. A substantial portion of the purchasing public has shown a marked preference for dealing with and purchasing items of merchandise from manufacturers and importers and those who operate on a large scale and do a large volume of business, believing that superior quality, lower prices, and other advantages can be secured by dealing with such manufacturers and importers.

PAR. 15. In truth and in fact, the respondent is not a manufacturer, importer, or a large scale operator.

PAR. 16. The false and misleading advertising and representations hereinabove set out, together with the false and fictitious price markings herein set out on the part of the respondent place in the hands of the aforesaid peddlers and retailers buying for resale, an instrument and a means whereby said peddlers and retailers may commit a fraud upon a substantial portion of the consuming public by enabling such dealers to represent, and offer for sale, and sell, the various wares and merchandise herein referred to as genuinely superior products produced by the manufacturers thereof, with the intent and purpose of selling the said products in the usual course of trade to the general consuming public at and for the retail price stamped on the products or their containers.

PAR. 17. There are among the competitors of the respondent in commerce as herein defined manufacturers and distributors of like and similar products who truthfully advertise and represent the nature, merit, value and price of their respective products. There are also among the competitors of respondent manufacturers and distributors of like and similar products who do not advertise or represent through fictitious price marks affixed to said merchandise which greatly exceed the actual intended retail sale value or retail sale price of the merchandise offered for sale that said merchandise has a value or price greater than it actually possesses.

PAR. 18. There are also among the competitors of the respondent distributors of like and similar products who do not advertise or represent themselves to be manufacturers and importers, or that they are large scale operators.

PAR. 19. In the course and conduct of his business as hereinbefore described, the respondent in soliciting the sale of and in selling and distributing his merchandise, has furnished and does furnish various devices and plans of merchandising which involve or which are designed to involve the operation of gift enterprises, gaming devices, or lottery schemes in the sale and distribution of such merchandise to the ultimate consumer thereof. Said devices or plans of merchandising consist of various pull cards, punchboards, push cards, and sales boards, 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 sale or distribution of specified articles of merchandise wholly by lot or chance.

One of the push cards which respondent furnishes together with an assortment of merchandise is as follows:

The assortment consists of a number of Scotty Dog novelties together with two cigarette table lighters and one 200-sale push card. Sales by means of said card are 2 cents each, and when a push or selection has been made a number is disclosed. There are 200 pushes and the numbers run from 1 to 200, but are not arranged in numerical sequence. The card bears legends or statements as follows:

ONLY 2C
A CHANCE

NO. 95 RECEIVES $1.00
TABLE LIGHTER

Nos. 1 to 10 Pay Nothing

Nos. 20–30–40–50–60–70–80–90–100
120–130–140–150–170–180–190
Receive a Scotty
Dog Novelty

Last punch on card receives
$1.00 Table Lighter

The numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the number separated from the card. The merchandise is distributed to the consuming public in accordance with the legends printed on said card.

The fact as to whether a purchaser receives one of the articles of merchandise or nothing other than the privilege of punching a number from said card for the price of 2 cents is thus determined wholly by lot or chance. The fact as to whether a person pays 2 cents for a chance or receives the same free of charge is also determined wholly by lot or chance. The normal retail value of the merchandise does not exceed the total cost of all the chances on said card, but each of the articles of merchandise is worth more than 2 cents or the price of a single punch.

The purchasing public are thus persuaded and induced into purchasing a push from said card in the hope of obtaining one of the articles of merchandise for the price of 2 cents.

The various pull cards, punch boards, push cards, and sales boards furnished by the respondent with various assortments of merchandise involve the same plan or principle as that described immediately above, but vary in detail and vary in the assortments of merchandise distributed.

PAR. 20. The retailers and peddlers to whom respondent sells his merchandise resell the same to the purchasing public. The 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 plan of operation hereinabove set forth. The said plan of operation has the tendency and capacity of inducing purchasers thereof to purchase respondent's said merchandise in preference to like or similar merchandise offered for sale and sold by his competitors.

PAR. 21. The sale and distribution of merchandise to the purchasing public as above alleged involve a game of chance, or the sale of chance, to procure such articles of merchandise in the manner alleged.

The use by respondent of said methods in the sale of his merchandise, and the sale of such merchandise by and through the use thereof and by the aid of such methods, is a practice of the sort which the common law and criminal statutes have long deemed contrary to public policy, and is contrary to the established public policy of the United States Government.

PAR. 22. Many individuals, firms, partnerships, and corporations who sell and distribute merchandise in competition with the respondent as above alleged are unwilling to offer for sale, or to sell, merchandise by any method involving a game of chance or any other method that is contrary to public policy, and such competitors refrain from so doing.

PAR. 23. Many dealers in and ultimate purchasers of merchandise as distributed by respondent are attracted by respondent's said methods or sales plans and by the element of chance involved in the sale

or purchase thereof in the manner above described, and are thereby induced to purchase said merchandise of respondent in preference to merchandise offered for sale and sold by competitors of respondent who do not use the same or equivalent methods.

The use of said methods or sales plans by respondent has the tendency and capacity, because of said game of chance, to and does divert to respondent trade from his said competitors who do not use the same or equivalent methods; to exclude from said trade all competitors who are unwilling to and who do not use the same or equivalent methods because the same are unlawful; to lessen competition in said trade and to tend to create a monopoly of said trade in respondent, and to deprive the purchasing public of the benefit of free competition in said trade.

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 the District of Columbia.

PAR. 24. The effect of the foregoing false and misleading representations and acts of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead a substantial portion of the purchasing and consuming public in the several States of the United States by inducing them to mistakenly and erroneously believe that:

1. The various items of merchandise described in respondent's catalogs and other advertising media were and are of superior value and were and are sold and distributed by respondent with the intent and purpose that said products should be sold at retail prices closely approximating the prices stamped thereon.

2. The said products, because of the price marks affixed or stamped thereon, are composed of superior ingredients and are products which ordinarily retail in the usual course of trade for prices closely approximating the prices stamped on the merchandise.

3. The respondent is a manufacturer.

4. The respondent is an importer.

5. The respondent is a large-scale operator and distributor.

PAR. 25. The foregoing false and misleading statements and representations on the part of respondent have induced and still induce a substantial number of retailers and peddlers as well as consumer purchasers of said products to buy the products offered for sale, sold, and distributed by respondent on account of the aforesaid erroneous and mistaken beliefs. As a result thereof trade has been unfairly diverted from competitors of respondent engaged in similar businesses who do not engage in similar practices. As a consequence thereof substantial injury has been and is being done by respondent to com-

petition in commerce between and among the various States of the United States.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 29, 1937, issued and thereafter served its complaint in this proceeding upon the respondent Frank Spors, trading as Spors Co., charging him 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 May 31, 1938, testimony and other evidence in support of the allegations of said complaint were introduced by George Foulkes and R. A. McOuat, attorneys for the Commission, and in opposition to the allegations of the complaint by Edwin C. Kraus and George F. Havel, attorneys for the respondent, before A. F. Thomas, trial examiner of the Commission theretofore duly designated by it, 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, briefs in support of the complaint and in opposition thereto, and 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, Frank Spors, is an individual trading under the name of Spors Co. and having his principal place of business located in Le Center, Minn. He is now and for many years last past has been engaged in the sale and distribution of drugs, cosmetics, foods, and other merchandise, including household notions and other novelties, to dealers, specialty salesmen, house-to-house peddlers, and others. Respondent causes his said merchan-

dise, when sold, to be transported from his place of business in the State of Minnesota to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said merchandise in commerce between and among the various States of the United States and in the District of Columbia.

The respondent has been and is in substantial competition with other individuals, and with corporations and firms also 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. 2. In the course and conduct of his business, and for the purpose of creating a demand for his product and inducing the purchase thereof, the respondent causes advertisements to be inserted in various periodicals and specialty magazines, in which advertisements the respondent solicits prospective agents and salesmen to apply for a copy of his catalogue. To those requesting it, the respondent forwards a copy of his catalogue, which contains descriptions and prices of approximately 4,000 items of merchandise sold by the respondent. Along with the catalogue the respondent sends leaflets and circulars describing other items in the respondent's stock. Respondent's catalogues and some of the other advertising material bear, in connection with respondent's trade name and in large and conspicuous type, the legend "Wholesale Importers and Manufacturers." Such catalogues carry also a picture of what purports to be the building in which respondent's business is housed, the building being portrayed as a two-story building of large dimensions.

PAR. 3. The Commission finds that the use by the respondent of the legend, "Wholesale Importers and Manufacturers" in connection with his trade name, and without any accompanying words to limit the application of such legend, serves as a representation to the public that respondent manufacturers or imports all or a major portion of the products sold by him.

The major portion of the articles sold by respondent is purchased by him in the domestic open market and is not manufactured by him. Respondent does, however, manufacture a cement and a few novelty items, including cigar lighters and stocking darners. He also mixes certain extracts and fruit nectars. Respondent's volume of business in the items manufactured by him constitutes not more than 15 percent, of his total volume of business. Nearly all of respondent's items of merchandise are of domestic rather than foreign

origin, the only items imported being certain novelty items and a small quantity of reproduction pearls.

PAR. 4. The Commission further finds that the pictorial representation of respondent's purported place of business as a two-story building of large dimensions serves as a representation to the public that respondent's business is much larger than is the fact. The structure which houses respondent's business is, in fact, a building 105 feet by 105 feet and having only a basement and first floor, rather than the two stories depicted in respondent's advertising material.

PAR. 5. There is a preference on the part of a substantial portion of the purchasing public for dealing with business concerns which manufacture or import their products and which do a large volume of business, such portion of the public believing that by dealing with such concerns lower prices, superior quality and other advantages may be obtained. In judging the volume of business done by a concern, the public is influenced by the size of the building in which the concern is housed.

PAR. 6. Among the many items offered for sale by respondent and described in said catalogue, are various devices and plans of merchandising which involve the operation of gift enterprises, gaming devices, or lottery schemes in the sale and distribution of merchandise to the ultimate consumer thereof. Said devices or plans of merchandising consist of various pull cards, punchboards, push cards, and sale boards, 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 sale or distribution of specified articles of merchandise wholly by lot or chance. One of respondent's assortments consists of a number of articles of merchandise, together with a device commonly known as a push card. This card contains a number of partially perforated discs, under each of which is concealed a number. The card bears legends or instructions as follows:

ONLY 2¢
A CHANCE

NO. 95 RECEIVES
$1.00 TABLE LIGHTER

NOS. 1 TO 10 PAY NOTHING

Nos. 20–30–40–50–60–70–80–90–100
120–130–140–150–170–180–190
Receive a Scotty Dog Novelty

Last Punch on Card Receives
$1.00 Table Lighter

The said numbers are effectively concealed from purchasers and prospective purchasers until a number has been pushed or removed from said card. The said articles of merchandise are distributed to the purchasers who select the above designated numbers in accordance with the above-described sales plan. Persons who do not select the numbers so designated receive nothing for their money. Each of said articles of merchandise has a greater retail value than 2 cents, the amount of a sale on said card. The facts as to whether a purchaser pays 2 cents or nothing for the number selected and what article of merchandise, if any, the purchaser is to receive, with the exception of the last number punched on said card, are thus determined wholly by lot or chance.

The respondent sells and distributes various assortments of said merchandise and furnishes and supplies various punchboard and push card devices for use in the sale of such assortments, but the sales plans or methods used in connection with all of said devices are similar to the one hereinabove described, varying only in detail.

PAR. 7. Retail dealers and peddlers who purchase respondent's said merchandise, either directly or indirectly, sell the same to the purchasing public in accordance with the above-described sales plans or methods. The sale and distribution of said merchandise by said sales plans or methods involve 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. The respondent in so selling and distributing said merchandise 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 sales plans or methods 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 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 violation of criminal laws. Many of respondent's competitors are unwilling to adopt, in the sale of their merchandise, such methods or any methods which are contrary to public policy, and such competitors refrain therefrom.

PAR. 8. The use by the respondent of the acts and practices herein set forth has the tendency and capacity to, and does, cause a substantial portion of the purchasing public to purchase respondent's merchandise in preference to the merchandise of his competitors. As a result, substantial trade has been diverted by respondent from competitors engaged in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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 oral argument of Merle P. Lyon, counsel for the Commission, and Edwin C. Kraus, 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, Frank Spors, individually and trading as Spors Co., 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 in commerce as "commerce" is defined in the Federal Trade Commission Act, of food, drugs, cosmetics, and other merchandise, including household notions and other novelties, do forthwith cease and desist from:

1. Using the term "Wholesale Importers and Manufacturers" or any other term of similar import or meaning, to describe the character of respondent's business operations, except in connection with such items of merchandise as are actually manufactured or directly imported by respondent.

2. Representing that all of the items of merchandise offered for sale by respondent are imported or manufactured by him, or that any designated item of merchandise offered for sale by the respondent is imported or manufactured by the respondent, when such item of merchandise has not been in fact so imported or manufactured by the respondent.

3. Representing, by means of pictorial representations or otherwise, that respondent's place of business is higher, larger or more spacious than is the fact.

4. 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.

5. 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.

6. 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.

7. 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.

IN THE MATTER OF

ZONITE PRODUCTS CORPORATION

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

Docket 3363. Complaint, Mar. 22, 1938—Decision, June 19, 1940

Where a corporation engaged in manufacture of its "Larvex" liquid moth repellent for spraying clothing, upholstered furniture, rugs, and other non-washable fabrics, along with its "Larvex" powder which, mixed with water as directed, it recommended as rinse for blankets, sweaters, bathing suits, woolens, and other washable fabrics, and in sale to purchasers in all parts of the United States, including manufacturers and wholesale and retail dealers, for their own use and for resale to public by such wholesale and retail dealers, of said preparations, designed to protect articles aforesaid from the ravages of the worms or larvae of flying and other moths and to prevent damage occasioned thereby, and in substantial competition with others engaged in sale and distribution to purchasers in various States of various preparations for use in prevention of damage to fabrics and garments by moths and other insects, and including among its competitors manufacturers, compounders, and distributors of like and similar products or those designed and intended for similar usage, who do not unfairly disparage competitive goods or articles—

Unfairly disparaged many competitors and their respective products through representing that moth balls, cedar oil, tar, and various other products containing pyrethrum, naphthalene, or paradichlorobenzene fail to give adequate protection against moth damage, and by means of such statements in advertisements of its said "Larvex" in magazines and other forms of printed matter circulated and distributed among the trade and public in the several States as, "If you, too, want sure protection against moth damage, dont take chances with moth balls, chests, and other makeshift ways. Too much is at stake." and "WHY OTHER METHODS FAIL. It is not enough to try with insecticides, bug-killers, moth balls, cedar chests, and tarbags with obnoxious odors, to drive away or kill the flying moth. When you see the flying moth it is too late—she has already laid eggs in your woolen things—and old-fashioned methods don't baffle the hungry moth-worms which hatch from the eggs"; facts being there are many competitive products, as aforesaid referred to, on the market, such as moth balls, cedar oil, tar, and various other competitive products containing pyrethrum, naphthalene, or paradichlorobenzene, which when properly used, will protect fabrics and other articles against moth damage caused by moth worms and larvae;

With capacity and tendency through such statements and representation in its advertisements as above set forth to deceive and mislead manufacturers of fabrics and other articles, dealers therein and members of purchasing public into erroneous and mistaken belief that such disparaging statements and representations made by it were true, and that competitive products referred to as above set forth were of no value in protecting fabrics and other articles against moth damage caused by moth worms or larvae, and

to cause prospective purchasers of such competitive products, because of belief thus engendered, to decline to purchase same and to buy instead its said products, and with result that trade was thereby diverted unfairly to it and dealers in its products from those competitors who do not make statements disparaging products made, sold and distributed by their competitors; to injury of competition in commerce:

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 in commerce.

Before *Mr. John W. Addison* and *Mr. Miles J. Furnas*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Mr. Horace G. Hitchcock of Chadbourne, Wallace, Parke & Whiteside, of New York City, for respondent.

Complaint

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Zonite Products Corporation, a corporation, hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Zonite Products Corporation, hereinafter referred to as respondent, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business located at 405 Lexington Avenue, in the city of New York, in the State of New York. Respondent is now, and for several years has been, through its Larvex Division, engaged in the business of manufacturing a liquid moth repellent designated as "Larvex" for spraying on clothing, upholstered furniture, carpets, rugs, blankets, draperies and other articles together with a powder designated as "Larvex," which, when mixed with water, is recommended as a rinse for said articles after they have been sprayed with the liquid. Said preparations are designed to protect such articles from the ravages of the flying and other moths and to prevent damage occasioned thereby.

Par. 2. During all the times above mentioned and referred to, the respondent has sold its liquid and powdered "Larvex" to purchasers located in various States of the United States other than New York including manufacturers, members of the public and wholesale and

retail dealers for their own use, and also for resale to the public by said wholesale and retail dealers. The respondent has caused "Larvex," both liquid and powdered, when so sold by it, to be transported from its plant or place of business in New York, or from the State of origin of the shipment, to purchasers located in said other States, and 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. During all the times above mentioned and for many years prior thereto, other corporations, firms, partnerships, and individuals, hereinafter referred to as sellers, have been engaged in the sale and distribution of various preparations, some in liquid and others in powder form, for use in the prevention of the ravages of moths and other insects, to purchasers located in the various States of the United States other than the State of the seller or the State of origin of the shipment. The sellers, respectively, have caused the said preparations when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to purchasers located in said other States.

PAR. 4. During all the times above mentioned and referred to, the respondent, in the sale of its said liquid and powdered preparations is, 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 the other corporations, firms, partnerships, and individuals, referred to in paragraph 3 hereof, as sellers.

PAR. 5. In the course and conduct of its business, as above set forth, the respondent, during all the times above mentioned and referred to, has caused and now causes advertisements pertaining to its product "Larvex" to be published in magazines and other forms of printed matter circulated and distributed amongst the trade and the public in the several States of the United States.

In such advertisements respondent represents through such statements as "One spraying mothproofs a whole year" and "One spraying guards it a whole year" and others similar thereto that one application of respondent's moth repellent to clothing, upholstered furniture, carpets, rugs, blankets, draperies and other articles is sufficient to protect said articles from damage due to moths for a period of approximately one year without further applications of said preparation.

These claims are true only insofar as they are applied to non-washable fabrics treated with the liquid or spraying form of "Larvex." It is necessary that washable fabrics be treated with the powdered or rinsing form of "Larvex" after each washing in order to secure the

protection claimed. The directions, in small type, on and inside the containers of respondent's product, explain the limitations of "Larvex," but do not adequately convey to the prospective purchaser of said preparations the limitations thereof. Such explanation as to the limitations of said preparations does not appear in respondent's general advertising in magazines and other printed matter. Respondent's statements and representations thus give rise to the impression and belief on the part of purchasers and prospective purchasers that, regardless of conditions, an article treated with the liquid or spraying form of "Larvex" is mothproof for one year. In truth and in fact the washing of articles after spraying, as directed, destroys the effectiveness of the liquid "Larvex" as a one-year mothproof.

PAR. 6. The respondent makes and has made to the trade and the public other unfair, misleading and deceptive statements and representations with reference to the value and merits of its product, "Larvex," a portion of which is as follows:

If you, too, want sure protection against moth damage, don't take chances with moth balls, chests, and other makeshift ways. Too much is at stake.

WHY OTHER METHODS FAIL

It is not enough to try with insecticides, bug-killers, mothballs, cedar chests, and tar-bags with obnoxious odors, to drive away or kill the flying moth. When you see the flying moth it is too late—she has already laid eggs in your woolen things—and old-fashioned methods don't baffle the hungry moth-worms which hatch from the eggs.

The respondent caused and now causes the above statements and other similar statements and representations also to be made to members of the public by others, such as dealers, manufacturers and users of "Larvex."

The aforesaid statements and representations of the respondent unfairly disparage a number of competitive products on the market which, if properly used, will protect fabrics and other articles against moth damage. Further, said statements and representations are misleading and deceptive insofar as they serve to represent or imply that "Larvex" in either liquid or powdered form is not an insecticide and that it is noninjurious. In truth and in fact respondent's product, "Larvex," in powdered form contains a high percentage of sodium silica fluoride and aluminum fluoride which is of sufficient strength to cause a skin rash when the article treated with said powdered "Larvex" contacts the human body. In truth and in fact respondent's product in both liquid and powdered forms is an insecticide.

PAR. 7. There are among the competitors of the respondent in commerce as herein set out, manufacturers, compounders, and distributors of like and similar products, or other products designed and intended for similar usage, who truthfully advertise and represent the nature, merit, and value of their respective products, who do not advertise and otherwise represent that such products have merit or value which they do not have and who do not unfairly disparage the competitive products of others.

PAR. 8. The statements and representations made by the respondent in its advertisements as above set forth had, and now have, the capacity and tendency to deceive and mislead manufacturers of fabrics and other articles, dealers therein and members of the public, purchasing such article or purchasing respondent's preparations, into the erroneous and mistaken belief that said statements and representations so made and caused to be made by the respondent were and are true, and into the purchase of respondent's "Larvex," in both liquid and powdered forms, in reliance upon such belief. As a result thereof trade has been diverted unfairly to respondent and dealers in its products from those competitors who do not misrepresent their respective products. As a consequence thereof 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.

PAR. 9. The above and foregoing acts, practices and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 22, 1938, issued and served its complaint in this proceeding upon respondent, Zonite Products Corporation, a corporation, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Horace G. Hitchcock, attorney for the respondent, before John W. Addison and Miles J. Furnas, examiners of

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Zonite Products Corporation, 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 in the Chrysler Building in New York City, N. Y. Its manufacturing plant is located in the city of New Brunswick, N. J.

Respondent is now, and for several years last past has been, through its Larvex Division, engaged in the business of manufacturing a liquid moth repellent, designated as "Larvex," for spraying on clothing, upholstered furniture, rugs and other nonwashable fabrics, together with a powder also designated as "Larvex," which, when mixed with water as directed, is recommended as a rinse for blankets, sweaters, bathing suits, woolens, and other washable fabrics. Said preparations are designed to protect such articles from the ravages of the worms or larvae of flying and other moths and to prevent damage occasioned thereby.

PAR. 2. During all the times referred to herein the respondent has sold and shipped its liquid and powdered "Larvex" to purchasers located in all parts of the United States, including manufacturers and wholesale and retail dealers, for their own use, and also for resale to the public by said wholesale and retail dealers. Respondent has maintained a course of trade in said product, in both its liquid and powdered forms, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. During all the times mentioned herein and for many years prior thereto, other corporations, firms, partnerships and individuals, hereinafter referred to as sellers, have been engaged in the sale and distribution to purchasers located in the various States of the United States other than the State of the seller or the State of origin of the shipment, of various preparations for use in the prevention of damage to fabrics and garments by moths and other insects. The

sellers thereof, respectively, have caused the said preparations when so sold by them, to be transported from the State of the seller, or from the State of origin of the shipment, to purchasers located in said other States.

PAR. 4. In the course and conduct of its aforesaid business, the respondent is now and has been during all 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 the other corporations, firms, partnerships, and individuals, referred to in paragraph 3 hereof, as sellers.

PAR. 5. In the course and conduct of its business, as above set forth, the respondent, during all the times above mentioned and referred to, has caused and now causes advertisements pertaining to its product "Larvex" to be published in magazines and in other forms of printed matter circulated and distributed among the trade and the public in the several States of the United States. In such advertisements respondent, among other statements, has made the following representations:

If you, too, want sure protection against moth damage, don't take chances with moth balls, chests, and other makeshift ways. Too much is at stake.

WHY OTHER METHODS FAIL

It is not enough to try with insecticides, bug-killers, moth balls, cedar chests, and tarbags with obnoxious odors, to drive away or kill the flying moth. When you see the flying moth it is too late—she has already laid eggs in your woolen things—and old-fashioned methods don't baffle the hungry moth-worms which hatch from the eggs.

By means of the aforesaid statements and representations the respondent represents that moth balls, cedar oil, tar and various other competitive products containing pyrethrum, naphthalene or paradichlorobenzene fail to give adequate protection against moth damage and thereby unfairly disparages many of respondent's competitors and their respective products. The Commission finds that such representations are false, misleading and deceptive, for there are many such competitive products on the market such as moth balls, cedar oil, tar and various other competitive products containing pyrethrum, naphthalene, or paradichlorobenzene, which, when properly used, will protect fabrics and other articles against moth damage caused by moth worms and larvae.

PAR. 6. There are among the competitors of the respondent in commerce as herein set out, manufacturers, compounders and distributors of like and similar products, or other products designed and intended for similar usage, who do not unfairly disparage competitive products.

PAR. 7. The statements and representations made by the respondent in its advertisements as above set forth have had the capacity and tendency to deceive and mislead manufacturers of fabrics and other articles, dealers therein, and members of the purchasing public into the erroneous and mistaken belief that said disparaging statements and representations so made by the respondent are true, and that the competitive products referred to in Paragraph Five hereof are of no value in protecting fabrics and other articles against moth damage caused by moth worms or larvae; and the capacity and tendency to cause prospective purchasers of said competitive products, because of the belief so engendered, to decline to purchase such competitive products and to purchase instead respondent's products. As a result thereof, trade has been diverted unfairly to respondent and dealers in its products from those competitors who do not use statements disparaging the products made, sold and distributed by their competitors. As a consequence thereof, 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, Zonite Products Corporation, a corporation, 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, testimony and other evidence taken before John W. Addison and Miles J. Furnas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Joseph C. Fehr, counsel for the Commission, and by Horace G. Hitchcock, 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, Zonite Products Corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its product now sold and distributed under the name "Larvex" or any other product, whether sold under that name

or some other name, sold as a moth repellent or mothproofing agent in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that moth balls, cedar oil, tar, and other competitive products containing pyrethrum, naphthalene or paradichlorobenzene will not protect fabrics and garments from damage by moth worms or larvae.

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

GARDNER REMEDIES, INC.

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

Docket 3595. Complaint, Sept. 19, 1938—Decision, June 19, 1940

Where a corporation engaged in the manufacture of its "Gardner's Food Herbs" medicinal preparation, and in sale and distribution thereof to dealer and consumer purchasers in various other States, in substantial competition with others engaged in sale and distribution, among the various States, of various medicinal preparations designed for treatment of same ailments and diseases—

(*a*) Represented, through advertisements disseminated among prospective purchasers by the mails and in periodicals of interstate circulation and by radio broadcasts and through circulars, leaflets, and other advertising literature that use of its preparation would rid the body of excess acid or hyperacidity and of acidosis, and thereby serve as a cure or remedy and competent and effective treatment for numerous ailments and diseases of the body, including rheumatism, kidney disorders, stomach ulcers, indigestion, constipation, liver disorders, stomach disorders, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of breath, and high and low blood pressure and sleeplessness;

Facts being that its said product would not serve to correct or affect to any material extent condition known as hyperacidity or excess acid or condition known as acidosis, and it was not a cure or remedy for and had no substantial therapeutic value in the treatment of rheumatism and the various other ailments and conditions above enumerated, and possessed no therapeutic value except insofar as small peppermint contained therein might have slight tendency to aid digestion;

With effect of causing members of purchasing public to believe that its said preparation possessed therapeutic properties and qualities, which it did not in fact possess, and with result, as consequence of such erroneous and mistaken belief, that such public was induced to and did purchase substantial quantities of its said product and trade was thereby diverted unfairly to it from its competitors; to their substantial injury:

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. William L. Pack and *Mr. DeWitt T. Puckett* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Gardner Remedies, 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, Gardner Remedies, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, and having its office and principal place of business in the city of Seattle, State of Washington.

PAR. 2. The respondent is now and has been for more than four years last past engaged in the business of compounding, selling, and distributing a medicinal or pharmaceutical preparation designated as "Gardner's Food Herbs." Respondent sells said preparation to members of the purchasing public situated in various States of the United States and causes said preparation, when sold by it, to be transported from its aforesaid place of business in the State of Washington to the purchasers thereof at their respective points of location in various States in the United States other than the State of Washington. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said preparation among and between various States of the United States.

PAR. 3. Respondent is engaged in substantial competition in commerce among and between the various States of the United States with other corporations and with partnerships, firms, and individuals selling and distributing medicinal and other preparations and products designed and intended for, and used in, the treatment of the ailments and conditions of the human body for which respondent recommends the use of its said preparation. Among such competitors in said commerce are many who do not in any manner misrepresent their said preparations and products, or the therapeutic properties thereof, and who do not make any 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 continuities broadcast from radio stations which have power to, and do, convey the programs emanating therefrom to the listeners thereof located in various States of the United States and through other means. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

And as nearly 95% of all organic troubles are caused by excess acid, you can see how necessary it is to rid the system of it. But this does not complete the treatment. It is necessary to prevent the return of this condition. And that is just what GARDNER'S FOOD HERBS do.

As we know, excess acid is the cause of about 90% of all our organic ailments, and rheumatism is one that is a direct result of excess acid. Now it is only reasonable, to get lasting results, we must first rid ourselves of the excess acid in the bloodstream and then continue to keep the blood free from the return of this trouble. This is just what GARDNER'S FOOD HERBS do. They first gently stimulate the kidneys to throw off all the excess acid that the bloodstream is carrying, and then by reducing the dose, it builds the kidneys back to normal, thereby insuring lasting results.

We do not treat rheumatism; just as in the case of stomach ulcers we do not treat the stomach. We treat the cause of the trouble. That is why we get such wonderful results.

The usual treatment for ulcers of the stomach is * * * The only way to really rid yourself of this ailment is to eliminate the cause, and in this case it is too much acid in the bloodstream. This can now be done by taking GARDNER'S FOOD HERBS * * * All they do is eliminate the acid, the only way possible by means of the kidneys. After this they gradually help the kidneys to build back to normal.

During the winter, one of the most complained of ailments is rheumatism * * * Usually rheumatism is not the only ailment people suffer with, but indigestion, gas and constipation. How would you like to rid yourselves of these troublesome and painful ailments? * * * Today you can. It is no longer necessary to suffer. GARDNER'S FOOD HERBS will clear up the cause of the trouble, giving Nature a chance to heal the ailments.

Facts You Should Know About GARDNER'S FOOD HERBS: "Nature's Way." How they have relieved sufferers from Stomach, Liver and Kidney Troubles, including acid or sour stomach, stomach ulcers, indigestion, gas, heartburn, constipation, colitis, dizziness, abnormal kidney functions, backache, swelling of ankles, soreness in the region of the kidneys, severe soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, and shortness of breath, high and low blood pressure, sleeplessness and rheumatism. A Natural Way to Remove Hyperacidity.

Gardner's Food Herbs stands alone in its field in the treatment of Hyperacidity.

PAR. 5. Through the use of the statements and representations hereinabove set forth and others similar thereto not herein set out, all of which purport to be descriptive of respondent's preparation and its

effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that from 90 to 95 percent of all the organic ailments of the human body are caused by a condition of excess acid in the human system; that the use of said preparation will cure, and is of substantial therapeutic value in the treatment of, excess acid in the human system, including hyperacidity and acidosis; that the use of said preparation will eliminate excess acid from the blood stream; that the use of said preparation will cure, and is of substantial therapeutic value in the treatment of, stomach ulcers; and that said preparation is a competent and effective remedy or treatment for, or will cure, stomach, liver and kidney troubles, including acid or sour stomach, indigestion, gas, heartburn, constipation, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, severe soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of the breath, high and low blood pressure, sleeplessness, and rheumatism.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading and untrue and constitute false advertisements. In truth and in fact 90 to 95 percent of the organic ailments of the human body are not caused by a condition of excess acid in the human system. Various organic ailments may give rise to acidosis, but such ailments are not caused by excess acid. The use of said preparation will not cure and has no substantial therapeutic value in the treatment of a condition of excess acid, including hyperacidity and acidosis. The use of said preparation will not eliminate excess acid from the blood stream.

The use of said preparation will not cure, nor has it any substantial therapeutic value in the treatment of, stomach ulcers. Said preparation is not a competent and effective remedy or treatment for, nor will it cure or be of substantial therapeutic value in the treatment of, stomach, liver and kidney troubles, including acid or sour stomach, indigestion, gas, heartburn, constipation, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, severe soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of the breath, high and low blood pressure, sleeplessness and rheumatism, or any other ailment, disease, or condition which may be present in, or afflict, the human body.

Respondent's claims as to the therapeutic value or efficacy of said preparation are grossly exaggerated, false and deceptive, and greatly

exceed any claims as to the therapeutic value and efficacy of said preparation which might truthfully be made.

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

PAR. 8. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and advertisements, disseminated as aforesaid, with respect to said preparation, has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that respondent's said preparation possesses the properties claimed and represented and will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of 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 therof, injury has been, and is now being, done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 19th day of September 1938, issued, and thereafter served, its complaint in this proceeding upon the respondent, Gardner Remedies, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of an answer thereto by respondent, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, Esquire, attorney for the Commission, and in opposition thereto by the respondent, who appeared in person, before John J. Keenan, examiner of the Commission theretofore duly designated by it. Said testimony and other evidence were

duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, and brief on behalf of the Commission in support of the complaint (no brief having been filed on behalf of the respondent, and oral argument not having been requested). 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, Gardner Remedies, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 2633 50th Avenue, S. W., Seattle, Wash. It is now, and since 1931, has been, engaged in the manufacture, sale and distribution of a medicinal preparation designated as "Gardner's Food Herbs." Respondent sells and distributes its product both to dealers and to consumers.

PAR. 2. In the course and conduct of its business respondent causes and has caused its product, when sold, to be transported from its place of business in the State of Washington, to purchasers thereof located in various other States of the United States. Respondent maintains, and since 1931 has maintained, a course of trade in its said medicinal preparation in commerce between and among the various States of the United States.

PAR. 3. Respondent is now, and at all times mentioned herein has been, engaged in substantial competition with other corporations and with firms, partnerships, and individuals engaged in the sale and distribution, in commerce between and among the various States of the United States, of various medicinal preparations designed for the treatment of the same ailments and diseases of the human body as those for which respondent's preparation is recommended.

PAR. 4. In the course and conduct of its business and for the purpose of inducing the purchase of its preparation, the respondent is disseminating and has disseminated advertisements among prospective purchasers by the United States mails, by insertion in periodicals having interstate circulation, by radio broadcasts, and by means of circulars, leaflets and other advertising literature. Among and typical of the statements and representations contained in such advertisements are the following:

And as nearly 95% of all organic troubles are caused by excess acid, you can see how necessary it is to rid the system of it.

But this does not complete the treatment. It is necessary to prevent the return of this condition. And that is just what GARDNER'S FOOD HERBS DO.

As we know, excess acid is the cause of about 90% of all our organic ailments, and rheumatism is one that is a direct result of excess acid. Now it is only reasonable, to get lasting results, we must first rid ourselves of the excess acid in the bloodstream and then continue to keep the blood free from the return of this trouble. This is just what GARDNER'S FOOD HERBS do. They first gently stimulate the kidneys to throw off all of the excess acid that the bloodstream is carrying, and then by reducing the dose, it builds the kidneys back to normal, thereby insuring lasting results.

We do not treat rheumatism; just as in the case of stomach ulcers we do not treat the stomach. We treat the cause of the trouble. That is why we get such wonderful results.

The usual treatment for ulcers of the stomach is * * * The only way to really rid yourself of this ailment is to eliminate the cause, and in this case it is too much acid in the bloodstream. This can now be done by taking GARDNER'S FOOD HERBS * * * All they do is to eliminate the acid, the only way possible by means of the kidneys. After this they gradually help the kidneys to build back to normal.

During the winter, one of the most complained of ailments is rheumatism * * * Usually rheumatism is not the only ailment people suffer with, but indigestion, gas and constipation. How would you like to rid yourselves of these troublesome and painful ailments? * * * Today you can. It is no longer necessary to suffer. GARDNER'S FOOD HERBS will clear up the cause of the trouble, giving Nature a chance to heal the ailments.

Facts You Should Know About GARDNER'S FOOD HERBS. "Nature's Way". How they have relieved sufferers from Stomach, Liver and Kidney Troubles, including acid or sour stomach, stomach ulcers, indigestion, gas, heartburn, constipation, colitis, dizziness, abnormal kidney functions, backache, swelling of ankles, soreness in the region of the kidneys, severe soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains and shortness of breath high and low blood pressure, sleeplessness and rheumatism. A Natural Way to Remove Hyperacidity.

Gardner's Food Herbs stand alone in its field in the treatment of Hyperacidity.

PAR. 5. Through the use of the foregoing statements and representations, and others of similar import, the respondent represents and has represented that nearly all ailments and diseases of the human body are due to the presence of excess acid in the system, that the use of respondent's preparation will rid the body of excess acid or hyperacidity, as well as acidosis, and thereby will serve as a cure or remedy and a competent and effective treatment for numerous ailments and diseases of the body, including rheumatism, kidney disorders, stomach ulcers, indigestion, constipation, liver disorders, stomach disorders, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness and stiffness in the cords and muscles of the neck, hives, skin rashes, heart pains, shortness of breath, high and low blood pressure, and sleeplessness.

PAR. 6. The Commission finds that respondent's product is an herbal preparation, the ingredients of which are "ledum glandulosum", an herb found principally in the State of Oregon, 87½ percent; alfalfa, 10 percent; and peppermint, 2½ percent. The preparation is intended to be taken somewhat like tea. A teaspoonful is placed in a pint of boiling water and the user then takes three tablespoonfuls of the liquid in a half glass of warm water before each meal and at bedtime.

The Commission further finds that respondent's preparation possesses no substantial therapeutic value. Its use will not serve to correct or affect to any material extent the condition known as hyperacidity or excess acid, nor the condition known as acidosis. The preparation is not a cure or remedy for, nor has it any substantial therapeutic value in the treatment of, rheumatism, kidney disorders, liver disorders, stomach disorders, stomach ulcers, indigestion, constipation, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness or stiffness in the cords or muscles of the neck, hives, skin rashes, heart pains, shortness of breath, high or low blood pressure, or sleeplessness. The preparation possesses no therapeutic value except in so far as the small peppermint content might have a slight tendency to aid digestion.

PAR. 7. The Commission finds that the statements and representations used by the respondent with respect to its preparation as herein set forth are grossly exaggerated, false and misleading. The use by the respondent of such statements and representations has the tendency and capacity to, and has, caused members of the purchasing public to believe that the respondent's preparation possesses therapeutic properties and qualities which it does not in fact possess. As a result of such erroneous and mistaken belief, the purchasing public has been induced to, and has, purchased substantial quantities of respondent's preparation and thereby trade has been diverted unfairly to the respondent from its competitors. In consequence thereof, substantial injury has been done and is being done by the 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 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, testimony and other evidence taken before John J. Keenan, 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 (no brief having been filed on behalf of respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Gardner Remedies, 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 or distribution of its medicinal preparation designated "Gardner's Food Herbs," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a cure or remedy for, or that it possesses any substantial therapeutic value in the treatment of, hyperacidity or excess acid, acidosis, rheumatism, kidney disorders, liver disorders, stomach disorders, stomach ulcers, indigestion, constipation, acid or sour stomach, gas, heartburn, colitis, dizziness, abnormal kidney functions, backache, swelling of the ankles, soreness in the region of the kidneys, soreness or stiffness in the cords or muscles of the neck, hives, skin rashes, heart pains, shortness of breath, high or low blood presure, or sleeplessness,

2. 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 contain any of the representations prohibited in paragraph 1 hereof.

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

WESTMINSTER TIRE CORPORATION

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

Docket 3786. Complaint, May 9, 1939—Decision, June 19, 1940

Where a corporation engaged in sale and distribution of pneumatic automobile and truck tires to purchasing distributors, jobbers, and dealers in State of origin and in various other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of such tires in commerce as aforesaid, and including among its competitors some who sell and distribute such products but do not inaccurately set forth number of plies contained therein, and tire designations of which, in hands of unscrupulous or uninformed retail dealers, do not provide means and instrumentality to mislead purchasing public—

Caused to be placed, affixed, or molded on or into the side walls of its said tires, which were of four-ply bead-to-bead construction, with double breaker strips, white sidewalls, extra material and tread stock, and had a net weight considerably in excess of the corresponding weight of first line four-ply tires marketed by other manufacturers and distributors, and upon the tire wrappings encasing said tires, in addition to its name and size and type of tire, the designation "V-7" and, because of unusual character of construction, made no express declaration as to four-ply construction of such "V-7" tires and did not disclose further, in absence of specific inquiry, four-ply construction thereof to jobber, distributor and other dealer-purchasers, by whom likewise in resale thereof no express declaration was made as to said four-ply construction, and, in absence of inquiry, no such advice given to prospective purchasers;

Facts being there was custom and usage in industry, followed by number of manufacturers of pneumatic automobile and truck tires, and well known to public, of marketing such tires with words and figures or phrases so as conspicuously and accurately to indicate number of plies existing in construction of tires concerned, public was accustomed, in purchasing tires, to place full credence in manufacturer's representations as to manner and quality of construction and number of plies therein contained as indicated by marks, brands, words, letters, figures, insignia, or phrases appearing on wrappings and sidewalls of such tires, and tires herein concerned were, as aforesaid, four-ply and not 7;

With tendency and capacity, through such inaccurate marking or branding in use of said designation "V-7", and especially in hands of unscrupulous or uninformed retail dealers, to induce portion of purchasing public to believe tires thus designated and marked contained 7 plies, and with effect of thereby placing in hands of such unscrupulous or uninformed retailers means and instrumentality whereby they might mislead purchasing public into erroneous belief that said "V-7" tires actually contained 7 plies, and with result, as consequence of such erroneous and mistaken belief, that number of public purchased substantial volume of said tires, and trade was thereby diverted unfairly to it from its competitors engaged in sale and distribution of such 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.

Before *Mr. Randolph Preston*, trial examiner.
Mr. Curtis C. Shears for the Commission.
Levien, Singer & Neuburger, 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 Westminster Tire 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, Westminster Tire Corporation, 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 601 West Twenty-sixth Street, New York, N. Y. Respondent is now, and for a number of years last past has been, engaged in the business of selling and distributing numerous brands of pneumatic motor vehicle tires and tubes to automobile dealers and wholesale and retail tire dealers throughout the United States. Respondent causes, and has caused, its said tires when sold to be transported from its place of business in New York, N. Y., and from the factories in which said products are made, to purchasing distributors, jobbers, and dealers hereinafter referred to as dealers, located in the State of New York, and in the various other States of the United States, and in the District of Columbia, at their respective places of business. There is now, and has been for some time last past, a course of trade in said tires by said 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 said business, respondent has been and is now in substantial competition with other corporations, individuals, partnerships, and firms engaged in the sale and distribution of tires 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 caused to be placed, affixed or molded on or into the side walls of said tires, conspicuous permanent

marks, brands or insignia in the form and shape of shields, said shields depicting in their centers certain words, letters, figures, or phrases which purport to be representative and indicative of the number of plies contained and existing in the structure of the tires whereon they appear, and representative, descriptive and indicative of the manner of construction and of the actual number of plies contained and existing in respondent's said products.

Respondent, directly or by inference, through the means and methods herein set out and by other means and methods of similar import and effect, represents that its pneumatic automobile and truck tires are made and constructed of the actual number of plies as indicated by the words, letters, figures, phrases or insignia as depicted and shown on the side walls of said tires.

The manner and quality of construction and the number of plies contained are substantial factors considered in the choice for purchase of pneumatic automobile and truck tires. It is a known fact regarding tires of identical or similar quality of material and workmanship that the manufacturer, retail dealer, and purchasing public have long been accustomed to offer and accept as indicative of greater value the tire containing the larger number of plies in its structure.

There is a custom and usage in the rubber tire industry, followed by a number of manufacturers of pneumatic automobile and truck tires, of marking such tires with words and figures or phrases so as to conspicuously and truthfully indicate the number of plies existing in the construction of such tires.

This custom and usage is well known to the public and the public is accustomed in the purchase of tires to place full credence in the manufacturer's representations as to the manner and quality of construction and the number of plies therein contained as indicated by the marks, brands, words, letters, figures, insignia, or phrases appearing on the wrappings and side walls of said tires.

Respondent does not generally make known to said dealers nor to the general public that the words, letters, figures, phrases, or insignia as depicted and shown on the side walls of respondent's tires are not the actual number of plies contained and existing in certain of its pneumatic motor vehicle tires nor that said representations are false, misleading, and untrue.

PAR. 3. Many of respondent's tires, represented or indicated, directly or by inference, as being made and constructed of a specific number of plies, as described in paragraph 2 hereof, do not contain the actual specific number of plies as therein indicated by the words.

letters, phrases, figures, or insignia depicted on the wrappings or shields appearing on said tires.

Certain brands of tires of respondent are not truthfully marked and branded. The number of plies contained and existing in the structure of these tires are not as represented or indicated, directly or by inference, by respondent, but are of a substantially lesser number than as indicated by the words, letters, figures, phrases, or insignia depicted on the wrappings and shields appearing on said tires.

One example of a brand of tires so marked and branded which is sold and distributed directly or indirectly to the purchasing public is a special brand of Westminster custom built, V-type white wall passenger car tires distinguished by a V–7 medallion which is molded into the side wall of said tires at the time of curing, or cemented to the side wall of said tires, hereinafter referred to as V–7 tires. Said V–7 tires are of 4-ply bead-to-bead construction with double breaker strips, white side walls, extra material, and tread stock, giving them a net weight considerably in excess of the corresponding weight of the first line 4-ply tires marketed by other manufacturers. Respondent does not disclose, in the absence of specific inquiry by said dealers who purchase said V–7 tires from respondent, that the V–7 tires are of 4-ply construction. Said dealers who purchase said V–7 tires, when reselling same directly or indirectly to the purchasing public, make no express declaration as to the ply construction of said V–7 tires and, in the absence of inquiry regarding same, prospective purchasers are not advised that said V–7 tires are actually of 4-ply construction. The use by respondent of said V–7 medallion on said V–7 tires, in the absence of any other declaration as to the ply construction of the same constitutes a misbranding and has the tendency and capacity to mislead, confuse, and deceive prospective purchasers as to the actual ply construction of the said V–7 tires.

PAR. 4. Wholesale and retail tire dealers and automobile dealers who purchase respondent's tires, directly or indirectly expose and sell the same to the purchasing public. Respondent thus supplies to, and places in the hands of, others, by virtue of the resale of said tires to the purchasing public in accordance with the sales plan or method set forth in paragraphs 2 and 3 hereof, a means and instrumentality whereby the public may be misled and deceived. In that the sale of said tires to the purchasing public, in the manner above alleged, involves a misbranding, said misbranding has had and now has a tendency and capacity to and does mislead and deceive pur-

chasers and prospective purchasers of said tires into the erroneous and mistaken belief that such representations, indications or inferences, as set out in paragraphs 2 and 3 hereof, are true and induces them to purchase said tires on account thereof to their injury. 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 tires of the same general kind as those offered by respondent.

PAR. 5. In that the sale of said tires to the purchasing public in the manner above alleged involves a misbranding, many of said dealers, as defined and described in paragraph 1 hereof, who sell or distribute tires in competition with the respondent, as above alleged, are unwilling to adopt and use said sales plan or method, or any method involving a brand or mark which has a tendency and capacity to mislead prospective purchasers as to the actual ply construction of said tires or any other methods involving a misbranding, and such competitors refrain therefrom. Many of said dealers are attracted by said sales plan or method employed by respondent in the sale and distribution of its tires, and are thereby induced to buy and sell respondent's said tires in preference to tires 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, because of said misbranding, has a tendency and capacity to, and does, unfairly divert trade to respondent from its said competitors who do not use the same or equivalent methods, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 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 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, and on the 10th day of May 1939, served, its complaint in this proceeding upon said respondent, Westminster Tire Corporation, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, on the 11th day

of April 1940, a stipulation was read into the record whereby it was stipulated and agreed that said statement of facts entered into the record by Levien, Singer and Neuberger, Esqrs., 70 Pine Street, New York, N. Y., attorneys for respondent, by Herbert M. Singer, Esq., of counsel, and Curtis C. Shears, trial attorney 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 the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation in the record, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Westminster Tire Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 601 West Twenty-sixth Street, New York, N. Y.

PAR. 2. Respondent is now and has been engaged in the sale of pneumatic automobile and truck tires, and causes said products, when sold, to be transported from its place of business in New York, N. Y., and from the factories in which said products are made to the purchasing distributors, jobbers and dealers (hereinafter called dealers), located in the State of New York, and in the various other States of the United States and in the District of Columbia.

PAR. 3. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said pneumatic automobile and truck tires, sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondent in the course and conduct of its business is in active and substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of pneumatic automobile and truck tires in commerce

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

PAR. 5. Respondent in the course and conduct of its business and for the purpose of inducing the purchase of said pneumatic automobile and truck tires, has made many representations concerning the character and quality of said products, by means of letters, blotters, signs, and price lists circulated generally among dealers and by means of tire wrappings, markings, insignia, and brands appearing on tires distributed to dealers located in the various States of the United States and in the District of Columbia.

PAR. 6. Respondent has caused to be placed, affixed, or molded on or into the side walls of said tires and upon the tire wrappings encasing said tires, the designation "V–7" in addition to the respondent's name and the size and type of tire.

PAR. 7. The said "V–7" tires are of four-ply bead-to-bead construction with double breaker strips, white side walls, extra material and tread stock, given them a net weight considerably in excess of the corresponding weight of the first line four-ply tires marketed by other manufacturers and distributors. Respondent because of the unusual character of construction had made no express declaration as to the ply construction of said "V–7" tires and therefore has not disclosed, in absence of specific inquiry by said dealers who purchase said "V–7" tires from respondent, that the "V–7" tires are of four-ply construction. Said dealers who purchase said "V–7" tires, when reselling the same directly or indirectly to the purchasing public, have made no express declaration as to ply construction of said "V–7" tires and, in absence of inquiry regarding the same, prospective purchasers have not been advised that said "V–7" tires are actually of four-ply construction.

PAR. 8. There is a custom and usage in the rubber tire industry, followed by a number of manufacturers of pneumatic automobile and truck tires, of marking such tires with words and figures or phrases so as to conspicuously and accurately indicate the number of plies existing in the construction of such tires. This custom and usage is well known to the public, and the public is accustomed in the purchase of tires to place full credence in the manufacturer's representations as to the manner and quality of construction and the number of plies therein contained as indicated by the marks, brands, words, letters, figures, insignia, or phrases appearing on the wrappings and side walls of said tires.

PAR. 9. The "V–7" tires of the respondent have not been accurately marked or branded in that the designation "V–7" has a tendency and capacity especially in the hands of unscrupulous or uninformed retail

dealers to induce a portion of the purchasing public to believe that the tires so designated and marked contain seven plies when in fact said tires actually contain a lesser number of plies, and thus the respondent's acts and practices as herein detailed serve to place in the hands of such unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may mislead the purchasing public into the erroneous belief that the respondent's "V-7" tires actually contain seven plies.

PAR. 10. There are among the respondent's competitors some who sell and distribute pneumatic automobile and truck tires but do not inaccurately set forth the number of plies contained in their respective products and whose tire designations in the hands of unscrupulous or uninformed retail dealers do not provide a means and instrumentality to mislead the purchasing public.

PAR. 11. The designation "V-7" placed upon the wrapper and side walls of the respondent's tires has had a tendency and capacity especially in the hands of unscrupulous or uninformed retail dealers to induce a portion of the purchasing public to believe that the tires so designated contain seven plies. As a result of this erroneous and mistaken belief a number of the public have purchased a substantial volume of said tires with the result that trade has been diverted unfairly to the respondent from its competitors who are likewise engaged in selling and distributing pneumatic automobile and truck tires.

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 a stipulation as to the facts entered into the record herein between counsel for the respondent and 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, Westminster Tire Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of pneumatic automobile and truck tires in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. From representing, directly or indirectly, by means of letters, words, figures, markings, insignia, or brands appearing in price lists, or on tire wrappings, or on tires, or in any other way, that the automobile and truck tires sold by the respondent contain more plies in their construction than they actually contain.

2. From representing, directly or indirectly, that the construction of respondent's tires or the materials therein contained are other than the actual construction and materials contained in said tires.

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

IN THE MATTER OF

THE KENDALL COMPANY, DOING BUSINESS UNDER THE TRADE NAME OF BAUER & BLACK

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

Docket 3894. Complaint, Sept. 16, 1939—Decision, June 19, 1940

Where a corporation engaged in manufacture of its Velure vanishing lotion or, as formerly designated, "Velure Lotion," 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 in commerce among the States and in said District of preparations designed and used for same general purpose, and including among such competitors many who sell and distribute hand lotion and other products designed, intended and sold to soften and beautify the skin and who do not in any way misrepresent quality or effectiveness of their respective products; in advertisements of its said preparation which it disseminated and caused to be disseminated through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States and through broadcasts from radio stations or extra-State audience and otherwise, and which were intended and likely to induce purchase of its said product—

(*a*) Represented, directly and by implication, that its said preparation was a new and scientific discovery, which, applied to hands, acted more quickly in softening and beautifying skin than did various other hand lotions and other products sold by its competitors, in competition therewith, and that it was more economical and effective in use than competitive hand lotions; and

(*b*) Represented that product in question conserved and supplemented the natural oils of the skin and that it had a bleaching and whitening effect thereon, and made hands shades lighter;

Facts being, none of the ingredients of which it consisted, essentially, had any substantial therapeutic value and all were commonly found in competitive hand lotions, it was not a new or scientific discovery, did not, applied to hands, act more quickly or achieve beneficial results more rapidly than other competitive products, and, although absorption of its glycerine and alcohol by skin might take place, it did not penetrate skin, and was not more economical or effective than competitive products, and would not accomplish results otherwise claimed therefor;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that all of such statements and representations were true, and that said product possessed properties represented and would accomplish results claimed, and that, as direct consequence of such beliefs induced by its said statements and representations, number of purchasing public bought substantial volume of its said preparation, and trade was thereby diverted unfairly to it from its competitors engaged in sale and distribution of hand lotions and similar products designed, intended and sold for use in the softening and beautifying

of the skin, and who truthfully represented effectiveness and qualities of their respective products; to the injury of competition in commerce:

Held, That such acts and practices, under circumstances set forth, were all to prejudice and injury of 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. Merle P. Lyon 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 Kendall 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 is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, having his office and principal place of business in the city of Boston, State of Massachusetts. Respondent also does business under the trade name Bauer & Black, having its office and principal place of business, doing business as Bauer & Black, at 2500 South Dearborn Street, city of Chicago, State of Illinois. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a cosmetic preparation now designated "Velure Vanishing Lotion" and formerly designated "Velure Lotion."

Par. 2. Respondent, being engaged in business as aforesaid, causes and has caused said preparation, when sold, to be transported from its factory in the State of Illinois, or from the State of origin of the shipment thereof, to purchasers of said preparation 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. There is now, and has been during all the times herein mentioned, a course of trade in said preparation by respondent in commerce between and among the various States of the United States and in the District of Columbia.

Par. 3. In the course and conduct of its business, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with persons, firms,

and partnerships 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 cosmetic preparations designed and used for the same general purposes as respondent's said preparation.

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 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 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 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:

Remarkable new hand lotion developed by scientists especially for women who do their own housework.

Makes hands feel naturally soft rather than artificially smooth.

It leaves no annoying stickiness or artificial coating when properly used.

Sinks right into the tiny crevices of the skin and disappears.

It has a sure, quick, self-penetrating action—sinks into skin crevices automatically.

You'll like the way Velure gets quick results. Like the way it requires no tedious rubbing. Like the way it vanishes—leaves no sticky or clammy after-feeling, and no gummy film to stain your gloves or your clothes, nor does it dull finger-nail polish.

Makes hands shades whiter, softer, smoother in a hurry.

A hand lotion specially created by scientists for women with active hands.

"Red hands" become shades lighter.

This new Bauer & Black vanishing lotion goes to work faster.

And now Bauer & Black scientists bring you a new fast-acting lotion.

Works to help nature keep hands soft, smooth and lovely.

Velure helps nature maintain soft, smooth hands for you.

Velure is also amazingly economical. A concentrated lotion, it goes 2½ times as far as thick, old-fashioned lotions.

In addition, certain ingredients in Velure help to conserve natural, skin-softening oils.

Velure supplements the natural oils of the skin and helps the skin to become naturally smooth and supple.

That's right where Velure is different—for Velure is definitely non-alkaline—one of the few lotions that can make that claim.

A fast-acting vanishing lotion different from all thick, heavy gummy lotions.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, all of which purport to be descriptive of respondent's preparation and its effectiveness in softening and beautifying the skin, the respondent has falsely represented, directly or by implication, among other things, (1) that said preparation is a new and scientific discovery which when applied to the hands, acts more quickly in softening and beautifying the skin than the various other hand lotions and other products which are sold by respondent's competitors in competition with said preparation, (2) that said preparation penetrates the skin and leaves no artificial coating or stickiness on the skin, (3) that said preparation conserves and supplements the natural oils of the skin, (4) that said preparation has a bleaching or whitening effect on the skin and makes hands shades lighter, and (5) that said preparation is more economical and effective in use than competitive hand lotions.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading and untrue, and constitute false advertisements. The true facts are that said preparation does not have any of the qualities or achieve any of the results claimed and represented as hereinabove described. Said preparation consists essentially of alcohol with a trace of brucine, glycerine, mucilage, perfume, coloring matter, and water. None of these ingredients have any substantial therapeutic value, and all of them are commonly found in competitive hand lotions. Said preparation is not a new or scientific discovery. Said preparation, when applied to the hands, does not act more quickly or achieve beneficial results more rapidly than other competitive products. Said preparation does not penetrate the skin, although there may be some absorption of the glycerine and alcohol by the skin. The use of said preparation leaves an artificial coating or stickiness on the skin. Said preparation does not conserve or supplement the natural oils of the skin. Said preparation does not have any bleaching or whitening effect on the skin and does not make hands shades whiter or lighter. Said preparation is no more economical or effective in use than competitive hand lotions.

PAR. 7. There are among respondent's competitors many who sell and distribute hand lotions and other products designed, intended, and sold for the purpose of softening and beautifying the skin who do not in any way misrepresent the qualities or effectiveness of their respective products.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations 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 all of said statements and representations are true, and that said product possesses the properties represented and will accomplish the results claimed. As a direct consequence of the mistaken and erroneous beliefs induced by the statements and representations of the respondent, as hereinabove detailed, a number of the purchasing public has purchased a substantial volume of respondent's said preparation, with the result that trade has been unfairly diverted to the respondent from its competitors also engaged in the business of selling and distributing hand lotions and similar products designed, intended and sold for use in the softening and beautifying of the skin, 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. 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 the 16th day of September, A. D. 1939, issued and thereafter served its complaint in this proceeding upon the respondent, The Kendall Co., a corporation, doing business under the trade name of Bauer & Black, 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 of the material allegations of fact set forth in said complaint and waiving all intervening procedure

and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, 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 Massachusetts having its office and principal place of business in the city of Boston, State of Massachusetts. Respondent also does business under the trade name of Bauer & Black, having its office and principal place of business, doing business as Bauer & Black, at 2500 South Dearborn Street, city of Chicago, State of Illinois. Respondent is now, and for several years last past has been, engaged in the manufacture, sale, and distribution of a cosmetic preparation now designated "Velure Vanishing Lotion" and formerly designated "Velure Lotion."

PAR. 2. Respondent, being engaged in business as aforesaid, causes and has caused said preparation, when sold, to be transported from its factory in the State of Illinois, or from the State of origin of the shipment thereof, to purchasers of said preparation 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. There is now, and has been during all the times herein mentioned, a course of trade in said preparation by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with persons, firms, and partnerships 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 cosmetic preparations designed and used for the same general purposes as respondent's said preparation.

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 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 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 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:

Remarkable new hand lotion developed by scientists especially for women who do their own housework.

Makes hands feel naturally soft rather than artificially smooth.

It leaves no annoying stickiness or artificial coating when properly used.

Sinks right into the tiny crevices of the skin and disappears.

It has a sure, quick, self-penetrating action—sinks into skin crevices automatically.

You'll like the way Velure gets quick results. Like the way it requires no tedious rubbing. Like the way it vanishes—leaves no sticky or clammy afterfeeling, and no gummy film to stain your gloves or your clothes, nor does it dull fingernail polish.

Makes hands shades whiter, softer, smoother in a hurry.

A hand lotion specially created by scientists for women with active hands.

"Red hands" become shades lighter.

This new Bauer & Black vanishing lotion goes to work faster.

And now Bauer & Black scientists bring you a new fast-acting lotion.

Works to help nature keep hands soft, smooth and lovely.

Velure helps nature maintain soft, smooth hands for you.

Velure is also amazingly economical. A concentrated lotion, it goes 2½ times as far as thick, old-fashioned lotions.

In addition, certain ingredients in Velure help to conserve natural, skin-softening oils.

Velure supplements the natural oils of the skin and helps the skin to become naturally smooth and supple.

That's right where Velure is different—for Velure is definitely non-alkaline—one of the few lotions that can make that claim.

A fast-acting vanishing lotion different from all thick, heavy gummy lotions.

PAR. 5. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set

out, all of which purport to be descriptive of respondent's preparation and its effectiveness in softening and beautifying the skin, the respondent, has falsely represented, directly or by implication, among other things, (1) that said preparation is a new and scientific discovery which when applied to the hands, acts more quickly in softening and beautifying the skin than the various other hand lotions and other products which are sold by respondent's competitors in competition with said preparation, (2) that said preparation penetrates the skin and leaves no artificial coating or stickiness on the skin, (3) that said preparation conserves and supplements the natural oils of the skin, (4) that said preparation has a bleaching or whitening effect on the skin and makes hands shades lighter, and (5) that said preparation is more economical and effective in use than competitive hand lotions.

PAR. 6. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and untrue, and constitute false advertisements. The true facts are that said preparation does not have any of the qualities or achieve any of the results claimed and represented as hereinabove described. Said preparation consists essentially of alcohol with a trace of brucine, glycerine, mucilage, perfume, coloring matter, and water. None of these ingredients have any substantial therapeutic value, and all of them are commonly found in competitive hand lotions. Said preparation is not a new or scientific discovery. Said preparation, when applied to the hands, does not act more quickly or achieve beneficial results more rapidly than other competitive products. Said preparation does not penetrate the skin, although there may be some absorption of the glycerine and alcohol by the skin. The use of said preparation leaves an artificial coating or stickiness on the skin. Said preparation does not conserve or supplement the natural oils of the skin. Said preparation does not have any bleaching or whitening effect on the skin and does not make hands shades whiter or lighter. Said preparation is no more economical or effective in use than competitive hand lotions.

PAR. 7. There are among respondent's competitors many who sell and distribute hand lotions and other products designed, intended and sold for the purpose of softening and beautifying the skin who do not in any way misrepresent the qualities or effectiveness of their respective products.

PAR. 8. The use by the respondent of the aforesaid false and misleading statements and representations had, and now has, the tendency and capacity to, and does, and did, mislead and deceive a sub-

stantial portion of the purchasing public into the erroneous and mistaken belief that all of said statements and representations are true, and that said product posseses the properties represented and will accomplish the results claimed. As a direct consequence of the mistaken and erroneous beliefs induced by the statements and representations of the respondents, as hereinabove detailed, a number of the purchasing public have purchased a substantial volume of respondent's said preparation, with the result that trade has been unfairly diverted to the respondent from its competitors also engaged in the business of selling and distributing hand lotions and similar products designed, intended and sold for use in the softening and beautifying of the skin, 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.

CONCLUSION

The aforesaid acts and practices of the respondent as herein found have been, and are, all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce 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, The Kendall Co., a corporation, doing business under the trade name of Bauer & Black, or doing business under any other trade name or names, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its cosmetic preparation designated "Velure Vanishing Lotion," formerly designated "Velure Lotion," or any other cosmetic preparation composed of substantially similar ingredients or possess-

ing substantially similar properties, whether sold under the same names or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a new or scientific discovery; that said preparation, when applied to the hands, acts more quickly in softening and beautifying the skin or achieves beneficial results more rapidly than other competitive products; that said preparation penetrates the skin and leaves no artificial coating or stickiness on the skin; that said preparation conserves or supplements the natural oils of the skin; that said preparation has a bleaching or whitening effect on the skin, or makes hands shades whiter or lighter; that said preparation is more economical or effective in use than competitive hand lotions.

2. 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 contain any of the representations prohibited in paragraph 1 hereof.

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

HENRY BERGMAN

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

Docket 4026. Complaint, Feb. 8, 1940—Decision, June 19, 1940

Where an individual engaged in sale and distribution to purchasers in various States and in the District of Columbia, of instruments for locating gold and silver, of booklet designated "Jacob's Rod," of so-called "crystal balls" for use, allegedly, in telling fortunes, of metal disks designated by him "Universal Good Luck Coins," and of list of names and addresses of parties or concerns from whom or which devices used in searching for treasures or minerals could be obtained; in advertisements of his said products in circulars, pamphlets, newspapers, and magazines distributed and circulated among prospective purchasers throughout the United States—

(*a*) Represented and implied to purchasing public through statements made, as aforesaid, that his instrument for locating gold and silver would enable person using same to locate said metals and hidden treasures, and that various testimonials published and disseminated by him in said advertisements in said connection were true and that persons giving same had actually located said metals or hidden treasures through use of his instrument, and, further, that through use of his said list of names and addresses of concerns selling devices used in searching for treasures or minerals a person would be able to pick particular device suitable for such person's needs, and that information contained in said booklet was valuable to anyone interested in locating lost, buried or hidden treasure, gold, silver, lead, or other ores;

(*b*) Represented, as aforesaid, that his said booklet entitled "Jacob's Rod" imparted information which would enable person to ascertain his psychic powers, make his own goldometer and locate gold, silver, and hidden treasure, and that such booklet was rare and that directions given therein were practiced by Jacob of old, and many other ancient patriarchs, and that it was offered by him at a very special price of $1; and

(*c*) Represented, as aforesaid, that his so-called fortune telling crystal ball foretold future and answered all questions concerning a person's past, present, and future, and that his "Universal Good Luck Coins" possessed mysterious powers and would bring good luck to those carrying one;

Facts being various testimonials published and disseminated by him, as aforesaid, were not from people who had located gold, silver, or hidden treasure with his instrument, booklet "Jacob's Rod" was not rare and there was no basis in fact for statement that directions given therein were practiced by Jacob of old or any other ancient patriarch's, price thereof of $1 was not a special one, but regular price at which he sold it, and supply thereof was not limited, and list of names and addresses sold by him, as aforesaid, was worthless, none of the devices thus procurable being suitable or effective for purpose represented, or accomplishing any results claimed therefor and his statements and representations in other respects, as above set forth, were false, misleading, and deceptive;

With effect, through use of said various false and misleading representations and implications, as above set forth, of misleading and deceiving substantial number of purchasing public into erroneous and mistaken belief that said representations and implications were true, and with result, as consequence of such belief that many members of purchasing public bought substantial volume of his said product:

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

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

Paragraph 1. Respondent, Henry Bergman, is an individual with his principal place of business located in Springfield, Mo. He resides at 2004 Milton Avenue, Springfield, Mo. Respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of instruments intended for locating gold and silver, and the sale and distribution of a booklet designated "Jacob's Rod." For more than 6 months last past, respondent has also been engaged in the sale and distribution of "crystal balls," allegedly for use in telling fortunes, metal disks which he calls "Universal Good Luck Coins" and a list of names and addresses of parties or concerns from which devices used in searching for treasures or minerals can be obtained. Respondent sells his said products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products when sold by him to be transported from his place of business in the State of Missouri, to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Missouri and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business in said commerce, as aforesaid, and for the purpose of inducing the purchase of said products, the respondent has caused various statements and representations relating to said products to be inserted in advertisements in circulars, pamphlets, newspapers, and magazines distributed and circulated among prospective purchasers throughout the United States generally. Among and typical of the representations made by the respondent, as aforesaid, concerning his so-called gold and silver locater are the following:

WANTED—Hear From Parties interested gold or silver ores, buried or hidden treasures. Bergman's Instrument, $5.00. Particulars free.

HENRY BERGMAN,

Box 70-F, Springfield, Missouri.

This letter is to inform you about Bergman's Instrument.

It is small, weighing only six ounces, and can be easily carried in your pocket.

The ingredients, including Gold, Silver and Mercury (quicksilver) are enclosed in bottles and incased in walnut tubes and covered with clear lacquer, connected with 24 inch No. 19 Brass coppered chain. It will last a life-time and does not require recharging. With each instrument is included 2 cut-offs and directions for operating.

It does not contain Loadstone, Magnetic Sand, or any Magnetic Substance that may cause an attraction to different metals or minerals.

The price of the instrument is $5.00 postpaid.

I will send it insured, postpaid, to you and allow you a 30-day free trial. If you are not satisfied, return the instrument and the two cut-offs, postpaid, to me within 32 days of date you receive the instrument, and I will immediately refund the $5.00 by Post Office Money Order.

Do not hesitate to give Bergman's Instrument a trial.

WANTED—Hear from parties interested gold or silver ores, buried or hidden treasures. Bergman's Instrument $5.00 Postpaid. 30 days free trial. Satisfaction guaranteed or your money immediately refunded without question. By Post Office Money Order upon return of the instrument. Particulars free:

Among and typical of the representations made by respondent through the publication of testimonials concerning his gold and silver locater are the following:

It works perfect (100%) for me. I'm sitting on top of the world, so to speak.

I have been informed of you by F-K * * * that you have the best instruments for locating buried treasures and hidden treasures.

* * * I tried it on a gold watch chain and ring. It worked in a circle over it. I have some nuggets and gold ore. I thought it was gold.

Those gold nuggets and ore, the locating instrument works something fine. The only way I can stop it is to put the cut-off on it. Then it will stop. I have taken it out to my farm once. I found a nugget and some quartz.

Received the gold finder and have tried it out. It works good for me. A friend took me yesterday up to Gold Creek to see if it would point out a place where he knew there was gold. It located it exactly, swinging in a circle over the place and at the same time a little sideways toward quartz deposit.

I have got one of your mineral rods and it works very well * * *.

The gold instrument I received from you last November I have had great success with it * * *.

I got one of your Gold and Silver Locating Instruments and it works fine for me. I have tested the instrument thoroughly and know it will work.

Among and typical of the representations made by respondent, as aforesaid, in connection with his booklet entitled, "Jacob's Rod," are the following:

HIDDEN TREASURES located by your own Goldometer on your own farms, mines, or old homestead,—Don't sell until you have investigated by this wonderful Psychic Power in yourself.

This very rare old book tells how to find all kind of Minerals, Water, Coal, Iron Ores, Lost and Hidden Treasures, etc., * * * which could no doubt be found by studying and following the directions given in this Rare Old Book, the same which have been practiced by Jacob and many other ancient patriarchs.

Remember the price of this rare and scarce Cloth Bound Book is only $2.00 if you order now. Sent prepaid.

SPECIAL NOTICE.—We have obtained a quantity of these books in paper binding, which we can furnish at $1.00 each postpaid. This is a great chance for those who want the book, but don't feel like paying $2.00 for the cloth binding.

Among and typical of the representations made by the respondent, as aforesaid, in connection with his so-called Fortune Telling Crystal Ball are the following:

Amaze and astound your friends with uncanny revelations. Let the Crystal Ball tell you about yourself, your sweetheart, friends and enemies. Ask it any of the 180 questions of interest to you. Will you be successful in money, love, games or business?

It answers all questions put to it. So simple that anyone may use it. Many professional Fortune Tellers swear by it.

Among and typical of the representations made by the respondent, as aforesaid, in connection with his so-called "Universal Good Luck Coins" are the following:

UNIVERSAL LUCK COINS.—It is believed by many that this wonderful LUCK TOKEN has a Mysterious and Attracting Power. It will amaze you. Many people carry it as a GOOD LUCK BRINGER and believe it will help them in everything they undertake. Looks Like Gold; Wears Like Iron; Everlasting Metal.

A Life-time souvenir that has no equal. The last word in an original luck token. Bears 26 well known and accepted symbols of good fortune. * * *

Good Luck may Come to You if You Always Carry the Good Luck Coin.

Each coin in attractive Descriptive Envelope 50¢ postpaid.

Free with Order—Seven Rules of Success, advice of which if followed may change your whole career, bringing Fame and Fortune.

Among and typical of the representations made by the respondent, as aforesaid, in connection with the offering for sale and sale of a list

of names and addresses of concerns from which devices used in searching for treasures or minerals can be obtained are the following:

PROSPECTORS

Buried Treasure Hunters!

Names and Addresses of 15 places where you can obtain various devices used when searching for treasures or minerals.

By carefully observing their free literature and circulars, you can pick the most suitable one for your particular need.

Useful and valuable information to any party interested in locating lost, buried or hidden treasure, gold, silver, lead or other ores.

The best method of searching for buried treasures and ores that I know without any investment.

The above information is of great value on all treasure seeking or prospecting trips.

All for 50¢ Postpaid.

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import and meaning not herein set out, respondent represents and implies to the purchasing public that his instrument for locating gold and silver will enable a person using the same to locate gold, silver, and hidden treasures and that the various testimonials published and disseminated as aforesaid are true, and that the persons giving such testimonials have actually located gold, silver, or hidden treasure by using respondent's said instrument.

In the manner aforesaid, respondent represents that his booklet entitled "Jacob's Rod" imparts information which will enable a person to ascertain his psychic powers, make his own goldometer and locate gold, silver, and hidden treasure, that said booklet is rare and that the directions given therein were practiced by Jacob of old and many other ancient patriarchs, and that said booklet is being offered for sale by the respondent at a very special price of $1.

In the manner aforesaid, respondent represents that his so-called Fortune Telling Crystal Ball foretells the future and answers all questions concerning a person's past, present, and future.

In the manner aforesaid, respondent represents that his "Universal Good Luck Coins" are possessed of mysterious powers and will bring good luck to persons carrying one of said coins.

In the manner aforesaid, the respondent represents that through the use of his list of names and addresses of concerns selling devices used in searching for treasures or minerals a person will be able to pick the particular device suitable for his needs and that the information contained in said booklet is valuable to any person interested in locating lost, buried, or hidden treasure, gold, silver, lead, or other ores.

PAR. 4. In truth and in fact the aforesaid representations and implications used and disseminated by the respondent, as aforesaid, are

false, misleading, and deceptive, for the use of respondent's said gold, silver, and treasure locating instrument will not enable one to locate gold, silver, or hidden treasure, and said instrument has no value in searching for gold, silver, or hidden treasure. The various testimonials published and disseminated by respondent, as aforesaid, are not from persons who have located gold, silver, or hidden treasure with respondent's said instrument. The reading of respondent's booklet entitled "Jacob's Rod" will not enable the reader to ascertain his psychic powers or make his own goldometer, or enable him to locate hidden treasure. Said booklet is not rare and there is no basis in fact for the statement that the directions given therein were practiced by Jacob of old or any other ancient patriarchs. The price of $1 at which respondent offers said booklet to the purchasing public, is not a special price, but is the regular price at which respondent sells this booklet. The supply of copies of the booklet is not limited. Respondent's fortune telling crystal balls do not foretell the future or answer questions concerning a person's past, present, or future. Respondent's "Universal Good Luck Coins" do not possess any power and will not bring good luck in any undertaking to a person carrying one of said coins. The following of the seven rules of success furnished with said good luck coins will not bring to the purchaser thereof fame and fortune. Respondent's list of names and addresses of concerns from which devices used in searching for gold, silver, and buried treasure can be obtained is worthless for none of the devices procured from any of the concerns listed is suitable or effective for the purposes represented by the respondent and will not locate gold, silver, or hidden treasure.

PAR. 5. The use of each and all of the false and misleading representations and implications made and used by the respondent, as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said representations and implications are true. As a result of such erroneous and mistaken belief many members of the purchasing public have purchased a substantial volume of respondent's said products.

PAR. 6. 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 February 8, 1940, issued and served its complaint in this proceeding upon respondent, Henry Bergman, an individual, charging him with the use of unfair and deceptive

acts and practices in commerce in violation of the provisions of said act. On March 21, 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 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, Henry Bergman, is an individual with his principal place of business located in Springfield, Mo. He resides at 2004 Milton Avenue, Springfield, Mo. Respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of instruments intended for locating gold and silver, and the sale and distribution of a booklet designated "Jacob's Rod." For more than 6 months last past, respondent has also been engaged in the sale and distribution of "crystal balls," allegedly for use in telling fortunes, metal discs which he calls "Universal Good Luck Coins" and a list of names and addresses of parties or concerns from which devices used in searching for treasures or minerals can be obtained. Respondent sells his said products to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said products when sold by him to be transported from his place of business in the State of Missouri, to the purchasers thereof at their respective points of location in the various States of the United States other than the State of Missouri and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business in said commerce, as aforesaid, and for the purpose of inducing the purchase of said products, the respondent has caused various statements and representations relating to said products to be inserted in advertisements in circulars, pamphlets, newspapers, and magazines distributed and circulated among prospective purchasers throughout the United States generally. Among and typical of the representations made by the respondent, as aforesaid, concerning his so-called gold and silver locater are the following:

WANTED—Hear From Parties interested gold or silver ores, buried or hidden treasures. Bergman's Instrument, $5.00. Particulars free.

HENRY BERGMAN,

Box 70-F, Springfield, Missouri.

This letter is to inform you about Bergman's Instrument.

It is small, weighing only six ounces, and can be easily carried in your pocket.

The ingredients, including Gold, Silver and Mercury (quick silver) are enclosed in bottles and incased in walnut tubes and covered with clear lacquer, connected with 24 inch No. 19 Brass coppered chain. It will last a lifetime and does not require recharging. With each instrument is included 2 cut-offs and directions for operating.

It does not contain Loadstone, Magnetic Sand, or any Magnetic Substance that may cause an attraction to different metals or minerals.

The price of the instrument is $5.00 postpaid.

I will send it insured, postpaid, to you and allow you a 30 day free trial. If your are not satisfied, return the instrument and the two cut-offs, postpaid, to me within 32 days of date you receive the instrument, and I will immediately refund the $5.00 by Post Office Money Order.

Do not hesitate to give Bergman's Instrument a trial.

WANTED—Hear from parties interested gold or silver ores, buried or hidden treasures. Bergman's Instrument $5.00 Postpaid. 30 days free trial. Satisfaction guaranteed or your money immediately refunded without question. By Post Office Money Order upon return of the instrument. Particulars free:

Among and typical of the representations made by respondent through the publication of testimonials concerning his gold and silver locater are the following:

It works perfect (100%) for me. I'm sitting on top of the world, so to speak.

I have been informed of you by F-K * * * that you have the best instruments for locating buried treasures and hidden treasures.

* * * I tried it on a gold watch chain and ring. It worked in a circle over it. I have some nuggets and gold ore. I thought it was gold.

Those gold nuggets and ore, the locating instrument works something fine. The only way I can stop it is to put the cut-off on it. Then it will stop. I have taken it out to my farm once. I found a nugget and some quartz.

Received the gold finder and have tried it out. It works good for me. A friend took me yesterday up to Gold Creek to see if it would point out a place where he knew there was gold. It located it exactly, swinging in a circle over the place and at the same time a little sideways toward quartz deposit.

I have got one of your mineral rods and it works very well * * *.

The gold instrument I received from you last November I have had great success with it * * *.

I got one of your Gold and Silver Locating Instruments and it works fine for me. I have tested the instrument thoroughly and know it will work.

Among and typical of the representations made by respondent, as aforesaid, in connection with his booklet entitled, "Jacob's Rod," are the following:

HIDDEN TREASURES located by your own Goldometer on your own farms, mines, or old homestead.—Don't sell until you have investigated by this wonderful Psychic Power in yourself.

This very rare old book tells how to find all kinds of Minerals, Water, Coal, Iron Ores, Lost and Hidden Treasures, etc., * * * which could no doubt be found by studying and following the directions given in this Rare Old Book, the same which have been practiced by Jacob and many other ancient patriarchs.

Remember the price of this rare and scarce Cloth Bound Book is only $2.00 if your order now. Sent prepaid.

SPECIAL NOTICE.—We have obtained a quantity of these books in paper binding, which we can furnish at $1.00 each postpaid. This is a great chance for those who want the book, but don't feel like paying $2.00 for the cloth binding.

Among and typical of the representations made by the respondent, as aforesaid, in connection with his so-called Fortune Telling Crystal Ball are the following:

Amaze and astound your friends with uncanny revelations. Let the Crystal Ball tell you about yourself, your sweetheart, friends and enemies. Ask it any of the 180 questions of interest to you. Will you be successful in money, love, games or business? It answers all questions put to it. So simple that anyone may use it. Many professional Fortune Tellers swear by it.

Among and typical of the representations made by the respondent, as aforesaid, in connection with his so-called "Universal Good Luck Coins" are the following:

UNIVERSAL LUCK COINS. It is believed by many that this wonderful LUCK TOKEN has a Mysterious and Attracting Power. It will amaze you. Many people carry it as a GOOD LUCK BRINGER and believe it will help them in everything they undertake. Looks Like Gold; Wears Like Iron; Everlasting Metal.

A Life-time souvenir that has no equal. The last word in an original luck token. Bears 26 well known and accepted symbols of good fortune. * * *

Good Luck may Come to You if You Always Carry the Good Luck Coin.

Each coin in attractive Descriptive Envelope 50¢ postpaid.

Free with Order—Seven Rules of Success, advice of which if followed may change your whole career, bringing Fame and Fortune.

Among and typical of the representations made by the respondent, as aforesaid, in connection with the offering for sale and sale of a list of names and addresses of concerns from which devices used in searching for treasures or minerals can be obtained are the following:

PROSPECTORS

Buried Treasure Hunters!

Names and Addresses of 15 places where you can obtain various devices used when searching for treasures or minerals.

By carefully observing their free literature and circulars, you can pick the most suitable one for your particular need.

Useful and valuable information to any party interested in locating lost, buried or hidden treasure, gold, silver, lead or other ores.

The best method of searching for buried treasures and ores that I know without any investment.

The above information is of great value on all treasure seeking or prospecting trips.

All for 50¢ postpaid.

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import and meaning not herein set out, respondent represents and implies to the purchasing public that his instrument for locating gold and silver will enable a person using the same to locate gold, silver and hidden treasures and that the various testimonials published and disseminated as aforesaid are true, and that the persons giving such testimonials have actually located gold, silver, or hidden treasure by using respondent's said instrument.

In the manner aforesaid, respondent represents that his booklet entitled "Jacob's Rod" imparts information which will enable a person to ascertain his psychic powers, make his own gold meter and locate gold, silver, and hidden treasure, that said booklet is rare and that the directions given therein were practiced by Jacob of old and many other ancient patriarchs, and that said booklet is being offered for sale by the respondent at a very special price of $1.

In the manner aforesaid, respondent represents that his so-called Fortune Telling Crystal Ball foretells the future and answers all questions concerning a person's past, present, and future.

In the manner aforesaid, respondent represents that his "Universal Good Luck Coins" are possessed of mysterious powers and will bring good luck to persons carrying one of said coins.

In the manner aforesaid, the respondent represents that through the use of his list of names and addresses of concerns selling devices used in searching for treasures or minerals a person will be able to pick the particular device suitable for his needs and that the information contained in said booklet is valuable to any person interested in locating lost, buried, or hidden treasure, gold, silver, lead, or other ores.

PAR. 4. In truth and in fact the aforesaid representations and implications used and disseminated by the respondent, as aforesaid, are false, misleading and deceptive, for the use of respondent's said gold, silver, and treasure locating instrument will not enable one to locate gold, silver, or hidden treasure, and said instrument has no value in searching for gold, silver, or hidden treasure. The various testimonials published and disseminated by respondent, as aforesaid, are not from persons who have located gold, silver, or hidden treasure with respondent's said instrument. The reading of respondent's booklet entitled "Jacob's Rod" will not enable the reader to ascertain his psychic powers or make his own gold meter, or enable him to locate hidden treasure. Said booklet is not rare and there is no basis in fact for the statement that the directions given therein were practiced by Jacob of old or any other ancient patriarchs. The price of $1

at which respondent offers said booklet to the purchasing public is not a special price, but is the regular price at which respondent sells this booklet. The supply of copies of the booklet is not limited. Respondent's fortune telling crystal balls do not foretell the future or answer questions concerning a person's past, present, or future. Respondent's "Universal Good Luck Coins" do not possess any power and will not bring good luck in any undertaking to a person carrying one of said coins. The following of the seven rules of success furnished with said good luck coins will not bring to the purchaser thereof fame and fortune. Respondent's list of names and addresses of concerns from which devices used in searching for gold, silver, and buried treasure can be obtained is worthless for none of the devices procured from any of the concerns listed is suitable or effective for the purposes represented by the respondent and will not locate gold, silver, or hidden treasure.

PAR. 5. The use of each and all of the false and misleading representations and implications made and used by the respondent, as aforesaid, has had and now has the tendency and capacity to and does mislead and deceive a substantial number of the purchasing public into the erroneous and mistaken belief that said representations and implications are true. As a result of such erroneous and mistaken belief many members of the purchasing public have purchased a substantial volume of respondent's said products.

CONCLUSION

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.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Henry Bergman, his representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale and dis-

tribution of any instrument or device for locating gold and silver, a booklet known as "Jacob's Rod," so-called fortune telling balls known as "Crystal Balls," metal disks known as "Universal Good Luck Coins," and a list of names and addresses of parties or concerns from which devices used in searching for treasures or minerals can be obtained, in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That the respondent's gold, silver and treasure locating instrument has any value in searching for gold, silver or hidden treasure or that said instrument or any other instrument will enable one to locate gold, silver, or hidden treasure.

2. By testimonials, or in any other manner, that persons have located gold, silver or hidden treasure by using the respondent's said instrument.

3. That a person reading the booklet known as "Jacob's Rod," sold by respondent, will be enabled thereby to ascertain his psychic powers, make his own goldometer, or locate hidden treasure.

4. There is any basis, in fact, for the statement that the directions given in the booklet known as "Jacob's Rod" were practiced by Jacob of old or any other ancient patriarch; that the booklet known as "Jacob's Rod" is rare or that the price of $1 is any other than the regular price at which respondent sells the same or that the supply of the copies thereof is limited.

5. That the so-called fortune-telling ball known as "Fortune Telling Crystal Ball," or any other device, foretells the future, or answers questions concerning a person's past, present, or future.

6. That the metal disks known as "Universal Good Luck Coins" possess power that assures success in any undertaking to the person carrying one of said coins.

7. That a person following "The Seven Rules of Success" furnished by respondent will attain fame and fortune.

8. That the respondent's list of names and addresses from which devices used in searching for gold, silver and buried treasure may be obtained has any value, or that devices which can be procured from any of such concerns are suitable and effective for locating gold, silver, or hidden treasure.

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

NORMAN D. LOUGHLIN, L. E. RUPPE, BERNAL H. DYAS, RUTH C. HEMSTREET, VOLNEY T. JAMES, AND PAGE H. LAMOREAUX, TRADING AS RULO COMPANY; AND RULO CORPORATION

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

Docket 3761. Complaint, Apr. 14, 1939—Decision, June 22, 1940

Where three individuals and a corporation which succeeded to business theretofore conducted by them and of which they were officers or directors, and sales policies, advertisements and other activities of which, with respect to acts and practices below set forth, they directed and controlled, engaged in sale and distribution of their "Rulo Automatic Injector" for attachment to automotive engines and of their "Rulo Energy Fluid" for use in said devices; in advertisements of their said devices in newspapers, and circulars or printed matter distributed in commerce, and in continuities broadcast from radio stations of extra-state audience—

(*a*) Represented, directly and by implication, that use of said device and fluid would effect substantial economy in the operation of an automobile through lessening gasoline and oil consumption and would effect a saving of from 20 percent to 55 percent in the gasoline used, and 10 percent of the gasoline used in the operation of every car driven 1,500 miles or more a month;

(*b*) Represented that use thereof would substantially increase the power and compression of the motor and would remove carbon therefrom and prevent its formation therein, and would substantially lessen engine friction and attendant engine wear; and

(*c*) Represented that use thereof would eliminate necessity of grinding valves and prevent them from sticking and seat valves and prevent motor from knocking, and that through use of said device and fluid, first-grade or Ethyl gasoline performance could be obtained with third grade gasoline, and that such use would prolong life of motor and cause it to operate more smoothly and with less heat, and would prolong the life and seal rings of motor, and stop or lessen oil pumping thereby;

Facts being use thereof would not save any substantial amount in cost of gasoline and oil consumed by any car driven any distance for any length of time, and would not accomplish any such savings as above represented, such use would not bring about same performance with third grade gasoline as that obtained from first-grade or Ethyl gas, and would not otherwise bring about various results and improvements claimed therefor as above set out; and

(*d*) Represented that said Rulo Energy Fluid was a synthetic product scientifically made from a secret formula, and that use thereof removed hard carbon, and that said fluid was a perfect heat resistant lubricant, and that through use thereof perfect lubrication in the upper cylinder was assured even when motor was cold when starting, and that use thereof stopped motor wear;

Facts being it was not made from a secret formula and was not a perfect heat resistant lubricant, but was a lubricating oil to which had been added small quantity of colloidal graphite, addition of which does not enhance value of lubricating oil for use in automotive engines, and it would not accomplish results claimed for it as above set forth;

With effect of misleading and deceiving members of purchasing public in various States into erroneous and mistaken belief that said statements and representations were true and, by reason of such belief, into purchasing substantial quantities of their said device and lubricant, and with direct result, as a consequence thereof, that trade in commerce among the various states was diverted unfairly to said individuals and corporation from their competitors engaged in sale and distribution of devices and lubricants designed for similar usage; 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.

Before *Mr. John J. Keenan*, trial examiner.

Mr. R. A. McOuat and *Mr. DeWitt T. Puckett* for the Commission.

Mr. Nathan M. Dicker, of Los Angeles, Calif., for L. E. Ruppe.

Hervey & Hervey, of Los Angeles, Calif., for Bernal H. Dyas.

Mr. Gilbert J. Heyfron, of Hollywood, Calif., for Volney T. James.

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 Norman D. Loughlin, L. E. Ruppe, Bernal H. Dyas, Ruth C. Hemstreet, Volney T. James, and Page H. Lamoreaux, individually and trading as Rulo Co., and Rulo Corporation, 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. Respondents, Norman D. Loughlin, L. E. Ruppe, Bernal H. Dyas, Ruth C. Hemstreet, Volney T. James, and Page H. Lamoreaux, are individuals and for more than one year prior to April, 1936, traded as the Rulo Co. and had their office and principal place of business in the city of Los Angeles, State of California. Respondent, Rulo Corporation, is a corporation organized, existing, 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 3636 Beverly Blvd., in the city of Los Angeles, State of California.

Respondents, Norman D. Loughlin, L. E. Ruppe, Bernal H. Dyas, Ruth C. Hemstreet, Volney T. James, and Page H. Lamoreaux, trading as Rulo Company, were prior to April 1936, and the Rulo

Corporation is now, and has been since April 1936, engaged in the business of selling and distributing a device known as "Rulo Automatic Injector," designed to be attached to automobile motors, and a fluid known as "Rulo Energy Fluid" designed for use in said device. During the times herein mentioned respondents have caused said device and fluid, when sold or ordered, to be transported from the State of California to the purchasers thereof at their respective points of location in various States of the United States other than the State of California. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said device and fluid among and between various States of the United States. Respondents, Lamoreaux, Hemstreet, and Dyas, are the directors, and respondents, Lamoreaux, Hemstreet, and James are the officers of respondent, Rulo Corporation, and direct and control the sales policies, advertisements and other activities of the said corporation with respect to the acts and practices herein described.

PAR. 2. Respondent, Rulo Corporation, is now, and all respondents have been during the times mentioned herein, in competition with other corporations and individuals and with firms and partnerships, engaged in the business of selling and distributing devices and fluids designed for similar uses 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 and for the purpose of inducing the purchase of their said device and fluid respondents have caused statements and representations relative to the effectiveness in use of said device and fluid to be inserted in advertisements in newspapers, periodicals, circulars and other printed matter, all of which are and were distributed in commerce, as commerce is defined in the Federal Trade Commission Act, and in continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto located in various States of the United States other than the State from which said broadcasts originated. Among and typical of the statements and representations contained in said advertisements so used and disseminated as aforesaid are the following:

NEW DISCOVERY GIVES
UP TO 45% MORE
GASOLINE MILEAGE

Motorists! The amazing RULO Gas-Saver is guaranteed to Save you up to 45% on gasoline! Eliminate any need for valve-grinding! Decrease oil consumption! Give you near-Ethyl performance on third-grade gasoline! Increase compression-power! Keep a new motor NEW, and make an OLD motor run like new!

KNOCK! KNOCK! FOLKS!

When your motor starts singing this song you don't have to ask "Who's there?." It is hard carbon * * *

My Rulo Automatic Injector will stop this knocking. In fact, it will take the hard carbon out of your motor and keep it out forever.

Prolongs the life of motor rings. Increases the mileage on lubricating oil. Rulo eliminates seventy-five percent motor wear. Guaranteed to stop your oil pumping.

RULO GAS-SAVER

This is what you obtain by installing a Rulo—this is what we guarantee—that by letting us install this NATIONALLY RECOGNIZED Rulo device in your car, you will secure a 20% SAVING IN GASOLINE!—or money cheerfully refunded without ANY red tape!

Call today and have a Rulo put on your car—$9.50 completely installed. If, like the average motorist, you drive 1500 miles each month, it is actually possible for you to save $10 each and every month with a Rulo.

Rulo is patented. It is a carburetor-type device—maintains a constant indestructible film of colloidal graphite (Rulo fluid) in the combustion chamber of your motor—eliminates need of expensive "valve grinds"—gives your motor more pep and compression—reduces wear and tear—prolongs the life of your motor—enables you to use cheaper gasoline and still get "top" performance—is absolutely harmless to all internal combustion engines—Do not confuse Rulo with so-called "gas-savers"!

RULO

Energy FLUID

Perfect Upper CYLINDER LUBRICATION

STOPS

MOTOR

WEAR!

75% of all motor wear occurs when a motor is started cold. Raw gas washes off what little oil has remained on frictional parts. Before the oil pump can force the thickened oil upward, the motor is grinding metal on metal.

When Rulo Energy Fluid is properly injected into the explosion chamber of your automobile, heat will not burn it off, gas cannot wash it off, and you are assured of perfect lubrication in the upper cylinder even when the motor is started cold.

Rulo Energy Fluid is a super-treated colloidal graphite, upper cylinder lubricant, compounded for use only in the Rulo Automatic Injector.

PERMANENTLY

REMOVES

CARBON

Rulo Energy Fluid is a synthetic product made scientifically to withstand more than the terrific heat of the explosion chamber of an automobile, truck, tractor or motor-boat. * * * a secret neutral formula is added for the purpose of removing hard carbon.

The Perfect Heat Resisting Lubricant.

RULO

Energy

FLUID

The aforesaid statements and representations, together with others of similar import and meaning not herein set out but disseminated as aforesaid, purport to be descriptive of respondent's device and fluid and their effectiveness in use. In the manner and by the means aforesaid the respondents represent directly and by implication that the use of said device and fluid will effect substantial economies in the operation of an automobile through lessening the gasoline and oil consumption of the automobile motor; that the use of such device and fluid will effect a saving of from 20 to 55 percent in the gasoline used in the operation of an automobile and will save 10 percent of the gasoline used in the operation of every car driven 1,500 or over miles per month; that the use of such device and fluid will substantially increase the motor power and compression pressure of the automobile motor; will remove carbon from the motor and prevent the formation of carbon therein; will substantially lessen engine friction and attendant engine wear; eliminate the necessity of grinding the valves; prevent valves from sticking and seat valves; prevent the motor from knocking; that by the use of such device and fluid first structure or ethyl gasoline performance can be obtained with third structure gasoline; that the use of such device and fluid will prolong the life of the motor; will cause the motor to operate smoother and with less heat; will prolong the life and seal the rings of the motor and will stop or lessen oil pumping by the motor.

Respondents also represent that the Rulo Energy Fluid is a synthetic product scientifically made from a secret formula; that the use of such fluid removes hard carbon; that such fluid is a perfect heat resistant lubricant; that by the use of such fluid perfect lubrication in the upper cylinder is assured even when the motor is cold when started; and that the use of such fluid stops motor wear.

PAR. 4. In truth and in fact the statements and representations by respondents disseminated as aforesaid are deceptive, misleading, exaggerated, and untrue. In truth and in fact the use of such device and fluid will not effect economies in the use of an automobile through lessening the gasoline and oil consumption of the motor. The use of such device and fluid will not save from 20 to 55 percent of the gasoline used in the operation of an automobile motor and will not save 10 percent of the gasoline used in the operation of any car driven 1,500 or over miles per month. In truth and in fact the use of such device and fluid does not save any amount in the cost of gasoline and oil consumed by any car driven any distance for any length of time. The use of such device and fluid will not increase the motor power and the compression power of an automobile motor; will not remove carbon from the motor or prevent the formation of carbon therein;

will not lessen engine friction or attendant engine wear; will not eliminate the necessity of grinding the valves; will not prevent valves from sticking; will not seat valves, and will not prevent the motor from knocking. First structure or ethyl gasoline performance cannot be obtained from third structure gasoline by the use of such device and fluid. The use of such device and fluid will not prolong the life of motors or cause motors to operate smoother or with less heat; will not prolong the life or seal the rings of the motor, and will not stop or lessen oil pumping by the motor.

The Rulo Energy Fluid is not made from a secret formula, and it is not a perfect heat resistant lubricant. The use of such fluid does not stop motor wear or remove carbon from the motor. The use of such fluid does not assure perfect lubrication in the upper cylinder of the motor at any time. Rulo Energy Fluid is a lubricating oil to which a small quantity of colloidal graphite is added. The addition of colloidal graphite does not enhance the value of lubricating oil for use in automobile engines.

PAR. 5. The use by the respondents of the aforesaid statements and representations, disseminated as aforesaid, has, and had, the tendency and capacity to, and does, and did, mislead and deceive members of the purchasing public, situated in various States of the United States, into the erroneous and mistaken belief that the aforesaid statements and representations are and were true and into purchasing substantial quantities of respondents' device and lubricant because of said erroneous and mistaken belief. As a direct result thereof trade in commerce among and between various States of the United States has been diverted unfairly to the respondents from their said competitors engaged in selling and distributing devices and lubricants designed for similar usages. In consequence thereof substantial injury has been done by the respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and of respondents' 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.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 14th day of April 1939, issued and thereafter served its complaint in this proceeding upon each of the respondents, charging the use of unfair and deceptive acts and practices in commerce and unfair methods of competition in

commerce in violation of the provisions of said act. On July 26, 1939, after the issuance of said complaint and the filing of respondent L. E. Ruppe's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by D. T. Puckett, Esq., attorney for the Federal Trade Commission, and in opposition to the allegations of the complaint by Nathan M. Dicker, 416 West Eighth Street, Los Angeles, Calif., attorney for respondent L. E. Ruppe, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. On September 25, 1939, respondent Bernal H. Dyas filed an answer stating that he has no connection with or interest in the Rulo Company or Rulo Corporation, and had not for a period of over two years, and that he knows nothing concerning the material allegations of fact set forth in the complaint and that he waives all intervening procedure, and further hearing as to said facts, and states that the Federal Trade Commission may make such disposition of the matter as it deems fit, and further states that the Federal Trade Commission may make its order that Rulo Company, Rulo Corporation and respondent Dyas cease and desist from doing any of the matters or things set forth in the complaint as in violation of law. On September 25, 1939, the respondents Norman D. Loughlin, Volney T. James, and on October 2, 1939, respondents Page H. Lamoreaux and the Rulo Corporation, filed separate 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 answers were duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, the separate answers thereto, 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. From the year 1935 to January 1938, respondents Normal D. Loughlin, Volney T. James, and Page H. Lamoreaux traded as the Rulo Co., and had their office and principal place of business in the city of Los Angeles, State of California.

Respondent Rulo Corporation is a corporation organized and has done business under and by virtue of the laws of the State of California, with its office and principal place of business at 309 South Western Street and various other locations in the city of Los Angeles, Calif.

Respondents Norman D. Loughlin, Volney T. James, and Page H. Lamoreaux, trading as Rulo Co., were, prior to April, 1936, and the Rulo Corporation has been, since April 1936, engaged in the business of selling and distributing a device known as "Rulo Automatic Injector," designed to be attached to automobile engines, and a fluid known as "Rulo Energy Fluid," designed for use in said device. During the times herein mentioned respondents have caused said device and fluid when sold or ordered to be transported from the State of California to the purchasers thereof at their respective points of location in various States of the United States other than the State of California. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in commerce in said device and fluid among and between various States of the United States and in the District of Columbia.

Respondent Lamoreaux was director, and the respondents Lamoreaux and James were officers of the respondent Rulo Corporation, and directed and controlled the sales policies, advertisements and other activities of said corporation with respect to the acts and practices herein described.

Respondents L. E. Ruppe and Barnal H. Dyas did not participate in any way in the manufacture, marketing, or advertising of the products sold and distributed by the other respondents.

Respondent Ruth C. Hemstreet was an employee of the corporate respondent, and at the instance, request and instructions of respondent Lamoreaux, acted as an officer of said corporation. Said respondent Hemstreet, while acting as an officer of respondent Rulo Corporation, did not at any time take any part in the manufacture, sale, distribution, or advertising of any of its products except in carrying out the instructions of the respondent Page H. Lamoreaux.

None of the respondents has been engaged in the marketing, sale and distribution of "Rulo Automatic Injector" or "Rulo Energy Fluid" since January 1, 1938.

PAR. 2. Respondents Lamoreaux, James, Loughlin, and Rulo Corporation had been, prior to January 1, 1938, in competition with other corporations and individuals, and with firms and partnerships engaged in the business of selling and distributing devices and fluids designed for similar uses, 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 and for the purpose of inducing the purchase of their said device and fluid, respondents Loughlin, James, Lamoreaux, and Rulo Corporation have caused statements and representations relative to the effectiveness in use of said device and fluid to be inserted in advertisements in news-

papers, periodicals, circulars, and other printed matter, all of which were distributed in commerce, as commerce is defined in the Federal Trade Commission Act, and in continuities broadcast from radio stations which have power to and do convey the programs emanating therefrom to the listeners thereto located in various States of the United States other than the States from which said broadcasts originated. Among and typical of the statements and representations contained in said advertisements so used and distributed as aforesaid are the following:

NEW DISCOVERY GIVES

UP TO 45% MORE

GASOLINE MILEAGE!

Motorists! The amazing RULO Gas-Saver is guaranteed to Save you up to 45% on gasoline! Eliminate any need for valve-grinding! Decrease oil consumption! Give you near-Ethyl performance on third-grade gasoline! Increase compression-power! Keep a new motor NEW, and make an OLD motor run like new!

KNOCK! KNOCK! FOLKS!

When your motor starts singing this song you don't have to ask "Who's there?". It is hard carbon * * *

My Rulo Automatic Injector will stop this knocking. In fact, it will take the hard carbon out of your motor and keep it out forever.

Prolongs the life of motor rings. Increases the mileage on lubricating oil. Rulo eliminates seventy-five percent motor wear. Guaranteed to stop your oil pumping.

RULO GAS-SAVER

This is what you obtain by installing a Rulo—this is what we guarantee—that by letting us install this NATIONALLY RECOGNIZED Rulo device in your car, you will secure a 20% SAVING IN GASOLINE!—or money cheerfully refunded without ANY red tape!

Call today and have a Rulo put on your car—$9.50 completely installed. If, like the average motorist, you drive 1,500 miles each month, it is actually possible for you to save $10 each and every month with a Rulo.

Rulo is patented. It is a carburetor-type device—maintains a constant indestructible film of colloidal graphite (Rulo fluid) in the combustion chamber of your motor—eliminates need of expensive "valve grinds"—gives your motor more pep and compression—reduces wear and tear—prolongs the life of your motor—enables you to use cheaper gasoline and still get "top" performance—is absolutely harmless to all internal combustion engines—Do not confuse Rulo with so-called "gas-savers"!

R U L O

Energy FLUID

Perfect Upper CYLINDER LUBRICATION

STOPS

MOTOR

WEAR!

75% of all motor wear occurs when a motor is started cold. Raw gas washes off what little oil has remained on frictional parts. Before the oil pump can force the thickened oil upward, the motor is grinding metal on metal.

When Rulo Energy Fluid is properly injected into the explosion chamber of your automobile, heat will not burn it off, gas cannot wash it off, and you are assured of perfect lubrication in the upper cylinder even when the motor is started cold.

Rulo Energy Fluid is a super-treated colloidal graphite, upper cylinder lubricant, compounded for use only in the Rulo Automatic Injector.

PERMANENTLY
REMOVES
CARBON

Rulo Energy Fluid is a synthetic product made scientifically to withstand more than the terrific heat of the explosion chamber of an automobile, truck, tractor or motor-boat. * * * a secret neutral formula is added for the purpose of removing hard carbon.

The Perfect Heat Resisting Lubricant.

RULO
Energy
FLUID

The aforesaid statements and representations, together with others of similar import and meaning not herein set out but disseminated as aforesaid, purport to be descriptive of respondents' device and fluid and their effectiveness in use. In the manner and by the means aforesaid the respondents represent directly and by implication that the use of said device and fluid will effect substantial economies in the operation of an automobile through lessening the gasoline and oil consumption of the automobile motor; that the use of such device and fluid will effect a saving of from 20 percent to 55 percent in the gasoline used in the operation of an automobile and will save 10 percent of the gasoline used in the operation of every car driven 1,500 or more miles per month; that the use of such device and fluid will substantially increase the power and compression of the automobile motor; will remove carbon from the motor and prevent the formation of carbon therein; will substantially lessen engine friction and attendant engine wear; eliminate the necessity of grinding the valves; prevent valves from sticking and seat valves; prevent the motor from knocking; that by the use of such device and fluid first grade or ethyl gasoline performance can be obtained with third grade gasoline; that the use of such device and fluid will prolong the life of the motor; will cause the motor to operate smoother and with less heat; will prolong the life and seal the rings of the motor and will stop or lessen oil pumping by the motor.

Said respondents also represent that the Rulo Energy Fluid is a synthetic product scientifically made from a secret formula; that

the use of such fluid removes hard carbon; that such fluid is a perfect heat-resistant lubricant; that by the use of such fluid perfect lubrication in the upper cylinder is assured even when the motor is cold when started; and that the use of such fluid stops motor wear.

PAR. 4. The representations set forth in paragraph 3 hereof which said respondents make with respect to the effectiveness of respondents' device and fluid when used are deceptive, misleading, exaggerated and untrue. In truth and in fact, the use of such device and fluid will not effect economies in the operation of an automobile through lessening of the gasoline and oil consumption of the motor. The use of such device and fluid will not save from 20 percent to 55 percent of the gasoline used in the operation of an automobile motor and will not save 10 percent of the gasoline used in the operation of any car driven 1,500 or more miles per month. In truth and in fact, the use of such device and fluid does not save any substantial amount in the cost of gasoline and oil consumed by any car driven any distance for any length of time. The use of such device and fluid will not increase the power or compression of an automobile motor; will not remove carbon from the motor or prevent the formation of carbon therein; will not substantially lessen engine friction or engine wear; will not eliminate the necessity of grinding the valves; will not prevent valves from sticking; will not seat valves, and will not prevent the motor from knocking. First grade or ethyl gasoline performance cannot be obtained from third grade gasoline by the use of such device and fluid. The use of such device and fluid will not prolong the life of motors or cause motors to operate smoother or with less heat; will not prolong the life or seal the rings of the motor, and will not stop or lessen oil pumping by the motor.

The Rulo Energy Fluid is not made from a secret formula, and it is not a perfect heat-resistant lubricant. The use of such fluid does not stop motor wear or remove carbon from the motor. The use of such fluid does not assure perfect lubrication in the upper cylinder of the motor at any time. Rulo Energy Fluid is a lubricating oil to which a small quantity of colloidal graphite is added. The addition of colloidal graphite does not enhance the value of lubricating oil for use in automobile engines.

PAR. 5. The use by the said respondents of the aforesaid statements and representations, disseminated as aforesaid, has, and had, the tendency and capacity to, and does, and did, mislead and deceive members of the purchasing public situated in various States of the United States into the erroneous and mistaken belief that the aforesaid statements and representations are and were true and into purchasing substantial quantities of respondents' device and lubricant

because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce among and between various States of the United States has been diverted unfairly to the respondents, Norman D. Loughlin, Volney T. James, and Page H. Lamoreaux, trading as Rulo Co. and Rulo Corporation, a corporation, from their said competitiors engaged in selling and distributing devices and lubricants designed for similar usages. In consequence thereof, substantial injury has been done by the 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, Norman D. Loughlin, Volney T. James, and Page H. Lamoreaux, trading as Rulo Co., and Rulo Corporation, a corporation, 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 L. E. Ruppe, 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 the complaint and in opposition thereto, and the answers of respondents Norman D. Loughlin, Volney T. James, and Page H. Lamoreaux, individually and trading as Rulo Co., and the answer of the Rulo Corporation, in which answers said respondents admitted all the material allegations of fact set forth in the complaint and state that each respondent 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 the respondents L. E. Ruppe, Bernal H. Dyas, and Ruth C. Hemstreet have not violated the provisions of the Federal Trade Commission Act and that the said respondents Norman D. Loughlin, Volney T. James, and Page H. Lamoreaux, individually and trading as Rulo Co., and Rulo Corporation, a corporation, have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Norman D. Loughlin, Volney T. James, and Page H. Lamoreaux, individually and trading as Rulo Co., and Rulo Corporation, a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other de-

vice, in connection with the offering for sale, sale, and distribution in commerce between and among the States of the United States and in the District of Columbia, of the automotive device known as "Rulo Automatic Injector" and the automotive lubricant known as "Rulo Energy Fluid," whether sold under those names or under any other name or names, do forthwith cease and desist from representing, directly or by inference, that

1. The use of said device and fluid will effect substantial economies in the operation of an automobile through the lessening of gasoline and oil consumption of the automobile motor.

2. The use of such device and fluid will effect any substantial saving of gasoline used in the operation of an automobile.

3. The use of such device and fluid will substantially increase the power and compression of the automobile motor.

4. The use of such device and fluid will remove carbon from the motor and prevent the formation of carbon therein.

5. The use of such device and fluid, or either of them, will substantially lessen engine friction and attendant engine wear.

6. The use of such device and fluid will eliminate the necessity of grinding the valves, prevent values from sticking, and seat valves.

7. The use of such device and fluid will prevent the motor from knocking.

8. By the use of such device and fluid first grade or ethyl gasoline performance can be obtained with gasoline of a lower grade.

9. The use of such device and fluid will prolong the life of the motor, will cause the motor to operate smoother and with less heat, will prolong the life and seal the rings of the motor and will stop or lessen oil pumping by the motor.

10. "Rulo Energy Fluid" is scientifically made from a secret formula.

11. The use of such fluid removes hard carbon.

12. Said fluid is a perfect heat-resistant lubricant.

13. By the use of such fluid perfect lubrication in the upper cylinder is assured even when the motor is cold when started.

It is further ordered, That the respondents Norman D. Loughlin, Volney T. James, and Page H. Lamoreaux, individually and trading as Rulo Co., and Rulo Corporation shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they, and each of them, have complied with this order.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondents L. E. Ruppe, Bernal H. Dyas, and Ruth C. Hemstreet.

IN THE MATTER OF

PETER SANDERS, HARRY SANDERS AND SAMUEL SANDERS, DOING BUSINESS AS THE PERFECT RECONDITION SPARK PLUG COMPANY, AND SAMUEL SANDERS, DOING BUSINESS AS ACE AUTO SUPPLY COMPANY

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

Docket 3392. Complaint, Jan. 24, 1939[1]*—Decision, June 25, 1940*

Where three individuals engaged in sale of used and discarded spark plugs, for use in automotive gasoline engines, to dealers and wagon peddlers in various parts of the United States and in foreign countries for resale, and, as thus engaged, in transporting their said products to such purchasers in other States, in the District of Columbia, and in foreign countries as aforesaid, and in competition as above set forth with others engaged in manufacture and sale of spark plugs to dealers purchasing for resale and to members of public purchasing for use in various States and in said District of Columbia and foreign countries, and including among such competitors two manufacturers who respectively sold their products under identifying trade names, brands, or marks, "Champion" and "AC," placed as identifying marks on the exposed portion of the insulators of their said products and on cartons or containers in which packaged when offered and sold to purchasing public, and who had expended large sums in advertising their said respective trade-marks and spark plugs made thereunder, which were well known by large majority of motoring public and served to identify such plugs thus marked with two manufacturers aforesaid, and business in which "AC" and "Champion" spark plugs, sold to substantial extent by manufacturers thereof and by dealers therein in commerce in the various States and in said District and foreign countries, constituted a very substantial portion of the entire spark plug business in the United States;

In carrying on their aforesaid business of selling used and discarded spark plugs, consisting, substantially, almost entirely of such plugs originally made and sold by 2 manufacturers above referred to under brand names AC and Champion, as above set forth, in course of which said individuals made a practice of (1) obtaining such discarded spark plugs as junk and at small cost from garages, service stations, and other places where they had been abandoned by their owners as worthless; (2) of treating and refurbishing same by cleaning, sandblasting, filing, buffing, adjusting points, and painting metal shells with black paint; and (3) packing such plugs 10 to a box with cover bearing inscription "PERFECT RECONDITIONED REGISTERED"; and (4) selling, as hereinbefore set forth, such plugs, which, after having been treated and refurbished as aforesaid, had appearance of new and unused Champion and AC spark plugs, respectively, to small garages, dealers, and wagon peddlers for resale to public—

[1] Amended and supplemental

Sold and distributed said spark plugs, which, thus treated and refurbished, and individually wrapped in plain waxed paper with no identification or marking of any kind, bore no individually identifying marking to indicate said individuals' connection therewith, or used, second-hand, refurbished character thereof, but continued to carry brand names "Champion" and "AC," placed thereon originally by manufacturers thereof, and which brand names on porcelain ends thereof, when installed in motor by mechanic or some other person at garage or service station where purchase is made, as is custom in great majority of cases in which such plugs are sold to car owners, afforded, in such instances, no opportunity to see box from which plug is removed or to see plug until after installation, and constituted only visible part of said product;

Notwithstanding fact said refurbished, discarded Champion and AC spark plugs, due to use and wear to which they had been previously subjected, were inferior in functional qualities to new spark plugs from which they were practically indistinguishable in appearance, and did not comply with blueprints and specifications of the original manufacturers, who, in response to the exacting and meticulous technical requirements of different models of the various automotive manufacturers, made and supplied very large number of types of such products, varying often only in very minor but essential respects, and recommended, in the interest of proper and adequate motor performance, periodic installation of new plugs of proper type for particular year and model of car involved;

With result that acts and practices of said individuals in selling such discarded, treated, and refurbished spark plugs, with said brand names and identifying marks of original manufacturers, and wholesale selling prices, which were about one-third of new products, and cleaning of which corresponded to service readily available to owners at service stations at a charge of 5 cents per plug (but additional treatment of which by said individuals in restoring appearance of newness altered the three highly important functional dimensions thereof), with their appearance of new plugs and possibilities of greater profits, afforded incentives to dealer to substitute said individuals' spark plugs for new ones, and with tendency and capacity, through such acts and practices, to deceive members of purchasing public into mistaken and erroneous belief that said plugs were new and unused, in same merchantable condition as when first sold and distributed, and backed by the guarantee of respective manufacturers, and with effect, as a consequence and direct result thereof, that trade and commerce among said States and in said District and foreign countries was diverted unfairly to said individuals from competitors engaged in sale of new and unused spark plugs, and also from those selling used plugs who may truthfully represent the quality and character thereof; 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. John W. Addison*, *Mr. Miles J. Furnas*, and *Mr. John L. Hornor*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Mr. John Wilson Hood, of New York City, for respondents.

Amended and Supplemental Complaint

Whereas, The Federal Trade Commission did heretofore, to wit, on April 29, 1938, issue its complaint herein, charging that respondents herein were and have been using unfair methods of competition in interstate commerce within the intent and meaning of section 5 of the Federal Trade Commission Act;

Whereas, The Commission has reason to believe that the respondents herein are engaged in unfair methods of competition and unfair and deceptive acts and practices other than and in addition to those in relation to which the Commission issued its said original complaint and it appears to said Commission that a further proceeding by it in respect thereof would be in the public interest;

Now therefore, Acting in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issues its amended and supplemental complaint charging that Peter Sanders, Harry Sanders, and Samuel Sanders, individuals, doing business as The Perfect Recondition Spark Plug Co., and Samuel Sanders, an individual, doing business as Ace Auto Supply Co., have been and now are using unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, as "commerce" is defined in said act, and states its charges in that respect as follows:

Paragraph 1. The respondents, Peter Sanders, Harry Sanders, and Samuel Sanders, are individuals doing busines as The Perfect Recondition Spark Plug Co., sometimes also referred to as The Perfect Reconditioned Spark Plug Co., with their principal office and place of business located at 1133–39 Bedford Avenue, in the Borough of Brooklyn, in the city of New York, in the State of New York. The aforementioned respondent, Samuel Sanders, also does business as the Ace Auto Supply Co., with his principal office and place of business located at 161 B Avenue in the city of New York, in the State of New York.

Par. 2. In the course and conduct of their businesses, said respondents have been for a period of more than 1 year last past, and are now, engaged in the sale of used and reconditioned spark plugs for use in gasoline engines. Respondents have sold and still sell said spark plugs to dealers located in various parts of the United States and in foreign countries who purchase for resale. Respondents have caused and now cause said spark plugs, when so sold by them, to be transported from their respective places of business in the State of New York to said purchasers located in States other than the State of New York, in the District of Columbia, and in foreign countries.

PAR. 3. During all the times above mentioned, other individuals, partnerships, firms, and corporations have been, and are now, engaged in the business of manufacturing and selling spark plugs to dealers who purchase for resale and to members of the public who purchase for use, residing in various States of the United States, in the District of Columbia and in foreign countries. Said manufacturers and sellers, respectively, have caused and now cause said spark plugs, when so sold by them, to be transported from their respective places of business to purchasers thereof located in States other than the State of origin of said shipments, in the District of Columbia and in foreign countries.

The respondents, during all the times above mentioned and referred to have been, and still are, in competition in the sale of spark plugs in commerce among and between the various States of the United States and in the District of Columbia with such other individuals, partnerships, firms, and corporations manufacturing, selling, and distributing spark plugs.

PAR. 4. Among the manufacturers and sellers of spark plugs referred to in paragraph 3 hereof are certain manufacturers who are, and have been, making and selling spark plugs, respectively, under the brands or trade names "Champion" and "A-C" in such commerce. Such spark plugs are respectively marked and branded with the names "Champion" and "A-C." The spark plugs made and sold under the brand and trade names "Champion" and "A-C" are well and favorably known among the trade and the public generally as being of superior quality and as being in constant demand by users of spark plugs.

During all of the times above mentioned, the spark plugs manufactured, branded and sold under the trade names "Champion" and "A-C" have to a substantial extent been sold by the manufacturers thereof and by dealers therein in commerce among and between the various States of the United States and in the District of Columbia. The business of the sale of such spark plugs branded as "Champion" and "A-C" spark plugs, respectively, in commerce among and between the various States of the United States and in the District of Columbia, has constituted a very substantial portion of the entire spark plug business.

PAR. 5. Substantially all of the spark plugs sold by respondents are spark plugs which were manufactured and sold by the manufacturers under the brand names "Champion" and "A-C." Such spark plugs, carrying the aforesaid brand names, have been used by members of the public until they became worn out by use or became defective and unserviceable for further use. The respondents make a prac-

tice of obtaining said worn out or defective and unserviceable spark plugs at small cost from garages, service stations, truck operators, and similar sources of supply. Respondents then repair or recondition such spark plugs for sale and use as herein detailed. When so repaired and reconditioned, such spark plugs have the appearance of new and unused "Champion" and "A-C" spark plugs, respectively. Respondent sell said used and reconditioned spark plugs with the brand names "Champion" and "A-C" appearing thereon without disclosing the purchasers thereof that said spark plugs are used, or defective spark plugs which have been repaired and reconditioned. The sale and distribution of said used and reconditioned spark plugs constitute the greater part of respondents' business in the sale of spark plugs.

The spark plugs thus sold and distributed by respondents were not and are not individually identified by suitable marking so as to indicate the used, second-hand, refurbished character thereof, but continue to have on their face the brand names "Champion" and "A-C," which said brand names were originally placed on said spark plugs by the manufacturers thereof. Said plugs are individually wrapped in plain waxed paper which carries no identification or mark to disclose the used or reconditioned nature thereof.

The acts and practices of the respondents as herein described place in the hands of retailers buying for resale an instrument and means whereby said retailers are enabled to represent and offer for sale and sell respondents' said reconditioned spark plugs as being new "Champion" or "A-C" spark plugs and thus commit a fraud upon a substantial portion of the purchasing public.

PAR. 6. The acts and practices of respondents in selling spark plugs bearing the brand names "Champion" and "A-C" which they have reconditioned and repaired without disclosing on the face of said spark plugs that said spark plugs were worn out or otherwise defective spark plugs repaired or reconditioned by the respondents, have had, and now have, the tendency and capacity to, and do, mislead and deceive dealers in spark plugs and members of the purchasing public, in the various States of the United States and in the District of Columbia, into the mistaken and erroneous belief that said spark plugs so sold by the respondents were, and are, new and unused spark plugs and are in the same merchantable condition as when manufactured and first sold and distributed by the respective manufacturers thereof, and into the purchase of such spark plugs in and on account of said mistaken and erroneous belief induced as aforesaid. As a result thereof, trade has been diverted unfairly to the respondents from competitors engaged in the sale of new and

unused "Champion" and "A-C" spark plugs and other spark plugs who truthfully represent the character and quality of said spark plugs and also from competitors who sell used and reconditioned spark plugs who truthfully represent the quality and character thereof. In consequence thereof, 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.

PAR. 7. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 29, 1938, issued and served its complaint in this proceeding upon the respondents Peter Sanders, Harry Sanders, and Samuel Sanders, and on January 24, 1939, issued and subsequently served its amended and supplemental complaint upon said respondents, 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 filing of answers to said complaint and said amended and supplemental complaint by the respondents, testimony and other evidence in support of the allegations of said complaint and said amended and supplemental complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of said complaint and said amended and supplemental complaint by John Wilson Hood, attorney for the respondents, before John W. Addison, Miles J, Furnas, and John L. Hornor, trial examiners of the Commission theretofore duly designated by it. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and said amended and supplemental complaint and the answers thereto, testimony and other evidence, briefs in support of the complaint and the amended and supplemental complaint and in opposition thereto, and upon 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. Respondents Peter Sanders and Harry Sanders are individuals doing business as The Perfect Recondition Spark Plug Co., sometimes also referred to as The Perfect Reconditioned Spark Plug Co., with their principal office and place of business located at 1133–39 Bedford Avenue, in the Borough of Brooklyn, in the city and State of New York; and respondent Samuel Sanders is an individual doing business as the Ace Auto Supply Co., with his principal office and place of business located at 161 B Avenue in the city and State of New York.

PAR. 2. In the course and conduct of their businesses, said respondents have been, for a period of more than 1 year last past, and now are, engaged in the sale of used and discarded spark plugs for use in gasoline engines of automobiles. Respondents have sold and still sell said spark plugs to dealers and wagon peddlers located in various parts of the United States and in foreign countries who purchase for resale. Respondents have caused and now cause said spark plugs, when so sold by them, to be transported from their respective places of business in the State of New York to said purchasers located in States other than the State of New York, in the District of Columbia, and in foreign countries.

PAR. 3. During all of the times above mentioned, other individuals, partnerships, firms, and corporations have been, and now are, engaged in the business of manufacturing and selling spark plugs to dealers who purchase for resale and to members of the public who purchase for use, residing in various States of the United States, in the District of Columbia and in foreign countries. Said manufacturers and sellers, respectively, have caused and now cause said spark plugs, when so sold by them, to be transported from their respective places of business to purchasers thereof located in States other than the State of origin of said shipments, in the District of Columbia and in foreign countries.

The respondents, during all of the times above mentioned, have been, and still are, in competition in the sale of spark plugs in commerce among and between the various States of the United States, in the District of Columbia and in foreign countries with such other individuals, partnerships, firms, and corporations, manufacturing, selling, and distributing spark plugs.

PAR. 4. Among the manufacturers and sellers of spark plugs referred to in paragraph 3 hereof are the Champion Spark Plug Co., a corporation, which manufactures and sells spark plugs under the brand or trade name "Champion," and the AC Spark Plug Co., a corporation,

which manufactures and sells spark plugs under the brand or trade name "AC." These brand or trade names and identifying marks are placed on the exposed portion of the insulators of the products of each of these companies and on the cartons or containers in which the respective products are packaged when offered for sale and sold to the purchasing public. Said trade-marks "AC" and "Champion" are well known by a large majority of the motoring public and serve to identify the spark plugs so marked with the two said corporations. Large sums of money have been expended by the two said corporations in advertising their respective trade marks "AC" and "Champion" and the spark plugs made and sold under those marks.

During all of the times above mentioned, the spark plugs so manufactured and branded under the trade-marks "AC" and "Champion" have been sold to a substantial extent by the manufacturers thereof and by dealers therein in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries. The business of selling such spark plugs branded as "AC" and "Champion" spark plugs, respectively, in commerce among and between the various States of the United States, in the District of Columbia and in foreign countries, has constituted a very substantial portion of the entire spark plug business in the United States.

PAR. 5. Substantially all of the spark plugs sold by the respondents are used and discarded spark plugs which originally were manufactured and sold by the aforesaid corporations under the brand names "AC" and "Champion." Such spark plugs, carrying the aforesaid brand or trade names and identifying marks of said manufacturers, have been used by members of the public operating motor vehicles and have been discarded by them as worn-out or defective and unserviceable for further use before they are acquired by the respondents, who make a practice of obtaining such discarded spark plugs as junk and at small cost from garages, service stations, and other places where they have been abandoned by their owners as worthless. Respondents then treat and refurbish such spark plugs by cleaning, sandblasting, filing, buffing, adjusting the points and painting the metal shells with black paint. They then pack 10 of such plugs in a box, the cover of which bears the inscription "PERFECT RECONDITIONED REGISTERED" and sell the same to small garages, dealers, and wagon peddlers for resale to the public. When so treated and refurbished, such spark plugs have the appearance of new and unused "Champion" and "AC" spark plugs, respectively.

PAR. 6. The spark plugs thus sold and distributed by respondents were not and are not individually identified by any marking so as to

indicate respondents' connection therewith or the used, second-hand, refurbished character thereof, but continue to carry the brand names "Champion" and "AC" which were originally placed thereon by the manufacturers thereof. Said plugs are individually wrapped in plain waxed paper which carries no identification or marking of any kind.

PAR. 7. In the great majority of cases, when spark plugs are sold to car owners they are installed in the motor by a mechanic or some other person at the garage or service station where the purchase is made. In such instances the car owner is not afforded any opportunity to see the box from which the spark plug is removed and often does not see the spark plug until after it has been installed in the motor of his car. When so installed, the only visible part of the spark plug is the upper part of the metal shell and the white ceramic insulator which bears the brand name of the manufacturer.

PAR. 8. In and during the process of manufacture, the firing end of the core of a "Champion" spark plug has been carefully worked out with a view to controlling the proper heat range of the plug and to shield the center electrode to a proper distance with respect to the end of the shell and the side electrode so that each spark may occur in proper position, the purpose of the spark plug being to ignite the compressed gas at the proper time and at a predetermined position within the cylinder of the engine. The spark plug is simultaneously subjected to many complex reactions under operation in an engine with temperature ranges from 1,200° to 1,500°. Explosion pressures are approximately 400 pounds per square inch and under detonation reach a 2,000-pound pressure. Chemical reaction is also encountered due to the various constituents of gasoline. Electrolytic reaction also accounts for much erosion of the center and side electrodes. The mechanical scouring action of gas at high temperatures and pressure have an erosive effect on the tip of the insulator, often changing its shape. The location of the spark in the cylinder of the motor is very important and this is determined by the location of the gap, different types of Champion plugs for different types or models of cars varying from each other in the position of the spark gap with relation to the gas stream within the cylinder. The spark plug manufacturer works very closely with the car manufacturers to insure that the plug will produce the spark at the right place, and car manufacturers often return plugs which have been sent to them with the wrong gap setting. It is very essential that not even one plug in a set leak an undue amount, since the leaky plug will get unduly hot and will often result in fusing the electrodes, causing serious harm to the engine. Car manufacturers invariably recom-

mend that new plugs be installed once each year or after approximately 10,000 miles of operation because from tests in their engineering division they know that the performance of a car can be jeopardized by old plugs. The Champion Spark Plug Co., in order to insure the accuracy of its spark plugs for various types of motor vehicles, causes an inspection and a reinspection to be made of all the spark plugs manufactured by it and causes special tests to be made by its engineering division of approximately 10 percent of its total production.

PAR. 9. Sixty so-called reconditioned "Champion" spark plugs purchased from respondents were given complete tests. There were 10 each of the following types: C–4, C–7, No. 7, C–15, J–5, and J–8. The C–4, the C–7, the No. 7, the C–15, the J–5 and the J–8 spark plugs were all obsolete. The box bearing the type No. C–4 contained 2 plugs which were of different type numbers. The box bearing the type No. J–5 contained 3 plugs which were of different type numbers. Of the 60 plugs there were 27 in which the relation of the side wire to the center wire was wrong. In connection with the center wires of the 60 plugs tested, 29 were slightly burned, 21 badly burned and 4 were satisfactory. Of the 60 plugs tested, 38 of the side wires had been either filed, burned, or bent so that they would not pass the inspection requirements of the Champion Spark Plug Co. for either a new or reconditioned plug and in 22 of the plugs the side wires were satisfactory. The gap spacing of the 60 plugs tested showed 36 to be improperly spaced and the semipetticoat of the core of the 60 plugs tested showed 49 badly damaged and in none of the 60 plugs was this feature in its original condition. The test showed that each had had more than 10,000 miles of service.

Discarded "Champion" and "AC" spark plugs refurbished and resold by respondents, due to the use and wear to which they have been previously subjected, are inferior in functional qualities to new spark plugs from which they are practically indistinguishable in appearance.

PAR. 10. The reconditioned spark plugs sold by respondents do not comply with the blueprints and specifications of the original manufacturers thereof and are not considered by them to be a satisfactory product. Neither Champion Spark Plug Co. nor AC Spark Plug Co., nor any other spark plug manufacturer, engages in the practice of collecting, cleaning, and selling discarded spark plugs. The damage and wear which result from use of a spark plug are to the firing end of the plug, which is located within the cylinder of the motor. In addition to the wear which occurs to the firing end of a spark plug through use, the respondents remove additional

material by their sandblasting and filing operations, which treatments alter the three important functional dimensions of the plug, which the manufacturers undertake to hold to very close limits in order to secure proper performance. These three dimensions are the distances from tip of insulator to end of center wire; from tip of insulator to end of shell; and from end of shell to end of center wire. Slight variations in one or more of these dimensions may make a spark plug incapable of rendering efficient service in the motors for which it is recommended by the manufacturer and result in waste of fuel and improper performance of the engine.

Because of the various requirements of different automobile engines over 70 types of spark plugs are supplied by 1 manufacturer. In some instances the differences in functional dimensions between various types of new Champion and AC plugs are less than the differences in functional dimensions between a used spark plug sold by respondents and a new one of the same type made by the same manufacturer. Spark plugs refurbished by respondents in which the functional dimensions have been altered to any material extent no longer correctly represent the type designation given them by the original manufacturer.

PAR. 11. The wholesale selling prices of used spark plugs refurbished by respondents are approximately one-third those of corresponding new spark plugs. Sales of respondents' plugs to car owners at the usual retail selling prices of new plugs would result in several times as much profit to the seller as the sale of a corresponding new plug. Sales of respondents' plugs at retail prices substantially lower than those of corresponding new plugs would still result in much greater profit to the seller. The appearance of respondents' spark plugs together with the possibilities of greater profits are incentives to the dealer to substitute respondents' spark plugs for new ones.

PAR. 12. Spark plug cleaning services are generally available to motorists throughout the United States. A large percentage of garages and service stations have spark plug cleaning machines which clean the firing end of the spark plug by sandblasting and such establishments also clean and adjust the points. A charge of 5 cents per plug is made for this service. The treatments thus available to motorists at garages and service stations before spark plugs are abandoned by their owners are substantially equivalent to those which respondents give to discarded, unserviceable, and worn out spark plugs, except for the additional steps performed by them having to do with restoring the appearance of newness.

PAR. 13. The acts and practices of respondents in selling discarded spark plugs treated and refurbished by them and bearing the brand names and other identifying marks of the original manufacturers have had and now have the tendency and capacity to deceive members of the purchasing public into the mistaken and erroneous belief that said spark plugs are new and unused spark plugs, in the same merchantable condition as when manufactured and first sold and distributed, and backed by the reputation and guarantee of the respective manufacturers thereof. As a direct result thereof, trade and commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries has been diverted unfairly to the respondents from competitors engaged in the sale of new and unused spark plugs and also from competitors selling used spark plugs who may truthfully represent the quality and character thereof. In consequence thereof, injury has been done and is being done by respondents to competition in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries.

CONCLUSION

The aforesaid acts and practices of respondents as herein found, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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 and the amended and supplemental complaint of the Commission, the answers of respondents Peter Sanders and Harry Sanders, individuals, doing business as The Perfect Recondition Spark Plug Co., and Samuel Sanders, an individual, doing business as Ace Auto Supply Co., testimony and other evidence, in support of the allegations of said complaint and said amended and supplemental complaint and in opposition thereto, briefs filed herein, and oral argument by Joseph C. Fehr, counsel for the Commission, and by John Wilson Hood, counsel for the respondents, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Peter Sanders and Harry Sanders, individuals, doing business as The Perfect Recondition

Spark Plug Co., and Samuel Sanders, an individual, doing business as Ace Auto Supply Co., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of spark plugs in interstate or foreign commerce or in the District of Columbia, do forthwith cease and desist from:

Offering for sale, selling, or delivering to others for sale to the public, any spark plug which has been used and thereafter reconditioned in any manner unless the word "used" or "second-hand" or "reconditioned," or some other word or words of similar import and meaning, have been permanently stamped or fixed on each of such spark plugs in a color in contrast to the surface to which the word is applied and of a size and in such location as to be clearly legible to the purchasers thereof after the same shall have been installed, and unless there has been plainly printed or marked on the boxes, cartons, or other containers in which such spark plugs are sold or offered for sale a notice that said spark plugs are used, second-hand, or reconditioned.

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

RETONGA MEDICINE COMPANY

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

Docket 3949. Complaint, Nov. 14, 1939—Decision, June 25, 1940

Where a corporation engaged in sale and distribution of its "Retonga" medicinal preparation as treatment for stomach disorders and various other ailments, to purchasers in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails, by insertion in newspapers and periodicals of general circulation, and in circulars and other printed or written matter distributed in commerce among the States, and by other means in commerce, and which were intended or likely to induce purchase of said preparation, and in false advertisements which it also disseminated through the same means and through use of purported testimonial letters published in local newspapers in form of news items reciting various beneficial results claimed to have been obtained by parties in such testimonial letters, and through which it represented that its said product would cure, eliminate or alleviate various symptoms which were, in fact, indicative of diseases and disorders for which its preparation had no curative or therapeutic value—

(*a*) Represented, through use of statements in such advertisements that its said "Retonga" was an alterative medicine and powerful stomachic, and cure or remedy for, or competent treatment of, nervousness, night rising, indigestion, headaches, sluggishness, pains, toxic poisoning, constipation, dizziness, muscular aches and pains, insomnia, biliousness, undernourishment, loss of weight, lack of strength, weak kidneys, and other long standing disorders, and was beneficial and effective in treatment of various diseases of which aforesaid disorders were symptoms, and relieved body of toxic poisons and cleansed system and renewed, restored and built up strength and appetite and body, and restored health and increased weight;

Facts being it was not a remedy or cure for nervousness and various other ailments or conditions above set forth, and would be of benefit in treatment of such conditions or symptoms only insofar as certain of them might be due to constipation or lack of appetite, it did not possess any therapeutic or beneficial value in treatment of diseases or disorders of which foregoing conditions might be symptoms, in excess of extent to which use of a mild laxative and gastric tonic might temporarily relieve symptoms due to constipation or lack of appetite, had no therapeutic value in treatment of former in excess of providing temporary relief therefrom, therapeutic properties thereof did not exceed those of a mild laxative and gastric tonic or stomachic, and it had no therapeutic value in healing, curing, or relieving functional or organic systemic disorders in excess of providing such relief as might be accomplished by administration of such a preparation as above indicated, and would not accomplish, except as aforesaid noted, various results claimed therefor as above set forth;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that foregoing false, deceptive and misleading statements, representations and advertisements were true, and that said preparation was a cure or remedy for various disorders for which it had little or no therapeutic value, and of inducing purchase by such public of its said 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.

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 Retonga 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. Respondent, Retonga Medicine Co., is a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its main office located at 161 Spring Street NW., in the city of Atlanta, State of Georgia. Respondent, during the year last past, has been and still is engaged in the sale and distribution of a certain medicinal preparation containing drugs known as "Retonga," which is offered for sale and sold as a treatment for stomach disorders and various ailments of the human body. In the course and conduct of its business, respondent causes said medicinal preparation when sold to be transported from its place of business in the State of Georgia to the purchasers thereof located in various other States of the United States other than the State of Georgia, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

Par. 2. 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 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:

The theory upon which Retonga was founded was first thought of by a German pharmaceutical chemist of many year's experience who was employed by one of the largest medicine companies in America * * * It took several years for these experiments but finally Retonga reached the stage of perfection sought by its originator.

Retonga contains seven different herbs, each one of which has a different effect on the human system.

It is a powerful stomachic and alterative medicine. Retonga gives you a keen appetite for good, wholesome, nourishing food and stimulates natural digestive processes.

Farmers, mechanics, merchants and men and women in every walk of life tell how Retonga relieved them of long suffering from nervousness, night risings, sour indigestion, headaches, sluggishness, and pains from toxic poisons with constipation.

Reports from men and women who were weakened and tired, suffering from food fermentation, headaches, dizziness, and muscular pains from sluggish bowels, say this new roots, herbs, and barks medicine has brought them rapid and lasting relief.

Retonga is inexpensive and brings lasting results.

Nearly all users of Retonga who send in statements of their experiences say that their troubles have been stubborn and of long standing, ranging from a few months' duration to many years, and although they have tried many medicines, Retonga is the only one that has brought them real relief.

Great Up-Building Herb Preparation, RETONGA, overcomes Weakened Condition, Strengthens Digestion, Corrects Toxic Aches and Pains of Sluggish Elimination, and Builds Up Your Strength.

Retonga, the remarkable new strengthening and up-building herbal medicine which is sweeping the country with sensational success, * * *

The very first bottle of Retonga is guaranteed to bring a decided improvement in your poor, weakened, tired-out ailing condition or every cent of the small cost will be refunded without question.

Unlimited Guarantee

No matter how long-standing and stubborn your weakened, worn-out condition may be, or how many times you have tried and failed to find relief from stubborn nervous, indigestion, muscular pains and achy joints, loss of weight from undernourishment, lack of strength, and similar harassing complaints due to a let-

down fagged-out condition, RETONGA is guaranteed to bring you gratifying improvement or you can return your very first bottle and get your money back without question.

Retonga has established a remarkable record everywhere for quickly overcoming long-standing cases of nervous indigestion, sluggish bowels, lack of strength and other distressing disorders.

Every day Retonga is thanked by scores of grateful men and women for ridding them of acid indigestion, weakened, worn-out condition and building up their strength.

In addition to the foregoing advertisements, the respondent disseminates false advertisements in the same manner as set out above by means of purported testimonial letters which the respondent publishes in local newspapers in the form of news items reciting the various beneficial results claimed to have been obtained by the parties in such testimonial letters. In this manner the respondent represents that its preparation will cure, eliminate or alleviate various symptoms which are in fact indicative of diseases and disorders for which respondent's preparation has no curative or therapeutic value. Typical of such advertising disseminated as aforesaid is the following:

I Didn't Dare Eat Such Things as Meat or Beans Before I Got Retonga.

"It's the Finest Medicine I Ever Saw", Declares Link Belt Employee. Eats anything He wants Now; Other Troubles Disappeared, Too. Tells Experience.

Colds are often dangerous and the changeable weather of spring is a season of colds. Keep yourself strengthened and built up. A weakened, run-down condition, sluggish elimination, poor digestion and acid wastes in the system lower resistance, make colds easier to catch and hang on longer. Every day Retonga is thanked by scores of grateful men and women for ridding them of acid indigestion, weakened, worn-out condition and building up their strength. Mr. William D. Brunnemer, 38 North Bell View Place, Indianapolis, a member of Waverly Masonic Lodge, and for 14 years a popular and valued employee of the Link Belt Company, one of the world's best-known concerns, gave Retonga a thorough test in his own case and says:

"I was in such bad shape I was afraid to eat for I almost smothered from sour indigestion and gas after every meal. I didn't dare touch meat, beans or greasy foods for they seemed like poison to my system. At night I had to get up practically every hour to relieve my kidneys and my passages burned and were cloudy and had a strong odor. Stubborn constipation added to my troubles and for years I had to take a laxative as regularly as I went to bed. My feet would swell and burn like coals of fire and I had pains between my shoulders and in my arms that felt as sharp as a knife. I felt so tired out and draggy it was an effort to move, and I hardly know what I would have done if I hadn't got hold of Retonga when I did.

"Retonga fixed me up so fine I now eat anything without a sign of indigestion; I don't need laxatives any more and every pain and ache is gone. Instead of getting up seven or eight times every night, I seldom get up at all, and the burning and cloudiness and odor have disappeared. I feel sure being built up again

helps me avoid the colds so many are suffering from. I hope everybody sees my statement and tries Retonga. It's the finest upbuilding medicine I ever saw."

Try Retonga. The Retonga representative at Hook's Dependable Drug Store, S. E. corner Illinois and Washington Sts., will gladly tell you all about it without obligation. Retonga may be obtained at all Hook's Dependable Drug Stores, $1.25 size 98¢.

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 its preparation Retonga: (*a*) is an alterative medicine and powerful stomachic; (*b*) is a cure or remedy for, or a competent treatment of, nervousness, night rising, indigestion, headaches, sluggishness, pains, toxic poisoning, constipation, dizziness, muscular aches and pains, insomnia, biliousness, undernourishment, loss of weight, lack of strength, weak kidneys, and other long-standing disorders, and that said preparation is beneficial and effective in the treatment of the various diseases of which these disorders are symptoms; (*c*) relieves the body of toxic poisons and cleanses the system; (*d*) renews, restores, and builds up the strength and appetite, restores the health, builds up the body, and increases weight.

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 Retonga is not an alterative medicine or powerful stomachic, and its therapeutic properties are limited to little more than those of a laxative. It is not a remedy or cure for nervousness, night risings, indigestions, headaches, sluggishness, pains, toxic poisoning, constipation, dizziness, muscular aches and pains, insomnia, biliousness, undernourishment, loss of weight, lack of strength, weak kidneys, or other long-standing disorders or a competent treatment therefor, and is not beneficial or effective in the treatment of various diseases of which such disorders are symptoms. Its use does not relieve the body of toxic poisons or cleanse the system. It does not renew, restore or build up the strength, appetite or health. It does not build up the body or increase weight.

PAR. 4. The use by the respondent of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to said medicinal preparation has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the errone-

ous and mistaken belief that such false statements, representations and advertisements are true, and that said preparation is a cure or remedy for various disorders for which it has little or no therapeutic value, and induces the purchase by the public of respondent's medicinal preparation containing drugs.

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 14, 1939, issued and served its complaint in this proceeding upon said respondent, Retonga Medicine Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On November 29, 1939, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Retonga Medicine Co., is a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its main office located at 161 Spring Street, NW., in the city of Atlanta, State of Georgia. Respondent is now and during the year last past has been engaged in the sale and distribution of a certain medicinal preparation, composed of drugs and known as "Retonga," which is offered for sale and sold as a treatment for stomach disorders

and various ailments of the human body. In the course and conduct of its business, respondent causes said medicinal preparation when sold to be transported from its place of business in the State of Georgia to the purchasers thereof located in various other States of the United States other than the State of Georgia, and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparation in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. 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 mail, 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 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:

The theory upon which Retonga was founded was first thought of by a German pharmaceutical chemist of many years' experience who was employed by one of the largest medicine companies in America. * * * It took several years for these experiments but finally Retonga reached the state of perfection sought by its originator.

Retonga contains seven different herbs, each one of which has a different effect on the human system.

It is a powerful stomachic and alterative medicine. Retonga gives you a keen appetite for good, wholesome, nourishing food and stimulates natural digestive processes.

Farmers, mechanics, merchants and men and women in every walk of life tell how Retonga relieved them of long suffering from nervousness, night risings, sour indigestion, headaches, sluggishness, and pains from toxic poisons with constipation.

Reports from men and women who were weakened and tired, suffering from food fermentation, headaches, dizziness, and muscular pains from sluggish bowels say this new roots, herbs, and barks medicine has brought them rapid and lasting relief.

Retonga is inexpensive and brings lasting results.

Nearly all users of Retonga who send in statements of their experiences say that their troubles have been stubborn and of long standing, ranging from a few months' duration to many years, and although they have tried many medicines, Retonga is the only one that has brought them real relief.

Great Up-Building Herb Preparation, RETONGA overcomes Weakened Condition, Strengthens Digestion, Corrects Toxic Aches and Pains of Sluggish Elimination, and Builds Up Your Strength.

Retonga, the remarkable new strengthening and up-building herbal medicine which is sweeping the country with sensational success, * * *.

The very first bottle of Retonga is guaranteed to bring a decided improvement in your poor, weakened, tired-out ailing condition or every cent of the small cost will be refunded without question.

Unlimited Guarantee

No matter how long-standing and stubborn your weakened, worn-out condition may be, or how many times you have tried and failed to find relief from stubborn nervous indigestion, muscular pains and achy joints, loss of weight from undernourishment, lack of strength, and similar harassing complaints due to a let-down, fagged-out condition, RETONGA is guaranteed to bring you gratifying improvement or you can return your very first bottle and get your money back without question.

Retonga has established a remarkable record everywhere for quickly overcoming long-standing cases of nervous indigestion, sluggish bowels, lack of strength and other distressing disorders.

Every day Retonga is thanked by scores of grateful men and women for ridding them of acid indigestion, weakened, worn-out condition and building up their strength.

In addition to the foregoing advertisements, the respondent disseminates false advertisements in the same manner as set out above by means of purported testimonial letters which the respondent publishes in local newspapers in the form of news items reciting the various beneficial results claimed to have been obtained by the parties in such testimonial letters. In this manner the respondent represents that its preparation will cure, eliminate or alleviate various symptoms which are in fact indicative of diseases and disorders for which respondent's preparation has no curative or therapeutic value. Typical of such advertising disseminated as aforesaid is the following:

I Didn't Dare Eat Such Things as Meat or Beans Before I Got Retonga.

"It's the Finest Medicine I ever Saw," Declares Link Belt Employee. Eats anything He wants Now; Other Troubles Disappeared Too. Tells Experience.

Colds are often dangerous and the changeable weather of spring is a season of colds. Keep yourself strengthened and built up. A weakened, run-down condition, sluggish elimination, poor digestion and acid wastes in the system lower resistance, makes colds easier to catch and hang on longer. Every day Retonga is thanked by scores of grateful men and women for ridding them of acid indigestion, weakened, worn-out condition and building up their strength. Mr. William D. Brunnemer, 38 North Bell View Place, Indianapolis, a member of Waverly Masonic Lodge, and for 14 years a popular and valued employee of the Link Belt Company, one of the world's best-known concerns, gave Retonga a thorough test in his own case and says:

"I was in such bad shape I was afraid to eat for I almost smothered from sour indigestion and gas after every meal. I didn't dare touch meat, beans or greasy foods for they seemed like poison to my system. At night I had to get up practically every hour to relieve my kidneys and my passages burned and were cloudy and had a strong odor. Stubborn constipation added to my troubles and for years I had to take a laxative as regularly as I went to bed. My feet would swell and burn like coals of fire and I had pains between my shoulders and in my arms that felt as sharp as a knife. I felt so tired out and draggy it was an effort to move, and I hardly know what I would have done if I hadn't got hold of Retonga when I did.

"Retonga fixed me up so fine I now eat anything without a sign of indigestion; I don't need laxatives any more and every pain and ache is gone. Instead of getting up seven or eight times every night, I seldom get up at all, and the burning and cloudiness and odor have disappeared. I feel sure being built up again helps me avoid the colds so many are suffering from. I hope everybody sees my statement and tries Retonga. It's the finest upbuilding medicine I ever saw."

Try Retonga. The Retonga representative at Hook's Dependable Drug Store, S. E. corner Illinois and Washington Sts., will gladly tell you all about it without obligation. Retonga may be obtained at all Hook's Dependable Drug Stores, $1.25 size 98¢.

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 its preparation Retonga is an alterative medicine and powerful stomachic; is a cure or remedy for, or a competent treatment of, nervousness, night rising, indigestion, headaches, sluggishness, pains, toxic poisoning, constipation, dizziness, muscular aches and pains, insomnia, biliousness, undernourishment, loss of weight, lack of strength, weak kidneys, and other long-standing disorders, and that said preparation is beneficial and effective in the treatment of the various diseases of which these disorders are symptoms; relieves the body of toxic poisons and cleanses the system; renews, restores, and builds up the strength and appetite, restores the health, builds up the body and increases weight.

The therapeutic properties of "Retonga" do not exceed those of a mild laxative and gastric tonic or stomachic. The preparation "Retonga" is not a remedy or cure for nervousness, night rising, indigestion, headaches, sluggishness, pains, toxic poisoning, dizziness, muscular aches and pains, insomnia, biliousness, undernourishment, loss of weight, lack of strength, or weak kidneys, and such preparation would be of benefit in the treatment of such conditions or symptoms only insofar as certain of them might be due to constipation or lack of appetite. Such preparation does not possess any therapeutic or beneficial value in the treatment of the diseases and disorders of which the foregoing conditions may be symptoms in excess of the extent to which

the use of a mild laxative and gastric tonic may temporarily relieve symptoms due to constipation or lack of appetite. Said preparation has no therapeutic value in the treatment of constipation in excess of providing temporary relief therefrom. It does not relieve the body of toxic poisons or cleanse the system or have any beneficial effect on kidney or bladder disorders. The use of such preparation does not renew or restore the strength or health of the user and its therapeutic properties with respect to building health or strength are limited to supplying a stomachic or gastric tonic which stimulates the appetite and may indirectly increase weight by reason of an increase in food intake. Said preparation has no therapeutic value in healing, curing or relieving functional or organic systemic disorders in excess of providing such relief as may be accomplished by the administration of a mild laxative or stomachic.

The use by the respondent of the foregoing false, deceptive and misleading statements, representations and advertisements disseminated as aforesaid with respect to said medicinal preparation has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations and advertisements are true, and that said preparation is a cure or remedy for various disorders for which it has little or no therapeutic value, and induces the purchase by the public of respondent's medicinal preparation containing drugs.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and the 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 Retonga Medicine Co., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of its medicinal preparation advertised as "Retonga" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent directly or through inference, (1) that said preparation is a cure or remedy for diseases or disorders characterized by such symptoms or conditions as nervousness, indigestion, headaches, sluggishness, pains, toxic poisoning, dizziness, muscular aches and pains, insomnia, biliousness, undernourishment, loss of weight, or lack of strength, or possesses any remedial or curative value in connection with the treatment of such diseases, disorders, symptoms or conditions; (2) that said preparation possesses any value in the treatment of such symptoms and conditions as nervousness, indigestion, headaches, sluggishness, pains, toxic poisoning, dizziness, muscular aches, and pains, insomnia, biliousness, undernourishment, loss of weight, or lack of strength in excess of the temporary relief furnished by a mild laxative or gastric tonic when such symptoms or conditions are due to or caused by constipation or lack of appetite; (3) that said preparation has therapeutic value in the treatment of constipation in excess of providing temporary relief therefrom; (4) that said preparation relieves the body of toxic poisons or cleanses the system; (5) that said preparation has any beneficial effect or therapeutic value in the treatment of kidney or bladder disorders; (6) that said preparation renews or restores the strength or health or has any therapeutic properties with respect to building health or strength in excess of stimulating the appetite.

2. 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 said advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

MICHAEL S. CHIOLAK, TRADING AS TONE COMPANY

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

Docket 4003. Complaint, Jan. 30, 1940—Decision, June 25, 1940

Where an individual engaged in sale and distribution of his Silver Label Formula No. 6 and Gold Label Formula No. 8 medicinal preparations, or Tone Periodic Compound, to purchasers in other States and in the District of Columbia; in advertisements of his said preparations which he disseminated and caused to be disseminated through the mails, insertions in periodicals of general circulation and in circulars and other printed or written matter distributed in commerce among the States, and by other means in commerce and otherwise, and which were intended and likely to induce purchase of his said products—

(*a*) Represented that said preparations were cures or remedies for delayed menstruation and competent and effective treatments therefor, and that they were safe and harmless, facts being they were not such cures or remedies and did not constitute competent or effective treatments for said condition, and were not safe and harmless in that they contained ergotin, aloes, extract black hellebore, and extract cotton root bark, which were present 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 gastro-intestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and, in those cases where used to interfere with normal course of pregnancy, might result in uterine infection, causing condition known as septicemia or blood poisoning, and use thereof, as aforesaid, might also produce very severe circulatory condition tending to produce abortion in some instances, often with violent poisonous effects upon human system, and severe toxic conditions and, in some instances, a gangrenous condition in lower limbs or other serious or irreparable injury to health; and

(*b*) Failed to reveal in said advertisements that use of said preparations under the 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 substantial portion of said public, because of such belief, to purchase his said medicinal 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.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. William L. Taggart 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 S. Chiolak, trading as Tone 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, Michael S. Chiolak, is an individual trading as Tone Co., with his office and principal place of business at 64 West Randolph Street, Chicago, Ill., from which address he transacts business under the above trade name.

PAR. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of certain medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound.

In the course and conduct of his business the respondent causes said medicinal preparations when sold to be transported from his 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, the respondent has maintained a course of trade in said medicinal preparations sold and distributed by him 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 advertisement concerning his said medicinal preparations by United States mails, by insertions in periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal

preparations in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

WOMEN * * * Delayed

When abnormally DELAYED try Tone Periodic Compound that has produced SENSATIONAL RESULTS to many women all over the country. Quick acting, easy to take. One woman writes, "DELAYED 2½ MONTHS, BROUGHT BACK REGULAR MENSTRUATION ON 2ND DAY WITHOUT ANY ILL EFFECTS." Tone Compound boxed fresh daily.

SILVER LABEL FORMULA No. 6—$2.00 a box. For Longer Standing Cases.

GOLD LABEL FORMULA No. 8—$5.00 a box.

MONEY BACK Agreement of Satisfaction on First Order. Full directions with every box. All orders strictly confidential and mailed in plain wrapper. TONE CO., 64 W. Randolph St., Dept. 310, CHICAGO.

Sophisticated WOMEN!

When Abnormally DELAYED try TONE Periodic Compound, which has proven successful to thousands of Women all over the country. Many Women report sensational results obtained. One woman writes, "Delayed 2½ months, brought back my flow on 2nd day without any ill effects." Quick Acting, easy to take. Confidence in our product enables us to make this money-back agreement. Formula No. 6—$2.00 per box. Trial Size 25¢. All orders sent same day in plain wrapper. SEND NO MONEY! If you prefer—just pay Postman on delivery plus Postage. MONEY BACK AGREEMENT of Satisfaction on First Order. TONE CO., 64 W. Randolph St., Dept. 314, Chicago.

No pain or ill effects whatsoever.

DIRECTIONS FOR USE OF TONE PERIODIC COMPOUND. Take one capsule every four hours. Continue PERSISTENTLY until desired results are obtained. The important thing to remember is to keep up the treatment without a break or a lapse until desired results are evident. Tone Periodic Compound Gold Label Formula No. 8. Tone Periodic Compound Silver Label Formula No. 6. Tone Company, 64 W. Randolph St., Chicago, Ill.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein the respondent represents, directly or by implication, that his medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, are cures or remedies for delayed menstruation and are competent and effective treatments therefor and that said preparations are safe and harmless.

PAR. 5. In truth and in fact, the medicinal preparations sold and distributed by the respondent, as aforesaid, designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, and are not cures or remedies

for delayed menstruation and do not constitute competent or effective treatments therefor. Furthermore, said preparations are not safe and harmless, in that they contain ergotin, aloes, extract black hellebore and extract cotton root bark.

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 gastro-intestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and in those cases where these 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 bloodstream, 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 the 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 in 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 Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, 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 his preparations, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and induces a substantial 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 respondent Michael S. Chiolak, an individual, trading as Tone Co., charging him with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. On June 5, 1940, 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, Michael S. Chiolak, is an individual, trading as Tone Co., with his principal office and place of business at 64 W. Randolph Street, Chicago, Ill., from which address he transacts business under the above trade name.

Par. 2. The respondent is now, and for more than one year last past has been, engaged in the sale and distribution of certain medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound.

In the course and conduct of his business the respondent causes said medicinal preparations when sold to be transported from his 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, the respondent has maintained a course of trade in said medicinal preparations sold and distributed by him 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 his said medicinal preparations by United States mails,

by insertions in periodicals having a general circulation on, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

WOMEN * * * Delayed

When abnormally DELAYED try Tone Periodic Compound that has produced SENSATIONAL RESULTS to many women all over the country. Quick acting, easy to take. One woman writes, "DELAYED 2½ MONTHS, BROUGHT BACK REGULAR MENSTRUATION ON 2ND DAY WITHOUT ANY ILL EFFECTS!" Tone Compound boxed fresh daily.

SILVER LABEL FORMULA No. 6—$2.00 a box. For Longer Standing Cases.

GOLD LABEL FORMULA No. 8—$5.00 a box.

MONEY BACK agreement of Satisfaction on First Order. Full directions with every box. All orders strictly confidential and mailed in plain wrapper. TONE CO., 64 W. Randolph St., Dept. 310, CHICAGO.

Sophisticated WOMEN!

When Abnormally DELAYED try TONE Periodic Compound, which has proven successful to thousands of Women all over the country. Many Women report sensational results obtained. One woman writes "Delayed 2½ months, brought back my flow on 2nd day without any ill effects." Quick acting, easy to take. Confidence in our product enables us to make this money-back agreement. Formula No. 6—$2.00 per box. Trial size 25¢. All orders sent same day in plain wrapper. SEND NO MONEY! If you prefer—just pay Postman on delivery plus postage. MONEY BACK AGREEMENT of Satisfaction on First Order. TONE CO., 64 W. Randolph St., Dept. 314, Chicago.

No pain or ill effects whatsoever.

DIRECTIONS FOR USE OF TONE PERIODIC COMPOUND. Take one capsule every four hours. Continue PERSISTENTLY until desired results are obtained. The important thing to remember is to keep up the treatment without a break or lapse until desired results are evident. Tone Periodic Compound Gold Label Formula No. 8. Tone Periodic Compound Silver Label Formula No. 6. Tone Company, 64 W. Randolph St., Chicago, Ill.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein the

respondent represents, directly or by implication, that his medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, are cures or remedies for delayed menstruation and are competent and effective treatments therefor and that said preparations are safe and harmless.

PAR. 5. In truth and in fact, the medicinal preparations sold and distributed by the respondent, as aforesaid, designated as Silver Label Formula No. 6, and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, are not cures or remedies for delayed menstruation and do not constitute competent or effective treatments therefor. Furthermore, said preparations are not safe and harmless, in that they contain ergotin, aloes, extract black hellebore, and extract cotton root bark.

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 gastro-intestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and in those cases where these preparations are used to interfere with the normal course of pregnancy, their use may result in uterine infection with extension of other pelvic and abdominal structures, and to the bloodstream, 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 the 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 in 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 Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are also known as Tone Periodic Compound, 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 his preparations, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's medicinal preparations.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found are all to the prejudice 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 he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Michael S. Chiolak, an individual trading as Tone Co., 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 his medicinal preparations designated as Silver Label Formula No. 6 and Gold Label Formula No. 8, both of which are known and sold under the name of Tone Periodic Compound, or of any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparations are cures or remedies for delayed menstruation or constitute competent or effective treatments therefor; that said

preparations are safe or harmless; or which advertisements fail to reveal that the use of said preparations may result in serious and irreparable injury to the health of the user.

2. 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 contain any of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of said preparations may result in serious and irreparable injury to the health of the user.

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

Syllabus

IN THE MATTER OF

JACK PUZES, TRADING AS THE NOVELTY HOME FURNISHER

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

Docket 4023. Complaint, Feb. 7, 1940—Decision, June 25, 1940

Where an individual engaged in sale and distribution of clocks, coffee makers, silverware, cameras, lamps, and other articles of merchandise to purchasers in the various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar articles of merchandise in commerce as aforesaid; in soliciting sale of and selling and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprises, or lottery schemes for sale and distribution of products in question to ultimate consumers wholly by lot or chance, and distribution to purchasing public of certain literature and instructions, including, among other things, push cards, order blanks, illustrations of goods, and circulars explaining his plan of selling merchandise and allotting it as premiums or prizes to operators of such cards and to purchasing and consuming public through the use of (1) push cards under plan in accordance with which purchaser selecting by chance from list of feminine names displayed on card name corresponding with that concealed under card's master seal received premium or prize, and under which, as above described, retail value of articles of merchandise being sold and distributed was greater than amount paid by purchasers for privilege of making punch, and through use of (2) other push cards accompanied by such order blanks, instructions and other printed matter for use in sale and distribution of his goods through means of game of chance, gift enterprise, or lottery scheme, and in accordance with sales plan or method in case of all similar to that herein described and varying therefrom in detail only; and

Supplied thereby to and placed in hands of others means of conducting lotteries in the sale of his merchandise, in accordance with sales plan above set forth, by persons to whom he furnished and who used such push cards in purchasing, selling, and distributing said products in accordance with such plan, under which articles, retail value of which was greater than amount paid therefor by purchasers, were distributed to purchasing and consuming public wholly by lot or chance, and involving 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 any or said method involving game of chance or sale of a chance to secure something by chance or any other method contrary to public policy and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and 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 same or equivalent method, and with effect through use of such method by him and because of said game of chance, of unfairly diverting trade in commerce to himself from his said competitors who do not use same or equivalent method:

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

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 Jack Puzes, an individual trading as The Novelty Home Furnisher, 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, Jack Puzes, is an individual trading as The Novelty Home Furnisher. His principal office and place of business is located at 53 West Jackson Boulevard, Chicago, Ill. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of clocks, coffee makers, silverware, cameras, lamps, and other articles of merchandise. 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 States of the United States other than Illinois and in the District of Columbia. There is now, and has been for more than 1 year 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 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 a number of small partially perforated disks on the face of which is printed the word "push." Below each of said disks 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 disks is a number which is disclosed when the disk is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until 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 below the said disks. The person selecting the feminine name corresponding to the one under the master seal receives a preminum or prize. The retail value of the articles of merchandise sold and distributed by means of the said push card is greater than the amount paid by purchasers for the privilege of making a punch on said card. The said articles of merchandise are thus distributed to the purchasing and consuming public 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 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. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 7, 1940, issued and subsequently served its complaint in this proceeding upon respondent Jack Puzes, individually and trading as The Novelty Home Furnisher, 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. Thereafter 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. The proceeding regularly came on for the 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, Jack Puzes, is an individual trading as The Novelty Home Furnisher. His principal office and place of business is located at 53 West Jackson Boulevard, Chicago, Ill. Respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of clocks, coffee makers, silverware, cameras, lamps, and other articles of merchandise. 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 States of the United States other than Illinois and in the District of Columbia. There is now, and has been for more than 1 year 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 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 a number of small partially perforated disks on the face of which is printed the word "push." Below each of said disks 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 disks is a number which is disclosed when the disk is pushed or separated from the card. The said numbers are effectively concealed from purchasers and prospective purchasers until 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 he feminine names appearing below the said disks. The person selecting the feminine name corresponding to the one under the master seal receives a premium or prize. The retail value of the articles of merchandise sold and distributed by means of the said push card is greater than the amount paid by purchasers for the privilege of making a punch on said card. The said articles of merchandise are thus distributed to the purchasing and consuming public 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 the sale of all of said merchandise by means of said push cards is the same as that hereinabove described, varying only in detail.

PAR. 3. The persons to whom respondent furnishes, and has furnished, the said push cards use the same in purchasing, selling, and distributing respondent's merchandise, in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his merchandise and the sale of said merchandise by and through the use thereof and by the aid of said sales plan or method is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations, who sell or distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said

method or any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jack Puzes, an individual, trading as The Novelty Home Furnisher, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale and distribution of clocks, coffee makers, silverware, cameras, lamps, 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 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 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 any 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.

IN THE MATTER OF

CHARLES L. KLAPP, TRADING AS THE CARDINAL CO. AND AS THE CARDINAL COMPANY OF ST. LOUIS

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

Docket 3879. Complaint, Aug. 26, 1939—Decision, June 26, 1940

Where an individual engaged in sale and distribution of certain medicinal preparations, consisting of two formulae known as FEMALADE, to purchasers in various other States and in the District of Columbia; in advertisements of his said products which he disseminated and caused to be disseminated through the mails, by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter distributed in commerce among the various States, and by other means in commerce, and which were intended and likely to induce purchase of his said products—

(*a*) Represented that his said medicinal preparations, consisting of tablet formula and liquid formula, were cures or remedies for delayed menstruation and competent and effective treatments therefor, and would accomplish desired results without fail, facts being said medicinal preparation consisting of tablet formula was not a cure or remedy for such condition and did not constitute competent or effective treatment therefor and would not accomplish results claimed by him as above set forth, and was not safe and harmless, in that it contained aloes, extract cotton root bark, extract black hellebore, oil savin, and extract ergot in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and use thereof might result in gastro-intestinal disturbances leading to excessive uterine hemorrhage, and, in those cases where used to interfere with normal course of pregnancy, might result in uterine infection causing septicemia or blood poisoning, might also produce very severe circulatory condition tending to produce abortion in some instances, often with violent poisonous effects upon system, and result in severe toxic conditions, in some instances producing gangrenous condition in lower limbs or other serious or irreparable injury to health, and said liquid preparation, "for obstinate cases," contained insufficient quantities of liquid ingredients to be of any therapeutic or curative value, if used under conditions prescribed in said advertisements or under such conditions as are customary or usual, and would not accomplish results claimed and was not a cure or remedy for delayed menstruation and did not constitute competent or effective treatment therefor; and

(*b*) Failed to reveal in his said advertisements that use of FEMALADE tablets, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect, through use of aforesaid false, deceptive, and misleading statements and representations, disseminated as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous and

mistaken belief that such statements, representations, and advertisements were true, and of inducing portion of said public, because of such belief, to purchase his said preparations:

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

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

Mr. William L. Taggart 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 Charles L. Klapp, trading as The Cardinal Co. and as The Cardinal Company, of St. Louis, 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, Charles L. Klapp, is an individual trading as The Cardinal Co. and as The Cardinal Company, of St. Louis, with his office and principal place of business at 406 Market Street, St. Louis, Mo., from which address he 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 FEMALADE.

In the course and conduct of his business the respondent causes said medicinal preparations when sold to be transported from his place of business in the State of Missouri 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 him 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 his 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 his said medicinal preparations; and has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said medicinal preparations, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

WOMEN DELAYED

Here is a message to bring happiness and peace of mind to end the worry and dread of a delayed monthly period.

FEMALADE Treatment gives relief quickly and harmlessly, usually one to three days, stubborn unnatural delays. FEMALADE Treatment is not just a box of pills, but consists of two separate prescriptions, and sent to you with a legally binding guarantee of satisfaction. Positively no risk—positively will not fail you.

Space forbids quoting testimonials, but our thousands of satisfied users will tell you of the wonderful results—your neighbor may be one of them.

To know that you are protected—to know that you will be safe and not sorry—to know that satisfaction is guaranteed you—is your right. Accept nothing less.

Send no money * * * Pay the postman or remit the reduced price of $1.95 for the regular; $2.95 for the double strength for obstinate cases.

"FEMALADE WILL NOT FAIL YOU"

THE CARDINAL CO., 406 Market St.

ST. LOUIS, MISSOURI

Free literature and booklet Feminine Hygiene.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations, consisting of a tablet formula and a liquid formula, known and designated as FEMALADE, are cures or remedies for delayed menstruation and competent and effective treatments therefor, and will accomplish the desired results without fail.

PAR. 5. In truth and in fact, the medicinal preparation sold and distributed by the respondent as aforesaid known as FEMALADE and consisting of the tablet formula, is not a cure or remedy for delayed menstruation and does not constitute a competent or effective treatment therefor. Said preparation will not accomplish the results claimed by the respondent. Furthermore, said preparation is not safe and harmless in that said preparation contains aloes, extract cotton root bark, extract black hellebore, oil savin, and extract ergot.

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 result in gastro-intestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and in those cases where this preparation is used to interfere with the normal course of pregnancy, it may result in uterine infection with extension to other pelvic and abdominal structures, and to the blood stream, causing a condition known as septicemia or blood poisoning.

The use of said preparation as aforesaid may also produce a very severe circulatory condition by the constriction of the 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 in 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 FEMALADE tablets, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 6. The said medicinal preparation sold and distributed by the respondent as aforesaid known as FEMALADE and consisting of the liquid formula, contains powdered hydrastis, powdered viburnum opulus, powdered viburnum prunifolium, blue cohosh, with the addition of ovarian substance and pituitary extract desiccated "for obstinate cases" in quantities insufficient to be of any therapeutic or curative value, if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Said preparation will not accomplish the results claimed by the respondent and is not a cure or a remedy for delayed menstruation and does not constitute a competent or an effective treatment therefor.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a

substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, 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. 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 August 26, 1939, issued, and on August 28, 1939, served, its complaint in this proceeding upon the respondent, Charles L. Klapp, an individual trading as The Cardinal Co. and as The Cardinal Company of St. Louis, 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 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 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, Charles L. Klapp, is an individual trading as The Cardinal Co. and as The Cardinal Company of St. Louis, with his office and principal place of business at 406 Market Street, St. Louis, Mo., from which address he 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 FEMALADE.

In the course and conduct of his business the respondent causes said medicinal preparations when sold to be transported from his

place of business in the said State of Missouri 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 him 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 his 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 his 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 his said medicinal preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

WOMEN DELAYED

Here is a message to bring happiness and peace of mind to end the worry and dread of a delayed monthly period.

FEMALADE Treatment gives relief quickly and harmlessly, usually one to three days, stubborn unnatural delays. FEMALADE Treatment is not just a box of pills, but consists of two separate prescriptions, and sent to you with a legally binding guarantee of satisfaction. Positively no risk—positively will not fail you.

Space forbids quoting testimonials, but our thousands of satisfied users will tell you of the wonderful results—your neighbor may be one of them.

To know that you are protected—to know that you will be safe and not sorry—to know that satisfaction is guaranteed you—is your right. Accept nothing less.

Send no money * * * Pay the postman or remit the reduced price of $1.95 for the regular; $2.95 for the double strength for obstinate cases.

"FEMALADE WILL NOT FAIL YOU"

THE CARDINAL CO., 406 Market St.

ST. LOUIS, MISSOURI

Free literature and booklet Feminine Hygiene.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparations, consisting of a tablet formula and a liquid formula, known and designated as FEMALADE, are cures or remedies for delayed menstruation and competent and effective treatments therefor, and will accomplish the desired results without fail.

PAR. 5. In truth and in fact, the medicinal preparation sold and distributed by the respondent as aforesaid known as FEMALADE and consisting of the tablet formula, is not a cure or remedy for delayed menstruation and does not constitute a competent or effective treatment therefor. Said preparation will not accomplish the results claimed by the respondent. Furthermore, said preparation is not safe and harmless in that said preparation contains aloes, extract cotton root bark, extract black hellebore, oil savin and extract ergot.

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 result in gastro-intestinal disturbances such as catharsis, nausea and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and in those cases where this preparation is used to interfere with the normal course of pregnancy, it may result in uterine infection with extension to other pelvic and abdominal structures, and to the blood stream, causing a condition known as septicemia or blood poisoning.

The use of said preparation as aforesaid may also produce a very severe circulatory condition by the constriction of the 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 in 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 FEMALADE tablets, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 6. The said medicinal preparation sold and distributed by the respondent as aforesaid known as FEMALADE and consisting

of the liquid formula, contains powdered hydrastis, powdered viburnum opulus, powdered viburnum prunifolium, blue cohosh, with the addition of ovarian substance and pituitary extract desiccated "for obstinate cases" in quantities insufficient to be of any therapeutic or curative value, if used under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Said preparation will not accomplish the results claimed by the respondent and is not a cure or a remedy for delayed menstruation and does not constitute a competent or an effective treatment therefor.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his preparations, disseminated as aforesaid, has had and now has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, 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.

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 he waives all intervening procedure and further hearings 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, Charles L. Klapp, an individual trading as The Cardinal Co. and as the Cardinal Company of St. Louis 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, or distribution of his medicinal preparations designated "Femalade Tablets" and "Femalade Liquid," or any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar prop-

erties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparations are cures or remedies for delayed menstruation or constitute competent or effective treatments therefor; or which advertisements with respect to said preparation "Femalade Tablets" fail to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 contain any of the representations prohibited in paragraph 1 hereof, or which advertisements with respect to the preparation "Femalade Tablets" fail to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

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

IN THE MATTER OF

JOHNS-MANVILLE CORPORATION AND JOHNS-MANVILLE SALES CORPORATION

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

Docket 3899. Complaint, Sept. 26, 1939—Decision, June 26, 1940

Where a corporation and sales subsidiary thereof engaged, as case might be, in manufacture, and in sale, of various lines of building and insulating materials, including certain low temperature insulating product sold under registered trade-mark "Rock Cork," to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution, in commerce as aforesaid, of low temperature insulating materials; in advertisements and advertising matter relating to said "Rock Cork" in magazines, newspapers, circulars, pamphlets, booklets, catalogs, leaflets, and other printed and illustrated material, widely circulated and distributed by them among prospective purchasers of their said insulating material—

Represented that said product was composed entirely of mineral matter, through such statements as "Make Sure Of Lasting Insulating Efficiency with this MINERAL INSULATION! * * * is entirely mineral, rotproof, verminproof * * *," "The reason for their long life is the fact that * * * is entirely mineral in composition * * * The efficient insulation material that cannot rot or decay. Mineral—Not Vegetable Composition," facts being said product was not, and for some time last past had not been, composed entirely of mineral matter, but was, and had for some time, been composed of approximately 88 percent mineral matter and 12 percent vegetable matter, and vegetable fiber was not that vegetable matter known to public as, and properly designated, "cork";

With effect of misleading and deceiving substantial portion of purchasers and prospective purchasers of said product into erroneous and mistaken belief that it was entirely of mineral composition, and of inducing such purchasers and prospective purchasers to buy said "Rock Cork" on account of such belief, and of unfairly diverting thereby trade in commerce to them from their competitors, who do not use misrepresentations with respect to their low temperature insulating materials:

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.

Mr. Curtis C. Shears for the Commission.

Mr. William E. Lamb, 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 Johns-Manville Cor-

poration and Johns-Manville Sales Corporation, corporations, 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 respondent, Johns-Manville Corporation, 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 22 East Fortieth Street, in the city of New York, State of New York. Respondent is now and for some time last past has been engaged in the business of manufacturing various lines of building and insulating materials including a certain low temperature insulating material sold under the registered trade mark "Rock Cork." Johns-Manville Sales Corporation 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 22 East Fortieth Street, in the city of New York, State of New York, and is a wholly owned subsidiary of respondent Johns-Manville Corporation. It is engaged in the sale and distribution of said Rock Cork in commerce between and among the various States of the United States and in the District of Columbia. In the conduct of their businesses, as aforesaid, respondents cause and have caused said Rock Cork when sold to be transported from its place of manufacture in Indiana to purchasers thereof in various other States in 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 in said Rock Cork by said respondents in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said businesses respondents are in competition with other corporations and with partnerships, firms, and individuals 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 low temperature insulation materials.

PAR. 2. In the course and conduct of their businesses, as described in paragraph 1 hereof, respondents, in soliciting the sale and selling of said Rock Cork and as an incident to and means of inducing and procuring the sale of said Rock Cork, are now causing, and for some time last past have caused advertisements and advertising matter relating to said Rock Cork to be inserted and displayed in magazines, newspapers, circulars, pamphlets, booklets, catalogs, leaflets, and other printed and illustrated material (all of which is hereinafter designated and referred to as "advertising matter") circulated or distributed among prospective purchasers of said Rock Cork for the aforesaid

purposes. Respondents are now and have been distributing said advertising matter widely in commerce.

PAR. 3. Respondents, in advertising or causing said advertising matter to be published, distributed, displayed, or exposed, as aforesaid, in commerce, have made false and misleading representations in and through said advertising matter to the effect that said Rock Cork when manufactured is made and constructed entirely of mineral matter or with words used in connection or conjunction with the word Rock Cork or with words, phrases, statements or representations descriptive of said Rock Cork which import or imply or tend to convey the belief to purchasers and prospective purchasers that Rock Cork is an entirely mineral product. Among and typical of said representations used and caused to be used by said respondents are the following:

Make Sure of Lasting
Insulating Efficiency
with this
MINERAL
INSULATION

* * * * *

The explanation is simple. J-M Rock Cork is entirely mineral, rot-proof, verminproof, highly resistant to moisture.

30 YEARS OLD and still going strong * * * This MINERAL INSULATION.

* * * * *

The reason for their long life is the fact that J-M Rock Cork is entirely mineral in Composition. Rot-proof and highly resistant to moisture, its low conductivity is practically unaffected by time.

J-M ROCK CORK—a real investment. The efficient insulation material that cannot rot or decay.

Mineral—Not Vegetable
Composition

A product of the recognized leader in the insulating field, Rock Cork is one of the most efficient insulating materials known. As a milk tank insulation, it is superior to other materials in that it is of material, not vegetable composition and therefore cannot rot or decay.

In truth and in fact the statements and representations set forth herein and other statements to the effect either stated or implied that Rock Cork is entirely mineral are false and misleading when in truth and in fact the product so advertised, designated, represented, and sold is not and for some time last past has not been composed entirely of mineral matter but contains, and for some time last past has contained approximately 88 percent mineral and 12 percent vegetable matter. The vegetable matter is not the vegetable product known

to the public as and properly designated cork. The mineral matter is "rock wool" and an asphaltum binder.

PAR. 4. The use by respondents of the foregoing advertisements, statements, and representations, and others similar thereto, in advertising, soliciting, and offering for sale and selling of said Rock Cork as herein set out has had the tendency and capacity to, and did in fact, mislead and deceive a substantial portion of the purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the said Rock Cork is of entirely mineral composition and has induced them to purchase said Rock Cork on account of said erroneous and mistaken belief. Thereby trade has been unfairly diverted to said respondents from competitors who do not make use of similar misrepresentations with respect to their low temperature insulating materials and who are engaged in the sale of said materials in commerce between and among the various States of the United States and in the District of Columbia.

As a result of respondents' said practices, as herein set out, substantial injury has been done by said respondents to competitors engaged in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The above alleged acts and practices of respondents are each and all to the injury and prejudice of the public and to competitors of respondents 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 26, 1939, issued, and on September 27, 1939, served its complaint in this proceeding upon the respondents, Johns-Manville Corporation and Johns-Manville Sales Corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, respondents filed an answer admitting all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts which answer was duly filed in the office of the Commission on October 23, 1939. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said admission 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, Johns-Manville Corporation, 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 22 East Fortieth Street, in the city of New York, State of New York. Respondent is now and for some time last past has been engaged in the business of manufacturing various lines of building and insulating materials including a certain low temperature insulating product sold under the registered trade mark "Rock Cork," Johns-Manville Sales Corporation 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 22 East Fortieth Street, in the city of New York, State of New York, and is a wholly owned subsidiary of respondent Johns-Mansville Corporation. It is engaged in the sale and distribution of said "Rock Cork" in commerce between and among the various States of the United States and in the District of Columbia. In the conduct of their businesses, as aforesaid, respondents cause and have caused said product, "Rock Cork," when sold to be transported from its place of manufacture in Indiana to purchasers thereof in various other States in 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 in said "Rock Cork" by said respondents in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said businesses respondents are in competition with other corporations and with partnerships, firms, and individuals 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 low temperature insulation materials.

PAR. 2. Respondents in the course and conduct of their businesses, in soliciting the sale and selling of said "Rock Cork" and as an incident to and means of inducing and procuring the sale of "Rock Cork" for a considerable period of time prior to the issuance of the complaint herein, caused advertisements and advertising matter relating to said "Rock Cork" to be inserted and displayed in magazines, newspapers, circulars, pamphlets, booklets, catalogs, leaflets, and other printed and illustrated material, which were circulated and distributed by respondents among prospective purchasers of said "Rock Cork" widely in commerce between and among the various

States of the United States and in the District of Columbia. Typical of these advertisements are the following:

Make Sure of Lasting
Insulating Efficiency
with this
MINERAL
INSULATION!

* * * * * * *

The explanation is simple. J-M Rock Cork is entirely mineral, rotproof, verminproof, highly resistant to moisture.

30 YEARS OLD and still going strong . . . This MINERAL INSULATION.

* * * * * * *

The reason for their long life is the fact that J-M Rock Cork is entirely mineral in composition. Rot-proof and highly resistant to moisture, its low conductivity is practically unaffected by time.

J-M ROCK CORK—a real investment. The efficient insulation material that cannot rot or decay.

MINERAL—NOT VEGETABLE COMPOSITION

A product of the recognized leader in the insulating field, Rock Cork is one of the most efficient insulating materials known. As a milk tank insulation, it is superior to other materials in that it is of mineral not vegetable composition and therefore cannot rot or decay.

PAR. 3. Through said advertisements and advertising matter so used and distributed by the respondents in advertising said insulating products, respondents represent that said product is composed entirely of mineral matter, when in truth and in fact said products is not, and for some time last past has not been, composed entirely of mineral matter but is, and for some time last past has been, composed of approximately 88 percent mineral matter and 12 percent vegetable matter. The vegetable fiber is not the vegetable matter known to the public as and properly designated cork. The mineral fiber is "Rock Wool" and an asphaltum binder.

PAR. 4. The use by respondents of the foregoing advertisements, statements, and representations, and others similar thereto, in advertising, soliciting, and offering for sale and selling of said "Rock Cork" as herein set out has the tendency and capacity to and does mislead and deceive a substantial portion of the purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the said "Rock Cork" is entirely of mineral composition and has induced them to purchase said "Rock Cork" on account of said erroneous and mistaken belief. Thereby trade in commerce between and among

the various States of the United States and in the District of Columbia has been unfairly diverted to said respondents from their competitors, who do not use misrepresentations with respect to their low temperature insulating materials.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, 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 on 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, Johns-Manville Corporation and Johns-Mansville Sales 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 insulating material now known as "Rock Cork," 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:

Using the terms "entirely mineral," "mineral composition," "mineral in composition," "mineral—not vegetable," or any other words of similar import and meaning to describe or in any way refer to a product which is not in fact entirely mineral in composition.

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

IN THE MATTER OF

MORTON COHEN, TRADING AS LEE-MOORE & CO. AND ADWELL SALES CO.

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

Docket 3938. Complaint, Nov. 2, 1939—Decision, June 26, 1940

Where an individual engaged in sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, and various other articles of merchandise to purchasers in various States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar merchandise in commerce as aforesaid—

(*a*) Sold to wholesalers, jobbers and retailers certain assortments of merchandise which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers and included (1) assortment consisting of two pen and pencil sets, three knives, two pipes, two cigar lighters, and watch and punchboard for use in sale and distribution of said articles under a plan and in accordance with said board's explanatory legend by which numbers secured by chance for five cents each by customer-purchasers determined which, if any, of said various articles, purchaser received, and under which person purchasing last number on board received the watch and person failing to qualify by obtaining one of lucky numbers or punching last number received nothing for his money other than privilege of punching number, and included (2) various other assortments of merchandise, along with punchboards involving lot or chance feature 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 his merchandise in accordance with sales plan above set forth by retail dealers who, as direct or indirect purchasers thereof, exposed and sold his said products in accordance with such plan, involving game of chance or sale of a chance to procure one of said articles at price much less than normal retail price, and less than value thereof and five cents paid for chance to secure same, 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 method contrary to public policy and refrain therefrom;

With result that many persons were attracted by his said sales plan or method employed in sale and distribution of his merchandise and 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 said competitors who do not use such or equivalent method, and with effect, through use of such method and because of said game of chance, of diverting unfairly trade in commerce to himself from his competitors aforesaid who do not use such or equivalent method;

(*b*) Represented in advertising for agents to sell his merchandise in various magazines and periodicals circulated among the United States and in said District, that $100 weekly was the usual and customary amount that would be earned by agents through sale of said merchandise, facts being his salesmen do not in ordinary and usual course of business earn such an amount or any other amount closely approximating it, and usual and customary earnings thereof in due course of normal business are substantially less than such amount;

With effect of causing members of public and prospective salesmen and distributors to have erroneous and mistaken belief that such false and misleading statement and representation was true, and causing prospective agents and distributors, because of such belief, to undertake sale of and sell his said products; and

(*c*) Sold and distributed to dealers many kinds of push cards and punchboards which were so prepared and arranged as to involve game of chance, gift enterprises, or lottery schemes when used in making sales of their merchandise to consuming public, and involved same chance or lottery feature, varying in detail only, and plans or schemes under which and in accordance mostly with legends placed thereon by him or, in other cases, placed thereon by dealers in blank spaces provided therefor and in accordance with particular plan provided, prices of sales varied and certain specified numbers entitled purchasers to articles of merchandise at prices which were much less than normal retail price thereof, and under which those who did not receive one of lucky numbers received nothing for their money other than privilege of making push or punch from said card or board;

With result that—

(1) Many who sold or distributed candy, cigars, and other articles of merchandise in commerce as aforesaid bought said push card and punchboard devices and packed and assembled assortments comprised of various articles of such merchandise, together with such cards and boards, and retail dealer buyers of such assortments, either as direct or indirect purchasers, and retailers who made up their own assortments, exposed same to purchasing public and sold or distributed such articles of merchandise through use of said push cards or punchboards and in accordance with sales plan as above described, involving game of chance or sale of a chance to procure articles in question at prices 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

(2) Many dealers in and ultimate consumers of such products were induced to deal with or purchase same from dealers selling or distributing such merchandise by means of or together with said push cards and punchboards and because of lottery feature involved therein and inherent thereto, in competition with many who sold or distributed like or similar articles in commerce and who, faced with alternative of descending to use of said cards ond boards or other similar devices which they were under a powerful moral compulsion not to use in connection with sale and distribution of their products, or suffering loss of substantial trade, did not sell and distribute their said merchandise by means of such cards, boards or similar devices, because of element of chance or lottery features therein involved and because practices in question were contrary to public policy of United States, and refrained from supplying to or placing in hands of others such cards,

boards or any other similar devices for use in connection with the sale and distribution of the merchandise of such competitors to general public by lot or chance, and with consequence that substantial trade was unfairly diverted to him and to those using his said push card and punchboard devices from others engaged in commerce and who did not sell or use such or any other lottery devices; and

(3) He supplied thereby to and placed in the hands of others through such sale or distribution of said push cards and punchboards (1) means of conducting lotteries, games of chance, or gift enterprises in the sale or distribution of their merchandise with its teaching and encouragement of gambling among members of public, through the conducting by retailers of such lotteries, games of chance, or gift enterprises, all to the injury of the public, as aforesaid, and therein and thereby (2) means of and instrumentalities for engaging in unfair methods of competition and unfair acts and practices:

Held, (1) That such acts and practices in selling and distributing assortments of merchandise, together with push cards and punchboard devices, and in advertising falsely as to earning capacity of salesmen of said individual, as above set forth, were all to the prejudice and injury of public, and competitors and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein; and

(2) That acts and practices of said individual in selling and distributing said push card and punchboard devices, separate and apart from any other merchandise, to dealers for use in sale and distribution of their products, under circumstances set forth, were all to the prejudice and injury of public and constituted unfair acts and practices in commerce.

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 Morton Cohen, an individual, trading as Lee-Moore & Co., and Adwell Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

Count 1

Paragraph 1. Respondent Morton Cohen is an individual trading as Lee-Moore & Co. and Adwell Sales Co., with his principal office and place of business located at 180 West Adams Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, candy, blankets, rings, fishing tackles, 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 Chicago, Ill., 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 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 wholesale dealers, jobbers and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of two pen and pencil sets, three knives, two pipes, two cigar lighters, and a watch, together with the device commonly called a punchboard. Said merchandise is sold and distributed to the consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The numbers begin with one and continue to the number of punches there are on the board but the numbers are not arranged in numerical sequence. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a fountain pen set, a knife, a cigar lighter, a pipe, a package of cigarettes, and that the last sale receives the watch. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise above mentioned are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the articles of merchandise, or the last punch on the board, receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. These said articles of merchandise are thus distributed to purchasers of punches from the board wholly by lot or chance.

Respondent sells and distributes, and has sold and distributed, variout assortments of mercandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of 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 said merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to an established public policy of the government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure one of the said articles 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 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. 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. In the course and conduct of his business, respondent advertises in various magazines and periodicals having a circulation between and among the various States of the United States and in the District of Columbia, for agents to sell his merchandise and represents to such prospective salesmen that $100 weekly is the usual and

customary commission that will be earned by them through the sale of respondent's merchandise. Said advertising is as follows:

PUNCHBOARDS, ASSORTMENTS, VENDING MACHINES. Make over hundred dollars weekly. Beautiful catalogue free. Adwell Sales, 180 Adams, Chicago, Illinois.

In fact respondent's salesmen do not in the ordinary and usual course of business, earn $100 weekly or earn any other amount of money closely approximating $100 weekly. The usual and customary earnings of such salesmen in due course of normal business are substantially less than $100 weekly.

PAR. 6. The use by respondent of the aforesaid false and misleading statement and representation has the capacity and tendency to, and does cause members of the public and prospective salesmen and distributors to have the erroneous and mistaken belief that the aforesaid false and misleading statement and representation is true and causes prospective agents and distributors to undertake the sale of and to sell said merchandise because of said erroneous and mistaken belief.

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.

Count 2

PARAGRAPH 1. Respondent Morton Cohen is an individual trading as Lee-Moore & Co. and Adwell Sales Co., with his principal office and place of business located at 180 West Adams Street, Chicago, Ill. Respondent 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.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in Chicago, Ill., to 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. There is now and has been for some time last past a course of trade by said respondent in such push cards 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 his business, as described in paragraph 1 hereof, respondent sells and distributes, and has 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 in making sales of their merchandise to the consuming public. Respondent sells and distributes, and has 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 or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or punch is made a disc or printed slip is separated and a number is 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 articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers 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 punchboards or push cards without said printed instructions or legends thereon place printed instructions or legends on the faces of said push cards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed or printed on the faces of push card or punchboard devices by respondent, as hereinabove described.

PAR. 3. Many persons, firms, and corporations who sell and distribute candy, cigarettes, 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 respondent's said push cards and punchboard devices and have packed and assembled assortments comprised of various articles of said merchandise, together with said push cards and punchboard devices. Retail dealers who have purchased such assortments, either directly or indirectly, or retail dealers who have purchased said devices direct from respondent and made up their own assortments, have exposed the same to the purchasing public and have sold or distributed said articles of mer-

chandise 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 or together with respondent's said push cards and punchboards because of the lottery feature involved therein and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of 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 feature 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. As a result thereof substantial trade has been unfairly diverted to said persons, firms, and corporations from said competitors in said commerce, who do not sell or use such devices.

PAR. 4. The sale of said merchandise to the purchasing public through the use of, or by means of, said devices 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 of said sales plan or method in the sale of merchandise and the sale of 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, and constitutes unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

The sale or distribution of said push cards and punchboards by respondent, as hereinabove alleged, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise. The conducting of said lotteries, games of chance, or gift enterprises by

retail dealers teaches and encourages gambling among members of the public, all to the injury of the public. The respondent thus supplies to said persons, firms and corporations the means of, and instrumentalities for, engaging in unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

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 November 2, 1939, issued, and on November 3, 1939, served, its complaint in this proceeding upon respondent, Morton Cohen, individually and trading as Lee-Moore and Co. and Adwell 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. 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 in lieu thereof 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, Morton Cohen, is an individual trading as Lee-Moore & Co. and Adwell Sales Co., with his principal office and place of business located at 180 West Adams Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, candy, blankets, rings, fishing tackle, 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 Chicago, Ill.,

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 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 wholesale dealers, jobbers, and retail dealers, certain assortments of merchandise so packed or assembled, as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of two pen and pencil sets, three knives, two pipes, two cigar lighters, and a watch, together with the device commonly called a punchboard. Said merchandise is sold and distributed to the consuming public by means of said punchboard in the following manner: 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 the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a fountain pen set, a knife, a cigar lighter, a pipe, a package of cigarettes, and that the last sale receives the watch. A purchaser who does not qualify by obtaining one of the lucky numbers, or by punching the last number on the board, receives nothing for his money other than the privilege of punching a number from the board. The articles of merchandise above mentioned are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the articles of merchandise, or the last punch on the board, receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. These said articles of merchandise 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 merchandise along with punchboards involving a

lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of 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 said merchandise by and through the use thereof and by the aid of said method, is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above found, involves a game of chance or the sale of a chance to procure one of the said articles 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 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.

PAR. 5. In the course and conduct of his business, respondent advertises in various magazines and periodicals having a circulation between and among the various States of the United States and in the District of Columbia, for agents to sell his merchandise and represents to such prospective salesmen that $100 weekly is the usual and customary commission that will be earned by them through the sale of respondent's merchandise. Said advertising is as follows:

PUNCHBOARDS, ASSORTMENTS, VENDING MACHINES. Make over hundred dollars weekly. Beautiful catalogue free. Adwell Sales, 180 Adams, Chicago, Illinois.

In fact respondent's salesmen do not in the ordinary and usual course of business earn $100 weekly or earn any other amount of money closely approximating $100 weekly. The usual and customary earnings of such salesmen in due course of normal business are substantially less than $100 weekly.

PAR. 6. The use by respondent of the aforesaid false and misleading statement and representation has the capacity and tendency to, and does cause members of the public and prospective salesmen and distributors to have the erroneous and mistaken belief that the aforesaid false and misleading statement and representation is true and causes prospective agents and distributors to undertake the sale of and to sell said merchandise because of said erroneous and mistaken belief.

PAR. 7. In the course of his business, respondent 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.

Respondent causes and has caused said devices, when sold, to be transported from his aforesaid place of business in Chicago, Ill., to 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. There is now and has been for some time last past a course of trade by said respondent 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. 8. In the course and conduct of his business, as described in paragraph 7 hereof, respondent sells and distributes, and has 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 in making sales of their merchandise to the consuming public. Respondent sells and distributes, and has 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 or may be used in the sale or distribution of various specified articles of merchandise. The prices of the sales on said push cards and punchboards vary in accordance with the individual device. Each purchaser is entitled to one punch or push from the device, for the amount of money paid, and when a push or

punch is made a disc or printed slip is separated and a number is 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 articles of merchandise. Persons securing lucky or winning numbers receive articles of merchandise at prices which are much less than the normal retail price of said articles of merchandise. Persons not obtaining one of the lucky or winning numbers 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 punchboards or push cards without said printed instructions or legends thereon place printed instructions or legends on the faces of said push cards or punchboards on the blank space provided therefor. The legends or instructions placed on the faces of said devices by said dealers and used in conjunction therewith involve the same chance or lottery features as those legends or instructions placed or printed on the faces of push card or punchboard devices by respondent, as hereinabove described.

PAR. 9. Many persons, firms, and corporations who sell and distribute candy, cigarettes, 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 respondent's said push cards 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, and retail dealers who have purchased said devices direct from respondent and made up their own assortments, 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 8 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 or together with respondent's said push cards and punchboards because of the lottery feature involved therein and inherent thereto. Said persons, firms, and corporations have many competitors who sell or distribute like or similar articles of 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 cards 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. As a result thereof substantial trade has been unfairly diverted to the respondent and to persons, firms, and corporations using respondent's push card and punchboard device from other persons, firms and corporations engaged in commerce among and between the various States of the United States who do not sell or use such lottery devices or any other lottery device.

PAR. 10. The sale of said merchandise to the purchasing public through the use of, and by means of, said devices in the manner above found, 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 of said sales plan or method in the sale of merchandise and the sale of 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 respondent, as hereinabove found, supplies to and places in the hands of others the means of conducting lotteries, games of chance, or gift enterprises in the sale and distribution of their merchandise. The conducting of said lotteries, games of chance, or gift enterprises by retail dealers teaches and encourages gambling among members of the public, all to the injury of the public. The respondent thus supplies to said persons, firms, and corporations the means of, and instrumentalities for, engaging in unfair methods of competition and unfair acts and practices within the intent and meaning of the Federal Trade Commission Act.

CONCLUSION

The aforesaid acts and practices of respondent in selling and distributing his said assortments of merchandise, together with push

card and punchboard devices, and in falsely advertising as to the earning capacity of his salesmen, 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, and the aforesaid acts and practices of respondent in selling and distributing said push card and punch board 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 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, Morton Cohen, individually and trading as Lee-Moore and Co. and as Adwell Sales Co., or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of radios, knives, cigar lighters, fountain pens, cameras, pipes, watches, candy, blankets, rings, fishing tackle, 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 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 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 any merchandise to the public.

4. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

5. Representing any specified sum of money as possible earnings or profits of salesmen or agents 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 respondent's active salesmen or agents in the ordinary course of business under normal conditions and circumstances.

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

SAM GUTTMAN, TRADING AS STANDARD SALES CO.

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

Docket 3990. Complaint, Jan. 4, 1940—Decision, June 26, 1940

Where an individual engaged in sale and distribution of radios, clocks, fishing tackle, pen and pencil sets, billfolds, and other articles of merchandise to wholesale, jobber, and retailer purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of like or similar merchandise in commerce as aforesaid—

Sold certain assortments of merchandise which were so packed or assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof, and included (1), as illustrative, 12 billfolds, together with punchboards for use in sale and distribution of said products to purchasing and consuming public under a plan and in accordance with said board's explanatory legend, by which purchasers or customers secured, for 5 cents paid and in accordance with success or failure in selecting by chance lucky numbers, 1 of said folds, value of which was worth more than 5 cents, and failing to make such selection, secured nothing other than privilege of punching number, and included (2) various other assortments of merchandise, along with punchboards involving lot or chance feature 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 sale of his merchandise in accordance with sales plan above set forth by retailers who, as direct or indirect purchasers of his said merchandise, exposed and sold same to purchasing public in accordance with said sales plan involving distribution of said billfolds to purchasers of punches from the board wholly by lot or chance, and game of chance or sale of a chance in the sale of said products to purchasing public 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 secure something by chance or any method contrary to public policy and refrain therefrom;

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

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

Mr. L. P. Allen, Jr. for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Sam Guttman, an individual trading as Standard Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sam Guttman is an individual trading as Standard Sales Co., with his principal office and place of business located at 2363 Milwaukee Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of radios, clocks, watches, fishing tackle, cameras, pen and pencil sets, billfolds, wood statuettes, 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 Chicago, Ill., to purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now and has been for some time last past a course of trade by said 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 his 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 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 wholesale dealers, jobbers and retail dealers certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of 12 billfolds, together with a device commonly called a punchboard. Said billfolds are sold and distributed to the purchasing and consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The board bears the statement or statements informing prospective purchasers

that certain specified numbers entitle the purchaser thereof to receive a billfold or money prize. Persons who do not qualify by obtaining one of the lucky numbers receive nothing for their money other than the privilege of punching a number from the board. The billfolds are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for 1 of the billfolds receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said billfolds 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 merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of 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 said merchandise by and through the use thereof and by the aid of said 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 one of the said articles 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 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. 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 January 4, 1940, issued and on January 5, 1940, served its complaint in this proceeding upon respondent, Sam Guttman, an individual, trading as Standard 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. 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 hearings as to said facts which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and 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, Sam Guttman, is an individual trading as Standard Sales Co., with his principal office and place of business located at 2363 Milwaukee Avenue, Chicago, Ill. Respondent is now and for some time last past has been engaged in the sale and distribution of radios, clocks, watches, fishing tackle, cameras, pen and pencil sets, billfolds, wood statuettes, 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 Chicago, Ill., to purchasers thereof, at their respective points of location, in the various States of the United States other than Illinois and in the District of Columbia. There is now and has been for some time last past a course of trade by said 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 his 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 merchandise 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 wholesale dealers, jobbers, and retail dealers certain assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of 12 billfolds, together with a device commonly called a punchboard. Said billfolds are sold and distributed to the purchasing and consuming public by means of said punchboard in the following manner: Sales are 5 cents each and when a punch is made from the board, a number is disclosed. The board bears the statement or statements informing prospective purchasers that certain specified numbers entitle the purchaser thereof to receive a billfold or money prize. Persons who do not qualify by obtaining 1 of the lucky numbers receive nothing for their money other than the privilege of punching a number from the board. The billfolds are worth more than 5 cents each and the purchaser who obtains one of the numbers calling for one of the billfolds receives the same for the price of 5 cents. The numbers are effectively concealed from purchasers and prospective purchasers until a punch or selection has been made and the particular punch separated from the board. The said billfolds 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 merchandise along with punchboards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies

to and places in the hands of others the means of conducting lotteries in the sale of 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 said merchandise by and through the use thereof and by the aid of said 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 one of the said articles of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with the respondent, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade in commerce between and among the various States of the United States and in the District of Columbia, to respondent from his said competitors who do not use the same or an equivalent method.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Sam Guttman, an individual, trading as Standard Sales 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 radios, clocks, watches, fishing tackle, cameras, pen and pencil sets, billfolds, wood statuettes, 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 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 any other lottery devices, which said punchboards, push and 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 any 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.

IN THE MATTER OF

AURINE 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 3993. Complaint, Jan. 12, 1940—Decision, June 26, 1940

Where a corporation engaged in sale and distribution of its "Ourine" medicinal preparation, to purchasers in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails, by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter, and by other means in commerce, and which were intended and likely to induce purchase of its said preparation—

(*a*) Represented, directly or by implication, that its said "Ourine" constituted a cure or remedy for deafness and had therapeutic value in treatment thereof and was a competent and effective treatment for deafness and for ringing and buzzing head noises due to hardened or coagulated wax in the ear, through such statements as "Deafened Man Hears Again. 'I heard the minister read scripture for the first time in years' * * *," and "Deafened Boy Hears Radio," etc., facts being said preparation was not a cure or remedy, or a competent or effective treatment for deafness, and had no therapeutic value in treatment thereof, and also was not such a treatment for deafness or partial deafness or ringing or buzzing head noises due to wax as aforesaid, and, while use thereof might soften accumulation of wax in ear without use of instrument or surgery, conditions which might result from such an accumulation, and including temporary deafness and ringing or buzzing head noises, would not be materially benefited or relieved; and

(*b*) Represented that it refunded purchase price for said preparation to its customers who were not satisfied with results obtained from use thereof, facts being it had not in all cases made refunds to such purchasers;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of substantial quantities of said preparation because of such belief:

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

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

Mr. Charles S. Cox for the Commission.

Mr. Frank E. Gettleman, 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 Aurine 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, Aurine Co., Inc., is a corporation organized and 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 3635 West Cermak Road, Chicago, Ill.

The respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of a medicinal preparation designated "Ourine," in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in the State of Illinois, to purchasers 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 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 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 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 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:

Deafened Man Hears Again. "I heard the minister read scripture for the first time in years," * * * If you are deafened, bothered by ringing, buzzing head noises, or some temporary septic condition, due to hardened or coagulated wax (cerumen), try the treatment that many sufferers say has

enabled them to hear well again—that is, Ourine, a Vienna specialist's prescription. * * * Money refunded if not satisfied.

Deafened Boy Hears Radio. "My boy hears everything on the radio", * * * "Before he used Ourine, he could not hear the radio."

Deafened Woman Hears Clock Tick. "I was deafened. Now I can hear the clock tick," * * *

Helps 88 Year Old Deafened Man Hear. "My husband was 88 years old and very hard of hearing. He is getting so he can hear a clock tick," * * *

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent represents, directly or by implication, that its said medicinal preparation designated "Ourine" is a cure or remedy for deafness and has therapeutic value in the treatment of deafness, that said preparation is a competent and effective treatment for deafness, ringing and buzzing head noises due to hardened or coagulated wax in the ear, and that respondent refunds the purchase price for said preparation to its customers who are not satisfied with the results obtained from the use thereof.

PAR. 4. The aforesaid statements and representations by respondent are false and misleading and constitute false advertisements. Deafness may be caused by either a central or systemic or a local disorder or condition. The said preparation "Ourine" is not a cure or remedy or a competent or effective treatment for deafness. It has no therapeutic value in the treatment of deafness. Said preparation is not a competent or effective treatment for deafness or partial deafness, ringing or buzzing head noises due to hardened or coagulated wax in the ear. The use of said preparation may soften accumulations of wax in the ear but without the use of an instrument to extract the wax, the conditions which may result from an accumulation of wax, to wit, temporary deafness, ringing or buzzing head noises, will not be materially benefited or relieved. Respondent does not uniformly make refunds to purchasers not satisfied with the results obtained.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its preparation, dissemination as aforesaid, has had and now has a 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 into the purchase of substantial quantities of said preparation because of such erroneous and mistaken belief.

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 the 12th day of January 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Aurine Co., 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 February 2, 1940, the respondent filed its answer in this proceeding. Thereafter, at a hearing in this matter at Chicago, Ill., on April 12, 1940, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts as dictated into the record between counsel for the Federal Trade Commission and counsel for respondent, subject to the approval of the Commission, may be taken as facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that 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 (including inferences which it may draw from such stipulated facts) and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDING AS TO THE FACTS

Paragraph 1. Respondent, Aurine Co., Inc., 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 3635 West Cermak Road, Chicago, Ill.

The respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of a medicinal preparation designated "Ourine," in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes said preparation, when sold, to be transported from its aforesaid place of business in the State of Illinois to 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 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 the aforesaid business the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of advertisements concerning the said preparation by United States mail, 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 its said preparation, and has disseminated and is now disseminating, and has caused and is now causing the dissemination of 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 statements and representations contained in said advertisements, disseminated and caused to be disseminated, as aforesaid, are the following:

Deafened Man Hears Again. "I heard the minister read scripture for the first time in years," * * * If you are deafened, bothered by ringing, buzzing head noises, or some temporary septic condition, due to hardened or coagulated wax (cerumen), try the treatment that many sufferers say has enabled them to hear well again—that is, Ourine, a Vienna Specialist's prescription. * * *

Money refunded if not satisfied.

Deafened Boy hears radio. "My boy hears everything on the radio", * * * "Before he used Ourine, he could not hear the radio."

Deafened Woman Hears Clock Tick. "I was deafened. Now I can hear the clock tick," * * *

Helps 88 year Old Deafened Man Hear. "My husband was 88 years old and very hard of hearing. He is getting so he can hear a clock tick." * * *

PAR. 3. Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, the respondent represents, directly or by implication, that its said medicinal preparation designated "Ourine" is a cure or remedy for deafness and has therapeutic value in the treatment of deafness, that said preparation is a competent and effective treatment for deafness, ringing and buzzing head noises due to hardened or coagulated wax in the ear, and that respondent refunds the purchase price for said preparation to its customers who are not satisfied with the results obtained from the use thereof.

PAR. 4. The aforesaid statements and representations by respondent are misleading and have a capacity and tendency to mislead and deceive. Deafness may be caused by either a central or systemic or a local disorder or condition. The said preparation "Ourine" is not a cure or

remedy or a competent or effective treatment for deafness and has no therapeutic value in the treatment of deafness. Said preparation is not a competent or effective treatment for deafness or partial deafness, ringing or buzzing head noises due to hardened or coagulated wax in the ear. Although the use of said preparation may soften accumulation of wax in the ear, without the use of an instrument or syringe to remove the wax, the conditions which may result from an accumulation of wax, to wit: temporary deafness, ringing or buzzing head noises, will not be materially benefited or relieved. Respondent has not in all cases made refunds to purchasers not satisfied with the results obtained.

PAR. 5. The use by the respondent of the foregoing statements and representations with respect to its preparation, disseminated as aforesaid, has had and now has a 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 into the purchase of substantial quantities of said preparation 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, the answer of respondent, and a stipulation as to the facts entered into between the respondent herein and 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Aurine Co., 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, or distribution of its medicinal preparation designated "Ourine" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether

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

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a cure or remedy or a competent or effective treatment for deafness or partial deafness; that said preparation possesses any therapeutic value in excess of such aid as it may render in softening coagulated wax in the ear; that respondent makes refunds to dissatisfied purchasers of said preparation, when respondent does not in fact establish and maintain a definite policy and practice of making such refunds.

2. 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 contain any of the representations prohibited in paragraph 1 hereof.

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

D. VICTOR WALLACE, TRADING AS PARAMOUNT INSTITUTE

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

Docket 4009. Complaint, Feb. 1, 1940—Decision, June 26, 1940

Where an individual engaged in sale and distribution, in commerce among the various States, of correspondence course of study through the mails to prepare students for various civil service examinations for positions under the United States Government—

(*a*) Represented, through use of advertising folder employed in personal solicitation and solicitation by his agents of prospective students, that under normal and ordinary conditions and circumstances most persons desiring to obtain civil service status by examination must have special coaching of the kind offered by him, and that he was in constant touch with the United States Civil Service Commission and its examiners and had advance and inside information concerning civil service examinations, and that he was a specialist in matters relating to the civil service of the United States Government and had a background of civil service experience therein, facts being, under conditions and circumstances referred to, persons wishing to pass such examination and qualified by prior general education and experience for particular positions desired do not require such coaching, very small percentage of those passing such examinations have had such coaching for examinations passed, his instruction is not of kind to prepare students for positions sought and is of little value to them unless otherwise qualified by prior education and experience, and, except as casual correspondent, he was not constantly or otherwise in touch with said commission or its examiners and had no advance information concerning its examinations, and was not such a specialist and had not had background of experience claimed as hereinabove set forth;

(*b*) Represented, as aforesaid, that commission referred to holds examinations for all types of positions at frequent intervals from year to year, and especially for those for which he offers instruction, and that civil service employees are never discharged or deprived of their various positions with the Government except for misconduct or gross inefficiency, and that such employees, if efficient, are certain to obtain promotion in position and advancement in salary, and that persons passing civil service examination with high rating are certain of obtaining position with the Government and of doing so within a short time after passing such examination, facts being there are many types of positions, including some of those with respect to which he offers instruction, for which examinations are held only at infrequent intervals, with many years elapsing between them sometimes, many employees are discharged for reasons other than those above set forth, including such matters as insufficient appropriations, efficient employees of said character are not certain to obtain promotion as above set forth, and persons passing such an examination with high rating are not certain of obtaining position at early date or at all;

(*c*) Represented, as aforesaid, that persons between ages of 23 and 45 might become inspectors of customs if otherwise qualified, and that appointments to position of immigrant inspector were ordinarily given to those who had passed civil service examinations appropriate for such position, facts being age limits for customs inspectors were not as given, and appointments to position of immigrant inspector were, and had been for number of years, made on other tests and qualifications than passing of civil service examination, and such examinations for such position had not been given for more than 6 years, and positions in question had been filled by appointment and by promotion within departments;

(*d*) Represented, as aforesaid, that persons who passed such examination as post office clerks and city mail carriers were eligible for appointment to regular positions paying $1,700 a year, with increases of $100 a year for 5 years, without first serving as substitutes, and that employees of said department entered upon their duties in such positions at salaries of $1,700, $1,800, $1,900, and $2,000, facts being postal clerk and mail carrier salaries first above indicated were paid only after such employees had served as substitutes and, in many instances, for a number of years, appointments to positions in department in question being made at salary of $1,700 only after employee has served as substitute and no appointments being made at higher salaries referred to, which are result of promotion;

(*e*) Represented, as aforesaid, that some employees of the United States Government working in civil service positions are allowed 30 days annual leave and no employee is required to work more than 8 hours a day, facts being some employees are required to work in excess of said amount, and 26, and not 30, days is maximum annual leave granted to such employees;

(*f*) Made use of trade name including word "Institute" for conduct of his said business, and implied and represented thereby to prospective students that he conducted an institution of learning with staff of competent, experienced and qualified educators, and that his school was a large and extensive institution offering training and instruction in philosophy, art, science, and other learned subjects, facts being he offered only one course of study and instruction which was substantially same, regardless of civil service examination for which students wished to prepare, his said school was not a large or extensive institution and he had as only employee, a stenographer, in addition to limited number of salesmen employed in past as above set forth, he did not offer, in conduct of his said school, training or instruction in philosophy, art, science, or other learned subjects, neither he nor any of his employees was a competent, experienced, or qualified educator or teacher, and no basic or thorough or complete instruction was given in any subject of learning, his said school was not an institution of learning in any accurate sense, and method of instruction consisted in mere mailing out of previously prepared mimeographed or printed sheets and the grading of papers by a key or prepared answer sheets;

(*g*) Represented and implied, through statement "Operated in strict compliance with the Laws and Regulations of the Federal Trade Commission" in advertising folders above referred to and circulated to prospective students, that the methods used in sale of said courses of study and instruction, and representations made in connection therewith, were all in conformity to the Federal Trade Commission Act and the decisions of the courts and the orders of the Federal Trade Commission thereunder,

and that such methods and representations made in connection therewith conformed to the trade practice rules of the Commission relating to line of business of which his said school was a part, and also that Commission had approved his methods and representations used in connection therewith, and that he had permission of Commission to use said statement in promoting sale of said course of study and instruction, facts being such methods and representations used by him in conduct of his said business as above set forth, were not in conformity with said act or decisions of courts and orders of Commission thereunder, nor in conformity with said trade practice rules, and Commission had not approved his methods or representations used in connection with his business, and he did not have its permission to use said or any other statement in connection with promotion of sale of his said course of study and instruction; and

(*h*) Represented to prospective purchasers that the price of $49.50 cash, or $59.50 on deferred payments, at which his said course was and had been offered, was a special price for the course, and that the regular one therefor had been $125, and made many of such "special" offers to recent high school graduates, to whom it was further represented that such "special" price was being offered to them because of high scholastic standing or because of some other means of determining their selection as recipients of such "special offer," facts being regular and usual prices were amounts first stated and, with few exceptions, all people enrolled in his said school contracted for the course at not to exceed such prices, higher price mentioned was purely fictitious and no student was then required to contract for such course at said price, and only a few had been enrolled at said price during entire time in which he conducted his business, and prices referred to, actually given, were not because of high scholarship or other merit or special selection, but were given to all who could be induced to contract for course, regardless of such qualifications or selection;

With tendency and capacity to mislead purchasers and prospective purchasers of his said course of study and instruction into erroneous and mistaken belief that such representations, as above set forth, were true, and to induce them to purchase his said course of study and instruction on account of such belief:

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

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

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 D. Victor Wallace, an individual, trading as Paramount Institute, 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, D. Victor Wallace, is an individual trading as Paramount Institute and having his office and principal place of business at 1095 Market Street, San Francisco, Calif.

PAR. 2. Said respondent, D. Victor Wallace, is now and for more than 3 years last past has been engaged, under the name and style of Paramount Institute, in the sale and distribution in commerce among and between the various States of the United States, of a course of study and instruction intended for preparing students thereof for examinations for various civil service positions under the United States Government, which said course of study and instruction is pursued by correspondence through the medium of the United States mails. Respondent, in the course and conduct of said business, caused and does now cause said course of study and instruction to be transported from his said place of business in California to the purchasers thereof located in various States of the United States other than the State of California.

PAR. 3. Respondent, in the course and conduct of said business as aforesaid, through personal solicitation and through the solicitation of agents employed by him for that purpose, has made and does make many misleading representations concerning his said course of study and instruction to prospective students located in various States of the United States. As a part of said solicitation, whether made by respondent or his said agents, respondent has distributed and does distribute to said prospective students in various States of the United States a certain advertising folder or pamphlet designed and intended to induce said prospective students to purchase his said course of study and instruction, which said folder or pamphlet contains misleading representations and statements concerning said course of study and instruction, concerning respondent's said business, and concerning the civil service of the Government of the United States. Among and typical of said representations and statements are the following:

1. Examinations are held at frequent intervals from year to year.

2. Regardless of outside conditions, the Civil Service employee's position is absolutely sure and certain. Downright inefficiency or gross misconduct are the only things that can bring about his discharge.

3. Under the Civil Service system, efficiency soon makes its presence felt and attracts the attention of the men "higher up." Promotion in position and advancement in salary are the inevitable results.

4. To pass a Civil Service examination, one should be coached along the proper lines.

5. A high rating means an early appointment.

6. Our coaching courses are kept parallel with recent examinations and are at all times up-to-date, giving the student just what is required, and in the manner it is presented by the examiners.

7. Our students are notified by us just as soon as an examination is announced, as we are in constant touch with the Civil Service Commission.

8. Inspector of Customs—Age limits 23 to 45. Starting salary $175.00 per month.

9. Immigrant Inspector—Age limits 21 to 45. Starting salary $175.00 per month. Applicants must be in good health and free from color blindness or other serious defects.

10. Post Office Clerk—City Mail Carrier . . . Salaries for clerks and carriers, $1,700 a year the first year ($141.83 a month), with increases of $100 a year for five years.

11. The United States Government is liberal with its employees. In the Post Office Department under which come such desirable positions as clerk, carrier, railway postal clerk, etc., appointments are made at $1,700, $1,800, $1,900, and $2,600 with opportunities for promotion to salaries of $4,900 or more.

12. Vacation allowances are liberal, 30 full working days with pay being given in some branches of the service; and, in addition, 30 days' sick leave, if needed; * * *

13. Congenial hours are the lot of the government employees, nowhere more than eight hours a day being required.

14. Paramount Institute—Civil Service Specialists.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not herein set out the respondent represents:

1. That the Civil Service Commission holds examinations for all types of positions at frequent intervals from year to year, and especially for those for which respondent offers instruction.

2. That Civil Service employees are never discharged or deprived of their various positions with the Government of the United States except for misconduct or gross inefficiency.

3. That efficient Civil Service employees of the Government of the United States are certain to obtain promotion in position and advancement in salary.

4. That under normal and ordinary conditions and circumstances most persons desirous of obtaining a Civil Service status by examination must have special coaching for said examination of the kind offered by respondent.

5. That persons passing a Civil Service examination with a high rating are certain of obtaining a position with the Government of the United States and are certain of obtaining such a position within a short time after passing said examination.

6. That respondent in the conduct of his said business is in constant touch with said Civil Service Commission and its examiners, and has advance and inside information concerning Civil Service examinations.

7. That persons between the ages of 23 and 45 years may become inspectors of customs if otherwise qualified.

8. That appointments to the position of Immigrant Inspector with the United States Government are ordinarily given to persons who have passed Civil Service examinations appropriate for that position.

9. That persons who pass a Civil Service examination as Post Office clerks and city mail carriers are eligible for appointment to regular positions paying $1,700 a year with increases of $100 a year for 5 years without first serving as substitutes.

10. That employees of the Post Office Department enter upon their duties in such positions at salaries of $1,700, $1,800, $1,900, and $2,600.

11. That some employees of the United States Government working in Civil positions are allowed 30 days annual leave.

12. That no employees of the United States Government are required to work more than eight hours a day.

13. That respondent is a specialist in matters relating to the Civil Service of the Government of the United States, and that he has a background of Civil Service experience in the United States Government.

PAR. 5. In truth and in fact there are many types of positions, including some of those in regard to which respondent offers instruction, for which civil service examinations are held only at infrequent intervals, many years sometimes elapsing between such examinations; many civil service employees are discharged for reasons other than inefficiency or misconduct, as for example, insufficient appropriations; efficient civil service employees of the United States Government are not certain to obtain promotion in position or advancement in salary; under normal and ordinary conditions and circumstances persons wishing to pass civil service examinations, and who are qualified by prior general education and experience for the particular positions desired, do not require special coaching of the kind offered by respondent; a very small percentage of persons passing civil service examinations have had such special coaching for the examinations passed; the instruction offered by respondent is not of the kind to prepare students for the positions sought and it is of little value to them unless they are otherwise qualified by prior education and experience; persons passing a civil service examination with a high rating are not certain of obtaining a position at an early date or at all; the respondent is not constantly or otherwise in touch with the Civil Service Commission or its examiners, except as a casual correspondent, and has no advance information concerning civil service examinations; the age limits for inspectors of customs are 21 and 36 years; appointments to the position of immigrant inspector are and have been for a number of years made on other tests and qualifications than the passing of a civil service examination; civil service examinations for the position of immigration inspector have not been given for more than 6 years, and such positions have been filled by appointment and by promotion within the department; the salaries indicated by respondent for post office clerks and city mail carriers are those which are paid only after said employees have served as substitutes, in many instances for a number of years; appointments to positions in the Post Office Department are made at a salary of $1,700 only after the employee has served as a substitute, and no appointments

are made at salaries of $1,800, $1,900, or $2,600, such salaries being the result of promotion; 26 days is the maximum annual leave granted to civil service employees of the United States Government; some employees of the Government of the United States are required to work more than 8 hours a day; respondent is not a specialist in matters relating to the civil service of the United States and has not had a background of civil service experience in the United States Government.

PAR. 6. The name, Paramount Institute, under which respondent conducts his said business, is misleading in that it implies and serves as a representation to prospective students that respondent conducts an institution of learning with a staff of competent, experienced and qualified educators and that his school is a large and extensive institution offering training and instruction in philosophy, art, science, and other learned subjects. In truth and in fact respondent offers only one course of study and instruction which is substantially the same regardless of the civil service examination for which his said students wish to prepare; respondent's said school is not a large or extensive institution. Respondent has only one employee, a stenographer, in addition to a limited number of salesmen employed in the past as heretofore alleged; respondent in the conduct of his said school does not offer training or instruction in philosophy, art, science, or other learned subjects. Neither respondent nor any of his employees is a competent, experienced or qualified educator or teacher. No basic or thorough or complete instruction is given in any subject of learning. Respondent's school is not an institution of learning in any accurate sense. The method of instruction consists in the mere mailing out of previously prepared mimeographed or printed sheets and the grading of papers by means of a key or prepared answer sheets.

PAR. 7. In the course and conduct of his said business as aforesaid, respondent, in the advertising folder circulated to prospective students as previously referred to, has made and now makes the following statement and representation:

Operated in strict compliance with the Laws and Regulations of the Federal Trade Commission.

Through said statement respondent represents or implies that the method used in the sale of said course of study and instruction and the representations made in connection therewith are all in conformity to the Federal Trade Commission Act and the decisions of the courts and the orders of the Federal Trade Commission thereunder, and that such methods and representations made in connection therewith conform to the Trade Practice Rules of the Federal Trade Commission relating to the line of business of which respondent's said school is a part.

Through said statement it is further represented or implied that the Federal Trade Commission has approved respondent's methods and the representations used in connection therewith and that the respondent has permission of the Federal Trade Commission to use said statement in promoting the sale of said course of study and instruction.

In truth and in fact the methods and representations used by respondent in the conduct of said business as specified herein are not in conformity to the Federal Trade Commission Act or the decisions of the courts and the orders of said Commission thereunder nor are they in conformity to the Trade Practice Rules of the line of business of which respondent's school is a part. The Federal Trade Commission has not approved respondent's methods or the representations used in connection with such business, and respondent does not have the Commission's permission to use said statement or any other statement in connection with the promotion of the sale of his said course of study and instruction.

PAR. 8. In the course and conduct of his said business as aforesaid, respondent has represented and now represents to prospective purchasers of his said course of study and instruction that the price at which said course is and has been offered to wit, $49.50 cash or $59.50 on deferred payments is a special price for the course and that the regular price thereof has been $125. Many of such special price offers have been made to recent high school graduates to whom the further representation has been made that said special price has been offered to them because of high scholarship standing or because of some other means of determining their selection as recipients of such special offer.

In truth and in fact, the regular and usual price of respondent's said course of study and instruction is and has been $49.50 cash or $59.50 on deferred payments. With but few exceptions, all persons who have enrolled for instruction in respondent's said school have contracted for the course at not to exceed $49.50 cash or $59.50 on the deferred payment plan. The price of $125 for said course is purely fictitious and no student is now required to contract for the course at that price. During the entire time respondent has conducted said business only a few students have been enrolled at that price. Said price of $49.50 cash or $59.50 on the deferred-payment plan is not given nor has it been given because of high scholarship or other mark of merit or because of special selection, but has been given to all who could be induced to contract for the course regardless of such special qualifications or selection.

PAR. 9. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of his said course of study and instruction has had, and now has, 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 respondent's said course of study and instruction on account thereof.

PAR. 10. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 1st day of February 1940, issued and on the 16th day of April 1940, served its complaint in this proceeding upon respondent D. Victor Wallace, an individual trading as Paramount Institute, charging him with the use of 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 May 29, 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 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, D. Victor Wallace, is an individual trading as Paramount Institute and having his office and principal place of business at 1095 Market Street, San Francisco, Calif.

PAR. 2. Said respondent, D. Victor Wallace, is now and for more than 3 years last past has been engaged, under the name and style of Paramount Institute, in the sale and distribution in commerce among and between the various States of the United States of a course of study and instruction intended for preparing students thereof for examinations for various civil service positions under the United States Government, which said course of study and instruction is pursued by correspondence through the medium of the United States mails. Respondent, in the course and conduct of said business, caused and does now cause said course of study and instruction to be transported from his said place of business in California to the purchasers thereof located in vadious States of the United States other than the State of California.

PAR. 3. Respondent, in the course and conduct of said business as aforesaid, through personal solicitation and through the solicitation of agents employed by him for that purpose, has made and does make many misleading representations concerning his said course of study and instruction to prospective students located in various States of the United States. As a part of said solicitation, whether made by respondent or his said agents, respondent has distributed and does distribute to said prospective students in various States of the United States a certain advertising folder or pamphlet designed and intended to induce said prospective students to purchase his said course of study and instruction, which said folder or pamphlet contains misleading representations and statements concerning said course of study and instruction, concerning respondent's said business, and concerning the civil service of the Government of the United States. Among and typical of said representations and statements are the following:

1. Examinations are held at frequent intervals from year to year.

2. Regardless of outside conditions, the Civil Service employee's position is absolutely sure and certain. Downright inefficiency or gross misconduct are the only things that can bring about his discharge.

3. Under the Civil Service system, efficiency soon makes its presence felt and attracts the attention of the men "higher up." Promotion in position and advancement in salary are the inevitable results.

4. To pass a Civil Service examination, one should be coached along the proper lines.

5. A high rating means an early appointment.

6. Our coaching courses are kept parallel with recent examinations and are at all times up-to-date, giving the student just what is required, and in the manner it is presented by the examiners.

7. Our students are notified by us just as soon as an examination is announced, as we are in constant touch with the Civil Service Commission.

8. Inspector of Customs—Age limits 23 to 45. Starting salary $175.00 per month.

9. Immigrant Inspector—Age limits 21 to 45. Starting salary $175.00 per month. Applicants must be in good health and free from color blindness or other serious defects.

10. Post Office Clerk—City Mail Carrier * * * Salaries for clerks and carriers, $1,700 a year the first year ($141.83 a month), with increases of $100 a year for five years.

11. The United States Government is liberal with its employees. In the Post Office Department under which come such desirable positions as clerk, carrier, railway postal clerk, etc., appointments are made at $1,700, $1,800, $1,900, and $2,600 with opportunities for promotion to salaries of $4,900 or more.

12. Vacation allowances are liberal, 30 full working days with pay being given in some branches of the service; and, in addition, 30 days' sick leave, if needed; * * *

13. Congenial hours are the lot of the government employees, nowhere more than eight hours a day being required.

14. Paramount Institute—Civil Service Specialists.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not herein set out, the respondent represents:

1. That the Civil Service Commission holds examinations for all types of positions at frequent intervals from year to year, and especially for those for which respondent offers instruction.

2. That Civil Service employees are never discharged or deprived of their various positions with the Government of the United States except for misconduct or gross inefficiency.

3. That efficient Civil Service employees of the Government of the United States are certain to obtain promotion in position and advancement in salary.

4. That under normal and ordinary conditions and circumstances most persons desirous of obtaining a Civil Service status by examination must have special coaching for said examination of the kind offered by respondent.

5. That persons passing a Civil Service examination with a high rating are certain of obtaining a position with the Government of the United States and are certain of obtaining such a position within a short time after passing said examination.

6. That respondent in the conduct of his said business is in constant touch with said Civil Service Commission and its examiners, and has advance and inside information concerning Civil Service examinations.

7. That persons between the ages of 23 and 45 years may become inspectors of customs if otherwise qualified.

8. That appointments to the position of Immigrant Inspector with the United States Government are ordinarily given to persons who have passed Civil Service examinations appropriate for that position.

9. That persons who pass a Civil Service examination as Post Office clerks and city mail carriers are eligible for appointment to regular positions paying $1,700 a year with increases of $100 a year for five years without first serving as substitutes.

10. That employees of the Post Office Department enter upon their duties in such positions at salaries of $1,700, $1,800, $1,900, and $2,600.

11. That some employees of the United States Government working in Civil Service positions are allowed 30 days annual leave.

12. That no employees of the United States Government are required to work more than eight hours a day.

13. That respondent is a specialist in matters relating to the Civil Service of the Government of the United States, and that he has a background of Civil Service experience in the United States Government.

PAR. 5. In truth and in fact there are many types of positions, including some of those in regard to which respondent offers instruction, for which civil service examinations are held only at infrequent intervals, many years sometimes elapsing between such examinations; many civil service employees are discharged for reasons other than inefficiency or misconduct as, for example, insufficient appropriations; efficient civil service employees of the United States Government are not certain to obtain promotion in position or advancement in salary;

under normal and ordinary conditions and circumstances persons wishing to pass civil service examinations, and who are qualified by prior general education and experience for the particular positions desired, do not require special coaching of the kind offered by respondent; a very small percentage of persons passing civil service examinations have had such special coaching for the examinations passed; the instruction offered by respondent is not of the kind to prepare students for the positions sought and it is of little value to them unless they are otherwise qualified by prior education and experience; persons passing a civil service examination with a high rating are not certain of obtaining a position at an early date or at all; the respondent is not constantly or otherwise in touch with the Civil Service Commission or its examiners, except as a casual correspondent, and has no advance information concerning civil service examinations; the age limits for inspectors of customs are 21 and 36 years; appointments to the position of immigrant inspector are and have been for a number of years made on other tests and qualifications than the passing of a civil service examination; civil service examinations for the position of immigration inspector have not been given for more than 6 years, and such positions have been filled by appointment and by promotion within the departments; the salaries indicated by respondent for post office clerks and city mail carriers are those which are paid only after said employees have served as substitutes, in many instances for a number of years; appointments to positions in the Post Office Department are made at a salary of $1,700 only after the employee has served as a substitute, and no appointments are made at salaries of $1,800, $1,900, or $2,600, such salaries being the result of promotion; 26 days is the maximum annual leave granted to civil service employees of the United States Government; some employees of the Government of the United States are required to work more than 8 hours a day; respondent is not a specialist in matters relating to the civil service of the United States and has not had a background of civil service experience in the United States Government.

PAR. 6. The name, Paramount Institute, under which respondent conducts his said business, is misleading in that it implies and serves as a representation to prospective students that respondent conducts an institution of learning with a staff of competent, experienced and qualified educators and that his school is a large and extensive institution offering training and instruction in philosophy, art, science, and other learned subjects. In truth and in fact respondent offers only one course of study and instruction which is substantially the same regard-

less of the civil service examination for which his said students wish to prepare; respondent's said school is not a large or extensive institution. Respondent has only one employee, a stenographer, in addition to a limited number of salesmen employed in the past as heretofore alleged; respondent in the conduct of his said school does not offer training or instruction in philosophy, art, science, or other learned subjects. Neither respondent nor any of his employees is a competent, experienced or qualified educator or teacher. No basic or thorough or complete instruction is given in any subject of learning. Respondent's school is not an institution of learning in any accurate sense. The method of instruction consists in the mere mailing out of previously prepared mimeographed or printed sheets and the grading of papers by means of a key or prepared answer sheets.

PAR. 7. In the course and conduct of his said business as aforesaid, respondent, in the advertising folder circulated to prospective students as previously referred to, has made and now makes the following statment and representation:

Operated in strict compliance with the Laws and Regulations of the Federal Trade Commission.

Through said statement respondent represents or implies that the method used in the sale of said course of study and instruction and the representations made in connection therewith are all in conformity to the Federal Trade Commission Act and the decisions of the Courts and the orders of the Federal Trade Commission thereunder, and that such methods and representations made in connection therewith conform to the Trade Practice Rules of the Federal Trade Commission relating to the line of business of which respondent's said school is a part. Through said statement it is further represented or implied that the Federal Trade Commission has approved respondent's methods and the representations used in connection therewith and that the respondent has permission of the Federal Trade Commission to use said statement in promoting the sale of said course of study and instruction.

In truth and in fact the methods and representations used by respondent in the conduct of said business as specified herein are not in conformity to the Federal Trade Commission Act or the decisions of the Courts and the orders of said Commission thereunder nor are they in conformity to the Trade Practice Rules of the line of business of which respondent's school is a part. The Federal Trade Commission has not approved respondent's methods or the representations used in connection with such business, and respondent does not have the Commission's permission to use said statement or any other statement

in connection with the promotion of the sale of his said course of study and instruction.

PAR. 8. In the course and conduct of his said business as aforesaid, respondent has represented and now represents to prospective purchasers of his said course of study and instruction that the price at which said course is and has been offered, to wit, $49.50 cash or $59.50 on deferred payments is a special price for the course and that the regular price thereof has been $125. Many of such special price offers have been made to recent high school graduates to whom the further representation has been made that said special price has been offered to them because of high scholarship standing or because of some other means of determining their selection as recipients of such special offer.

In truth and in fact, the regular and usual price of respondent's said course of study and instruction is and has been $49.50 or $59.50 on deferred payments. With but few exceptions, all persons who have enrolled for instruction in respondent's said school have contracted for the course at not to exceed $49.50 cash or $59.50 on the deferred payment plan. The price of $125 for said course is purely fictitous and no student is now required to contract for the course at that price. During the entire time respondent has conducted said business only a few students have been enrolled at that price. Said price of $49.50 cash or $59.50 on the deferred payment plan is not given nor has it been given because of high scholarship or other mark of merit or because of special selection, but has been given to all who could be induced to contract for the course regardless of such special qualifications or selection.

PAR. 9. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of his said course of study and instruction has had, and now has, 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 respondent's said course of study and instruction on account thereof.

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, as commerce is defined in the Federal Trade Commission Act within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and 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, D. Victor Wallace, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of courses of study and instruction intended for preparing students thereof for examinations for various civil service positions under the United States Government, and in connection with the offering for sale, sale, and distribution of any other course or courses of instruction in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that success in a civil service examination requires special coaching.

2. Representing that respondent has any opportunity for contact, not available to any member of the public, with the United States Civil Service Commission or its employees, or that respondent has advance or "inside" information concerning civil service examinations, or that respondent offers any preparation for civil service examinations other than a coaching service.

3. Representing that respondent is a specialist in matters relating to the civil service of the United States Government, or that he has special qualifications in relation to the civil service or examinations therefor.

4. Representing that respondent's general business or sales methods have the approval of the Federal Trade Commission or are in conformity with any rules or regulations issued by such Commission.

5. Representing that the price regularly and customarily charged for respondent's courses of study and instruction is a special or reduced price, or is anything other than the regular price for such courses.

6. Representing that respondent's courses of study are being offered to a particular prospect at a special or reduced price because of the prospect's high scholastic standing or for any other purported reason when such price is in fact the regular and customary price for such courses.

7. Representing that persons who pass the civil service examination for post office clerks or city mail carriers are eligible for appointment without previously serving as substitutes for a period of time.

8. Misrepresenting the frequency with which, or the time at which, the United States Civil Service Commission holds, or will hold, examinations.

9. Misrepresenting the prospects for obtaining a position under civil service after having passed an examination, or the salary at which appointees enter into their positions, or the age limits for employees in civil service positions, or the prospects for promotion or advancement in salary of civil service employees, or the permanency of civil service positions.

10. Misrepresenting the number or classification of positions in the United States Government service which are ordinarily filled through civil service examinations.

11. Misrepresenting the number of working hours required of employees of the Government or the length of the period of annual leave granted such employees.

12. Using the term "Institute" as part of the trade or corporate name under which respondent's business of selling courses of instruction is conducted, or using the term "Institute" to in any way describe or refer to respondent's 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

GREAT BUCKEYE CANDIES, INC.

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

Docket 4015. Complaint, Feb. 5, 1940—Decision, June 26, 1940

Where a corporation engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers, and included (1) number of penny candy, all day suckers, upon sticks of some of which, embedded in said pieces of candy, appeared word "Bullet," for sale and distribution to such penny purchasers under a plan by which chance purchaser securing stick with word "Bullet" thereon was entitled to and received an additional piece of candy without additional cost, and (2) various other assortments which were so packed and assembled that sales thereof were to be made to purchasing public by means of game of chance, gift enterprise, or lottery scheme and under sales plan or method substantially similar to that above described and varying therefrom in detail only—

Sold said assortments to dealers and to retailers by whom, as direct or indirect purchasers thereof, such assortments were exposed and sold to purchasing public in accordance with aforesaid sales plan, under which additional pieces of candy worth one cent each were distributed to purchasing public wholly by lot or chance, and involving aforesaid game of chance or sale of a chance to procure additional piece of candy without additional cost, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its candy in accordance with sales plan or method above set forth, contrary to the established policy of the United States Government, and in violation of criminal laws, and in competition with many who are willing to adopt and use said or any method 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 result that many persons were attracted by its said method and by element of chance involved in sale of said merchandise as above described and were thereby induced to buy and sell its said product in preference to that offered and sold by its said 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 diverting unfairly trade in commerce to it from its competitors aforesaid who do not use such or equivalent sales plan or method; 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. 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 Great Buckeye Candies, 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 Great Buckeye Candies, Inc., is a corporation organized and doing business under the laws of the State of Ohio with its principal office and place of business located at 567 East South Street, Akron, Ohio. Respondent is now and for more than one year last past has been engaged in the manufacture of candy 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 candy, when sold, to be shipped or transported from its aforesaid place of business in the State of Ohio to purchasers thereof in 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 one year last past has been a course of trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other corporations and with 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 candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy 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 pieces of candy commonly known as all-day suckers. Each of said pieces of candy has imbedded therein a wooden stick or handle. On some of said sticks there appears the word "Bullet" and the ends of said sticks on which such word appears are imbedded in said pieces of candy. Sales are one cent each, and each purchaser is entitled to and receives one piece of candy. Each purchaser who secures a piece of candy containing a

stick with the word "Bullet" thereon is entitled to and receives an additional piece of candy without additional cost. The word "Bullet" is effectively concealed from purchasers and prospective purchasers until the piece of candy purchased has been consumed or removed from said stick. Each of said pieces of candy is worth one cent. The additional pieces of candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of candy so packed and assembled that the sales of such candy are to be made to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method employed in connection with each of said assortments is substantially the same as the sales plan or method hereinabove described, varying 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 a means of conducting lotteries in the sale of its candy in accordance with the sales plan or method hereinabove set forth. The use by respondent of said method in the sale of its candy and the sale of such candy by and through the use thereof, and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an additional piece of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with the respondent as above alleged are unwilling to adopt and use said method or any method involving the use of a game of chance or the sale of a chance to win something by a 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 of said merchandise in the manner above alleged, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by the respondent, because of said game of chance, has the tendency and capacity to and does unfairly divert trade 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 sales plan or method. As a result thereof,

substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. The aforesaid acts and practices of 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, Great Buckeye Candies, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Great Buckeye Candies, Inc., is a corporation organized and doing business under the laws of the State of Ohio, with its principal office and place of business located at 567 East South Street, Akron, Ohio. Respondent is now and for more than one year last past has been engaged in the manufacture of candy 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 candy, when sold, to be shipped or transported from its aforesaid place of business in the State of Ohio to purchasers thereof in 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 one year last past has been a course of

trade by said respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other corporations and with 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 candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy 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 pieces of candy commonly known as all day suckers. Each of said pieces of candy has imbedded therein a wooden stick or handle. On some of said sticks there appears the word "Bullet" and the ends of said sticks on which such word appears are imbedded in said pieces of candy. Sales are one cent each, and each purchaser is entitled to and receives one piece of candy. Each purchaser who secures a piece of candy containing a stick with the word "Bullet" thereon is entitled to and receives an additional piece of candy without additional cost. The word "Bullet" is effectively concealed from purchasers and prospective purchasers until the piece of candy purchased has been consumed or removed from said stick. Each of said pieces of candy is worth one cent. The additional pieces of said candy are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of candy so packed and assembled that the sales of such candy are to be made to the purchasing public by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method employed in connection with each of said assortments is substantially the same as the sales plan or method hereinabove described, varying 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 a means of conducting lotteries in the sale of its candy in accordance with the sales plan or method hereinabove described. The use by respondent of said method in the sale of its candy and the sale of such candy by and through the use thereof, and by the aid of said method, is a practice

of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure an additional piece of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with the respondent, as above alleged, are unwilling to adopt and use said method or any method involving the use of a game of chance or the sale of a chance to win something by a 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 of said merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by 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 an equivalent sales plan or method. As a result thereof, substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, and the substitute answer of respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further 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, Great Buckeye Candies, 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 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 assortments of any merchandise so packed and assembled that sales of said merchandise to the general public are to be made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others assortments of any merchandise, either together with lottery devices or separately, which said lottery devices are to be used, or may be used, in selling or distributing said merchandise to the general public.

3. 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

WILLIAM W. KELSO, TRADING AS NORTHWESTERN PRODUCTS COMPANY AND NORTHWESTERN HEALTH CLINIC

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

Docket 4066. Complaint, Mar. 18, 1940—Decision, June 26, 1940

Where an individual engaged in sale and distribution of medicinal preparation designated "Periodic Relief Pills" and recommended as remedy for delayed menstruation, to purchasers in various other States and in the District of Columbia; in advertisements of his said product which he disseminated and caused to be disseminated through the mails, by insertions in newspapers and periodicals of general circulation, and in circulars and other printed or written matter distributed among and between the various States, and by other means in commerce, and which were intended and likely to induce purchase of said product—

(*a*) Represented, directly and indirectly, that said preparation was a cure or remedy for delayed menstruation and constituted a competent and effective treatment therefor, and possessed therapeutic value with respect thereto, and that it was safe and harmless, facts being it was not a cure or remedy for such condition, did not constitute competent or effective treatment therefor or possess any therapeutic value with respect thereto, and said preparation was not safe and harmless, in that it contained extract cotton root bark, extract black hellebore, aloes, oil savin, and ergotin in quantities sufficient to cause serious and irreparable injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual, and use thereof might result in gastro-intestinal disturbances, and, where used to interfere with normal course of pregnancy, might result in uterine infection and even lead to condition known as septicemia or blood poisoning, and use thereof might produce severe circulatory condition, often with poisonous effects upon the human system, and tending to cause abortion in some instances, and might result in severe toxic conditions leading possibly either to loss of limbs or other serious and irreparable injury to health; and

(*b*) Failed to reveal, in advertisements disseminated by him as aforesaid, that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual might result in serious or irreparable injury to health of user;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false and misleading representations were true, and into purchase of substantial quantity of his said product:

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

Mr. William L. Taggart 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 W. Kelso, individually, and trading as Northwestern Products Co., and as Northwestern Health Clinic, 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, William W. Kelso, is an individual trading as Northwestern Products Co., and Northwestern Health Clinic, with his office and principal place of business located at 611½ Union Street, Seattle, Wash. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a medicinal preparation designated "Periodic Relief Pills," recommended as a remedy for delayed menstruation.

In the course and conduct of his business the respondent causes his said preparation, when sold, to be transported from his place of business in the State of Washington to the purchasers thereof located in various other States of the United States and in the Districtof Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in his said product 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 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 insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product; and has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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, with respect to said product, are the following:

LADIES WITH DELAYED PERIODS: Don't worry or be uncertain when Nature fails you. You can obtain in the privacy of your home our Time-Tried "PERIODIC RELIEF PILLS." Harmless, Reliable and Efficient. Women report the pill form more CONVENIENT TO TAKE with no pain or ill after effects. Relieves most unnatural, stubborn Delayed periods immediately with no interference with Home or Social duties. Special Treatment, $2.00 Postpaid, in plain sealed wrapper. THERE IS NO SUBSTITUTE FOR SAFETY. Order today and be convinced. NORTHWESTERN PRODUCTS COMPANY, P. O. BOX 674, SEATTLE, WASH.

PAR. 3. Through the use of the representations hereinabove set forth, and others of similar import not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of his said preparation, respondent has represented, and does now represent, directly and indirectly, that said preparation is a cure or remedy for delayed menstruation; that said preparation constitutes a competent and effective treatment for delayed menstruation and possesses therapeutic value with respect thereto, and that said preparation is safe and harmless.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for delayed menstruation, nor does it constitute a competent or effective treatment therefor or possess any therapeutic value with respect thereto. Moreover, said preparation is not safe and harmless, in that it contains extract cotton root bark, extract black hellebore, aloes, oil savin, and ergotin in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation 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, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning.

The use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea, and

in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

PAR. 5. In addition to the representations herein set forth the respondent is also engaged in the dissemination of false advertisements in that said advertisements fail to reveal that the use of said preparation 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.

PAR. 6. The use by the respondent of the foregoing false and misleading representations with respect to his said product 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 and misleading representations are true, and into the purchase of a substantial quantity of respondent's product.

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 March 18, 1940, issued, and on March 23, 1940, served, its complaint in this proceeding upon William W. Kelso, individually, and trading as Northwestern Products Co., and as Northwestern Health Clinic, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 15, 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, William W. Kelso, is an individual trading as Northwestern Products Co., and Northwestern Health Clinic, with his office and principal place of business located at 611½

Union Street, Seattle, Wash. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of a medicinal preparation designated "Periodic Relief Pills," recommended as a remedy for delayed menstruation.

In the course and conduct of his business the respondent causes his said preparation, when sold, to be transported from his 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 his said product 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 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 insertions in newspapers and periodicals having a general circulation, and also in circulars and other printed or written matter all of which are distributed in commerce among and between the various States of the United States, and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of said product; and has disseminated, and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning said product by various means for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of 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, with respect to said product, are the following:

LADIES WITH DELAYED PERIODS: Don't worry or be uncertain when Nature fails you. You can obtain in the privacy of your home our Time-Tried "PERIODIC RELIEF PILLS." Harmless, Reliable and Efficient. Women report the pill form more CONVENIENT TO TAKE with no pain or ill after effects. Relieves most unnatural, stubborn Delayed periods immediately with no interference with Home or Social duties. Special Treatment, $2.00 Postpaid, in plain sealed wrapper. THERE IS NO SUBSTITUTE FOR SAFETY. Order today and be convinced. NORTHWESTERN PRODUCTS COMPANY, P. O. BOX 674, SEATTLE, WASH.

PAR. 3. Through the use of the representations hereinabove set forth, and others of similar import not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of his said preparation, respondent has represented, and does now represent, directly and indirectly, that said

preparation is a cure or remedy for delayed menstruation; that said preparation constitutes a competent and effective treatment for delayed menstruation and possesses therapeutic value with respect thereto, and that said preparation is safe and harmless.

PAR. 4. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for delayed menstruation, nor does it constitute a competent or effective treatment therefor or possess any therapeutic value with respect thereto. Moreover, said preparation is not safe and harmless, in that it contains extract cotton root bark, extract black hellebore, aloes, oil savin, and ergotin in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation 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, and in those cases where said preparation is used to interfere with the normal course of pregnancy may result in uterine infection with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning.

The use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea, and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

PAR. 5. In addition to the representations herein set forth the respondent is also engaged in the dissemination of false advertisements in that said advertisements fail to reveal that the use of said preparation 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.

PAR. 6. The use by the respondent of the foregoing false and misleading representations with respect to his said product 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 and misleading representations are true, and into the purchase of a substantial quantity of respondent's product.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, William W. Kelso, individually and trading as Northwestern Products Co. and as Northwestern Health Clinic, 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, or distribution of his medicinal preparation designated "Periodic Relief Pills," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a cure or remedy for delayed menstruation or constitutes a competent or effective treatment therefor; or which advertisements fail to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 contain any of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

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

IN THE MATTER OF

POPULAR PUBLICATIONS, INC.

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

Docket 4077. Complaint, Mar. 30, 1940—Decision, June 26, 1940

Where a corporation engaged in sale and distribution of its "Birthstone Rings" jewelry, to purchasers in various other States and in the District of Columbia; in advertising circulars, letters, newspaper advertisements, and otherwise—

Represented that the stones contained in the rings sold by it as lucky birthstone rings were the real, or certain precious or semiprecious, stones, as understood by common acceptance, from word "birthstone," as identified with each month, and including such stones as garnet, amethyst, jasper or bloodstone (acquamarine), diamond or sapphire, emerald, agate, turquoise, carnelian, chrysolite, beryl, topaz, and ruby, through such statements, in advertisements referred to, as "YOUR BIRTHSTONE IS YOUR LUCKY CHARM," and "Garnet, for January, Amethyst for February, Acquamarine for March, and so all through the year, each month has its special birthstone," facts being representations and implications disseminated by it as above set forth were false and stones in the rings sold by it as "Lucky Birthstone Rings" were not the stones they were represented as being, but imitations thereof;

With effect, through use of aforesaid false and misleading statements and representations, disseminated as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true, and of inducing substantial portion of said public, because of such belief, to purchase its said products:

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. Jesse D. Kash for the Commission.

Swiger, King & Chambers, 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 Popular Publications, 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. The respondent, Popular Publications, Inc., is a corporation organized, existing, and doing business under and by virtue

of the laws of the State of New York, with its office and principal place of business at 205 East Forty-second Street, in the city of New York, State of New York.

PAR. 2. In the course and conduct of its business respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of certain jewelry designated "birthstone rings."

By common acceptance, a certain precious stone or semi-precious stone (in some cases alternative stones), is identified with each month of the year as the birthstone of that month, such stones being garnet, amethyst, jasper or bloodstone (aquamarine), diamond or sapphire, emerald, agate, turquoise, carnelian, chrysolite, beryl, topaz, and ruby.

Respondent causes its jewelry, when sold by it to be transported from its aforesaid 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.

PAR. 3. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said jewelry 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 aforesaid business and for the purpose of inducing the purchase of said birthstone rings, respondent by means of advertising circulars, letters, newspaper advertisements, and by other means, has made false and misleading representations concerning its said product.

Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid, are the following:

YOUR BIRTHSTONE IS YOUR LUCKY CHARM.

Garnet for January, Amethyst for February, Aquamarine for March, and so all through the year, each month has its special birthstone.

PAR. 5. Through the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents that the stones contained in the rings sold by it as lucky birthstone rings are respectively the real stones named in paragraph 2 hereof.

PAR. 6. The aforesaid representations and implications used and disseminated by the respondent in the matter above described are false. In truth and in fact the stones in the rings sold by the respondent as "Lucky Birthstone Rings" are not the stones they are represented to be but are imitations of same.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations 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 and representa-

tions are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said product.

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 March 30, 1940, issued, and on April 1, 1940, served its complaint in this porceeding upon respondent, Popular Publications, 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 May 23, 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 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 Popular Publications, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 205 East Forty-second Street, in the city of New York, State of New York.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the sale and distribution of certain jewelry designated "Birthstone Rings."

By common acceptance a certain precious stone or semiprecious stone (in some cases alternative stones), is identified with each month of the year as the birthstone of that month, such stones being garnet, amethyst, jasper or bloodstone (acquamarine), diamond or sapphire, emerald, agate, turquoise, carnelian, chrysolite, beryl, topaz, and ruby.

Respondent causes its jewelry when sold by it to be transported from its aforesaid 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.

PAR. 3. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said jewelry 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 aforesaid business and for the purpose of inducing the purchase of said birthstone rings, respondent, by means of advertising circulars, letters, newspaper advertisements, and by other means, has made false and misleading representations concerning its said product. Among and typical of the representations contained in said false advertisements so used and disseminated as aforesaid are the following:

YOUR BIRTHSTONE IS YOUR LUCKY CHARM

Garnet for January, Amethyst for February, Acquamarine for March, and so all through the year, each month has its special birthstone.

PAR. 5. Through the use of the representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents that the stones contained in the rings sold by it as lucky birthstone rings are respectively the real stones named in paragraph 2 hereof.

PAR. 6. The aforesaid representations and implications used and disseminated by the respondent in the manner above described are false. In truth and in fact the stones in the rings sold by the respondent as "Lucky Birthstone Rings" are not the stones they are represented to be but are imitations of same.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations 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 and representations are true and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's said products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material

allegations of fact set forth in said complaint, 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, Popular Publications, 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 rings in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication that the rings offered for sale and sold by respondent are set with precious or semiprecious stones identified as the birthstones for the respective months of the year.

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

OAK LANE 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 4099. Complaint, Apr. 23, 1940—Decision, June 26, 1940

Where a corporation engaged in sale and distribution of certain assortments of candy and peanuts, which were so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers, and included (1) number of pieces of candy and push card for use in sale and distribution thereof under a plan in accordance with which chance selection of certain numbers from card entitled penny purchaser to 20, 10, 5, 3, or 2 pieces of candy as case might be, and under which last purchaser in each of first 3 sections into which card was divided was entitled to and received 5 pieces, and purchaser pushing last number on card was entitled and received 15 pieces, and those securing other numbers were entitled to and received 1 piece only, and (2) various other assortments of said product, together with punchboards and push cards and involving methods or sales plans like or similar to that above described and varying therefrom in detail only—

Sold said assortments to dealers, and to retailers, by whom as direct and indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with aforesaid sales plan, under which persons selecting many of the numbers designated, as above indicated, received pieces of candy which had retail values greatly in excess of amounts to be paid therefor, and under which such additional pieces were distributed to persons selecting such designated numbers wholly by lot or chance, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with sales plans or methods as above set forth, contrary to the established public policy of the United States Government, and in violation of criminal law, and in competition with many who are unwilling to adopt and use said or any sales plans or methods 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 dealers in, and ultimate purchasers of, said products were attracted by its said sales plan or method and manner of packing such products and by element of chance involved in sale thereof as above described and were thereby induced to purchase said products so packed and sold by it in preference to like or similar ones offered or sold by said 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 said competitors who do not use same 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 in commerce and unfair and deceptive acts and practices therein.

Mr. D. C. Daniel for the Commission.
Mr. Martin B. Ebbert, of York, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Oak Lane Candy Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Oak Lane Candy 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 Pine and Oak Lane Streets, York, Pa. Respondent is now, and for more than 1 year last past has been engaged in the sale and distribution of candy and peanuts to dealers. Respondent causes and has caused its said products, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in various other States of the United States at their respective points of location. There is now, and for more than one year last past has been, a course of trade by said respondent in such products in commerce between and among various States of the United States. 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 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 dealers certain assortments of said candy and peanuts so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said products are sold and distributed to the consumers thereof. One of said assortments consists of a number of pieces of candy together with a device commonly called a push card. Such assortment is sold and distributed to the purchasing public in substantially the following manner: Said push card is divided into 4 sections and each

section contains a number of partially perforated discs, within each of which there is a number. Sales are 1 cent each. The card bears legends informing purchasers and prospective purchasers that the person pushing a designated number is entitled to, and receives 20 pieces of candy; persons pushing other designated numbers are entitled to, and receive 10 pieces of candy; persons pushing other designated numbers are entitled to, and receive 5 pieces of candy; persons pushing other designated numbers are entitled to, and receive 3 pieces of candy; persons pushing other designated numbers are entitled to, and receive 2 pieces of candy. The purchaser of each of the remaining numbers is entitled to, and receives 1 piece of candy; the last purchaser in each of the first three of said sections is entitled to, and receives 5 pieces of candy; and the purchaser pushing the last number on said card is entitled to, and receives 15 pieces of candy. Persons selecting said designated numbers receives pieces of said candy which have retail values greatly in excess of the amounts to be paid therefor. The said numbers are effectively concealed from purchasers and prospective purchasers until the said disks have been selected and removed from said card. The said additional pieces of candy distributed to the persons selecting said designated numbers are thus distributed to the purchasers thereof wholly by lot or chance.

The respondent sells and distributes various assortments of said products together with punchboards and push cards but the methods or plans used in the sale and distribution of each of said assortments, is like or similar to the one hereinabove described varying only in detail.

PAR. 3. Retailers who purchase respondent's said products directly or indirectly, expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of others, the means of conducting lotteries in the sale of its products 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 products and the sale of said products 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 the established public policy of the Government of the United States and in violation of criminal law.

PAR. 4. The sale of said products to the purchasing public in the manner above alleged involves a game of chance or a sale of a chance to procure said products at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute products in competition with the respondent, as above

alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or a sale of a chance to win something by a chance, or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, said products are attracted by respondent's sales plans or methods and the manner of packing said products and by the element of chance involved in the sale thereof, in the manner above described, and are thereby induced to purchase said products so packed and sold by respondent, in preference to like or similar products offered for sale or 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 various States of the United States.

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 receptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 23, 1940, issued, and thereafter served, its complaint in this proceeding upon respondent, Oak Lane Candy 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 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, Oak Lane Candy 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 Pine and Oak Lane Streets, York, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of candy and peanuts to dealers. Respondent causes and has caused its said products when sold to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in various States of the United States 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 products in commerce between and among various States of the United States. 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 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 dealers certain assortments of said candy and peanuts so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said products are sold and distributed to the consumers thereof. One of said assortments consists of a number of pieces of candy together with a device commonly called a push card. Such assortment is sold and distributed to the purchasing public in substantially the following manner: Said push card is divided into four sections and each section contains a number of partially perforated disks, within each of which there is a number. Sales are 1 cent each. The card bears legends informing purchasers and prospective purchasers that the person pushing a designated number is entitled to, and receives, 20 pieces of candy; persons pushing other designated numbers are entitled to, and receive 10 pieces of candy; persons pushing other designated numbers are entitled to, and receive, 5 pieces of candy; persons pushing other designated numbers are entitled to, and receive, 3 pieces of candy; persons pushing other designated numbers are entitled to, and receive, 2 pieces of candy. The purchaser of each of the remaining numbers is entitled to, and receives, 1 piece of candy; the last purchaser in each of the first three of said sections is entitled to, and receives 5 pieces of candy; and the purchaser pushing the last number on said card is entitled to, and receives, 15 pieces of candy. Persons selecting many of said designated numbers receive pieces of said candy which have retail values greatly in excess of the amounts to be paid therefor. The said numbers are effectively concealed from

purchasers and prospective purchasers until the said discs have been selected and removed from said card. The said additional pieces of candy distributed to the persons selecting said designated numbers are thus distributed to the purchasers thereof wholly by lot or chance.

The respondent sells and distributes various assortments of said products, together with punchboards and push cards, but the methods or plans used in the sale and distribution of each of said assortments, is like or similar to the one hereinabove described, varying only in detail.

PAR. 3. Retailers who purchase respondent's said products directly or indirectly expose and sell the same to the purchasing public in accordance with the aforesaid sales plan. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of its products 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 products and the sale of said products 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 the established public policy of the Government of the United States and in violation of criminal law.

PAR. 4. The sale of said products to the purchasing public in the manner above described involves a game of chance or a sale of a chance to procure said products at prices much less than the normal retail prices thereof. 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 sales plans or methods or any sales plans or methods involving a game of chance or a sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, said products are attracted by respondent's sales plans or methods and the manner of packing said products and by the element of chance involved in the sale thereof, in the manner above described, and are thereby induced to purchase said products so packed and sold by respondent, in preference to like or similar products offered for sale or 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 various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusions that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Oak Lane 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 and peanuts or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales thereof 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 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 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 said candy and peanuts or any 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 and peanuts 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

GROVE 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 3445. Complaint, May 24, 1938—Decision, June 29, 1940

Where a corporation engaged in sale and distribution of its Pazo Ointment, as treatment for hemorrhoids, and of its Dr. Porter's Antiseptic Healing Oil, for variety of skin disorders, to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of similar medicinal preparations in commerce among the various States and in said District; in advertising its said products in newspapers and magazines, and pamphlets, circulars and otherwise—

(*a*) Represented or implied that said ointment would cure hemorrhoids in all cases, through statement "Effective treatment today for piles is to be had in Pazo Ointment";

Facts being treatment by any ointment such as said product cannot be effective in all cases or, at least, as a rule, rather than the exception, and cannot be efficacious except in being helpful in relieving symptoms through aid in alleviating pain by virtue of phenol contained therein, and through having generally soothing effect, many prescriptions found in prescription books generally recognized and used by medical profession in treatment of said condition or ailment contain same or similar ingredients as those found in its said ointment, and including, as an important one, phenol, which, together with other medication, will relieve mild conditions of hemorrhoids without necessity of resort to surgery, only effective treatment in many instances, or to other severe measures, and its said ointment constituted no more than a treatment for alleviation of minor rectal irritations accompanying piles, therapeutic value of which was limited to affording palliative relief in cases of simple hemorrhoids; and

(*b*) Represented that its said Antiseptic Healing Oil constituted an effective or standard treatment for skin diseases caused by infection, and an effective agent in the treatment of dandruff, falling hair, or diseases peculiar to the scalp, and that it would promote growth of hair and prevent baldness, and destroy parasites usually associated with dandruff and other diseases of scalp, through such statements, among others, as "Most scalp troubles involve a parasite of some kind—a living organism that causes infection with resulting itch, scales, crust, thin and falling hair. Here, at last, is a treatment that not only destroys the parasite but helps repair the damage done. * * * it works wonders in correcting scalp and skin troubles. Stops itch almost instantly. Softens and removes crust. Cleanses and stimulates the whole scalp, making it white and wholesome and promoting growth of new hair * * *," and such statements as "* * * not only destroys the parasites that cause many skin troubles but, at the same time, helps heal the sore and damaged skin" and "* * * an oil, which, of course, is not drying and an oil which is Both antiseptic and an aid to healing. * * * not only checks bacterial growth but at the same time increases the superficial blood supply to the local tissues and thereby promotes the natural healing process";

Facts being said oil would not be an effective treatment for sore, scaly scalp, bald patches, thin and falling hair, or for scalp troubles generally, statement that "Most scalp troubles involve a parasite of some kind" or that preparation is effective against parasites on the scalp, skin or feet is not in accord with medical knowledge, and fact of its being an antiseptic does not indicate that it is of any value against any type of parasitic organism, except some types of bacteria, itching in many instances is usually symptom of scabies, for which it is not effective treatment, skin troubles generally, and including foot sores, leg sores, boils, rash, broken-out skin, ringworm, eczema, and other similar disorders described in its advertisements, will not in all cases respond to treatment with said oil, and, while ingredients contained in said oil, including large proportion of linseed oil, will aid in alleviating itching of scalp and of normal skin conditions, they will not destroy parasites, and preparation in question would not promote growth of hair nor purify nor cleanse scalp;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations above set forth were true, and of inducing portion of said public, because of such erroneous and mistaken belief, to purchase its said medicinal preparations, and with result that trade was diverted unfairly to it from its competitiors who are likewise engaged in sale and distribution in commerce of similar preparations or other preparations intended for similar usage:

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

Mr. William L. Pencke for the Commission.

Small & Small, of St. Louis, Mo., and *Davies, Richberg, Beebe, Busick & Richardson*, 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 Grove Laboratories, 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 Grove Laboratories, Inc., is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal office and place of business at 2630 Pine Street, in the city of St. Louis, State of Missouri.

PAR. 2. Said respondent is now, and for more than one year 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 the District of Columbia. Said preparations are known as Pazo Ointment and Dr. Porter's Antiseptic Healing Oil and represented to be remedies for hemorrhoids

and a variety of skin diseases. Respondent causes said products, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located in a State or States of the United States other than the State of Missouri and in the District of Columbia.

There is now, and has been at all times herein mentioned, a course of trade in said medicinal products so sold and distributed by the respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, partnerships and firms engaged in the sale and distribution of similar medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. The respondent, Grove Laboratories, Inc., in connection with the sale and distribution of said medicinal products, and for the purpose of inducing the purchase thereof, makes certain representations as to their medicinal value and therapeutic effects in newspaper and magazine advertisements, pamphlets, circulars and otherwise, of which the following are typical examples:

Piles can take various forms—internal or external, itching or painful, bleeding or non-bleeding—but whatever form they take, they are a cause of misery and a danger.

A SCIENTIFIC FORMULA

Effective treatment today for Piles is to be had in Pazo Ointment. Pazo is a scientific treatment for this trouble of proven efficacy. Pazo gives quick relief. It stops pain and itching. It assures comfort, day and night * * *

Real treatment for the relief of distress due to Piles is to be had today in Pazo Ointment. Pazo almost instantly stops the pain and itching. It is effective because it is threefold in effect * * *

RELIEF!

Thousands upon thousands have used Pazo with success. Our files are filled with letters from men and women who say they never knew what it was to get real relief from the torture of Piles until they tried Pazo.

Pazo will give *you* relief, too! One trial will show you how unnecessary it is to go about distressed and embarrassed by Piles. All drug stores sell Pazo-in-Tubes and Pazo Suppositories, at small cost. Get either today and see how effective!

You get immediate and lasting relief with Pazo * * *

Pazo is the most wonderful preparation ever known for Piles.

Itching Sore Scaly

S C A L P

Dry Bald Patches Crust

Most scalp troubles involve a parasite of some kind—a living organism that causes infection with resulting itch, scales, crust, thin and falling hair. Here, at last, is a treatment that not only destroys the parasite but helps repair the damage done. It is Dr. Porter's Antiseptic Healing Oil and it works wonders in correcting scalp and skin troubles. Stops itch almost instantly. Softens and removes crust. Cleanses and stimulates the whole scalp, making it white and wholesome and promoting growth of new hair * * *

Itching Smarting Cracked

SKIN

Broken Out Peeling Scabby

For skin troubles—itch, cracking, smarting and scaling—there is nothing like Dr. Porter's Antiseptic Healing Oil. There may be fancier preparations but nothing that will do the work like this famous oil. It not only destroys the parasites that cause many skin troubles but, at the same time, helps heal the sore and damaged skin.

The most stubborn cases of itching and scaling skin that defy every other treatment usually yield to Dr. Porter's Antiseptic Healing Oil. Try it on your itching or broken out skin and see how effective it is * * *

In Dr. Porter's Antiseptic Healing Oil you have an oil, which, of course is not drying and an oil which is BOTH antiseptic and an aid to healing. In other words, it not only checks bacterial growth but at the same time increases the superficial blood supply to the local tissues and thereby promotes the natural healing process.

BURNS AND SCALDS

One of the first things you must do in case of a burn or scald is exclude the air. Dr. Porter's Antiseptic Healing Oil forms an oily film over the burned parts which keeps out the air. At the same time, it helps to keep the parts clean, relieves the pain and assists Nature in the healing process.

IVY AND OAK POISONING

Dr. Porter's Antiseptic Healing Oil soothes and aids healing of the irritated surfaces. The surface exposed to Poison Ivy or Poison Oak should be washed with strong soap. If the irritation has not actually become manifest it should be washed with laundry soap or gasoline before applying Dr. Porter's Antiseptic Healing Oil.

MINOR IRRITATION OF THE THROAT

Apply Dr. Porter's Antiseptic Healing Oil with atomizer or swab. It will help in healing the irritated membranes.

ITCHING OF SKIN IRRITATIONS

For itching due to eczema, psoriasis and skin irritations, Dr. Porter's Antiseptic Healing Oil is an ideal palliative. As an inhibitory antiseptic, it tends to check bacterial growth. As a soothing preparation it temporarily relieves pain and itching.

PAR. 5. All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products and their efficacy in use and to represent that: said Pazo Ointment (1) is an effective and scientific remedy in

the treatment of hemmorhoids regardless of their pathology, (2) its use insures instant relief from pain and (3) it is the best preparation on the market; said Dr. Porter's Antiseptic Healing Oil (1) is an effective agent in the treatment of dandruff, falling hair and diseases peculiar to the scalp, (2) is of value in destroying and inhibiting parasitic organisms and (3) is a remedy for a variety of infections of the skin.

PAR. 6. In truth and in fact, said statements and representations were and are false and misleading in that said Pazo Ointment is not an effective remedy in the treatment of all forms of hemorrhoids; it will not prevent or remove the cause of hemorrhoids, and hence will not give immediate and lasting relief in all cases; it is not the best preparation on the market, and does not constitute a scientific formula of proven efficacy. While said ointment may give temporary relief in some instances, it is not an effective treatment of piles. In truth and in fact, said Dr. Porter's Antiseptic Healing Oil will not destroy parasites and is at most a mild antiseptic; it cannot be considered a standard treatment for the variety of skin diseases specifically named in respondent's representations, since the pathological conditions resulting in said skin disorders arise from different causes and require different treatments. It will not promote the growth of hair nor prevent baldness, nor will it cure any of the number of affections of the scalp set forth in the various representations made by respondent. Due to the carbolic acid contained in said ointment, it does not constitute a safe surgical dressing for household use.

PAR. 7. In the course and conduct of its business as hereinbefore described, respondent is, and has been, in competition with corporations, partnerships, firms, and individuals engaged in the sale and shipment in commerce among and between the several States of the United States, and in the District of Columbia, of other medicinal preparations, which said competitors do not misrepresent the extent of the beneficial or therapeutic effects of their said competitive preparations.

PAR. 8. The aforesaid misleading and deceptive statements and representations hereinabove set forth made by respondent in selling said medicinal preparations have the capacity and tendency to, and do, mislead and deceive the purchasing public into buying said Pazo Ointment and Dr. Porter's Antiseptic Healing Oil, in the erroneous beliefs that such representations are true and that the use of said preparations will accomplish the results set out or indicated in said advertisements and statements. As a result of the aforesaid representations by the respondent with respect to said preparations,

trade has been diverted unfairly to it from its said competitors, whose ability to compete successfully with respondent has been, and is, lessened and injured by the methods of the respondent hereinbefore set forth.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 24th day of May 1938, issued, and on the 27th day of May 1938, served its complaint in this proceeding upon said respondent, Grove Laboratories, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On August 4, 1938, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent, and W. T. 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. Grove Laboratories, Inc., is a corporation organized, existing and doing business under the laws of the State of Delaware, with its principal place of business apart from its office in Delaware at 2630 Pine Street, in the city of St. Louis, State of Missouri.

PAR. 2. Grove Laboratories, Inc., is now, and for more than one year 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 the District of Columbia. Said preparations are known as Pazo Ointment and Dr. Porter's Antiseptic Healing Oil, and at, and prior to, the date of the issuance of the complaint herein were represented to be, respectively, a treatment for hemorrhoids, and for a variety of skin disorders. Grove Laboratories, Inc., causes said products, when sold, to be shipped from its place of business in the State of Missouri to purchasers thereof located in a State or States of the United States other than the State of Missouri and in the District of Columbia.

There is now, and has been at all times herein mentioned, a course of trade in said medicinal products so sold and distributed by the said company 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, said company is now, and for more than one year last past has been, in substantial competition with other corporations, and with individuals, partnerships, and firms engaged in the sale and distribution of similar medicinal preparations in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Grove Laboratories, Inc., in connection with the sale and distribution of said medicinal products, and for the purpose of inducing the purchase thereof, has made certain representations as to their medicinal value and therapeutic effects in newspaper and magazine advertisements, pamphlets, circulars, and otherwise, among which are the following:

Piles can take various forms—internal or external, itching or painful, bleeding or non-bleeding—but whatever form they take, they are a cause of misery and a danger.

A SCIENTIFIC FORMULA

Effective treatment today for Piles is to be had in Pazo Ointment, Pazo is a scientific treatment for this trouble of proven efficacy. Pazo gives quick relief. It stops pain and itching. It assures comfort, day and night * * *

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RELIEF!

Thousands upon thousands have used Pazo with success. Our files are filled with letters from men and women who say they never knew what it was to get real relief from the torture of Piles until they tried Pazo.

Pazo will give *you* relief, too! One trial will show you how unnecessary it is to go about distressed and embarrassed by Piles. All drug stores sell Pazo-in-Tubes and Pazo Suppositories, at small cost. Get either today and see how effective!

You get immediate and lasting relief with Pazo * * *
Pazo is the most wonderful preparation ever known for Piles.

Itching Sore Scaly

SCALP

Dry Bald Patches Crust

Most scalp troubles involve a parasite of some kind—a living organism that causes infection with resulting itch, scales, crust, thin and falling hair. Here, at last, is a treatment that not only destroys the parasite but helps repair the damage done. It is Dr. Porter's Antiseptic Healing Oil and it works wonders in correcting scalp and skin troubles. Stops itch almost instantly. Softens and removes crust. Cleanses and stimulates the whole scalp, making it white and wholesome and promoting growth of new hair * * *

Itching Smarting Cracked

SKIN

Broken Out Peeling Scabby

For skin troubles—itch, cracking, smarting and scaling—there is nothing like Dr. Porter's Antiseptic Healing Oil. There may be fancier preparations but nothing that will do the work like this famous oil. It not only destroys the parasites that cause many skin troubles but, at the same time, helps heal the sore and damaged skin.

The most stubborn cases of itching and scaling skin that defy every other treatment usually yield to Dr. Porter's Antiseptic Healing Oil. Try it on your itching or broken out skin and see how effective it is * * *

In Dr. Porter's Antiseptic Healing Oil you have an oil, which, of course, is not drying and an oil which is BOTH antiseptic and an aid to healing. In other words, it not only checks bacterial growth but at the same time increases the superficial blood supply to the local tissues and thereby promotes the natural healing process.

BURNS AND SCALDS

One of the first things you must do in the case of a burn or scald is exclude the air. Dr. Porter's Antiseptic Healing Oil forms an oily film over the burned parts which keeps out the air. At the same time, it helps to keep the parts clean, relieves the pain and assists Nature in the healing process.

IVY AND OAK POISONING

Dr. Porter's Antiseptic Healing Oil soothes and aids healing of the irritated surfaces. The surface exposed to Poison Ivy or Poison Oak should be washed with strong soap. If the irritation has not actually become manifest it should be washed with laundry soap or gasoline before applying Dr. Porter's Antiseptic Healing Oil.

MINOR IRRITATION OF THE THROAT

Apply Dr. Porter's Antiseptic Healing Oil with atomizer or swab. It will help in healing the irritated membranes.

ITCHING OF SKIN IRRITATIONS

For itching due to eczema, psoriasis and skin irritations Dr. Porter's Antiseptic Healing Oil is an ideal palliative. As an inhibitory antiseptic, it tends to check bacterial growth. As a soothing preparation it temporarily relieves pain and itching.

PAR. 5. Up to the time of the issuance of the complaint, respondent's preparation, Pazo Ointment, was prepared according to the following formula:

Camphor	5.5%
Phenol	2.5%
Zinc Oxide	5.2%
Iron Oxide	0.8%
Mercuric Nitrate	1.4%

These ingredients in the proportions named are combined with balsam peru and oil citronella in a Petrolatum base, which, in the suppositories, is stiffened with paraffin and beef tallow.

Since the issuance of the complaint herein the formula for Pazo Ointment has been changed and the preparation is now made according to the following formula:

Bismuth Subgallate	5%
Zinc Oxide	5%
Lanolin	10%
Iron Oxide (Brown)	0.625%
Iron Oxide (Red)	0.125%
Camphor	5.50%
Phenol	2.75%
Resorcin	1%
Balsam Peru	4.41%
Oil Citronella	0.25%
Bees Wax	2%
Base—Yellow Petrolatum.	

PAR. 6. Grove Laboratories, Inc.'s preparation, Dr. Porter's Antiseptic Healing Oil, is prepared according to the following formula:

Phenol	4.64%
Camphor	13.00%
Cottonseed Oil	25.00%
Linseed Oil	57.00%

PAR. 7. Hemorrhoids, commonly called "piles," are frequently classified into a number of varieties depending upon their clinical manifestations and symptoms. They are very generally classified as follows:

1. Simple or uncomplicated—Those which exhibit varicosities of the hemorrhoidal veins, with or without pain or discomfort and usually without hemorrhage.

2. Ulcerated piles—Those in which the mucous membrane or surface epithelium has been eroded, leaving a raw granulating surface, with the usual subjective symptoms.

3. Prolapsed piles—Hemorrhoids of the internal variety which have protruded through the sphincter—anal orifice—and characterized by marked swelling and great turgescence, etc.

4. Bleeding piles—Those in which there is ulceration or erosion of the mucous membrane where hemorrhage has occurred; or any variety with hemorrhage as the outstanding clinical feature.

5. Prolapsed fibrotic piles—Hemorrhoids which have become thrombotic and completely or partially organized by fibrous tissue with or without the production of secondary varicosities and the attending clinical symptoms.

6. Thrombotic piles—Those which have become obstructed by the formation of blood clots in the veins, usually accompanied by considerable inflammation, erosion and ulceration with secondary infection.

7. Infected hemorrhoids—Those in which infection has occurred. They may be of any of the above varieties and are usually accompanied by considerable exaggeration of the clinical symptoms.

PAR. 8. The representations made in the advertisements offering said Pazo Ointment for sale to the purchasing public are misleading and deceptive because the claims made in said advertisements go beyond claims which may reasonably be made or which are justified by the facts.

The statement, "Effective treatment today for piles is to be had in Pazo Ointment," is misleading and deceptive because the words "Effective treatment" imply a cure of the disease in all cases. Treatment by any ointment such as respondent's product cannot be effective in all cases, or at least as a rule rather than the exception. It cannot be efficacious except in being helpful in relieving the symptoms, in that the phenol contained in said product will aid in alleviating pain; and the preparation generally will have a soothing effect. It is no more than a treatment for the alleviation of minor rectal irritations accompanying piles and the therapeutic value of respondent's preparation is limited to affording palliative relief in cases of simple hemorrhoids. The words "Effective treatment," however, imply that a cure will be accomplished. This is not true, because in many instances, surgery will be the only effective treatment in cases of hemorrhoids.

PAR. 9. Said Dr. Porter's Antiseptic Healing Oil will not be an effective treatment for sore, scaly scalp, bald patches, thin and falling hair, or for scalp troubles generally. The statement that "Most scalp troubles involve a parasite of some kind" or that the preparation is effective against parasites on the scalp, skin, or feet is not in accord with medical knowledge. The fact that Dr. Porter's Antiseptic Healing Oil is an antiseptic does not indicate that it is of any value against any type of parasitic organism except some types of bacteria. Itching in many instances is usually a symptom of scabies and said preparation is not an effective treatment therefor.

Generally, skin troubles, foot sores, leg sores, boils, rash, broken-out skin, ringworm, eczema, and other similar disorders described in

respondent's advertisements will not in all cases respond to treatment with said Dr. Porter's Antiseptic Healing Oil.

Dr. Porter's Antiseptic Healing Oil will not promote the growth of hair nor purify nor cleanse the scalp.

PAR. 10. Depending upon the severity and progress of the local manifestations, hemorrhoids are treated (1) by the use of soothing ointments, and/or astringent lotions, with general care for the patient, such as keeping him in bed, applications of cold water, etc., (2) by nonsurgical measures such as injection therapy, electrocoagulation, cautery, (3) by surgery, i. e. ligation and excision, and (4) by the application of radium.

Purely medical treatment, as distinguished from the other treatments mentioned herein, usually consists in the use of ointments and/or astringent lotions, with confinement in bed in severe cases and similar measures. The use of mild laxatives is sometimes prescribed to prevent the irritation of the swollen and inflamed parts by the passage of hard fecal matter.

Many prescriptions are found in prescription books generally recognized and used by the medical profession in the treatment of hemorrhoids. In varying proportions these prescriptions contain the same or similar ingredients as those found in respondent's preparation. Most of these are standard drugs which have been in use for many years. Among them are zinc oxide, menthol, phenol, belladonna, iodoform, opium extract, and others. All of them are contained in suitable vehicles, such as lanolin, vaseline, and petrolatum. All of these prescriptions will afford antiseptic, antipruritic, anesthetic, or analgesic effects. As has heretofore been noted, phenol is an important ingredient because of its soothing effect and thereby alleviating pain, and it, together with other medication, will relieve mild conditions of hemorrhoids without the necessity of having to resort to surgery or other severe measures.

PAR. 11. The respondent's preparation, Dr. Porter's Antiseptic Healing Oil, contains phenol, camphor, cottonseed oil, and a large proportion of linseed oil. These ingredients will aid in alleviating the itching of the scalp in abnormal skin conditions, but will not destroy parasites. Linseed oil is known to be a remedy which has been used for a long period of time as a soothing agent which will promote healing processes.

PAR. 12. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its preparations disseminated as aforesaid, has had, and now has, the capacity and tendency to, and does, mislead and deceive a sub-

stantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true and induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's medicinal preparations. As a result trade has been diverted unfairly to the respondent from its competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia, of similar 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 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, 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, Grove Laboratories, Inc., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its various medicinal preparations now designated as Pazo Ointment and Dr. Porter's Antiseptic Healing Oil, or any other preparations composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under those 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 preparation, Pazo Ointment, is a cure or remedy for hemorrhoids, or has any therapeutic value in the treatment thereof in excess of affording palliative relief in cases of simple hemorrhoids,

2. Representing that respondent's preparation, Dr. Porter's Antiseptic Healing Oil—

(*a*) is an effective or standard treatment for skin diseases caused by infection, or

(*b*) is an effective agent in the treatment of dandruff, falling hair or diseases peculiar to the scalp, or

(*c*) will promote the growth of hair or prevent baldness, or

(*d*) will destroy parasites usually associated with dandruff and other diseases of the scalp.

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

MONTICELLO DRUG COMPANY

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

Docket 3455. Complaint, June 13, 1938—Decision, June 29, 1940

Where a corporation engaged in making its "666" medicinal preparations for fevers, common colds, and malaria, and including its preparation known as "666," and also other products similarly designated, including its "666 Liquid," "666 Tablets," "666 Salve," and "666 Nose Drops," and in sale and distribution thereof to purchasers in various other States, in substantial competition with others engaged in sale and distribution in both foreign commerce and that among the States and in the District of Columbia, of preparations for use in connection with treatment of said ailments and conditions, and including many who make, sell, and distribute, preparations designed and intended as aids or treatment for same or similar conditions, and do not in any way misrepresent the effectiveness of their respective products; in advertisements of its said preparation in newspapers having interstate circulation and through radio broadcasts:

(*a*) Represented directly or by inference that its said preparations would check or cure colds and constituted the only complete treatment therefor and one which could not be improved on and would cure malaria and that millions of users thereof had obtained permanent relief from and been cured of colds thereby; and

(*b*) Represented that said preparations were the speediest remedies known for colds, malaria, chills and fever, or bilious fever, due to malaria, and that they would check colds and fever the first day used and malaria in 3 days, and that they were commonly prescribed by doctors;

Facts being they were not commonly thus prescribed and did not constitute cures or complete remedies for colds or for malaria and, while containing quinine which will, if administered in the proper doses, generally alleviate symptoms of malaria, such as chills and fever, they did not constitute cure therefor, there is no single preparation in common use generally recognized as specific for colds nor standard preparation or treatment used therefore by doctors, fever is not a disease but symptom of many and various ailments, and should not be treated as an ailment or disease, and claims and representations made as above set forth were otherwise false, grossly exaggerated, misleading, and untrue;

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 direct result, as consequence of such belief, that number of consuming public purchased substantial volume of its preparations, and trade was thereby diverted unfairly to it from competitors, also engaged in manufacturing, selling, and distributing preparations and treatments for colds, malaria and fever, and who truthfully advertise their respective products, and the effectiveness and therapeutic value thereof; to the injury of competition in commerce:

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

Before *Mr. Edward E. Reardon* and *Mr. John W. Addison*, trial examiners.

Mr. R. P. Bellinger and *Mr. Charles S. Cox* 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 Monticello Drug Co., a corporation, hereinafter referred to as respondent, has been and is now using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Monticello Drug Co., is a corporation created by and existing under the laws of the State of Florida, with its principal office and place of business at Riverside Viaduct, in the city of Jacksonville, State of Florida, with other plants in New York, Louisiana, and the Republic of Mexico. Respondent is now, and has been for some time last past, engaged in the business of making, selling and distributing in commerce, as herein set out, certain preparations known as "666," intended by respondent as a treatment and cure for fevers, common colds, and malaria.

Par. 2. Respondent, being engaged in business as aforesaid, causes said preparations, when sold, to be transported from its office and place of business in the State of Florida to purchasers thereof located at various points in States of the United States other than the State of Florida. Respondent maintains and at all times mentioned herein has maintained a course of trade in said preparations, sold and distributed by it in commerce between and among the various States of the United States, in the District of Columbia and in foreign countries.

Par. 3. In the course and conduct of its said business, respondent is now, and has been, in substantial competition with other corporations, and with firms and individuals likewise engaged in the business of selling and distributing in commerce, both foreign and among and between the various States of the United States and in the District of Columbia, preparations for use in connection with treatment for fever, common colds, and malaria.

In the course and conduct of said business, and for the purpose of inducing the purchase of said preparations, respondent has made, by means of advertisements inserted in newspapers having an interstate circulation and by means of radio broadcasts, representations concerning said preparations and the results obtained from their use. Among said representations made by respondent are the following:

(a) 666 checks colds and fever first day.

(b) For years this famous cold treatment has offered relief to millions of persons.

(c) Because the products are doctor's prescriptions * * * you can be certain of complete treatment.

(d) Early treatment will stop the common cold.

(e) Remember, for the only COMPLETE cold treatment, always ask for the three sixes—Six Sixty Six.

(f) COMBINED TREATMENT: There are two methods for treating Colds—internal and external treatments. Each have their merits and 666 offers both. The use of 666 Liquid or 666 Tablets with 666 Salve or 666 Nose drops makes a complete treatment which cannot be improved upon.

(g) MALARIA: 666 Liquid and Tablets is a Doctor's prescription and is the speediest remedy known for Malaria, Chills and Fever, and Bilious Fever due to Malaria. 666 will check Malaria in three days when taken according to directions.

All of said statements together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's preparations and of their effectiveness in use. In all of its advertising literature and through other means respondent, directly or by inference, through such statements and representations as herein set out, and through other statements of similar import and effect, represents: that its preparations are commonly prescribed by doctors; that millions of users of said preparations have obtained permanent relief from colds; that is, have been cured of colds by the use of said preparations; that treatment with respondent preparations will stop the common cold; that these preparations constitute the only complete treatment for colds and that this treatment cannot be improved upon; that treatment with said preparations is the speediest remedy known for malaria, colds, and fever; that said preparations will check colds and fever the first day they are used and will check malaria in 3 days.

PAR. 4. The representations made by the respondent with respect to the nature and effect of its preparations when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent's preparations are not commonly prescribed by doctors, nor have millions of users obtained permanent relief and been cured of colds by the use of these preparations. These preparations do not constitute a complete treatment for colds and can be improved upon. Treatment with these preparations is not the speediest remedy known for malaria,

colds, and fever. Said preparations will not check colds and fever the first day used, nor will they check malaria in 3 days.

The true facts are that no single preparation in common use today is generally recognized as a specific for colds and no standard prescription or treatment is used by doctors for colds. Fever is now recognized to be not a disease but a symptom of many and various ailments and should not be treated as an ailment or a disease. Respondent's preparations do not contain the specifics for malaria in sufficient quantities to obtain the results claimed by respondent for said preparations.

PAR. 5. There are among respondent's competitors many who make, sell, and distribute preparations designed and intended as aids or treatments for the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. Each and all of the false and misleading statements and representations made by the respondent in describing its preparations, and their effectiveness when used, as hereinabove set out, was and is calculated to, and has had and now has a tendency and capacity to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the consuming public have purchased a substantial volume of respondent's preparations with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of making, selling, and distributing preparations for the treatment of fevers, colds, and malaria, who truthfully advertise their respective preparations 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 June 13, 1938, issued and subsequently served its complaint in this proceeding upon respondent, Monticello Drug 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 of the allegations of said complaint and in opposition thereto were introduced before examiners of the Commission theretofore duly designated by it, and a stipulation as to the facts was entered into and dictated into the record herein, 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, stipulation as to the facts, testimony, and other evidence, 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, Monticello Drug Co., is a corporation created by and existing under the laws of the State of Florida, with its principal office and place of business at Riverside Viaduct, in the city of Jacksonville, State of Florida, with other plants in New York, Louisiana, and the Republic of Mexico. Respondent is now, and has been for 10 years last past, engaged in the business of making, selling, and distributing in commerce, as herein set out, certain medicinal preparations known as "666," intended by respondent as a treatment for fevers, common colds, and malaria.

PAR. 2. Respondent, being engaged in business as aforesaid, causes and has caused said preparations when sold to be transported from its place of business in the State of Florida to purchasers thereof located at various points in the States of the United States other than the State of Florida. Respondent also ships said preparations from its various plants in the States of New York, Louisiana, and in the Republic of Mexico to purchasers located in the States of the United States other than the point of shipment. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparations sold and distributed by it in commerce between and among the various States of the United States, in the District of Columbia, and in foreign countries. Among the preparations manufactured, sold, and distributed by respondent and known as the preparation "666" are "666 Liquid," "666 Tablets," "666 Salve," and "666Nose Drops."

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 also engaged in the business of selling and distributing in commerce, both foreign and among and between

the various States of the United States and in the District of Columbia, preparations for use in connection with treatment for fever, common colds, and malaria.

In the course and conduct of said business, and for the purpose of inducing the purchase of said preparations, respondent has made, by means of advertisements inserted in newspapers having an interstate circulation and by means of radio broadcasts, representations concerning said preparations and the results obtained from their use. Among said representations made by respondent are the following:

(a) 666 checks colds and fever first day.

(b) For years this famous cold treatment has offered relief to millions of persons.

(c) Because the products are doctor's prescriptions * * * you can be certain of complete treatment.

(d) Early treatment will stop the common cold.

(e) Remember, for the only COMPLETE cold treatment, always ask for the three sixes—Six Sixty Six.

(f) COMBINED TREATMENT: There are two methods for treating Colds—internal and extrenal treatments. Each have their merits and 666 offers both. The use of 666 Liquid or 666 Tablets with 666 Salve or 666 Nose Drops makes a complete treatment which cannot be improved upon.

(g) MALARIA: 666 Liquid and Tablets is a Doctor's prescription and is the speediest remedy known for Malaria, Chills and Fever, and Bilious Fever due to Malaria.

666 will check Malaria in 3 days when taken according to directions.

All of said statements together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's preparations and of their effectiveness in use. In all of its advertising literature and through other means respondent, directly or by inference, through such statements and representations as herein set out, and through other statements of similar import and effect, represents: That its preparations are commonly prescribed by doctors; that millions of users of said preparations have obtained permanent relief from colds; that is, have been cured of colds by the use of said preparations; that treatment with respondent's preparations will stop the common cold; that these preparations constitute the only complete treatment for colds and that this treatment cannot be improved upon; that treatment with said preparations is the speediest remedy known for malaria; colds and fever; that said preparations will check colds and fever the first day they are used and will check malaria in 3 days.

PAR. 4. The representations made by the respondent with respect to the nature and effect of its preparations when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact respondent's preparations are not commonly prescribed by doctors; they are not cures for nor do they constitute a complete remedy or cure for

colds; they are not a cure for malaria, and they are not the speediest remedy known for malaria, colds, and fever. Said preparations will not check colds the first day used, nor will they if used in the early or late treatment thereof, check, stop, or cure the common cold. The use of one of respondent's preparations, either singly or in conjunction with one or more of the others, does not constitute a complete treatment for colds which cannot be improved upon.

In truth and in fact there is no single preparation in common use today which is generally recognized as a specific for colds, and no standard preparation or treatment is used by doctors for colds. Fever is now recognized to be, not a disease, but a symptom of many and various ailments, and should not be treated as an ailment or disease.

The respondent's products "666" contain quinine which will, if administered in the proper doses, generally alleviate the symptoms of malaria such as chills and fever but respondent's products do not constitute a cure for malaria.

PAR. 5. There are among respondent's competitors many who make, sell, and distribute preparations designed and intended as aids or treatments for the same or similar conditions, who do not in any way misrepresent the effectiveness of their respective products.

PAR. 6. The foregoing misleading and untrue statements and representations made by the respondent in describing its preparations and their effectiveness when used, as hereinabove set out, has a 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 direct result of this erroneous and mistaken belief a number of the consuming public have purchased a substantial volume of respondent's preparations, with the result that trade has been diverted unfairly to respondent from competitors also engaged in the business of manufacturing, selling and distributing preparations for the treatment of colds, malaria, and fever who truthfully advertise their respective preparations and the effectiveness and therapeutic value 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the 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, and a stipulation as to certain facts read into the record herein, 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, Monticello Drug 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 medicinal preparations designated and known as "666," in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That said preparations will check, cure or stop the common, or any other, cold.

2. That said preparations constitute a complete treatment for colds, whether taken or administered singly or in conjunction with each other.

3. That said preparations will cure malaria.

4. That said preparations are the speediest remedies known for colds, malaria, chills and fever, or bilious fever due to malaria.

5. That said preparations are commonly prescribed by doctors.

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

BETTY WELLS FOWLER, TRADING AS BETTY WELLS COSMETIC COMPANY

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

Docket 3538. Complaint, Aug. 17, 1938—Decision, June 29, 1940

Where an individual engaged in compounding, under name "Tissuefane," cosmetic preparation consisting essentially of water, alcohol, gum, perfume, small amount of benzoate of soda, and coal-tar dye, and in compounding, under name "Tissuefane Preparatory Oil," preparation consisting essentially of a pure scented olive oil, and in sale and distribution of said preparations to purchasers in various other States, in substantial competition with others also engaged in sale and distribution of similar products designed and intended for similar usage, in commerce also among the various States and in the District of Columbia; in advertising her said products in newspapers and other publications, pamphlets, magazines, etc., having general circulation and reaching members of purchasing public in various States—

(*a*) Represented that said "Tissuefane" would nourish skin and build tissue and strengthen facial muscles and remove lines, pimples, or crow's-feet and blackheads, facts being it would have no effect on blackheads in excess of removing superficial dirt on surface thereof, and it would not, by its effect upon circulation of blood supply or otherwise, render firmer or strengthen or nourish skin, muscles, or tissues, or build tissue, and would not accomplish, otherwise, results claimed therefor as above set forth;

(*b*) Represented that said preparation would rejuvenate, preserve, and stimulate or beautify skin, and reduce and clean pores, and increase circulation and supply of blood, facts being effect upon circulation of blood at place of application was transitory and had no physiological significance, it would not beautify, revitalize, or rejuvenate user or her skin, and neither stimulated pores nor reduced their size nor cleansed same, in excess of removing superficial dirt from openings thereof;

(*c*) Represented that said product was made wholly of fruit and vegetable products and was an innovation in the cosmetic field and constituted a bleaching agent and skin tonic and was healing to skin and possessed beneficial value in treatment of acne, facts being it was not composed entirely as aforesaid set out, did not constitute an unparalleled innovation in cosmetic world, had no bleaching qualities, was not a skin tonic in any sense that permanent beneficial results may be obtained from its persistent use, and was not healing nor helpful nor beneficial in treatment of acne, and would not erase years from appearance of user; and

(*d*) Represented that her said "Tissuefane Preparatory Oil" would nourish or feed skin and pores and make skin soft and prevent or remove wrinkles or lines from face, facts being it did not remove wrinkles or lines other than that very fine lines due solely to dryness of skin might be temporarily removed by its use, any softness which it might impart to skin was temporary only, and it would not nourish or feed same or tissues;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations, as above set forth were true, and that her said preparations would accomplish results indicated, and to erase substantial portion of such public, because of said erroneous and mistaken belief, to purchase substantial quantities of her said products, and with result that trade was diverted unfairly to her from competitors in commerce who truthfully advertise effectiveness in use of their respective preparations:

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

Before *Mr. John J. Keenan*, trial examiner.

Mr. Randolph W. Branch and *Mr. DeWitt T. Puckett* for the Commission.

Betty Wells Fowler, pro se.

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 Betty Wells Fowler, an individual, trading and doing business under the name and style of Betty Wells Cosmetic 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, Betty Wells Fowler, is an individual, trading and doing business under the name and style of Betty Wells Cosmetic Co., with her office and principal place of business located in the town of Capitola, county of Santa Cruz, State of California.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of distributing and selling certain cosmetics known as "Tissuefane" and "Tissuefane Preparatory Oil."

Respondent causes the said cosmetics when sold to be transported from her place of business in the State of California to purchasers thereof located in States of the United States other than the State of California.

PAR. 3. In the course and conduct of her said business respondent is now, and has been for more than 1 year last past, in substantial competition with other individuals and with firms, partnerships, and corporations engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States.

PAR. 4. In the course and conduct of her said business, and for the purpose of inducing the purchase of the said cosmetics, respondent has made and caused to be made, by means of radio broadcasts, advertising circulars and folders, and advertisements inserted in newspapers circulated generally throughout the United States representations concerning the character and nature of said cosmetics and their effectiveness in use. Typical of the said representations so made as to "Tissuefane" are the following:

Tissuefane firms and strengthens the skin through the process of arousing the circulation. It definitely removes lines and crowsfeet, eliminates large pores, and has a tendency to bleach.

Its action is triplefold—stimulating, beautifying, and permanently rejuvenating.

Permanent scientific benefit derived from its persistent use.

Find your face simply wiped clean of weariness—drooping tired lines—and instead of looking even your years, you will find a young glowing countenance confronting you.

A real beneficial bracing skin tonic.

I would say it was *bad* for pimples.

It is made entirely of fruit and vegetable products carefully blended and was perfected nearly twenty years ago by a well-known chemist.

Tissuefane is an unparalleled innovation in the cosmetic world. It protects beauty, builds youthful tissue and contour, banishes aging lines, and strengthens facial muscles. If used absolutely as directed, it will work miracles in your appearance.

It helps remove tired lines and weary looks.

Tissuefane is the result of years of scientific research.

The use of Tissuefane is triple fold: first—its principal work is to increase the blood supply so necessary for preservation of fresh, healthy skins; second—it stimulates and refines the pores, definitely removes blackheads, and also gently bleaches unsightly spots, such as freckles, and lastly, is a marvelous help for one of the worst destroyers of feminine beauty, sagging cheek muscles and flabby chins.

Enforced circulation firms those tired or lazy muscles.

Tissuefane treatment has an effect equal to several hours rest and brings a blood supply immediately to the surface of the skin equal to the ordinary supply of several days—actually feeding the skin in a highly scientific way. In addition to being an aid to beauty it is very healing to a skin irritated by roughness or pimples—even in aggravated cases of acne great benefit is obtained, owing to the thorough manner in which it speeds up blood circulation.

The re-vitalizing, rejuvenating and scientific action of Tissuefane.

You will find crowsfeet disappearing with this renewed circulation.

Tissuefane will bring both positive results and lasting satisfaction, whether it be used to retain your fresh glowing beauty, or to bring back the charm of a beautiful, soft, attractive skin.

Tissuefane is always at hand as the magic helper to "pick you up"—mentally, as well as physically, no matter how tired you feel or how weary looking you become.

Erases years from your appearance.

Typical of the said representations so made as to "Tissuefane Preparatory Oil" are the following:

Too much cannot be said for this delightful soothing, nourishing vegetable oil. The pores drink it in like thirsty plants do the gentle raindrops.

A treatment that erases years from your appearance. For dry skins, particularly, a carefully blended Vegetable Oil lubricates and softens the texture of your skin until it becomes petal-soft.

Aside from feeding the pores and keeping the skin soft and pliable during the Tissuefane treatment, it is of inestimable value in eradicating the fine lines which form around the eyes.

This delicately fragrant, carefully blended Vegetable Oil triply refined is absorbed almost immediately as you will discover and the most persistent little skin creases, for that is what wrinkles really are, simply smooth away.

For those whose skins have a rather undernourished appearance this delightful Oil is like food.

All of said statements, together with similar statements made in the respondent's radio broadcasts and advertising literature, purport to be descriptive of respondent's products and their effectiveness in use. By said statements respondent directly or impliedly represents that "Tissuefane Preparatory Oil": softens, nourishes, and lubricates the skin; is absorbed by and feeds the pores of the skin; eradicates fine lines from around the eyes and smooths away wrinkles, and erases years from the appearance. Respondent in like manner represents that "Tissuefane": is composed entirely of fruit and vegetable products; is an unparalleled and scientific innovation in the cosmetic world; arouses and enforces the circulation and increases the blood supply to the portions of the body where it is applied; strengthens the facial muscles, helps sagging cheek muscles and flabby chins, builds youthful tissue and contour, and removes lines of age and weariness, blackheads, pimples and crow's-feet from the face; firms, stimulates, refines, and preserves the skin; is healing to the skin and beneficial to acne; stimulates, cleans, and reduces the pores; is a gentle bleaching agent, and is beautifying, rejuvenating, and revitalizing to the skin; erases years from the appearance of the user, and will produce a glowing, youthful complexion; produces positive results and scientific and permanent benefits.

PAR. 5. The representations made by the respondent with respect to the nature and effect of her products, when used, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, "Tissuefane Preparatory Oil" does not nourish, soften, or lubricate the skin. It is neither absorbed by nor feeds the pores. Said preparation neither eradicates fine lines from around the eyes nor smooths away wrinkles, nor erases years from the appearance. "Tissuefane"

is not composed entirely of fruit and vegetable products. It is not an unparalleled nor scientific innovation in the cosmetic world. It has no effect on the circulation of the blood, the muscles of the face or cheek, or flabby chins. It does not build tissue or contour, youthful or otherwise, nor remove lines due to age or fatigue, blackheads, pimples, or crow's-feet. It does not firm, stimulate, refine, or preserve the skin. It neither stimulates, cleans, nor reduces the pores; it is not healing to the skin nor beneficial to acne. It is not a bleaching agent. It gives no permanent or scientic stimulation, protection, beautification, rejuvenation, revitalization, or improvement to the skin or complexion.

The true facts are that respondent's cosmetics are of value only in that they provide a pleasant lubricant for massaging the face, which massage may be directly beneficial to the skin, have a cooling and mildly astringent effect, leave a slight oily residue somewhat comforting to a dry skin, and give to the skin a transitory feeling of smoothness and improvement.

PAR. 6. There are, among respondent's aforesaid competitors, many who manufacture, distribute, and sell cosmetics who do not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in the description of her products and their effectiveness when used, as hereinabove set out, were and are calculated to have, have had and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of 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 preparations, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of manufacturing, distributing, and selling cosmetics, 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.

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 August 17, 1938, issued and subsequently served its complaint in this proceeding upon the said respondent, Betty Wells Fowler, charging her with the use of unfair methods of competition in commerce in violation of the provisions of said act. On the 6th day of September 1938, the respondent filed her answer in this proceeding. Thereafter, testimony and other evidence in support of the allegations of the said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Betty Wells Fowler, pro se, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. 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 (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, Betty Wells Fowler, is an individual trading under the name and style of Betty Wells Cosmetic Co., with her office and principal place of business located at Capitola, Sante Cruz County, Calif. Respondent was for more than 1 year prior to the issuance of the complaint herein, engaged in the business of compounding, distributing, and selling cosmetic preparations known and designated as "Tissuefane" and "Tissuefane Preparatory Oil."

"Tissuefane" consists essentially of water, alcohol, gum, perfume, a small amount of benzoate of soda, and a coal-tar dye. "Tissuefane Preparatory Oil" is a pure scented olive oil.

Par. 2. In the course and conduct of her business as aforesaid, respondent caused said products, when sold, to be transported from her place of business in California to purchasers thereof located at various points in States of the United States other than the State from which the said shipments were made. Respondent maintained a course of trade in said products in commerce between and among various States of the United States and in the District of Columbia.

Par. 3. In the course and conduct of her business, respondent has 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 various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of her business, and for the purpose of inducing the purchase of her said products, respondent caused various statements and representations relative to said products to be inserted in advertisements in newspapers and in other publications, pamphlets, magazines, etc., having a general circulation which reached members of the purchasing public situated in various States of the United States. Among and typical of said statements and representations are the following:

Tissuefane firms and strengthens the skin through the process of arousing the circulation. It definitely removes lines and crowsfeet, eliminates large pores, and has a tendency to bleach.

Its action is triplefold—stimulating, beautifying, and permanently rejuvenating.

Permanent scientific benefit derived from its persistent use.

Find your face simply wiped clean of weariness—drooping tired lines—and instead of looking even your years, you will find a young glowing countenance confronting you.

A real beneficial bracing skin tonic.

I would say it was *bad* for pimples.

It is made entirely of fruit and vegetable products carefully blended and was perfected nearly twenty years ago by a well-known chemist.

Tissuefane is an unparalleled innovation in the cosmetic world. It protects beauty, builds youthful tissue and contour, banishes aging lines, and strengthens facial muscles. If used absolutely as directed, it will work miracles in your appearance.

It helps remove tired lines and weary looks.

Tissuefane is the result of years of scientific research.

The use of Tissuefane is triple fold: first—its principal work is to increase the blood supply so necessary for preservation of fresh, healthy skins; second—it stimulates and refines the pores, definitely removes blackheads, and also gently bleaches unsightly spots, such as freckles, and lastly, is a marvelous help for one of the worst destroyers of feminine beauty, sagging cheek muscles and flabby chins.

Enforced circulation firms those tired or lazy muscles.

Tissuefane treatment has an effect equal to several hours rest and brings a blood supply immediately to the surface of the skin equal to the ordinary supply of several days—actually feeding the skin in a highly scientific way. In addition to being an aid to beauty it is very healing to a skin irritated by roughness or pimples—even in aggravated cases of acne great benefit is obtained, owing to the thorough manner in which it speeds up blood circulation.

The re-vitalizing, rejuvenating and scientific action of Tissuefane.

You will find crowsfeet disappearing with this renewed circulation.

Tissuefane will bring both positive results and lasting satisfaction, whether it be used to retain your fresh glowing beauty, or to bring back the charm of a beautiful, soft, attractive skin.

Tissuefane is always at hand as the magic helper to "pick you up" mentally, as well as physically, no matter how tired you feel or how weary looking you become.

Erases years from your appearance.

Typical of the said representations so made as to "Tissuefane Preparatory Oil" are the following:

Too much cannot be said for this delightful soothing, nourishing vegetable oil. The pores drink it in like thirsty plants do the gentle raindrops.

A treatment that erases years from your appearance. For dry skins, particularly, a carefully blended Vegetable Oil lubricates and softens the texture of your skin until it becomes petal-soft.

Aside from feeding the pores and keeping the skin soft and pliable during the Tissuefane treatment, it is of inestimable value in eradicating the fine lines which form around the eyes.

This delicately fragrant, carefully blended Vegetable Oil triply refined is absorbed almost immediately as you will discover and the most persistent little skin creases, for that is what wrinkles really are, simply smooth away.

For those whose skins have a rather under-nourished appearance this delightful Oil is like food.

Through the use of the aforesaid statements and representations and others of similar import or meaning not herein set out, respondent has represented, directly or by implication, that: "Tissuefane Preparatory Oil" softens, nourishes, and lubricates the skin; is absorbed by and feeds the pores of the skin; eradicates fine lines from around the eyes and smooths away wrinkles, and erases years from the appearance of the user; that "Tissuefane" is composed entirely of fruit and vegetable products; is an unparalleled and scientific innovation in the cosmetic world; arouses and enforces the circulation and increases the blood supply to the portions of the body where it is applied; strengthens the facial muscles, helps sagging cheek muscles and flabby chins; builds youthful tissue and contour; removes lines of age and weariness, blackheads, pimples, and crow's-feet from the face; firms, stimulates, refines, and preserves the skin; is healing to the skin and beneficial to acne; stimulates, cleans, and reduces the pores; is a gentle bleaching agent, and is beautifying, rejuvenating, and revitalizing to the skin, erases years from the appearance of the user; will produce a glowing youthful complexion; produces positive results and scientific and permanent benefits.

PAR. 5. The aforesaid statements and representations by the respondent with respect to the therapeutic and other properties of her said products and the results obtained from the use thereof are exaggerated, false, and misleading. In truth and in fact respondent's preparation "Tissuefane" is not composed entirely of fruit and vegetable products nor is it an unparalleled innovation in the cosmetic world. Its effect upon the circulation of the blood at the place of application is transitory and has no physiological significance. Neither by its effect upon the circulation of the blood supply or otherwise will it render firmer or strengthen or nourish the skin, muscles, or tissues, nor will it build tissue. It will not beautify, revitalize, or rejuvenate

the user or her skin. No scientific or permanent benefit will result from its use. It will not remove lines, blackheads, pimples, or crow's-feet from the face and any "glow" which it may impart due to its irritant character is of short duration. It is not a skin tonic in any sense that permanent beneficial results will be obtained from its persistent use. It is not healing nor is it helpful or beneficial in the treatment of acne. It neither stimulates the pores nor reduces their size. It has no bleaching qualities. It will not erase years from the appearance of the user.

Respondent's product "Tissuefane Preparatory Oil" will not nourish or feed the skin or tissues. It does not remove wrinkles or lines except that very fine lines due solely to dryness of the skin may be temporarily removed by its use. Any softness which it may impart to the skin is but temporary.

PAR. 6. The use by the respondent of the foregoing false and misleading statements and representations disseminated as aforesaid, with respect to the said preparations, has had, and now has, the capacity and tendency to 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 that respondent's said preparations will accomplish the results indicated and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase substantial quantities of respondent's said preparations. As a result, trade has been diverted unfairly to the respondent from her competitors in commerce among and between the various States of the United States who truthfully advertise the effectiveness in use of their respective preparations.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, 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 filed herein in support of the complaint (respondent not having filed brief and oral argument not having been requested)

and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Betty Wells Fowler, individually and trading under the name of Betty Wells Cosmetic Co., or under any other name or names, her representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of cosmetic preparations heretofore designated by the names of "Tissuefane" and "Tissuefane Preparatory Oil," or any other preparations composed of substantially similar ingredients or possessing substantially similar qualities, whether sold under those names or any other names, do forthwith cease and desist from representing:

(*a*) That the preparation designated "Tissuefane"

(1) Will nourish the skin, build tissue or strengthen facial muscles;

(2) Will remove blackheads or have any effect thereon in excess of removing the superficial dirt on the surface thereof;

(3) Will remove lines, pimples or crow's-feet;

(4) Will rejuvenate, preserve, stimulate, or beautify the skin except to the extent that said preparation may temporarily stimulate the skin;

(5) Will reduce the pores or will clean the pores in excess of removing superficial dirt from the pore openings;

(6) Will increase the circulation and supply of blood or have any effect thereon in excess of slightly and temporarily stimulating the blood in those portions of the body to which it is applied;

(7) Is made wholly of fruit and vegetable products or is an innovation in the cosmetics field;

(8) Is a bleaching agent;

(9) Is a skin tonic, or is healing to the skin or possesses any beneficial value in the treatment of acne.

(*b*) That the preparation designated "Tissuefane Preparatory Oil"

(10) Will nourish or feed the skin or pores;

(11) Will make the skin soft other than temporarily;

(12) Will prevent or remove wrinkles or lines from the face other than such lines as may be caused solely by dryness of the skin.

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

IN THE MATTER OF

DAN M. THOMPSON, DOING BUSINESS AS DANSON LABORATORIES AND THOMPSON LABORATORIES

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

Docket 3752. Complaint, Mar. 31, 1939—Decision, June 29, 1940

Where an individual engaged in sale and distribution of his Danson Formula medicinal preparation, advertised and sold as cure for alcoholism or drunkenness, to purchasers in 10 or 12 States other than State of Illinois, or place of business, and including Minnesota, Missouri, and Ohio, in which he circulated his advertising and labels as below set forth—

(*a*) Represented through advertisements in various newspapers and other publications, and through circulars sent through the mails and circular letters, that his said Danson Formula constituted a remedy or cure for alcoholism and that it was a competent and effective treatment for said condition or drunkenness, and counteracted desire for alcoholic stimulation and relieved craving therefor;

Facts being his said product, active drug ingredient of which was a sedative, was not a remedy or cure for either acute or chronic alcoholism, requiring separate treatments and also, in some cases, different treatments in cases of same type, and it would not relieve craving for such stimulation or counteract desire therefor, or have any value as a competent or effective treatment for alcoholism in excess of its value as a sedative for quieting nerves; and

(*b*) Represented through use of word "Laboratories," as included by him in his trade names and displayed on labels attached to his product, that he conducted a laboratory in connection with his said business;

Facts being he did not own or operate a laboratory or use any laboratory equipment in connection with the business in question;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such representations were true, and into purchase of substantial quantity of 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.

Before *Mr. John J. Keenan* and *Mr. Lewis C. Russell*, trial examiners.
Mr. DeWitt T. Puckett for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Dan M. Thompson, an individual doing business as Danson Laboratories and Thompson 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. Respondent, Dan M. Thompson, is an individual doing business as Danson Laboratories and Thompson Laboratories at 32 North State Street, Chicago, Ill. He is engaged in the sale and distribution of a medicinal preparation called "Danson Formula," an alleged cure for alcoholism or drunkenness, said medicinal preparation constituting a drug within the intent and meaning of the Federal Trade Commission Act.

Respondent now causes, and for more than 1 year last past has caused, his said medicinal preparation, when sold by him, to be shipped from his said place of business in Chicago, Ill., to the purchasers thereof located in the various States of the United States, other than the State of Illinois, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said medicinal preparation so sold and distributed by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his 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:

LIQUOR HABIT.—A new home treatment; harmless, tasteless; given secretly in coffee, tea, etc.; send for FREE BOOKLET. DANSON LAB., 32 N. State St., Chicago.

DANSON
FORMULA
THE
TRIED
TREATMENT
FOR ALCOHOLISM

DANSON FORMULA relieves the craving by counteracting the desire for alcoholic stimulation and the principle (sic) idea is to get the system thoroughly inoculated with this preparation. * * *

DANSON

FORMULA

THOMPSON LABORATORIES

CHICAGO, ILL.

* * *

Through the use of the statements hereinabove set forth and others similar thereto not specifically set out herein, respondent has represented and does now represent that his said medicinal preparation is an adequate remedy or cure for alcoholism or drunkenness; that it is a competent and effective treatment for alcoholism or drunkenness; that said medicinal preparation relieves the craving for alcoholic stimulation by counteracting the desire therefor; and that respondent conducts a laboratory.

PAR. 3. In truth and in fact, respondent's said preparation, Danson Formula, is not an adequate remedy or cure for alcoholism or drunkenness, nor is it a competent and effective treatment therefor. It does not relieve the craving for alcoholic stimulation by counteracting the desire therefor. The respondent does not own, operate, or control a laboratory.

PAR. 4. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements disseminated as aforesaid 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 Danson Formula as a result of such an erroneous belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on March 31, 1939, issued and subsequently served its complaint in this proceeding upon respondent, Dan M. Thompson, an individual doing business as Danson Laboratories and as Thompson Laboratories, 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 DeWitt T. Puckett, attorney for the Commission, and in opposition thereto by the respondent, who appeared in his own behalf, before John J. Keenan and Lewis C. Russell, trial examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony, and other evidence and brief in support of the complaint (no brief having been filed by respondent 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, Dan M. Thompson, an individual was for several years immediately preceding the month of August 1939, engaged in the sale and distribution of a medicinal preparation designated and sold under the trade name "Danson Formula." He advertised and sold said product as a cure for alcoholism or drunkenness. Respondent's place of business was at 32 North State Street, Chicago, Ill.

In the course and conduct of the aforesaid business, respondent sold and shipped his said product from his aforesaid place of business in Chicago, Ill., to purchasers thereof in 10 or 12 States other than the State of origin, including the States of Minnesota, Missouri, and Ohio, in all of which States respondent circulated his advertising and labels hereinafter mentioned.

PAR. 2. During the time mentioned above and in the course of his aforesaid business, respondent caused to be published and disseminated through the Minneapolis Tribune, the St. Louis Neighborhood News, a Grand Rapids, Mich., paper, and other publications, certain advertisements of which the following are typical.

LIQUOR HABIT—A new home treatment; harmless, tasteless; given secretly in coffee, tea, etc.; send for FREE BOOKLET DANSON LAB., 32 N. State St., Chicago.

Respondent also sent through the United States mails to prospective purchasers, circulars and circular letters containing representations of which the following are typical:

DANSON FORMULA

THE TRIED TREATMENT

FOR ALCOHOLISM

DANSON FORMULA relieves the craving by counteracting the desire for alcoholic stimulation and the principle (sic) idea is to get the system thoroughly inoculated with this preparation * * *.

Respondent also represented on his labels attached to the product the following:

DANSON FORMULA

THOMPSON LABORATORIES

CHICAGO, ILL.

* * *

By the use of the above representations, respondent represented that "Danson Formula" is a remedy or cure for alcoholism; that said preparation is a competent and effective treatment for alcoholism or drunkenness; that said preparation counteracts the desire for alcoholic stimulation; that said product relieves the craving for alcoholic stimulation; and that respondent conducts a laboratory in connection with his aforesaid business.

PAR. 3. The quantitative formula for respondent's product is:

	Oz.
Ammonium bromide (U. S. P.)	8
Ammonium carbonate (U. S. P.)	¼
Glycerine	2
Distilled water	10

The recommended dosage is 20 drops three times a day, or 30 drops twice a day.

PAR. 4. Alcoholism may be defined as a condition resulting from excessive use of alcohol. If taken in moderation, alcohol is burned by the body and acts as a fuel for energy. If the use of alcohol exceeds the body's need for fuel, alcoholism results.

There are two types of alcoholism, viz, acute and chronic. Acute alcoholism results from excessive use of alcohol for a comparatively short period of time and may be described as a temporary condition, whereas chronic alcoholism results from an excessive and regular use of alcohol for a considerable period of time and may be described as a more or less permanent condition. The treatment for acute alcoholism is not the same as the treatment for chronic alcoholism nor should all cases of either type be treated the same way. Acute alcoholism is usually treated by giving the patient a blood sugar intravenously and by administration of a sedative drug, if necessary, to quiet the patient's nerves. Chronic alcoholism is usually treated by psychiatric methods, such as an attempt to solve the problem which causes the patient to desire drink or the effects produced thereby. Sedative drugs are also used in some cases of chronic alcoholism to quiet the patient's nerves.

PAR. 5. The active ingredient contained in respondent's product is ammonium bromide, which is a sedative drug. Sedative drugs containing bromides are sometimes used in the treatment of alcoholism as an adjunct for the purpose of quieting the patient's nerves. The Commission finds that respondent's product is not a remedy or cure for either type of alcoholism nor will it relieve the craving for alcoholic stimulation or counteract the desire therefor, or have any value as a competent and effective treatment for alcoholism in excess of its value as a sedative for quieting the nerves. The respondent does not own or operate a laboratory nor does he use any laboratory equipment in connection with his business.

PAR. 6. The use by the respondent of the foregoing deceptive and misleading statements, representations, and advertisements, disseminated as aforesaid, has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of substantial quantities of respondent's product as a result 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, the answer of respondent, testimony, and other evidence taken before John J. Keenan and Lewis C. Russell, trial examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, and brief filed herein in support of the complaint (no brief having been filed by respondent and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Dan M. Thompson, trading as Danson Laboratories and as Thompson Laboratories, 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 or distribution of his medicinal

preparation designated "Danson Formula," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a cure or remedy for alcoholism or the liquor habit, that said preparation has any value as a competent and effective treatment for alcoholism in excess of its value as a nerve sedative, or that said preparation will counteract the desire for liquor, or relieve the craving for alcoholic stimulation.

2. 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 contain any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent, Dan M. Thompson, his representatives, agents, and employees, as aforesaid, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of said preparation, or any other similar preparation, as hereinabove referred to, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Laboratories" or any other word of similar import or meaning in any trade or corporate name or in any other manner to describe or refer to respondent's business.

2. Representing in any manner that respondent owns or operates a laboratory.

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

IRVING NAPP, TRADING AS NAPP'S LONGLIFE HOSIERY

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

Docket 3875. Complaint, Aug. 25, 1939—Decision, June 29, 1940

Where an individual engaged in sale and distribution of women's hosiery through personal demonstration and solicitation to purchasers in various other States and in the District of Columbia—

(*a*) Represented that his said hosiery was run-proof and snag-proof, directly and through purported demonstrations, and that it would outwear all other hosiery on the market;

Facts being hosiery sold by him was neither run-proof nor snag-proof, and did not outwear other hosiery as aforesaid, but was of inferior quality as compared thereto, and demonstration made by him was not proper test, but trick or demonstration to confuse customer and cause him to believe that such hosiery would not be subject to runs or snags, through procedure employed by him of using nail file or other sharp, pointed instrument to scratch threads and punch holes in hosiery and separate threads, so as to appear snagged, or to have run, and manipulating same thereafter so as to bring hosiery back to its original condition; and

(*b*) Represented that said hosiery was guaranteed to be satisfactory to purchasers, and guaranteed for 6 months against runs or holes, that he would deliver to purchaser free of charge new pairs if runs or holes appeared therein within said period from date of purchase, and that prompt adjustment would be made by him in any case where hosiery was not satisfactory or as represented;

Facts being there were instances in which after acceptance of partial and even full payment, he converted money to his own use, failed and neglected and refused to ship hosiery sold, and made no refund to customers, so that they received nothing whatsoever from him, and other instances in which he shipped and delivered to customers hosiery inferior in quality or different in color or size from that ordered, and he did not fill his guarantee to purchasers, when advised that product had been found unsatisfactory and notified that runs or holes had developed within period aforesaid, with request for new hosiery free of charge, but neglected and refused to deliver to purchasers, in accordance with guarantee, such new product and, in many cases, he did not make prompt adjustment when notified that product was not satisfactory and did not wear as represented and guaranteed, and in cases in which adjustment was made, he replaced initial hosiery with other product of inferior quality or differing in color or size;

With effect of misleading and deceiving substantial number of members of purchasing public into erroneous and mistaken belief that such false and misleading demonstrations, statements and representations, including those with respect to purported snag-proof, run-proof character of hosiery, constituting, by reason of serious item of expense involved in such defects, special attraction to women, were true, and into purchase of substantial quantities of his hosiery 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.

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

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 Irving Napp, an individual, trading as Napp's Longlife Hosiery, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Irving Napp, is an individual doing business under the name of Napp's Longlife Hosiery, and having his residence and principal place of business located at 107 West Seventy-fifth Street in the city of New York in the State of New York. During the past year, and for some time prior thereto, the respondent has been engaged in the sale and distribution of hosiery from his said place of business through the solicitation of orders for such hosiery from persons living in various States of the United States and in the District of Columbia. Respondent fills or pretends to fill such orders by transporting, or causing to be transported, said hosiery from his said place of business in New York to the purchasers thereof at their respective points of location in various States of the United States and in the District of Columbia.

Respondent, at all times mentioned herein, has maintained a course of trade in commerce in said hosiery among and between various States of the United States and in the District of Columbia.

Par. 2. In the course and conduct of his aforesaid business and in furtherance of the sale of said hosiery, the respondent has made various false and misleading statements and representations relative to said hosiery, among and typical of which are the following:

(*a*) That his hosiery is run-proof and snag-proof.

(*b*) That respondent guarantees said hosiery to be satisfactory to the purchasers thereof.

(*c*) That respondent's hosiery is guaranteed for 6 months against runs or holes and that respondent will deliver to the purchasers, free of charge, new pairs of hosiery, if runs or holes occur in said hosiery within 6 months from the date of purchase.

(*d*) That prompt adjustment will be made by respondent in any case where the hosiery is not satisfactory or does not wear as represented.

(*e*) That respondent's hosiery will outwear all other hosiery on the market.

PAR. 3. In truth and in fact, respondent's said hosiery is not run-proof or snag-proof. Respondent does not guarantee said hosiery to be satisfactory to the purchasers thereof. Respondent's hosiery is not guaranteed for 6 months against runs or holes and respondent does not deliver or cause to be delivered to purchasers of said hosiery a new pair of hose, free of charge, if runs or holes occur in said hosiery within 6 months from the date of purchase thereof. In many cases runs and holes have developed in said hosiery after a short period of use thereof and respondent has failed and refused to make any adjustment with the purchasers of said hosiery. Respondent's hosiery will not outwear all other hosiery on the market. Respondent's hosiery is inferior to various other brands of hosiery on the market.

The respondent has further represented to prospective purchasers, by means of a misleading demonstration consisting of pushing a sharp instrument through the hosiery, that sharp objects will not damage or cause his hosiery to run, and has further represented that only run-proof hosiery would withstand such test. In truth and in fact such manipulation is not a true test, of the wearing qualities of said hosiery or as to whether or not said hosiery is run-proof.

PAR. 4. Respondent, in addition to the use of the above and foregoing false and misleading representations and statements, and others similar thereto, in offering for sale and selling his hosiery, has used the following methods and practices, to wit:

He has filled certain orders received by him with hosiery which was of different size, color, or quality, or different in all of such respects from hosiery ordered, and in certain instances he has failed and refused to furnish hosiery after receiving orders with deposits and has failed and refused to return said deposits. He has failed and refused in many instances to adjust or correct orders which were improperly filled by him, and has failed and refused to refund money or furnish new hosiery in accordance with the terms of his purported guarantee and representations.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said hosiery, 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 hosiery because of said erroneous and mistaken belief.

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 August 25, 1939, issued and thereafter served its complaint in this proceeding upon the respondent, Irving Napp, an individual, doing business under the trade name Napp's Longlife Hosiery, charging him with the use of unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act. After the issuance of said complaint, respondent not having filed answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John W. Brookfield, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Irving Napp, 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 said complaint, 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, Irving Napp, is an individual doing business under the trade name Napp's Longlife Hosiery, having his office and principal place of business at 107 West Seventy-fifth Street, New York, N. Y. Respondent, for more than 1 year prior to March 1939, was engaged in the business of the sale and distribution of women's hosiery through personal demonstration and solicitation, causing said hosiery, when sold, to be transported from 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 main-

tained a course of trade in said hosiery 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 as aforesaid and in the furtherance of the sale of such hosiery, respondent personally solicited prospective customers and made physical demonstrations, using a sharp nail file or other sharp instrument to prove that this hosiery was absolutely run-proof and snag-proof, thereby having wearing qualities not to be found in other hosiery. Respondent also personally made statements and representations relative to the quality and wearing qualities of said hosiery and also made certain guarantees. Among and typical of said statements, representations and guarantees so made were the following:

(*a*) That respondent's hosiery was run-proof and snag-proof.

(*b*) That respondent guaranteed said hosiery to be satisfactory to the purchasers thereof.

(*c*) That respondent's hosiery was guaranteed for 6 months against runs or holes and that respondent would deliver to the purchaser, free of charge, new pairs of hosiery, if runs or holes occurred in said hosiery within 6 months from the date of purchase.

(*d*) That prompt adjustment would be made by respondent in any case where the hosiery was not satisfactory or did not wear as represented.

(*e*) That respondent's hosiery would outwear all other hosiery on the market.

PAR. 3. Respondent used a nail file or other sharp pointed instrument to scratch threads, to punch holes in the hosiery and separate the threads, causing the hosiery to appear to be snagged or have a "run" in it. Then he would manipulate the hosiery so as to bring it back to its original condition. This demonstration was not a proper test to indicate or prove that the hosiery was run-proof or snag-proof, but was a trick demonstration to confuse the customer and cause the customer to believe this hosiery would not be subject to "runs" or snagging.

PAR. 4. Snags in hosiery usually start "runs." "Snags" and "runs" destroy the life and usefulness of women's hosiery, creating such a serious item of expense that women are especially attracted to hosiery which may give longer wear, due to being resistant to snags or "runs."

PAR. 5. In instances, after demonstration and solicitation, respondent secured orders, accepted partial payment, and even payment in full on such order, converted the money to his own use, and failed, neglected, and refused to ship the hosiery so sold. Respondent made no refund to the customer in such instances and the customer received

nothing whatsoever from respondent. In other instances, respondent shipped and delivered to the customer hosiery inferior in quality or different in color or size from the hosiery ordered by the customer.

PAR. 6. The hosiery sold by respondent was not run-proof or snag-proof, nor would it outwear all other hosiery on the market; but was of inferior quality as compared with other hosiery on the market.

PAR. 7. Respondent did not fulfill his guarantee to the purchasers of his hosiery when notified by the customer that such hosiery had been found unsatisfactory. Respondent, when notified by the customer that "runs" or holes had developed in his hosiery within 6 months from the date of the purchase, and request was made that new hosiery be supplied free of charge, neglected and refused to deliver to the purchaser, free of charge, new hosiery in accordance with his guarantee. Respondent in many cases did not make prompt adjustment when notified that the hosiery was not satisfactory to the customer or did not wear as represented and guaranteed by him, and, in those instances where respondent did make adjustment, the initial hosiery was replaced with hosiery of inferior quality or hosiery of a different color or size.

PAR. 8. The use by the respondent of the aforesaid false and misleading demonstrations, statements, and representations, had the capacity and tendency 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 demonstrations, statements, and representations were true and into the purchase of substantial quantities of respondent's hosiery 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, the answer of the 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 brief filed herein by J. W. Brookfield, Jr., counsel for the Commission (no brief having been filed on behalf of the respond-

ent 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, Irving Napp, an individual trading as Napp's Longlife Hosiery, 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 or distribution of hosiery in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by means of purported demonstrations, that respondent's hosiery is snag-proof or run-proof.

2. Representing that respondent's hosiery is guaranteed to be satisfactory to the purchaser, or that respondent will make prompt adjustment or refund for any hosiery which is not satisfactory to the user or which does not wear as represented, when respondent has not in fact established, and does not in fact maintain a definite policy and practice of fulfilling such guarantee and making such adjustment or refund.

3. Representing that respondent's hosiery is guaranteed against runs or holes for any specified period of time, or that respondent will supply new hosiery to the purchaser without cost if runs or holes develop within such specified period, when respondent has not in fact established, and does not in fact maintain a definite policy and practice of fulfilling such guarantee and supplying such new hosiery.

4. Representing that respondent's hosiery is of a grade or quality different from or superior to its true grade or quality, or that such hosiery will outwear all other competitive hosiery.

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

ROY FELLOM, DOING BUSINESS UNDER THE NAME AND STYLE OF FELLOM 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 3960. Complaint, Dec. 1, 1939—Decision, June 29, 1940

Where an individual engaged under trade name in publication of his Pacific Road Builder and Engineering Review periodical, and in sale and distribution thereof to purchasers in various other States, and in deriving main source of income from conduct of his said business of publication and sale of such magazine, devoted to subject matters of interest to contractors, road builders, engineers, and buyers of construction equipment, from sale of advertising space to manufacturers and others having for sale equipment, materials, and commodities which might be of interest to subscribers and recipients of magazine involved, and in competition with others engaged in sale and distribution in commerce in the various States and the District of Columbia of periodicals devoted to the same general subject matter, and of interest to the same general class of readers, and circulated in the same general territory, and who also similarly derived main source of income from their respective businesses—

(*a*) Represented in advertising matter distributed by mails or otherwise to advertisers and prospective advertisers in said magazine, located in various States, that it was circulated only to equipment buyers and had no circulation to nonbuyers, and that survey had been made of such equipment buyers in 11 States in which said magazine was principally circulated, and that in said States it was circulated to 93 percent of such buyers, and that it circulated also to 93 percent of heavy construction equipment buyers based on number thereof, and to 98 percent thereof based on volume of purchases in said 11 States;

Facts being, circulation of said periodical was not restricted exclusively to buyers of equipment, but portion of subscribers and other recipients consisted of those who were not such buyers and no accurate and dependable survey had been made by or for him as basis for figures given by him regarding its coverage of equipment buyers, and his magazine was not circulated to 93 percent of such buyers in said 11 states in which principally circulated, or to 93 percent of heavy construction buyers based on number thereof, nor to 98 percent thereof based on volume of purchases aforesaid; and

(*b*) Furnished figures and material in regard to volume of circulation of his said magazine for publication and distribution to prospective advertisers, and authorized publication and distribution thereof for information of such advertisers and to induce them to place advertisements in his said magazine, and among such representations set forth that such magazine had a total average monthly net paid circulation of 5,129 and a total average monthly distribution of 6,289 for the last 6 months of 1937, and a total average monthly net paid circulation of 4,583 and a total average monthly distribution of 5,625 for the first 6 months of 1938;

Facts being, figures furnished and authorized as aforesaid were misleading in that they overstated volume of circulation of periodical in question and gave an erroneous idea of value thereof as an advertising medium based on possible results, and also correctness of prices charged for advertising space therein based on extent of such circulation, and average monthly paid circulation and average monthly distribution of his magazine during last 6 months of 1937 and first 6 months of 1938 were much less than given in his said authorized statements, which were inaccurate and greatly exaggerated;

With tendency and capacity, through such acts and practices used by said individual in connection with offer and sale of advertising space in his said magazine, to mislead purchasers and prospective purchasers into erroneous and mistaken belief that such representations as above set forth were true, and to induce them to purchase, by reason thereof, advertising space in his said publication, with result that trade was thereby diverted unfairly to him from competitors engaged in sale in commerce of advertising space in magazines and other publications circulated in commerce, and including among competitors those who, in sale of advertising space in magazines and other publications, do not similarly or in any manner misrepresent the volume or character of their circulation or matters pertaining thereto:

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

Mr. B. G. Wilson for the Commission.

Winforth, Cannon & Miller, 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 Roy Fellom, an individual, doing business under the name and style of Fellom Publishing 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, Roy Fellom, is an individual doing business under the name and style of Fellom Publishing Co. with his office and principal place of business at 637 New Call Building in the city of San Francisco, State of California. Respondent is now, and has been for more than 4 years last past, engaged, under said name and style of Fellom Publishing Co., in the publication of a magazine, designated as Pacific Road Builder and Engineering Review, and in the sale and distribution of the same in commerce between and among

the various States of the United States. Respondent, in the course and conduct of said business during the time aforesaid, caused and does now cause its said magazine to be transported from his said place of business in California to, into, and through States of the United States other than California to the purchasers thereof in such other States. Said magazine is devoted to subject matters of interest to contractors, road builders, engineers, and buyers of construction equipment.

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 magazines devoted to the same general subject matter as that of respondent and of interest to the same general class of readers and circulated in the same general territory as that covered by the circulation of respondent's said magazine.

PAR. 3. The main source of income of respondent in the conduct of said business as well as that of his said competitors is derived from the sale of advertising space to manufacturers and others having for sale equipment, materials and commodities which are or may be of interest to the subscribers and recipients of the magazine involved. In connection with the insertion of the advertisements heretofore referred to in respondent's said magazine as well as in those of respondent's competitors, the advertisers contracting for space for the same transport in commerce from their respective States of location to respondent and its competitors located in other States of the United States, cuts, electrotypes, stereotypes, mats, and textual copy for use in making up and publishing such advertisements. Such movement of commerce is materially affected by the methods, acts, and practices of respondent as hereinafter set out.

PAR. 4. In the course and conduct of his business as aforesaid, the respondent has made various misleading representations in advertising matter distributed by mail or otherwise to advertisers and prospective advertisers in said magazine located in various States of the United States in which it is represented that respondent's said magazine is circulated only to equipment buyers and has no circulation to nonbuyers; that a survey had been made of the equipment buyers in the eleven States in which said magazine is principally circulated; that said magazine is circulated to 93 percent of equipment buyers in said eleven States; and that said magazine circulated to 93 percent of heavy construction equipment buyers based on the number of such buyers and to 98 percent thereof based on volume of purchases in

said eleven States. Among such representations so made are the following:

A circulation coverage limited to equipment buyers—a circulation with no waste to nonbuyers. This is exactly what you need for BEST ADVERTISING RESULTS!

A SURVEY SHOWS—

Coverage of equipment buyers in the Eleven Western States comprising contractors (road and public works), State, Federal and county road officials, rock, gravel and cement plants:

By Pacific Road Builder & Engineering Review—93% * * *

* * * You reach in Pacific Road Builder & Engineering Review practically all the equipment buyers in the Eleven Western States.

Breakdown by Purchasing Power in Heavy Construction Pacific Road Builder & Engineering Review Reaches:

By Quantity—93% of Equipment Buyers.

By Volume—98% of Equipment Buying.

PAR. 5. In the course and conduct of his business as aforesaid, respondent has furnished the material and figures in regard to the volume of circulation of his said magazine for publication and distribution to prospective advertisers and authorized the publication and distribution thereof for the information of such prospective advertisers and for the purpose of inducing them to place advertisements in his said magazine. The figures so furnished and authorized to be published as aforesaid have been and are misleading in that they overstate the volume of circulation of said magazine and give an erroneous idea of the value of the same as an advertising medium based on possible results and also of the correctness of the prices charged for advertising space therein based on the extent of such circulation. Among such representations so made by respondent are statements that said magazine had a total average monthly net paid circulation of 5,129 and a total average monthly distribution of 6,289 for the last 6 months of 1937, and a total average monthly net paid circulation of 4,583 and a total average monthly distribution of 5,625 for the first 6 months of 1938.

PAR. 6. In truth and in fact, the circulation of respondent's said magazine is not restricted exclusively to buyers of equipment; a portion of the subscribers and other recipients of respondent's said magazine consists of those who are not buyers of equipment; no accurate and dependable survey had been made by or for respondent as the basis for the figures given in regard to coverage of equipment buyers as quoted in paragraph 4 herein; respondent's magazine is not circulated to 93 percent of the equipment buyers in the 11 States in which it is principally circulated; said magazine is not circulated to 93 percent of heavy construction buyers based on the number of such buyers or to 98 percent thereof based on volume of purchases in said 11 States; and the average monthly paid circulation and average

monthly distribution of respondent's magazine during the last 6 months of 1937 and the first 6 months of 1938 was much less than given in respondent's authorized statements as set forth in paragraph 5 hereof. All of the statements and representations made by respondent as hereinabove alleged are in fact inaccurate and greatly exaggerated.

PAR. 7. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of advertising space in his said magazine 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 the advertising space in respondent's said publication 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 advertising space in magazines and other publications circulated in commerce among and between the various States of the United States and in the District of Columbia. There are among the competitors of respondents those who in the sale of advertising space in magazines and other publications do not similarly or in any manner misrepresent the volume or character of their circulation or matter 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. 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 1st day of December 1939, issued and on the 5th day of December 1939, served its complaint in this proceeding upon respondent Roy Fellom, doing business under the name and style of Fellom Publishing Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations

of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceding 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, Roy Fellom, is an individual doing business under the name and style of Fellom Publishing Co. with his office and principal place of business at 637 New Call Building, in the city of San Francisco, State of California. Respondent is now, and has been for more than 4 years last past, engaged, under said name and style of Fellom Publishing Co., in the publication of a magazine, designated as Pacific Road Builder and Engineering Review, and in the sale and distribution of the same in commerce between and among the various States of the United States. Respondent, in the course and conduct of said business during the time aforesaid, caused, and does now cause, his said magazine to be transported from his said place of business in California to, into and through States of the United States other than California to the purchasers thereof in such other States. Said magazine is devoted to subject matters of interest to contractors, road builders, engineers, and buyers of construction equipment.

PAR. 2. During the time above mentioned, other individuals, firms and corporations in various States of the United States have been, and are now, 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 magazines devoted to the same general subject matter as that of respondent and of interest to the same general class of readers and circulated in the same general territory as that covered by the circulation of respondent's said magazine.

PAR. 3. The main source of income of respondent in the conduct of said business, as well as that of his said competitors, is derived from the sale of advertising space to manufacturers and others having for sale equipment, materials, and commodities which are or may be of interest to the subscribers and recipients of the magazine involved. In connection with the insertion of the advertisements heretofore referred to in respondent's said magazine, as well as in those of respondent's competitors, the advertisers contracting for space for the same transport in commerce from their respective States of loca-

tion to respondent and its competitors located in other States of the United States, cuts, electrotypes, stereotypes, mats, and textual copy for use in making up and publishing such advertisements. Such movement of commerce is materially affected by the methods, acts, and practices of respondent as hereinafter set out.

PAR. 4. In the course and conduct of his business as aforesaid, the respondent has made various misleading representations in advertising matter distributed by mail or otherwise to advertisers and prospective advertisers in said magazine located in various States of the United States in which said magazine is circulated only to equipment buyers and has no circulation to nonbuyers; that a survey had been made of the equipment buyers in the 11 States in which said magazine is principally circulated; that said magazine is circulated to 93 percent of equipment buyers in said 11 States; and that said magazine circulated to 93 percent of heavy construction equipment buyers based on the number of such buyers and to 98 percent thereof based on volume of purchases in said 11 States. Among such representations so made are the following:

A circulation coverage limited to equipment buyers—a circulation with no waste to non-buyers. This is exactly what you need for BEST ADVERTISING RESULTS!

A SURVEY SHOWS—

Coverage of equipment buyers in the Eleven Western States comprising contractors (road and public works), State, Federal and county road officials, rock, gravel and cement plants:

By Pacific Road Builder & Engineering Review—93% * * *

* * * You reach in Pacific Road Builder & Engineering Review practically all the equipment buyers in the Eleven Western States.

Breakdown by Purchasing Power in Heavy Construction Pacific Road Builder & Engineering Review Reaches:

By Quantity—93% of Equipment Buyers.

By Volume—98% of Equipment Buying.

PAR. 5. In the course and conduct of his business as aforesaid, respondent has furnished the material and figures in regard to the volume of circulation of his said magazine for publication and distribution to prospective advertisers and authorized the publication and distribution thereof for the information of such prospective advertisers and for the purpose of inducing them to place advertisements in his said magazine. The figures so furnished and authorized to be published as aforesaid have been and are misleading in that they overstate the volume of circulation of said magazine and give an erroneous idea of the value of the same as an advertising medium based on possible results and also of the correctness of the prices charged for advertising space therein based on the extent of such circulation. Among such representations so made by respondent are statements that said magazine had a total average monthly net paid circulation of 5,129 and a total average

monthly distribution of 6,289 for the last 6 months of 1937, and a total average monthly net paid circulation of 4,583 and a total average monthly distribution of 5,625 for the first 6 months of 1938.

PAR. 6. In truth and in fact, the circulation of respondent's said magazine is not restricted exclusively to buyers of equipment; a portion of the subscribers and other recipients of respondent's said magazine consists of those who are not buyers of equipment; no accurate and dependable survey had been made by or for respondent as the basis for the figures given in regard to coverage of equipment buyers as quoted in paragraph 4 herein; respondent's magazine is not circulated to 93 percent of the equipment buyers in the 11 States in which it is principally circulated; said magazine is not circulated to 93 percent of heavy construction buyers based on the number of such buyers or to 98 percent thereof based on volume of purchases in said 11 States; and the average monthly paid circulation and average monthly distribution of respondent's magazine during the last 6 months of 1937 and the first 6 months of 1938 were much less than given in respondent's authorized statements as set forth in paragraph 5 hereof. All of the statements and representations made by respondent as hereinabove alleged are in fact inaccurate and greatly exaggerated.

PAR. 7. The aforesaid acts and practices used by respondent in connection with the offering for sale and sale of advertising space in his said magazine 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 found, are true, and to induce them to purchase the advertising space in respondent's said publication 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 advertising space in magazines and other publications circulated in commerce among and between the various States of the United States and in the District of Columbia. There are among the competitors of respondent those who in the sale of advertising space in magazines and other publications do not similarly or in any manner misrepresent the volume or character of their circulation 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 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 states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the said facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Roy Fellom, individually or doing business under the name and style of the Fellom Publishing Co., or any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale and sale of advertising space in the magazine now designated "Pacific Road Builder and Engineering Review," whether published under that name, or any other name, and in connection with the offering for sale, sale and distribution of said magazine in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That said magazine is circulated only among equipment buyers and has no substantial circulation among nonbuyers of equipment.

2. That a survey has been made of the equipment buyers in the area in which said magazine is principally circulated unless an accurate and dependable survey of such buyers has in fact been made by some qualified agency.

3. That advertisers in said magazine reach, through the medium of said magazine, substantially all of the road building and other heavy equipment buyers located in the area in which the magazine is principally circulated.

4. That said magazine is circulated among 93 percent of the equipment buyers located in the area in which it is principally circulated or among 98 percent of such buyers based on volume purchases or among any percentage or number of such buyers greater than the percentage or number among which it is actually circulated.

5. That the average monthly net paid circulation or average monthly distribution of said magazine is greater in number than the actual net paid circulation or the average monthly distribution.

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

GEORGE W. HAYLINGS, TRADING AS NATIONAL FOLIO SERVICE

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

Docket 4008. Complaint, Feb. 1, 1940—Decision, June 29, 1940

Where an individual engaged in sale and distribution of books and pamphlets, containing so-called treatises purporting to disclose and portray unusual business opportunities, to purchasers in various other States and in the District of Columbia; in advertising his said treatises through advertisements disseminated through newspapers and other periodicals, and through letters and circulars sent through the mails to prospective purchasers—

(*a*) Represented directly and by inference that his so-called treatises presented business opportunities which possessed exceptional merit and offered prospects of high earnings and profits with expenditure of little or no effort, and that operation of businesses concerned involved no peddling or canvassing, and that the plans were original and new and in many cases included valuable formulas which had been acquired by him at great expenses and which he owned exclusively;

Facts being many plans set forth were without any substantial merit, and earnings and profits which he represented as obtainable from operation of businesses concerned were far in excess of any amounts which had been or might be earned therefrom, and many of his said plans did require peddling and house to house convassing, and plans referred to by him were in many cases neither original nor new and did not include formulas which had any substantial value or which were owned exclusively by him; and

(*b*) Represented that he was able to grant purchasers of such treatises exclusive rights to operate businesses concerned within certain territories, and that such treatises were offered for sale for a limited time only, and that he issued at regular intervals supplements thereto;

Facts being he was unable to grant purchasers any rights with respect to operation of such businesses in any specific territories, the time within which such plans might be obtained from him were not limited, but they were subject to purchase at any time, and he did not issue any supplements as set forth above;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true, and of inducing substantial portion of such public, because of such belief, to purchase a substantial number of such books and pamphlets:

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.

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 George W. Haylings, an individual, trading and doing business under the name and style of National Folio Service, 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 said respondent, George W. Haylings, is an individual trading and doing business under the name and style of National Folio Service, with his office and principal place of business at 1071 West Thirtieth Street, Los Angeles, Calif.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of books and pamphlets containing so-called treatises purporting to disclose and portray unusual business opportunities.

Respondent causes said books and pamphlets, when sold, to be transported from his place of business in the State of California 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 books and pamphlets 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, and for the purpose of inducing the purchase of his said treatises, the respondent has made and now makes false and misleading representations with respect to his said treatises, such representations being disseminated by means of advertisements inserted in newspapers and other periodicals, and by means of letters and circulars sent through the United States mails to prospective purchasers of such treatises. Among and typical of such representations are the following:

Afternoons free for outdoors, shows, $340 month home. Unique plans. No canvassing. Prepare for surprise.

$50,000.00—NO CANVASSING * * * in orders—reports Mr. S. D. (full time and Exceptional). Smaller possibilities half days. Unusual Business Plan (Treatise 11-B) AFTERNOONS FREE for life's pleasures. Drive into the country or go to the movies afternoons. Work each morning until noon at HOME! Right now in time for a happy Autumn. Prepare for surprise!

New supplemental pages being issued regularly.

We are withdrawing this formula from our treatise next spring for our personal use.

We will grant you territorial rights under a binding contract.

We are the sole owners of this plan and formula.

We went to considerable trouble and expense purchasing this unusual plan from a gentleman 6,000 miles away in Australia.

Here is something new! We have just purchased this formula.

"Special offer," limited by time.

Our Treatise No. 2, a workable "business plan" that tells you How the originator earned a remarkable wage "every month" the year round, no slack seasons. And—from a heretofore "hidden source" that will surprise, fascinate and Delight you!—there are few business worries—no long waits for the money—no long hours of unpleasant working—no similar competition—no office or store overhead—and no equipment needed in such a service of this kind—a service needed badly in this modern age.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, respondent represents, directly and by inference, that his so-called treatises present business opportunities which possess exceptional merit and which offer prospects of high earnings and profits, with the expenditure of little or no effort; that the operation of such businesses involves no peddling or canvassing; that such plans are original and new and in many cases include valuable formulas which have been acquired by respondent at great expense and which are owned exclusively by respondent; that respondent is able to grant to purchasers of such treatises exclusive rights to operate such businesses within certain territories; that such treatises are offered for sale for a limited time only; that the respondent issues at regular intervals supplements to said treatises.

PAR. 5. The aforesaid representations are grossly exaggerated, false, and misleading. In truth and in fact, many of the plans set forth in respondent's treatises are without any substantial merit. The earnings and profits which respondent represents may be obtained from the operation of such businesses are far in excess of any amounts which have been or may be earned therefrom. Many of such plans do require peddling and house-to-house canvassing. Such plans are in many cases neither original nor new, nor do they include formulas which have any substantial value or which are owned exclusively by respondent. The respondent is unable to grant to purchasers any rights with respect to the operation of such businesses in any specific territories. The time within which such plans may be obtained from respondent is not limited, but such plans are subject to purchase at any time. The respondent does not issue any supplements to such treatises.

PAR. 6. The use by respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial

portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial number of respondent's books and pamphlets.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on February 1, 1940, issued, and thereafter served, its complaint in this proceeding upon respondent, George W. Haylings, trading as National Folio Service, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On March 25, 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 said respondent, George W. Haylings, is an individual trading and doing business under the name and style of National Folio Service, with his office and principal place of business at 1071 West Thirtieth Street, Los Angeles, Calif.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of books and pamphlets containing so-called treatises purporting to disclose and portray unusual business opportunities.

Respondent causes said books and pamphlets, when sold, to be transported from his place of business in the State of California 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 books and pamphlets 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, and for the purpose of inducing the purchase of his said treatises, the respondent has made and now makes false and misleading representations with respect to his said treatises, such representations being disseminated by means of advertisements inserted in newspapers and other periodicals and by means of letters and circulars sent through the United States mails to prospective purchasers of such treatises. Among and typical of such representations are the following:

Afternoons free for outdoors, shows, $340 month home. Unique plans. No canvassing. Prepare for surprise.

$50,000.00—No CANVASSING * * * in orders—reports Mr. S. D. (full time and Exceptional). Smaller possibilities half days. Unusual Business Plan (Treatise 11-B). AFTERNOONS FREE for life's pleasures. Drive into the country or go to the movies afternoons.

Work each morning until noon at HOME! Right now in time for a happy Autumn. Prepare for surprise!

New supplemental pages being issued regularly.

We are withdrawing this formula from our treatise next spring for our personal use.

We will grant you territorial rights under a binding contract.

We are the sole owners of this plan and formula.

We went to considerable trouble and expense purchasing this unusual plan from a gentleman 6,000 miles away in Australia.

Here is something new! We have just purchased this formula.

"Special offer", limited by time.

"Our Treatise No. 2, a workable "business plan" that tells you How the originator earned a remarkable wage "every month" the year round, no slack seasons. And—from a heretofore "hidden source" that will surprise, fascinate and Delight you!—There are few business worries—no long waits for the money—no long hours of unpleasant working—no similar competition—no office or store overhead—and no equipment needed in such a service of this kind—a service needed badly in this modern age.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, respondent represents and has represented, directly and by inference, that his so-called treatises present business opportunities which possess exceptional merit and which offer prospects of high earnings and profits, with the expenditure of little or no effort; that the operation of such businesses involves no peddling or canvassing; that such plans are original and new and in many cases include valuable formulas which have been acquired by respondent at great expense and which are owned exclusively by respondent; that respondent is able to grant purchasers of such treatises exclusive rights to operate such businesses within certain territories; that such treatises are offered for sale for a limited time only; that the respondent issues at regular intervals supplements to said treatises.

PAR. 5. The aforesaid representations are grossly exaggerated, false, and misleading. Many of the plans set forth in respondent's treatises are without any substantial merit. The earnings and profits which respondent represents may be obtained from the operation of such businesses are far in excess of any amounts which have been or may be earned therefrom. Many of such plans do require peddling and house-to-house canvassing. Such plans are in many cases neither original nor new, nor do they include formulas which have any substantial value or which are owned exclusively by respondent. The respondent is unable to grant to purchasers any rights with respect to the operation of such businesses in any specific territories. The time within which such plans may be obtained from respondent is not limited, but such plans are subject to purchase at any time. The respondent does not issue any supplements to such treatises.

PAR. 6. The use by respondent of the foregoing false, deceptive, and misleading statements and representations has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and induces, and has induced, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase a substantial number of respondent's books and pamphlets.

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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, George W. Haylings, trading as National Folio Service, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of books or pamphlets containing treatises with respect to purported business opportunities, do forthwith cease and desist from:

1. Representing as earnings or profits from the operation of the businesses described in said treatises, any amounts in excess of those which have in fact been regularly and customarily earned by persons operating such businesses under normal conditions.

2. Representing that the businesses described in said treatises involve no peddling or house-to-house canvassing, when in fact such businesses do require such activities.

3. Representing as original or new any plan or business which is not such in fact.

4. Representing that the formulas involved in the plans or business described in said treatises possess any substantial value, or that such formulas are owned exclusively by respondent.

5. Representing that respondent is able to grant to purchasers of said treatises or business plans any rights with respect to the operation of such businesses in any specific territory.

6. Representing that the period of time within which said treatises or business plans may be obtained from respondent is limited.

7. Representing that respondent issues any supplements to said treatises.

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

GAREY CARR, TRADING AS AL VIOLA PRODUCTS

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

Docket 4045. Complaint, Mar. 2, 1940—Decision, June 29, 1940

Where an individual engaged in manufacture of his Al Viola Dental Plate Tightener and Reliner for tightening such plates, and sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements of his said product which he disseminated and caused to be disseminated through the mails, insertion in newspapers and periodicals of general circulation, and in circulars, and other printed or written matter distributed in commerce among the various States, and through other means in commerce and otherwise, and which were intended and likely to induce purchase of his said product—

Represented that his said dental plate tightener and reliner constituted a competent and effective method of tightening dental plates and that use thereof was certain to result in a perfect fit of such plates, and that it might be applied effectively by anyone, and that no expert assistance was required in use thereof, through such statements, among others, as "You can tighten and renew your present plates in a few minutes time in your own home" and "A simple fool-proof method with guaranteed results on any type of dental plate";

Facts being said device or product did not constitute in usual and ordinary case competent or effective method of tightening such plates and use thereof would not result in an improved fit, but satisfactory results therefrom could be obtained only in exceptional and unusual cases where condition of mouth was favorable to use of such method, and in which exceptional cases, also, product had to be applied by one qualified by training to perform such work, and results obtained would be only temporary in their nature;

With tendency and capacity to and effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and claims were true, and into purchase of substantial quantities 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. 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 Garvey Carr, an individual trading as Al Viola Products, and 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. Garey Carr is an individual, trading and doing business as Al Viola Products, with his principal place of business located at 1225 Keniston Avenue, Los Angeles, Calif.

PAR. 2. In the course and conduct of his aforesaid business, respondent, Garey Carr, is and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a preparation for tightening dental plates designated as "Al Viola Dental Plate Tightener and Reliner."

Respondent causes said product, when sold by him, to be transported from his aforesaid place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his 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:

You can tighten and renew your present plates in a few minutes time in your own home.

One application of AL VIOLA is guaranteed to produce a perfect, tight-fitting plate.

A simple fool proof method with guaranteed results on any type of dental plate.

Guarantees a tight-fitting plate in a few minutes at home. No adhesive needed.

By the use of the representations and statements above set out and of similar statements used by respondent but not set out herein, respondent represents that his said product constitutes a competent and effective method of tightening dental plates, and that the use of such product is certain to result in a perfect fit of such plates; that such product may be applied effectively by any person, and that no expert assistance is required in the use of such product.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondent's product does not constitute, in the usual and ordinary case, a competent or effective method for the tightening of dental plates, nor will the use of such product result in an improved fit of such plates. In truth and in fact, satisfactory results from the application of respondent's product can be obtained only in exceptional and unusual cases where the condition of the mouth is favorable to the use of such a method. Even in such exceptional cases such product must be applied by one qualified by training to perform such work, and the results obtained will be only temporary in their nature.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and claims with respect to his product, 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 into the purchase of substantial quantities of respondent's product.

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 March 2, 1940, issued, and on March 8, 1940, served, its complaint in this proceeding upon respondent Garey Carr, an individual trading as Al Viola Products, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 10, 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 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, Garey Carr, is an individual trading and doing business as Al Viola Products, with his principal place of business located at 1225 Keniston Avenue, Los Angeles, Calif.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the manufacture, sale, and distribution of a preparation for tightening dental plates designated as "Al Viola Dental Plate Tightener and Reliner."

Respondent causes said product, when sold by him, to be transported from his aforesaid place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia.

PAR. 3. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of his 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:

You can tighten and renew your present plates in a few minutes time in your own home.

One application of AL VIOLA is guaranteed to produce a perfect, tight-fitting plate.

A simple fool-proof method with guaranteed results on any type of dental plate.

Guarantees a tight-fitting plate in a few minutes at home. No adhesive needed.

By the use of the representations and statements above set out and of similar statements used by respondent but not set out herein, respondent represents that his said product constitutes a competent and effective method of tightening dental plates, and that the use of such product is certain to result in a perfect fit of such plates; that such product may be applied effectively by any person, and that no expert assistance is required in the use of such product.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. Respondent's product does not constitute, in the usual and ordinary case, a competent or effective method for the tightening of dental plates, nor will the use of such product result in an improved fit of such plates. In truth and in fact, satisfactory results from the application of respondent's product can be obtained only in exceptional and unusual cases where the condition of the mouth is favorable to the use of such a method. Even in such exceptional cases such product must be applied by one qualified by training to perform such work, and the results obtained will be only temporary in their nature.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations and claims with respect to his product, 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 into the purchase of substantial quantities of respondent's product.

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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Garey Carr, an individual, trading as Al Viola Products, 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 or distribution of his preparation designated "Al Viola Dental Plate Tightener and Reliner," or of any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that, except in unusual and exceptional cases where the condition of the mouth is favorable to the use of such method, the use of said preparation constitutes a competent or effective method for tightening dental plates, or supplies an improved fit for such plates or accomplishes satisfactory results; or that said preparation may be applied effectively by anyone other than an expert; or that the satisfactory use of said preparation requires no expert assistance.

2. 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 contain any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

THE MURINE 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 4076. Complaint, Mar. 30, 1940—Decision, June 29, 1940

Where a corporation engaged in manufacture of its Murine medicinal preparation, and in sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails and through various other means in commerce, and otherwise, and including advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, and which were intended and likely to induce purchase of its said preparation—

Represented that said Murine was a cure or remedy for eyestrain and constituted a competent and effective treatment therefor, and that use thereof would prevent or ward off eyestrain due to driving, attendance at movies, reading, sewing, or other excessive use of the eyes, and would prevent irritation of eyes due to exposure to dust, sun, or light glare, through such statements, among others, as "Quick relief from eyestrain due to dust, sun, light glare, driving, movies, reading, etc.," "*Millions Know This Relief For Eye Strain. Here's safe, easy way to end discomfort of tired eyes,*" and "Sewing and reading hold no terrors for the eyes of those who use Murine * * * helps to ward off eyestrain";

Facts being said product was not a cure or remedy for eyestrain caused by excessive use of eyes, nor a competent or effective treatment therefor, and in those cases in which such strain is due to uncorrected defects in focusing of eyes, instillation of said products or one of substantially similar properties into eyes thus afflicted would not provide cure or remedy therefor or competent treatment, or possess any therapeutic value with respect thereto in excess of furnishing refreshment to eyes and relief from irritation and discomfort of eye associated with such eye strains, would not prevent such strain due to driving, movies, reading, sewing, or other excessive use of eyes nor prevent irritation caused by exposure to dust, sun, or light glare as distinguished from eyestrain, and it possessed no therapeutic value with respect to such irritations in excess of furnishing refreshment to eyes and relief therefrom;

With capacity and tendency to and 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 to induce portions of said public, because of such belief, to purchase its said 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. Robert Mathis, Jr., for the Commission.

Rogers, Hoge & Hills, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that The Murine Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The Murine Co., Inc., is a corporation organized and existing under the laws of the State of Illinois, with its general offices and principal place of business located at 660–678 North Wabash Avenue, in the city of Chicago, and State of Illinois.

PAR. 2. Respondent is now and has been for several years last past engaged in the business of manufacturing, selling, and distributing a medicinal preparation containing drugs, known and designated as "Murine." Respondent causes said preparation 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 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 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 and by various 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 respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodi-

cals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Quick relief from eyestrain due to dust, sun, light glare, driving, movies, reading, etc.

2. *Millions Know This Relief For Eye Strain.* Here's safe, easy way to end discomfort of tired eyes. Do your eyes smart and burn? Feel tired, uncomfortable? Then you should try the safe modern Murine way to cleanse and refresh them.

3. Close work, reading and sewing put a heavy strain on your eyes but MURINE quickly relieves that tired smarting feeling your eyes so often have when you have been using them steadily for hours.

4. Driving an automobile puts a heavy strain on your eyes. * * * MURINE makes short work of the irritation resulting from this cause.

5. Sewing and reading hold no terrors for the eyes of those who use MURINE for an application of this famous lotion helps to ward off eyestrain.

6. Do you, too, suffer from eyestrain after driving? So did I until I found Murine's amazing relief.

PAR 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondent has represented directly and by implication that respondent's preparation "Murine" is a cure or remedy for eyestrain caused by excessive use of the eyes and constitutes a competent and effective treatment therefor; that said preparation will prevent eyestrain due to dust, sun, light glare, driving, movies, reading, sewing, and other excessive uses of the eyes, and will quickly relieve and eliminate the irritation and eyestrain caused thereby.

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 respondent's preparation "Murine" is not a cure or remedy for eyestrain caused by excessive use of the eyes and is not a competent or effective treatment therefor. Eyestrain is due to or caused by excessive use of the eyes or eye muscles or by uncorrected defects in the focusing of the eyes. After the eye muscles have been strained by excessive use or from uncorrected defects in the focusing of the eyes, the instillation of respondent's preparation or one of substantially similar therapeutic properties into the conjunctival sac of eyes so afflicted will have no effect other thana that of affording a sensation of refreshment to such eyes. Respondent's preparation will not prevent eyestrain due to dust, sun, light glare, driving, movies, reading, sewing, and other excessive uses of the eyes, and will not relieve or eliminate the irritations caused by such eyestrain in excess of affording a temporary sensation of refreshment to the eyes.

PAR. 6. The use by the respondent of the foregoing false and deceptive statements and representations with respect to its 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 to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's preparation containing drugs.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 30th day of March 1940, issued, and on the 1st day of April 1940, served its complaint upon respondent, The Murine Company, 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 the 5th day of April 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's counsel, Rogers, Hoge and Hills, 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

PARAGRAPH 1. Respondent, The Murine Co., Inc., is a corporation organized and existing under the laws of the State of Illinois, with its general offices and principal place of business located at 660–678 North Wabash Avenue, 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 manufacturing, selling, and distributing a medicinal preparation containing drugs, known and designated as "Murine." Respondent causes said preparation, 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 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 aforesaid business the respondent has disseminated and is now disseminating, and has caused, and is now causing the dissemination of, advertisements concerning its said product by United States mails and by various 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 respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, 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 statements and representations contained in said advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, by radio continuities, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

1. Quick relief from eyestrain due to dust, sun, light glare, driving, movies, reading, etc.

2. *Millions Know This Relief For Eye Strain.* Here's safe, easy way to end discomfort of tired eyes. Do your eyes smart and burn? Feel tired, uncomfortable? Then you should try the safe modern Murine way to cleanse and refresh them.

3. Sewing and reading hold no terrors for the eyes of those who use MURINE for an application of this famous lotion helps to ward off eyestrain.

4. Do you, too, suffer from eyestrain after driving? So did I until I found Murine's amazing relief.

PAR. 4. The foregoing statements, representations and advertisements and others of similar import have the capacity and tendency to cause purchasers to mistakenly believe that respondent's preparation Murine is a cure or remedy for eyestrain caused by excessive use of the eyes and that said product constitutes a competent and effective treatment therefor; that said preparation will prevent irritation of the eyes due to dust, sun and light glare and prevent eyestrain due

to driving, movies, reading, sewing, and other excessive uses of the eyes.

PAR. 5. Respondent's preparation Murine is not a cure or remedy for eyestrain caused by excessive use of the eyes and is not a competent or effective treatment therefor. Eyestrain is due to or caused by excessive use of the eyes or eye muscles or by uncorrected defects in the focusing of the eyes. True eyestrain may be due to such actions, among others, as driving, attendance at movies, reading, or sewing. After the eye muscles have been strained by excessive use or by uncorrected defects in the focusing of the eyes, the instillation of respondent's preparation or one of substantially similar properties into the conjunctival sac of the eyes so afflicted will not provide a cure or remedy for such eyestrain or provide a competent treatment therefor, or possess any therapeutic value with respect to eyestrain in excess of furnishing refreshment to the eyes and furnishing relief from irritation and discomforts of the eyes associated with such eyestrain. Respondent's preparation will not prevent eyestrain due to driving, movies, reading, sewing, or other excessive uses of the eyes. Exposure to dust, sun, or light glare may cause irritation to the eyes as distinguished from eyestrain. Respondent's preparation will not prevent irritation caused by such exposure or possess therapeutic value with respect to such irritation in excess of furnishing refreshment to the eyes and furnishing relief from such irritation.

PAR. 6. The use by the respondent of the foregoing statements and representations with respect to its 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 to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's preparation containing drugs.

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, the answer of the respondent, and a stipulation as to the facts entered into between the

respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent The Murine Co., Inc., 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 their medicinal preparation advertised as "Murine" or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisements by means of the United States mails, or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent directly or through inference.

(*a*) That respondent's preparation "Murine" is a cure or remedy for eyestrain, or that it constitutes a competent or effective treatment therefor or possesses any therapeutic value with respect to eyestrain in excess of furnishing relief from irritation and discomforts of the eyes incident thereto.

(*b*) That the use of respondent's preparation will prevent or ward off eyestrain due to driving, attendance at movies, reading, sewing, or other excessive uses of the eyes.

(*c*) That the use of respondent's preparation will prevent irritation of the eyes due to exposure to dust, sun, or light glare, or possess any therapeutic value with respect to irritation of the eyes in excess of furnishing relief therefrom.

2. 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, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

GEORGE D. MOORMAN AND ROY C. STOCKBRIDGE, INDIVIDUALLY AND TRADING AS MAYOS PRODUCTS COMPANY AND AS M. P. COMPANY

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

Docket 4147. Complaint, May 31, 1940—Decision, June 29, 1940

Where two individuals engaged in sale and distribution of a medicinal preparation designated and described as "Mayos Periodic Compound," to purchasers in various other States and in the District of Columbia; in advertisements thereof which they disseminated and caused to be disseminated through the mails, and by various other means in commerce, and which were intended and likely to induce purchase of their said product—

(*a*) Represented, directly and by implication, that their said medicinal preparation was a cure or remedy for delayed, scanty, irregular and painful menstruation, and constituted competent and effective treatment therefor, and that it was entirely safe and harmless and might be used without danger of ill effects upon health of user, facts being their said preparation was not a cure or remedy for such conditions as above set forth, and did not constitute competent or effective treatment for any of said ailments, and it was not safe or harmless, in that it contained ergotin, aloes, extract cotton root bark, extract black hellebore, and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual, and use thereof might result in gastro-intestinal disturbances, with pelvic congestion and other conditions, leading to excessive uterine hemorrhage, and in those cases where used to interfere with normal course of pregnancy, such use might result in uterine infection with extension to other parts of the body and to the blood stream, causing condition known as septicemia or blood poisoning, and might also produce very severe circulatory condition, tending to produce abortion in some instances, often with violent poisonous effects upon system, and also produce severe toxic conditions, and, in some instances lead to gangrenous condition in lower limbs or other serious or irreparable injury to health; and

(*b*) Failed to reveal, in their said advertisements, disseminated as above set forth, that use of said medicinal preparation, under conditions prescribed in such advertisements, or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect, through use of aforesaid false, deceptive and misleading statements and representations, disseminated as above set forth, of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations and advertisements were true, and of inducing portion of said public, because of such erroneous and mistaken belief, to purchase their 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. William L. Taggart 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 George D. Moorman and Roy C. Stockbridge, individually, and trading as Mayos Products Co. and as M. P. Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents (George D. Moorman, residing at 1833 West Larchmont Avenue, Chicago, Ill., and Roy C. Stockbridge, residing at 5623 North Wayne Avenue, Chicago, Ill., are individuals, doing business under the trade names of Mayos Products Co. and M. P. Co., with their office and principal place of business at 1833 West Larchmont Avenue, in the city of Chicago, State of Illinois.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the sale and distribution of a medicinal preparation designated and described as Mayos Periodic Compound. Respondents, in the course and conduct of their said business during the time aforesaid, have caused, and do now cause, their said medicinal preparation, when sold by them, to be transported from their said place of business in the State of Illinois to the purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, respondents have maintained a course of trade in said medicinal preparation sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, 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, and by various 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 respondents have also 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, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

IF UNNATURALLY OR FUNCTIONALLY DELAYED

LADIES—DON'T WORRY

ABOUT WHAT TO DO!

Two Dollars brings glorious IMMEDIATE, Painless relief, safest way known to unnaturally late or functionally delayed periods. Pure, QUICK ACTING, reliable medical formula tablets—XXX Strength—easy to take and absolutely GUARANTEED to give results OR MONEY BACK. Magic-like results in most cases and NO DELAY FROM WORK. CONVENIENT, no one need know. Used by thousands, highly recommended, no need to pay more. Rushed to you in sealed, plain package, no letter necessary. C. O. D. plus postage if desired. Send $2 with order and we pay postage. Valuable, private information enclosed free. Don't delay! Send today.

If you are troubled with painful, scanty, irregular, unnaturally or functionally delayed periods, this product should help to correct such irregularity. This famous formula has been used with success by some doctors and nurses for many years throughout the country. It usually will relieve the most obstinate cases of unnatural or functionally delayed periods without pain or inconvenience from work. We believe that there is no more successful product available from any source whatsoever.

Women, however, do not all respond the same after the use of this product. Some find that only a few tablets will do the necessary work, while others find it necessary to use two or even three packages to obtain relief. If you are one of the latter, please do not delay in ordering the other additional packages so as to keep the results of each package close together.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other and similar statements and representations not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondents' said preparation, respondents, directly and by implication, represent that said preparation is a cure or remedy for delayed, scanty, irregular, and painful menstruation and is a competent and effective treatment for such ailments; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation is not a cure or remedy for delayed, scanty, irregular, or painful menstruation, nor does it constitute a competent or effective treatment for any of said ailments. Said preparation is not safe or harmless, as it contains ergotin, aloes, extract cotton root bark, extract black hellebore, and oil of savin in quantities sufficient to cause serious

and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said medicinal preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, inflammation and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, its use may result in uterine infection with extension to other pelvic and abdominal structures, and to the blood stream, causing the condition known as septicemia or blood poisoning.

The use of said preparation as aforesaid may also produce a very severe circulatory condition by the constriction of the 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 in the lower limbs or other serious or irreparable injury to health.

PAR. 6. 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, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their 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 such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

PAR. 8. The aforesaid acts and practices of the respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on May 31, 1940, issued, and on

June 3, 1940, served, its complaint in this proceeding upon the respondents George D. Moorman and Roy C. Stockbridge, individually and trading as Mayos Products Co. and as M. P. Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 14, 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

PARAGRAPH 1. Respondents, George D. Moorman, residing at 1833 West Larchmont Avenue, Chicago, Ill., and Roy C. Stockbridge, residing at 5623 North Wayne Avenue, Chicago, Ill., are individuals, doing business under the trade names of Mayos Products Co. and M. P. Co., with their office and principal place of business at 1833 West Larchmont Avenue, in the city of Chicago, State of Illinois.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of a medicinal preparation designated and described as Mayos Periodic Compound. Respondents, in the course and conduct of their said business during the time aforesaid, have caused, and do now cause, their said medicinal preparation, when sold by them, to be transported from their said place of business in the State of Illinois to the purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein respondents have maintained a course of trade in said medicinal preparation sold and distributed by them in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, 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, and by various 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 respondents have

also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

IF UNNATURALLY LATE OR FUNCTIONALLY DELAYED—LADIES DON'T WORRY ABOUT WHAT TO DO!

Two Dollars brings glorious IMMEDIATE, Painless relief, safest way known to unnaturally late or functionally delayed periods. Pure, QUICK ACTING, reliable and medical formula tablets—XXX Strength—easy to take and absolutely GUARANTEED to give results or MONEY BACK. Magic-like results in most cases, and NO DELAY FROM WORK. CONVENIENT, no one need know. Used by thousands, highly recommended, no need to pay more. Rushed to you in sealed, plain package, no letter necessary. C. O. D. plus postage if desired. Send $2 with order and we pay postage. Valuable, private information enclosed free. Don't delay! Send today.

If you are troubled with painful, scanty, irregular, unnaturally or functionally delayed periods, this product should help to correct such irregularity. This famous formula has been used with success by some doctors and nurses for many years throughout the country. It usually will relieve the most obstinate cases of unnatural or functionally delayed periods without pain or inconvenience from work. We believe that there is no more successful product available from any source whatsoever.

Women, however, do not all respond the same after the use of this product. Some find that only a few tablets will do the necessary work, while others find it necessary to use two or even three packages to obtain relief. If you are one of the latter, please do not delay in ordering the other additional packages so as to keep the results of each package close together.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other and similar statements and representations not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondents' said preparation, respondents, directly and by implication, represent that said preparation is a cure or remedy for delayed, scanty, irregular, and painful menstruation and is a competent and effective treatment for such ailments; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation is

not a cure or remedy for delayed, scanty, irregular, or painful menstruation, nor does it constitute a competent or effective treatment for any of said ailments. Said preparation is not safe or harmless, as it contains ergotin, aloes, extract cotton root bark, extract black hellebore, and oil of savin in quantities sufficient to cause serious and irreparable injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said medicinal preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, inflammation, and congestion of the uterus and adnexa, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, its use may result in uterine infection with extension to other pelvic and abdominal structures, and to the blood stream, causing the condition known as septicemia or blood poisoning.

The use of said preparation as aforesaid may also produce a very severe circulatory condition by the constriction of the 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 in the lower limbs or other serious or irreparable injury to health.

PAR. 6. 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, under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 7. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their 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 such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, George D. Moorman and Roy C. Stockbridge, individually, and trading as Mayos Products Co. and as M. P. 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, or distribution of their medicinal preparation designated "Mayos Periodic Compound," or of any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a cure or remedy or a competent or effective treatment for delayed, scanty, irregular, or painful menstruation; that said preparation is safe or harmless, or which advertisements fail to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 contain any of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing stating whether they intend to comply with this order, and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order said respondents shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

MAY'S CUT RATE DRUG COMPANY

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

Docket 4152. Complaint, June 4, 1940—Decision, July 6, 1940

Where a corporation engaged in sale and distribution of various medicinal preparations, including drug preparation advertised as "Mayco" and as "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also designated as "Genuine Mayco English Crown Female Capsules, Double Strength" and as "Genuine Mayco English Crown Female Capsules, Triple Strength," to purchasers thereof in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails and by various other means in commerce, and including newspapers, circulars, and other advertising literature and which advertisements were intended and likely to induce purchase of its said product—

(*a*) Represented, directly and by implication, that its preparation, designated as above set forth, was a competent and effective treatment for delayed menstruation and that it was safe and harmless, facts being it was not a competent or effective treatment for such condition and was not safe or harmless, in that it contained drugs apiol green, ergotin, oil of savin, and aloin 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 use thereof might result in gastro-intestinal disturbances and, in those cases where used to interfere with normal course of pregnancy, in uterine infection, with extension to other pelvic and abdominal structures and even to blood stream, causing condition known as septicemia or blood poisoning, and use might produce also severe circulatory condition, often with poisonous effects and tending to cause abortion in some instances, and result in severe toxic conditions, producing, in some instances, gangrenous condition in lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health; and

(*b*) Failed to reveal, in advertisements disseminated by it as aforesaid, that use of said preparation under conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations and advertisements were true, and that said preparation was a safe, competent, and effective treatment for delayed menstruation, and with further effect of inducing, directly or indirectly, purchase by such public of said 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.

Robinson & Stump, of Clarksburg, W. Va., and *Mr. David D. Blumenstein*, of Pittsburgh, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that May's Cut Rate Drug 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, May's Cut Rate Drug Co., is a corporation, organized, existing, and doing business under the laws of the State of West Virginia, with its principal office and place of business located at 109 South Fourth Street, Clarksburg, W. Va.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is 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."

Respondent causes its said preparation, when sold, to be transported from its place of business in the State of West Virginia 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 its said 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 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, and by various 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 respondent has also 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, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated,

as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

GENUINE
MAYCO
ENGLISH CROWN
FEMALE CAPSULES
for
DELAYED PERIODS
MAY'S CUT RATE DRUG CO.
109 S. 4th St.

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated "Mayco English Crown Female Capsules for Delayed Periods," also designated "Mayco English Crown Female Capsules Double Strength" and as "Mayco English Crown Female Capsules Triple Strength," is a competent and effective treatment for delayed menstruation and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as herein above set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin 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 preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy such use may result in uterine infection, with extension to other pelvic and abdominal structures, and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in

some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has 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 such preparation is a safe, competent and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said preparation.

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 June 4, 1940, issued, and on June 5, 1940, served, its complaint in this proceeding upon respondent, May's Cut Rate Drug 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 June 21, 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 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, May's Cut Rate Drug Co., is a corporation, organized, existing, and doing business under the laws of the State of West Virginia, with its principal office and place of business located at 109 South Fourth Street, Clarksburg, W. Va.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent prior to January 16, 1940, was 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."

Respondent caused its said preparation, when sold, to be transported from its place of business in the State of West Virginia to purchasers thereof, located in various other States of the United States and in the District of Columbia. Respondent maintained, and at all times mentioned herein, prior to January 16, 1940, did maintain, a course of trade in its said 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 its aforesaid business, the respondent has disseminated and has caused the dissemination of false advertisements concerning its said product, by United States mails, and by various 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 product; and respondent has also disseminated and has caused the dissemination of false advertisements concerning its said product by various means, for the purpose of inducing and which were 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinafter set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, were the following:

GENUINE

MAYCO

ENGLISH CROWN

FEMALE CAPSULES

for

DELAYED PERIODS

MAY'S CUT RATE DRUG CO.

109 S. 4th St.

PAR. 4. Through the use of the statements and representations herein set forth, and others similar thereto, not specifically set out herein, the respondent has represented, directly and by implication, that its preparation, designated "Mayco English Crown Female Capsules for Delayed Periods," also designated "Mayco English Crown Female Capsules, Double Strength," and as "Mayco English Crown Female Capsules, Triple Strength," is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin 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 preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances, producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has 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 such preparation is a safe, competent, and effective treatment for delayed menstruation and to induce, directly or indirectly, the purchase by the public of the respondent's said preparation.

CONCLUSION

The aforesaid acts and practices of the respondent, as herein found, were and 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, May's Cut Rate Drug Co., a corporation, its officers, agents, representatives, servants, employees, and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of its medicinal preparation designated and advertised as "Mayco," and as "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also designated as "Genuine Mayco English Crown Female Capsules, Double Strength," and as "Genuine Mayco English Crown Female Capsules, Triple Strength," or of any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparation is a safe, competent, and effective preparation for use in the treatment of delayed menstruation; that said preparation is

a cure or remedy for delayed menstruation; or which advertisement fails to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 advertisement contains any representations prohibited in paragraph 1 hereof, or which fails to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

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

IN THE MATTER OF

MAY'S CUT RATE DRUG COMPANY OF CHARLESTON

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

Docket 4153. Complaint, June 4, 1940—Decision, July 6, 1940

Where a corporation engaged in sale and distribution of various medicinal preparations, including drug preparation advertised as "Mayco" and as "Genuine Mayco English Crown Female Capsules For Delayed Periods," and also designated as "Genuine Mayco English Crown Female Capsules Double Strength" and as "Genuine Mayco English Crown Female Capsules Triple Strength," to purchasers thereof in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails and by various other means in commerce, and including newspapers, circulars, and other advertising literature and which advertisements were intended and likely to induce purchase of its said product—

(*a*) Represented, directly and by implication, that its preparation designated as above set forth was a competent and effective treatment for delayed menstruation and that it was safe and harmless, facts being said preparation was not a competent or effective treatment for such condition and was not safe or harmless, in that it contained drugs apiol green, ergotin, oil of savin, and aloin 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 the use thereof might result in gastro-intestinal disturbances and, in those cases where used to interfere with normal course of pregnancy, in uterine infection, with extension to other pelvic and abdominal structures and even to blood stream, causing condition known as septicemia or blood poisoning, and use thereof might also produce severe circulatory condition, often with poisonous effects and tending to cause abortion in some instances, and result in severe toxic conditions, producing, in some cases, gangrenous condition in lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health; and

(*b*) Failed to reveal, in advertisements disseminated by it as aforesaid, that use of said preparation under conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health:

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and that said preparation was a safe, competent, and effective treatment for delayed menstruation, and with further effect of inducing, directly or indirectly, purchase by such public of said 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.

Mr. David D. Blumenstein, of Pittsburgh, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that May's Cut Rate Drug Co. of Charleston, 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 May's Cut Rate Drug Co. of Charleston is a corporation, organized, existing, and doing business under the laws of the State of West Virginia, with its principal office and place of business located at 911 Quarrier Street, Charleston, W. Va.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by respondent is 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."

Respondent causes its said preparation, when sold, to be transported from its place of business in the State of West Virginia 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 its said 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 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, and by various 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 respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be

disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

Genuine MAYCO
English Crown
Female Capsules
For
Delayed Periods
Safe—Certain—
Harmless
$5.00 Box $3.98
On Sale at May's Only
Mail Orders Add 15¢ for
Tax and Postage

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated "Mayco English Crown Female Capsules for Delayed Periods," also designated "Mayco English Crown Female Capsules Double Strength" and as "Mayco English Crown Female Capsules Triple Strength," is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin 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 preparation may result in gastro-intestinal disturbances, such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human

system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has 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 such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said preparation.

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 June 4, 1940, issued and on June 5, 1940, served its complaint in this proceeding upon respondent, May's Cut Rate Drug Co., of Charleston, 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 June 24, 1940, the respondent filed its answer, in which answer it 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 May's Cut Rate Drug Co. of Charleston is a corporation, organized, existing, and doing business under the laws of the State of West Virginia, with its principal office and place of business located at 911 Quarrier Street, Charleston, W. Va.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is 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."

Respondent causes its said preparation, when sold, to be transported from its place of business in the State of West Virginia 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 its said 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 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, and by various 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 respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

Genuine MAYCO
English Crown
Female Capsules
For
Delayed Periods
Safe—Certain—
Harmless
$5.00 Box $3.98
On Sale at May's Only
Mail Orders Add 15¢ for
Tax and Postage

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated "Mayco English Crown Female Capsules for Delayed Periods," also designated "Mayco English Crown Female Capsules Double Strength," and as "Mayco English Crown Female Capsules Triple Strength," is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin 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 preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has 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 such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said 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 the material allegations of fact as 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, May's Cut Rate Drug Co. of Charleston, a corporation, its officers, agents, representatives, servants, employees, and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparation designated and advertised as "Mayco," and as "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also designated as "Genuine Mayco English Crown Female Capsules, Double Strength," and as "Genuine Mayco English Crown Female Capsules, Triple Strength," or of any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparation is a safe, competent, and effective preparation for use in the treatment of delayed menstruation; that said preparation is a cure or remedy for delayed menstruation; or which advertisement fails to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 advertisement contains any representations prohibited in Paragraph 1 hereof, or which fails to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

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

IN THE MATTER OF

PITTSBURGH CUT RATE DRUG COMPANY

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

Docket 4154. Complaint, June 4, 1940—Decision, July 6, 1940

Where a corporation engaged in sale and distribution of various medicinal preparations, including drug preparation advertised as "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also designated as "Genuine Mayco English Crown Female Capsules Double Strength," and as "Genuine Mayco English Crown Female Capsules Triple Strength," to purchasers thereof in various other States and in the District of Columbia; in advertisements of its said product which it disseminated and caused to be disseminated through the mails and by various other means in commerce, and including newspapers, circulars, and other advertising literature and which advertisements were intended and likely to induce purchase of its said product—

(*a*) Represented, directly and by implication, that its preparation designated as above set forth was a competent and effective treatment for delayed menstruation and that it was safe and harmless, facts being said preparation was not a competent and effective treatment for such condition and was not safe or harmless, in that it contained drugs apiol green, ergotin, oil of savin, and aloin 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 use thereof might result in gastro-intestinal disturbances and, in those cases where used to interfere with normal course of pregnancy, in uterine infection, with extension to other pelvic and abdominal structures and even to blood stream, causing condition known as septicemia or blood poisoning, and use thereof might also produce severe circulatory condition, often with poisonous effects and tending to cause abortion in some instances, and might result in severe toxic conditions, producing, in some cases, gangrenous condition in lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health; and

(*b*) Failed to reveal, in advertisements disseminated by it as aforesaid, that use of said preparation under conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and that said preparation was a safe, competent, and effective treatment for delayed menstruation, and with further effect of inducing, directly or indirectly, purchase by such public of said 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.

Mr. David D. Blumenstein, of Pittsburgh, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Pittsburgh Cut Rate Drug 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, Pittsburgh Cut Rate Drug Co., is a corporation, organized, existing, and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 329 Fifth Avenue, McKeesport, Pa.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is 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."

Respondent causes its said preparation, when sold, to be transported from its place of business in the State of Pennsylvania 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 its said 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 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, and by various 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 respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated,

as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

GENUINE
MAYCO
ENGLISH CROWN
FEMALE CAPSULES
for
DELAYED PERIODS
DOUBLE STRENGTH $5.
PITTSBURGH CUT RATE DRUG COMPANY,
THE SUPER CUT RATE,
329 FIFTH AVENUE

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated "Mayco English Crown Female Capsules for Delayed Periods," also designated "Mayco English Crown Female Capsules Double Strength," and as "Mayco English Crown Female Capsules Triple Strength" is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin 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 preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result

in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has 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 such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said preparation.

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 June 4, 1940, issued and on June 5, 1940, served its complaint in this proceeding upon respondent, Pittsburgh Cut Rate Drug 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 June 24, 1940, the respondent filed its answer, in which answer it 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, Pittsburgh Cut Rate Drug Co., is a corporation, organized, existing, and doing business under the laws of the State of Pennsylvania, with its principal office and place of business located at 329 Fifth Avenue, McKeesport, Pa.

PAR. 2. Respondent is now, and for more than one year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is 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."

Respondent causes its said preparation, when sold, to be transported from its place of business in the States of Pennsylvania 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 its said 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 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, and by various 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 respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

GENUINE

MAYCO

ENGLISH CROWN

FEMALE CAPSULES

for

DELAYED PERIODS

DOUBLE STRENGTH $5.

PITTSBURGH CUT RATE DRUG COMPANY,

THE SUPER CUT RATE,

329 FIFTH AVENUE

PAR. 4. Through the use of the statements and representations hereinbefore set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated "Mayco English Crown Female Capsules for Delayed Periods," also designated "Mayco English Crown Female Capsules Double Strength," and as "Mayco English Crown Female Capsules Triple Strength" is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or effective treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin 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 preparation may result in gastro-intestinal disturbances such as catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy such use may result in uterine infection, with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the constriction of the blood vessels and contraction of the involuntary muscles, often with poisonous effects upon the human system and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition in the lower limbs, resulting possibly either in loss of limbs or in other serious and irreparable injury to health.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had and now has 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 such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said 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 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, Pittsburgh Cut Rate Drug Co., a corporation, its officers, agents, representatives, servants, employees, and assigns, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparation designated and advertised as "Genuine Mayco English Crown Female Capsules for Delayed Periods," and also designated as "Genuine Mayco English Crown Female Capsules, Double Strength," and as "Genuine Mayco English Crown Female Capsules, Triple Strength," or of any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication, that said preparation is a safe, competent, and effective preparation for use in the treatment of delayed menstruation; that said preparation is a cure or remedy for delayed menstruation; or which advertisement fails to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 advertisement contains any representations prohibited in Paragraph 1 hereof, or which fails to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

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

IN THE MATTER OF

J. E. BERNARD & 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 3534. Complaint, Aug. 12, 1938—Decision, July 8, 1940

Where a corporation engaged in purchase, chiefly, of used and discarded spark plugs which were originally made and sold by manufacturers thereof under well-known and widely advertised brand names and trade marks "Champion" and "AC," and which had been refurbished under process so as to give them appearance of new and unused "Champion" and "AC" spark plugs, respectively, and in sale and distribution of such refurbished and processed plugs, for use in automotive gasoline engines, to dealers in foreign countries, and in competition, as thus engaged, with those engaged in manufacture and sale of such products to dealers purchasing for resale and to members of the public purchasing for use, in the various States, the District of Columbia, and in foreign countries, principally non-English speaking, including Brazil, British India, and others in which it made sales as above set forth of its said reconditioned products, cleaning of which was substantially equivalent to that available to car owners generally through garages and service stations at charge of 5 cents a plug before abandonment of product—

Sold such spark plugs, which were originally obtained by its vendors, as discarded products and junk and at small cost, from garages, service stations and other places where they had been abandoned by owners as worthless, and which, as above set forth, were thereafter treated and refurbished by process giving them, as above described, appearance of new plugs, and which, in some instances, continued to carry aforesaid brand names originally placed thereon by manufacturers thereof, displayed, under common practice of installation for owner by mechanic or other garage or service station employee on only visible remaining part of product; with no individual marking on individual plugs to indicate its connecton therewith or used character thereof, to dealers in foreign countries, as above described, and in which purchasers who did not understand English were compelled to rely solely on appearance of plug itself and trade mark or brand name appearing thereon;

Facts being process employed resulted in important impairment of functional quality of product, some of plugs were obsolete and often did not contain type indicated in accordance with manufacturers' practice of making such products in very large numbers of types adapted to different makes and models of cars for which made and sold, and were not of type or in condition to render satisfactory or adequate service in accordance with manufacturers' further practice of subjecting to rigid tests various plugs made by them for different makes and models and recommending discarding thereof after certain specified use, and said reconditioned products did not compare with blue prints and specifications of original manufacturers thereof and were not considered by them as a satisfactory product;

With tendency and capacity, through sale of such discarded and much less costly refurbished spark plugs, with their greater profit incentive to dealer for substitution for new product, to deceive purchasers into erroneous and

mistaken belief that said plugs were new and unused, and in same merchantable condition as when first sold to distributor by manufacturer and backed by reputation and guarantee thereof, and with result, as direct consequence, that trade in commerce with foreign countries was diverted unfairly to it from competitors in such commerce engaged in sale of new and unused plugs and from those selling used plugs who truthfully represent character and quality thereof; to injury of competitors in commerce 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.

Mr. Joseph C. Fehr for the Commission.

Mr. John Wilson Hood, 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 J. E. Bernard & Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, J. E. Bernard & Co., Inc., is a corporation organized, existing and doing business under the laws of the State of New York, with its principal place of business located at 27 Pearl Street, in the city of New York, in the State of New York.

Par. 2. In the course and conduct of its business, said respondent has been for a period of more than 1 year last past, and is now engaged in the sale of used and reconditioned spark plugs for use in gasoline engines. Respondent has sold and still sells such spark plugs to dealers located in various parts of the United States and in foreign countries who purchase for resale. Respondent has caused and now causes said spark plugs, when so sold by it, to be transported from its place of business in the State of New York to said purchasers located in States other than the State of New York, in the District of Columbia, and in foreign countries.

Par. 3. The respondent, during all the times above mentioned and referred to has been, and still is, in competition in the sale of spark plugs in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries with other corporations, firms, partnerships, and individuals manufacturing, selling, and distributing spark plugs.

PAR. 4. Among the manufacturers and sellers of spark plugs referred to in paragraph 3 hereof are certain manufacturers who are, and have been, making and selling spark plugs, respectively, under the brands or trade names "Champion" and "AC" in such commerce. Such spark plugs are respectively marked and branded with the names "Champion" and "AC." The spark plugs made and sold under the brand and trade names "Champion" and "AC" are well and favorably known among the trade and the public generally as being of superior quality and as being in constant demand by users of spark plugs.

During all of the times above mentioned, the spark plugs manufactured, branded, and sold under the trade names "Champion" and "AC" have to a substantial extent been sold by the manufacturers thereof and by dealers therein in commerce among and between the various States of the United States, in the District of Columbia, and in foreign countries. The business of the sale of such spark plugs branded as "Champion" and "AC" spark plugs, respectively, in such commerce has constituted a very substantial portion of the entire spark plug business.

PAR. 5. Substantially all of the spark plugs sold by respondent are spark plugs which were manufactured and sold by the manufacturers under the brand names "Champion" and "AC." Such spark plugs, carrying the aforesaid brand names, have been used by members of the public until they became worn out by use or became defective and unserviceable for further use. The respondent purchases said used and reconditioned spark plugs from another concern. Said concern obtains said used, worn out, or defective spark plugs at small cost from garages, service stations, truck operators, and similar sources of supply and after repairing and reconditioning them sells them to respondent and other dealers for resale. Said spark plugs when thus sold by respondent have the appearance of new and unused "Champion" or "AC" spark plugs. Respondent sells said used and reconditioned plugs thus obtained, with the brand names "Champion" and "AC" appearing thereon, without disclosing to purchasers thereof that said spark plugs are used, worn out, or defective spark plugs which have been repaired or reconditioned. The sale and distribution of said used and reconditioned spark plugs constitute the greater part of respondent's business in the sale of spark plugs.

The spark plugs thus sold and distributed by respondent were not and are not individually identified by suitable marking so as to indicate the used, second-hand, refurnished character thereof. Said spark plugs are individually wrapped in plain white, waxed paper which carries no identification or mark to disclose the used or reconditioned

nature thereof. Certain of said spark plugs so wrapped are placed in individual cartons on the face of which appears the words "Cooper Processed" printed in heavy conspicuous type and superimposed upon the word "RECONDITIONED" printed in light, less distinguishable type so as to make the word "RECONDITIONED" almost illegible. At one end of the carton appear the words "Make Champion." Certain other of said spark plugs are merely wrapped in plain paper and placed in flat cardboard containers which carry on one side a label reading "Perfect Reconditioned Registered" along with the size and number so packed.

PAR. 6. The aforesaid misleading and deceptive statements and representations and their implications on the part of the respondent place in the hands of retailers buying for resale an instrument and means whereby said retailers may commit a fraud upon a substantial portion of the purchasing public enabling such dealers to represent and offer for sale and sell respondent's said reconditioned spark plugs as being new "Champion" or "AC" spark plugs made by the manufacturer thereof with the intent and purpose of selling the said spark plugs in the usual course of trade to the general purchasing public at less than the retail price new "Champion" or "AC" spark plugs are usually sold for.

PAR. 7. The acts and practices of respondent in selling spark plugs bearing the brand names "Champion" and "AC" which have been reconditioned and repaired without disclosing that said spark plugs were and are worn out or otherwise defective spark plugs repaired or reconditioned by another concern have had, and now have, the tendency and capacity to, and do, mislead and deceive dealers in spark plugs, and members of the purchasing public in the various States of the United States, in the District of Columbia, and in foreign countries using spark plugs, into the mistaken and erroneous belief that the spark plugs so sold by respondent were and are new and unused spark plugs and are in the same merchantable condition as when manufactured and first sold and distributed by the respective manufacturers thereof, and into the purchase of such spark plugs from respondent in and on account of said mistaken and erroneous belief induced as aforesaid. As a result thereof, trade has been diverted unfairly to the respondent from competitors engaged in the sale of new and unused "Champion" and "AC" spark plugs and other spark plugs who truthfully represent the character and quality of said spark plugs and also from competitors who sell used and reconditioned spark plugs and who truthfully represent the quality and character thereof. 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, in the District of Columbia, and in foreign countries.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 12, 1938, issued its complaint against respondent and caused such complaint to be served as required by law, in which it was charged that said respondent was and had been using unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto making certain admissions, the taking of testimony and other evidence herein was waived by stipulation entered into on December 12, 1939, between W. T. Kelley, chief counsel for the Federal Trade Commission, and John Wilson Hood, attorney for respondent herein, and thereafter duly approved by the Commission and filed in the office of the Commission, whereby it was agreed that the facts in this proceeding, except as to the identity of parties, are the same as the facts in the proceeding by the Commission styled "In the Matter of Peter Sanders, Harry Sanders, and Samuel Sanders, individuals, doing business as The Perfect Recondition Spark Plug Co., and Samuel Sanders, an individual, doing business as Ace Auto Supply Co., Docket No. 3392"; that the testimony and evidence in support of and in opposition to the allegations of the complaint, as amended, in said Docket No. 3392, and appearing in the stenographic record of the testimony herein, be made testimony and evidence in support of and in opposition to the allegations of the complaint in this proceeding, with the same force and effect as if such testimony and evidence had been given and such agreements and stipulations as to the facts had been entered into originally in this proceeding; that all testimony, evidence, agreements, and stipulations as to the facts in said Docket No. 3392 relative to the operations of the respondent herein and relative to the relations existing between the respondents in said Docket No. 3392 and the respondent herein be adopted and accepted as the facts herein, and that such briefs as may be filed in support of the allegations of the complaint as amended in said Docket No. 3392, and in opposition thereto, and such oral arguments as may be made in support of the allegations of the complaint, as amended, and in opposition thereto in said Docket

No. 3392, shall be applicable also to this proceeding, separate oral argument and separate briefs herein being expressly waived.

The Commission having considered the record and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. E. Bernard & Co., Inc., is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business located at 27 Pearl Street in the city of New York, in the State of New York.

PAR. 2. Said respondent was, for more than 1 year prior to on or about January 1, 1938, engaged in the sale and distribution of used and discarded spark plugs for use in gasoline engines of automobiles, which plugs have been refurbished in the manner set forth in paragraph 5 hereof. Respondent has sold such spark plugs to dealers located in various foreign countries and has shipped them or caused them to be shipped to residents of foreign countries who purchase for resale. Respondent has caused and now causes said spark plugs, when so sold by it, to be transported from its place of business in the State of New York to said purchasers located in foreign countries.

PAR. 3. During all of the times above mentioned, various individuals, partnerships, firms, and corporations domiciled in the United States have been and now are, engaged in the business of manufacturing and selling spark plugs to dealers who purchase for resale and to members of the public who purchase for use, residing in various States of the United States, in the District of Columbia, and in foreign countries, including those countries wherein respondent has made sales. Said manufacturers and sellers, respectively, have caused and now cause said spark plugs, when so sold by them, to be transported from their respective places of business to purchasers thereof located in States other than the State of origin of said shipments, in the District of Columbia, and in foreign countries.

Respondent, during all of the times above mentioned, has been in competition in the sale of spark plugs in commerce in foreign countries with such individuals, partnerships, firms, and corporations, manufacturing, selling and distributing spark plugs.

PAR. 4. Among the manufacturers and sellers of spark plugs referred to in paragraph 3 hereof, are certain manufacturers who have been and are making and selling spark plugs in commerce under the brands or trade names "Champion" and "AC." Spark plugs

manufactured and sold by AC Spark Plug Co. are identified by the trade-mark "AC" and those manufactured and sold by Champion Spark Plug Co. are identified by the trade-mark "Champion." Such marks are printed on the cartons and containers and are also displayed on the exposed portion of the insulators of the spark plugs themselves. Said trade-marks "AC" and "Champion" are well known by a large majority of the motoring public and serve to identify the spark plugs so marked with the two said corporations. Large sums of money have been expended by the two said corporations in advertising their respective trade-marks "AC" and "Champion" and the spark plugs made and sold under those marks.

During all of the times above mentioned, the spark plugs so manufactured, branded and sold under the trade-marks "AC" and "Champion" have been sold to a substantial extent by the manufacturers thereof and by dealers therein in commerce among and between the various States of the United States, in the District of Columbia and in practically all foreign countries. The business of selling such spark plugs branded as "Champion" and "AC" spark plugs, respectively, in commerce among and between the various States of the United States and the District of Columbia and in foreign countries, has constituted a very substantial portion of the entire spark plug business.

PAR. 5. Substantially all of the spark plugs sold by respondent are used and discarded spark plugs which originally were manufactured and sold by the manufacturers under the brand names "Champion" and "AC." Such spark plugs, carrying the aforesaid brand names and other identifying markings of such original manufacturers have been used by members of the public and discarded by them as worn out or defective and unserviceable for further use before they are acquired by the so-called spark plug reconditioner from whom respondent purchases them. The used and refurbished spark plugs dealt in by respondent were purchased by it from Peter Sanders, Harry Sanders, and Samuel Sanders, doing business as The Perfect Recondition Spark Plug Co. These persons make a practice of obtaining such discarded spark plugs as junk and at small cost from garages, service stations, and other places where they have been abandoned by their owners as worthless. Such discarded spark plugs were then treated and refurbished by cleaning, sandblasting, filing, buffing, adjusting the points, and painting the metal shells with black paint. After such treatment the spark plugs were purchased by respondent and sold by it to dealers in foreign countries. When so treated and refurbished and sold by respondent, such spark plugs had the appearance of new and unused Champion and AC spark plugs, respectively.

PAR. 6. The spark plugs thus sold and distributed by respondent were not individually identified by any marking thereon so as to indicate respondent's connection therewith or the used, second-hand, refurbished character thereof, and in some instances continued to carry the brand names "Champion" and "AC" which were originally placed thereon by the manufacturers thereof. In other instances the said brand names were removed at the request of respondent and such spark plugs were sold without any marking appearing thereon.

PAR. 7. Spark plugs reconditioned for respondent were sold by it principally in non-English speaking countries, including Brazil, British India, Colombia, Ecuador, Java, Latvia, Peru, New Zealand, and the Straits Settlements. In such countries purchasers of spark plugs who do not understand English are compelled to rely solely on the appearance of the plug itself and on the trade-mark or brand name appearing thereon. It does not appear that cartons or containers for respondent's refurbished spark plugs were printed in any language other than English.

PAR. 8. In the great majority of cases, when spark plugs are sold to car owners they are installed in the motor by a mechanic or some other person at the garage or service station where the purchase is made. In such instances the car owner is not afforded any opportunity to see the box from which the spark plug is removed and often does not see the spark plug until after it has been installed in the motor of his car. When so installed, the only visible part of the spark plug is the upper part of the metal shell and the white ceramic insulator which bears the brand name of the manufacturer.

PAR. 9. In and during the process of manufacture, the firing end of the core of a "Champion" spark plug has been carefully worked out with a view to controlling the proper heat range of the plug and to shield the center electrode to a proper distance with respect to the end of the shell and the side electrode so that each spark may occur in proper position, the purpose of the spark plug being to ignite the compressed gas at the proper time and at a predetermined position within the cylinder of the engine. The spark plug is simultaneously subjected to many complex reactions under operation in an engine with temperature ranges from 1,200° to 1,500°. Explosion pressures are approximately 400 pounds per square inch and under detonation reach a 2,000 pound pressure. Chemical reaction is also encountered due to the various constituents of gasoline. Electrolytic reaction also accounts for much erosion of the center and side electrodes. The mechanical scouring action of gas at high temperatures and pressure have an erosive effect on the tip of the insulator, often changing its shape.

The location of the spark in the cylinder of the motor is very important and this is determined by the location of the gap, different types of Champion plugs for different types or models of cars varying from each other in the position of the spark gap with relation to the gas stream within the cylinder. The spark plug manufacturer works very closely with the car manufacturers to insure that the plugs will produce the spark at the right place, and car manufacturers often return plugs which have been sent to them with the wrong gap setting. It is very essential that not even one plug in a set leak an undue amount, since the leaky plug will get unduly hot and will often result in fusing the electrodes, causing serious harm to the engine. Car manufacturers invariably recommend that new plugs be installed once each year or after approximately 10,000 miles of operation because from tests in their engineering division they know that the performance of a car can be jeopardized by old plugs. The Champion Spark Plug Co., in order to insure the accuracy of its spark plugs for various types of motor vehicles, causes an inspection and reinspection to be made of all the spark plugs manufactured by it and causes special tests to be made by its engineering division of approximately 10 percent of its total production.

PAR. 10. Sixty so-called reconditioned "Champion" spark plugs purchased from The Perfect Recondition Spark Plug Co., respondent's supplier, were given complete tests. There were 10 each of the following types: C–4, C–7, No. 7, C–15, J–5, and J–8. The C–4, the C–7, the No. 7, the C–15, the J–5, and the J–8 spark plugs were all obsolete. The box bearing the type No. C–4 contained two plugs which were of different type numbers. The box bearing the type No. J–5 contained three plugs which were of different type numbers. Of the 60 plugs there were 27 in which the relation of the side wire to the center was wrong. In connection with the center wires of the 60 plugs tested, 29 were slightly burned, 21 badly burned, and 4 were satisfactory. Of the 60 plugs tested 38 of the side wires had been either filed, burnt, or bent so that they would not pass the inspection requirements of the Champion Spark Plug Co. for either a new or repaired plug and in 22 of the plugs the side wires were satisfactory. The gap spacing of the 60 plugs tested showed 36 to be improperly spaced and the semi-petticoat of the core of the 60 plugs tested showed 49 badly damaged and in none of the 60 plugs was this feature in its original condition. The test showed that each had had more than 10,000 miles of service.

Discarded Champion and AC spark plugs, refurbished and resold by respondent, due to the use and wear to which they have been previ-

ously subjected, are inferior in functional qualities to new spark plugs from which they are practically indistinguishable in appearance.

PAR. 11. The reconditioned spark plugs sold by respondent do not comply with the blueprints and specifications of the original manufacturers thereof and are not considered by them to be a satisfactory product. Neither Champion Spark Plug Co. nor AC Spark Plug Co., nor any other spark plug manufacturer, engages in the practice of collecting, cleaning, and selling discarded spark plugs. The damage and wear which result from use of the spark plug are to the firing end of the plug, which is located within the cylinder of the motor. In addition to the wear which occurs to the firing end of the spark plug through use, the suppliers of such refurbished spark plugs to the respondent herein remove additional material by its sandblasting and filing operations, which treatments alter the three important functional dimensions of the plug, which the manufacturers undertake to hold to very close limits in order to secure proper performance. These three dimensions are the distances from tip of insulator to end of center wire, from tip of insulator to end of shell, and from end of shell to end of center wire. Slight variations in one or more of these dimensions may make a spark plug incapable of rendering efficient service in the motors for which it is recommended by the manufacturer and result in waste of fuel and improper performance of the engine.

Because of the various requirements of different automobile engines, over 70 types of spark plugs are supplied by one manufacturer. In some instances the differences in functional dimensions between various types of new Champion and AC plugs are less than the differences in functional dimensions between a used spark plug sold by respondent and a new one of the same type made by the manufacturer. Spark plugs refurbished for respondent in which the functional dimensions have been altered to any material extent no longer correctly represent the type of designation given them by the original manufacturer.

PAR. 12. The wholesale selling prices of used spark plugs refurbished for respondent are approximately one-third those of corresponding new spark plugs. Sales of respondent's plugs to car owners at the usual retail selling prices of new plugs would result in several times as much profit to the seller as the sale of a corresponding new plug. Sales of respondent's plugs at retail prices substantially lower than those of corresponding new plugs would still result in much greater profit to the seller. The appearance of respondent's spark plugs together with the possibilities of greater profits are incentives to the dealer to substitute respondent's spark plugs for new ones.

PAR. 13. Spark plug cleaning services are generally available to motorists throughout the United States. A large percentage of garages and service stations have spark plug cleaning machines which clean the firing end of the spark plug by sandblasting and such establishments also clean and adjust the points. A charge of five cents per plug is made for this service. The treatments thus available to motorists at garages and service stations before spark plugs are abandoned by their owners are substantially equivalent to those which the suppliers of such refurbished spark plugs to the respondent herein give to discarded, unserviceable, and worn out spark plugs, except for the additional steps performed by said suppliers having to do with restoring the appearance of newness.

PAR. 14. The acts and practices of respondent in selling discarded spark plugs which have been treated and refurbished, and which bear the brand names and other identifying marks of the original manufacturers, have had and now have the tendency and capacity to deceive purchasers thereof into the mistaken and erroneous belief that said spark plugs are new and unused spark plugs, in the same merchantable condition as when manufactured and first sold and distributed, and backed by the reputation and guarantee of the respective manufacturers thereof. As a direct result trade in commerce with foreign countries has been diverted unfairly to the respondent from competitors in said commerce engaged in the sale of new and unused spark plugs and from competitors selling used spark plugs who truthfully represent the quality and character thereof. In consequence thereof injury has been done to competitors in commerce with foreign countries.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, J. E. Bernard & Co., Inc., and the stipulation as to the facts entered into by and between W. T. Kelley, chief counsel for the Federal Trade Commission, and John Wilson Hood, attorney for the respondent, and, pursuant to such stipulation, on the record, briefs, and arguments

in the matter of "Peter Sanders, Harry Sanders, and Samuel Sanders, individuals, doing business as The Perfect Recondition Spark Plug Co., and Samuel Sanders, an individual, doing business as Ace Auto Supply Co., Docket No. 3392,"[1] 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, J. E. Bernard & Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of spark plugs in commerce with foreign countries, do forthwith cease and desist from:

Offering for sale, selling, or delivering to others for sale to the public, any spark plug which has been used and thereafter reconditioned in any manner unless the word "used" or "second-hand" or "reconditioned," or some other word or words of similar import and meaning, have been permanently stamped or fixed on each of such spark plugs in a color in contrast to the surface to which the word is applied and of a size and in such location as to be clearly legible to the purchasers thereof after the same shall have been installed, and unless there has been plainly printed or marked on the boxes, cartons, or other containers in which such spark plugs are sold or offered for sale, a notice that said spark plugs are used, second-hand, or reconditioned.

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

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[1] See *ante*, p. 212.

IN THE MATTER OF

ALGREN MANUFACTURING 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 3200. Complaint, Aug. 10, 1937—Decision, July 9, 1940

Where a corporation engaged in manufacture of jewelry findings, including wrist watch buckles, 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 manufacture of such products, and in sale and distribution thereof to jobbers in commerce among the various States and in said District of Columbia—

Sold its said jewelry findings and buckles with words "Gold Filled," which it had caused to be stamped, branded, or imprinted thereon, to jobbers by whom they were offered and sold, thus branded, to consuming public, facts being, minimum standard for marking of gold-filled articles other than watch cases, as accepted by jewelry manufacturing trade, which had generally adopted use of certain terms in describing gold-covered articles as descriptive of process used in applying gold thereto and as designating quality, quantity, and character of gold thus applied, and as representations to general public that articles were made, and gold applied, in conformity with certain set standards, is one-twentieth by weight of 10-carat gold, and said wrist watch buckles did not contain a layer or coating of gold of such substantial thickness as to be properly and accurately represented, designated, or referred to as "Gold Filled," but contained 12-carat gold to extent only of one-fiftieth of their weight, and not equivalent to one-twentieth by weight of 10-carat gold, in accordance with minimum standard aforesaid for articles properly designated as "Gold Filled" and generally accepted by trade and substantial portion of general purchasing public as being of character and weight superior to articles made by processes designated as "Gold Plate" and "Gold Electro-Plate";

With result, through use of such false and misleading statement, of placing in hands of jewelry jobbers aforesaid, instrument and means whereby they might perpetrate a fraud upon substantial portion of retailers, and both jobbers and retailers upon substantial portion of consuming public, by enabling them falsely to represent, offer, and sell said wrist watch buckles as being superior to other articles not so branded, and as being of same quality and value as other articles truthfully branded "Gold Filled," and with effect that substantial portion of retailers aforesaid and of consuming public, believing that words "Gold Filled" denoted quality exceeded only by solid gold or carat gold, were led, because of such belief, to purchase its said product, and with further result that its said acts and practices constituted added inducements for substantial number of jobbers and retail and consuming purchasers to buy such product, and unfairly diverted substantial volume of trade from many competitors who conform to set standards above referred to and do not brand as "Gold Filled" wrist watch buckles or other jewelry findings which do not contain by weight at least 5 percent gold of a fineness of at least 10 carats; to the substantial injury of competition in commerce:

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

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

Mr. Morton Nesmith for the Commission.

Mr. Henry S. Sellin, of New York City, and *Mr. Lucien Nemser*, of Brooklyn, N. Y., for respondent.

Complaint

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that the Algren Manufacturing Co., Inc., a corporation, hereinafter referred to as respondent, is now, and has been, using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. The respondent, Algren Manufacturing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 8 Washington Place, in the city of New York, State of New York, and is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing jewelry findings, including wrist watch buckles, in commerce as hereinafter set out.

Par. 2. Said respondent, bing engaged in the business as aforesaid, causes said jewelry findings, including wrist watch buckles, when sold, to be transported from its office and principal place of business in the State of New York to purchasers thereof located in various cities and other States of the United States and the District of Columbia, and there is now, and has been at all times mentioned herein, a constant current of trade and commerce in said jewelry findings, including watch buckles, so sold and distributed by respondent between and among the various States of the United States and the District of Columbia.

Par. 3. In the course and conduct of said business, the respondent is now, and has been, in substantial competition with individuals, firms, and corporations engaged in the business of manufacturing, selling, and distributing jewelry findings, including wrist watch buckles, as herein described, to jobbers and retailers in commerce between and among the various States of the United States and 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 wrist watch buckles, the respondent caused the words "Gold Filled" to be stamped, branded, or imprinted upon said buckles.

Respondent sells its jewelry findings, including wrist watch buckles, as described in paragraph 4 hereof, to jobbers and retailers who in turn offer for sale and sell the articles to the consuming public branded "Gold Filled."

PAR. 5. The jewelry manufacturing trade has generally adopted the use of certain terms in describing gold covered articles. The names so used are descriptive of the process used in applying gold to the manufactured articles, and also designate the quality, quantity, and character of the gold so applied to the articles, and serve as representations to the general purchasing public that the articles were manufactured, and the gold applied, in conformity, with certain set standards. The designations generally adopted by the trade with respect to articles that are not of solid gold are: "Gold Filled," "Rolled Gold Plate," "Gold Plate," and "Gold Electro-Plate." In the process of manufacturing articles designated as "Gold Filled," a substantial quantity of gold in weight and thickness is applied to the base metal core, and these articles truthfully designated as "Gold Filled" are generally accepted by the trade and a substantial portion of the general purchasing public as being of a character and quality superior to articles manufactured by the processes designed as "Gold Plate" and "Gold Electro-Plate."

PAR. 6. In truth and in fact, the respondent's wrist-watch buckles described in paragraph 4 do not contain a layer or coating of gold of such substantial thickness as to be properly and accurately represented, designated or referred to as "Gold Filled."

PAR. 7. The foregoing false and misleading statement on the part of the respondent places in the hands of the aforesaid jewelry jobbers an instrument and means whereby said jobbers may perpetrate a fraud upon a substantial portion of the retailers, and both jobbers and retailers upon a substantial portion of the consuming public, by enabling them to falsely represent, offer for sale, and sell respondent's wrist watch buckles as being superior to other articles not so branded and as being of equal quality and value with other articles truthfully branded "Gold Filled." A substantial portion of said retailers and of the consuming public are of the opinion that the words "Gold Filled" denote a quality exceeded only by solid gold or carat gold, and are thus led to purchase respondent's product engendered by said belief.

PAR. 8. There are among the competitors of respondent many persons, firms, and corporations who in no way misrepresent the composi-

tion, nature, character, or quality of the jewelry findings, including wrist-watch buckles, which they manufacture, sell, and distribute.

The aforesaid acts and practices of the respondent are added inducements for a substantial number of jobbers, retail purchasers, and consuming purchasers to buy respondent's product, and have a tendency and capacity to, and do unfairly divert a substantial volume of trade to respondent from its said competitors. As a consequence thereof, substantial competition in commerce among and between the various States of the United States and in the District of Columbia has been substantially injured.

PAR. 9. The above and foregoing acts, practices, and representations of the respondent have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and intent of section 5 of an act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 10, 1937, issued and served its complaint in this proceeding upon respondent Algren Manufacturing 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 and in opposition thereto were introduced by Morton Nesmith and S. Brogdyne Teu, II, attorneys for the Commission, and Henry S. Sellin, counsel 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 said complaint, answer, 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, Algren Manufacturing Co., Inc., is a corporation organized, existing, and doing business under and by vir-

tue of the laws of the State of New York, with its office and principal place of business located at 8 Washington Place, in the city of New York, State of New York, and is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing jewelry findings, including wrist-watch buckles, in commerce.

PAR. 2. Said respondent, being engaged in the business as aforesaid, caused said jewelry findings, including wrist-watch buckles, when sold, to be transported from its office and principal place of business in the State of New York to purchasers thereof located in various cities in other States of the United States and the District of Columbia, and there is now, and has been at all times mentioned herein, a current of trade and commerce in said jewelry findings, including wrist-watch buckles, so sold and distributed by respondent between and among the various States of the United States and the District of Columbia.

PAR. 3. In the course and conduct of said business, the respondent is now, and has been, in substantial competition with individuals, firms, and corporations engaged in the business of manufacturing, selling, and distributing jewelry findings, including wrist watch buckles, as herein described, to jobbers in commerce between and among the various States of the United States and 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 wrist-watch buckles, the respondent caused the words "Gold Filled" to be stamped, branded, or imprinted upon said buckles.

Respondent sells its jewelry findings, including wrist-watch buckles as hereinbefore described, to jobbers who in turn offer for sale and sell the articles to the consuming public branded "Gold Filled."

PAR. 5. The jewelry manufacturing trade has generally adopted the use of certain terms in describing gold covered articles. The names so used are descriptive of the process used in applying gold to the manufactured articles, and also designate the quality, quantity, and character of the gold so applied to the articles, and serve as representations to the general purchasing public that the articles were manufactured, and the gold applied, in conformity with certain set standards. The designations generally adopted by the trade with respect to articles that are not of solid gold are: "Gold Filled," "Rolled Gold Plate," "Gold Plate," and "Gold Electro-Plate." In the process of manufacturing articles designated as "Gold Filled," a substantial quantity of gold in weight and thickness is applied to the base metal core. The minimum standard for the marking of gold-filled articles other than watch cases as accepted by the trade is one-twentieth by weight of 10-carat gold. The fraction preceding the carat mark or fineness designation denotes the correct proportion of the weight of the gold to

the weight of the entire article. These articles are properly designated as "Gold Filled" and are generally accepted by the trade and a substantial portion of the general purchasing public as being of a character and weight superior to articles manufactured by the processes designated as "Gold Plate" and "Gold Electro-Plate."

PAR. 6. In truth and in fact, the respondent's wrist-watch buckles, described in paragraph 4, made before 1937, did not contain a layer or coating of gold of such substantial thickness as to be properly and accurately represented, designated, or referred to as "Gold Filled." They contained 12-carat gold only to the extent of one-fiftieth of their weight, which is not equivalent to one-twentieth by weight of 10-carat gold.

PAR. 7. The use of the foregoing false and misleading statement by the respondent places in the hands of the aforesaid jewelry jobbers an instrument and means whereby said jobbers may perpetrate a fraud upon a substantial portion of the retailers, and both jobbers and retailers upon a substantial portion of the consuming public by enabling them to falsely represent, offer for sale, and sell respondent's wrist watch buckles as being superior to other articles not so branded and as being of equal quality and value with other articles truthfully branded "Gold Filled." A substantial portion of said retailers, and of the consuming public, are of the opinion that the words "Gold Filled" denote a quality exceeded only by solid gold or carat gold, and are led to purchase respondent's product because of such belief.

PAR. 8. There are among the competitors of respondent many persons, firms, and corporations who conform to the set standards referred to in paragraph 5 above and do not brand wrist watch buckles or other jewelry findings "Gold Filled" unless they contain by weight at least 5 percent gold of a fineness of at least 10 carats.

PAR. 9. The aforesaid acts and practices of the respondent are added inducements for a substantial number of jobbers, retail purchasers, and consuming purchasers to buy respondent's product, and have a tendency and capacity to, and do unfairly divert a substantial volume of trade to respondent from its said competitors. As a consequence thereof competition in commerce among and between the various States of the United States and in the District of Columbia has been substantially injured.

CONCLUSION

The 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 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 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 on behalf of the Commission filed herein by Morton Nesmith, counsel for the Commission (respondent having waived the filing of brief), oral argument not having been requested, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Algren Manufacturing Co., Inc., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of wrist watch buckles in interstate commerce or in the District of Columbia do forthwith cease and desist from:

Using the term "gold filled" or any other term or word of similar import and meaning as a brand, stamp, or label upon or for wrist watch buckles, unless such buckles shall have an alloyed gold content of one-twentieth by weight of 10-carat gold.

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 B. ROCHE, TRADING AS THE G-H-R ELECTRIC DILATOR COMPANY AND THE ROCHE ELECTRIC MACHINE COMPANY

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

Docket 3772. Complaint, Apr. 25, 1939—Decision, July 9, 1940

Where an individual engaged in sale and distribution of Electric Thermitis Dilator for use in treatment of prostate gland, and of his Electric Hygienic Machine for use, as recommended by him, in treatment of various ailments, diseases and conditions, to purchasers in the various other States and in competition with others engaged in sale and distribution of like or similar devices, and of preparations, remedies, and treatments for use and useful in treatment of ailments, diseases, and conditions for which he recommended his said devices, in commerce also among the various States and in the District of Columbia; in advertisements of his said devices which he disseminated and caused to be disseminated through the mails, by insertion in newspapers and periodicals of general circulation, and also 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 advertisements were intended or likely to induce purchase of his said devices—

(*a*) Represented, directly and by implication, that prostate disorders are responsible for many of the ailments, diseases, and conditions of the human body, including impotency, kidney weaknesses, loss of vitality, constipation, piles, and sexual decline, and that use of his Electric Thermitis Dilator device would cure prostate disorders and the ailments, diseases, and conditions caused thereby; and

(*b*) Represented, as aforesaid, that the use of his said Dilator would stop the wasting away of tissues and keep glands vigorous and strong, enabling one to feel and look young at 80, and that said device was useful and effective in treatment of frigidity and would eliminate lack of procreative impulse, and was useful generally in renewing vigor and vitality and would produce beneficial results where all other treatments and methods had failed, and would restore and preserve prostate gland;

Facts being said dilator, while it might have some beneficial effects on congested prostatic conditions because of heat generated in said device, had no value in treatment of prostatic disorders and its use would not cure such disorders, and use thereof was not a cure or remedy for, or a competent treatment of, impotency, kidney weakness, or other ailments and conditions above set forth, and would not stop wasting away of tissues or keep glands vigorous and strong, would have no effect on conditions due to age, and would not make user thereof feel and look young at 80, and use of said device was of no value in treatment of frigidity and would not eliminate lack of procreative impulse or be useful in renewing vigor and vitality; and

(*c*) Represented, as aforesaid, that use of said Electric Hygienic Machine would take place of exercise and massage and all other vibrators and would re-

vive the nerves and muscles, including involuntary muscles, insure perfect blood circulation, restore health and vital force where such health and force had been lost by prodigal expenditure of nervous and physical energy, and that said machine would renew human vitality, however and whatever lost, and, through increasing circulation of blood, would eliminate failure or weakness of any vital organ and restore such organ so that it would perform its normal functions and set it vigorously to work; and

(*d*) Represented, as aforesaid, that said machine was a cure for, or beneficial in treatment of, paralysis, locomotor ataxia, vertigo, apoplexy, rheumatism, gout, lumbago, high blood pressure, hardening of the arteries, and many other ailments, diseases, and conditions afflicting mankind, and that there was no other treatment on the market for ailments, diseases, and conditions mentioned as efficacious as his said machine;

Facts being, said device would not take place of exercise, massage, or all other vibrators and would not revive nerves and muscles, use thereof would not insure perfect blood circulation nor restore health and vital force, or renew human vitality, however and whatever lost, it was not effective in treatment of any weakness of any vital organ and would not restore such organ so that it would perform its normal functions or set such organ vigorously to work, and use of said device was not a cure or remedy for, or competent treatment of, paralysis and other ailments, diseases, or conditions above set forth;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements, representations, and advertisements were true, and of causing portion of such public, because of said belief, to purchase his said devices, and with result that trade was diverted unfairly to him from his competitors who were likewise engaged in sale and distribution in commerce among the various States and in the District of Columbia of preparations, remedies, and treatments for use in treatment of ailments, diseases, and conditions for which he recommended his said devices, and who truthfully advertise the effectiveness and therapeutic value of their respective preparations and devices; 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. Clark Nichols for the Commission.

Mr. Stewart J. Roche, of Hart, 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 John B. Roche, an individual, trading as The G-H-R Electric Dilator Co. and The Roche Electric Machine Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to said

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

PARAGRAPH 1. Respondent, John B. Roche, is an individual trading and doing business as The G-H-R Electric Dilator Co. and The Roche Electric Machine Co., with principal place of business at 215 North Division Avenue, Grand Rapids, Mich. Respondent is now and for the several years last past has been engaged in the sale and distribution of a device under the name Electric Thermitis Dilator for use in the treatment of the prostate gland, and a device under the name Roche Electric Hygienic Machine recommended by the respondent for use in the treatment of various ailments, diseases and conditions, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said devices, when sold, to be transported from his place of business in Grand Rapids, Mich., to the purchasers thereof located at various points in the several States of the United States other than the State of Michigan. There is now and has been for the several years last past a course of trade in such devices in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business as aforesaid, the respondent is in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of like or similar devices, and in the sale and distribution of preparations, remedies, and treatments for use and useful in the treatment of the ailments, diseases, and conditions for which the respondent recommends his said 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 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 devices, 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 devices; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said devices, by various means, for the purpose of inducing, and which are likely to induce, directly

or indirectly, the purchase of his said devices in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements made in said false advertisements, disseminated and caused to be disseminated as aforesaid, with reference to the device sold under the name Electric Thermitis Dilator, are the following:

Let us by a simple and harmless means restore to normal this very vital and important gland, for upon this gland in a large degree depends the future race. Not only that, but it has been proven in thousands of cases that prostate disorders are as a rule largely responsible for a long list of ailments to which our body is subject.

This can be done by means of our new and improved G-H-R Electric Thermitis Dilator and a few minutes spent each day brings you new health, vigor, and vitality. Those whose vital stamina has been on the decrease, and who have failed in nerve energy, should by all means seek a restoration for this lost power, in order that they may get the best out of life.

Men wonder why they are old at fifty. The knife is a failure in preserving that wonderful gland. Send for our G-H-R Electric Thermitis Dilator.

Women often suffer from various forms of female disorders which can be overcome by this simple and harmless treatment.

Impotency and prostate disorders are very closely related.

WHY PERMIT YOURSELF TO GROW OLD when science has discovered a way out.

The new and improved G-H-R Electric Thermitis Dilator is the one true method for the treatment of bladder or kidney weakness, loss of vitality, prostate gland trouble. Constipation, piles, sexual decline, and other seminal losses can be laid to the birth of prostate gland trouble.

You cannot go wrong when you purchase one of these G-H-R Electric Thermitis Dilators for prostate gland trouble, so get into the highways of strength and preserve this wonderful gland.

Of course, you will notice the years passing by. We cannot prevent it, but you can stop the wasting away of your tissues, and keep your glands vigorous and strong. You can feel and look young at 80 by simply taking the proper treatment.

The principal effect is a typical hyperemia (an increased blood supply) of the pelvic organs, particularly of the genital organs. Remarkable results have been obtained where frigidity and lack of procreative impulse have been treated with this element of the G-H-R Electric Thermitis Dilator.

The G-H-R Electric Thermitis Dilator produces results when all other treatments fail.

Restore and preserve that wonderful gland and don't be robbed by age.

Among and typical of the statements made in said false advertisements, disseminated and caused to be disseminated as aforesaid, with reference to the device sold under the name Roche Electric Hygienic Machine, are the following:

The Roche Electric Hygienic Machine has all the value of exercise, hand manipulation, and so-called vibrators, but it goes still farther for it relieves the nerves and muscles, reaching you voluntarily and involuntarily. The whole world recognizes the necessity of keeping up a good blood circulation. No man knows of a machine or anything that will do it so effectively as the Roche Electric Hygienic Machine.

We honestly believe, yes, and we know that the Roche Electric Hygienic Machine is the greatest boon that has been granted to intelligent teachers of health.

We claim to be able to show how to restore to your system that perfect stage of health and vital force, probably lost by a too prodigal expenditure of nervous and physical energy.

You might sum up the whole story of the Roche Electric Hygienic Machine by saying that it "renews human vitality, however, and whatever lost." Whatever lengths the various ailments for which it is beneficial may lead us to in the description of its uses, you will find through it all the important facts, that whatever it does is done through the renewed and increased circulation of the blood, the restoration of which by our machine once more establishes a vigorous action of the part of the body that was ailing, and since the cause of the troubles originates in the failure or weakness of some vital organ, rendering it incapable of performing the function expected of it, and anything which will restore the strength to this feeble organ and will set it vigorously to work again, that is a cure.

The failure of medicine and so-called electric machines is no argument against the Roche Electric Hygienic Machine. No other treatment is in the same class with it. Everything else may fail, and still the Roche Electric Hygienic Machine will produce results. The merit of this machine is unquestionable.

The Roche Electric Hygienic Machines satisfy and soothe the nerves of one that is longing for a good night's sleep. They will convince the most skeptical after a few demonstrations. This is the one reason why we ask you to give the machine a trial, showing you that this machine will master the ailments that it is recommended for, such as: Paralysis, locomotor ataxia, vertigo, apoplexy, rheumatism, gout, lumbago, high blood pressure, or hardening of the arteries.

PAR. 3. Through the use of said statements in said advertisements, disseminated as aforesaid, and others similar thereto not herein set out, all of which purport to be descriptive of said devices and their efficacy in the treatment of various ailments, diseases, and conditions of the human body, the respondent represents, directly and by implication, in connection with the offering for sale and sale of said devices, that prostate disorders are responsible for many of the ailments, diseases, and conditions of the human body, including impotency, kidney weaknesses, loss of vitality, constipation, piles, and sexual decline, and that the use of the device known as Electric Thermitis Dilator will cure prostate disorders and the ailments, diseases, and conditions caused thereby; that the use of said dilator will stop the wasting away of tissues and keep glands vigorous and strong, enabling one to feel and look young at eighty; that said dilator is useful and effective in the treatment of frigidity and will eliminate the lack of procreative impulse, and that it is useful generally in renewing vigor and vitality and will produce beneficial results where all other treatments and methods have failed, and will restore and preserve the prostate gland; that the use of the device known as Roche Electric

Hygienic Machine will take the place of exercise and massage and all other vibrators and will revive the nerves and muscles, including the involuntary muscles, insure perfect blood circulation, restore health and vital force where health and vital force has been lost by prodigal expenditure of nervous and physical energy; that said machine will renew human vitality, however and whatever lost; that said machine, through increasing the circulation of the blood, will eliminate the failure or weakness of any vital organ and restore such organ so that it will perform its normal functions and set such vital organ vigorously to work; that said machine is a cure for, or beneficial in the treatment of, paralysis, locomotor ataxia, vertigo, apoplexy, rheumatism, gout, lumbago, high blood pressure, hardening of the arteries, and many other ailments, diseases, and conditions afflicting mankind, and that there is no other treatment on the market for the ailments, diseases, and conditions mentioned, as efficacious as respondent's said machine.

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, the device known as Electric Thermitis Dilator, while it may have some beneficial effect on congested prostatic conditions because of the heat generated in said device, has no value in the treatment of prostatic disorders and its use will not cure such disorders. The use of said device is not a cure or remedy for, or a competent treatment of, impotency, kidney weakness, loss of vitality, constipation, piles, or sexual decline. The use of said Electric Thermitis Dilator will not stop wasting away of tissues or keep glands vigorous and strong. Its use will have no effect on conditions due to age and will not make the user thereof feel and look young at eighty. The use of said device is of no value in the treatment of frigidity and will not eliminate the lack of procreative impulse or be useful in renewing vigor and vitality.

The device known as Roche Electric Hygienic Machine will not take the place of exercise, massage or all other vibrators and will not revive the nerves and muscles. The use of said device will not insure perfect blood circulation and will not restore health and vital force, or renew human vitality, however and whatever lost. Said device is not effective in the treatment of any weakness of any vital organ, and will not restore such organ so that it will perform its normal functions or set such vital organ vigorously to work. The use of said device is not a cure or remedy for, or a competent treatment of, paralysis, locomotor ataxia, vertigo, apoplexy, rheumatism, gout, lumbago, high blood pressure, hardening of the arteries, or any other ailments, diseases, or conditions.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the therapeutic value and effectiveness of its devices, known as Electric Thermitis Dilator and Roche Electric Hygienic Machine, 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 such erroneous and mistaken belief, to purchase respondent's devices. As a result, trade has been diverted unfairly to the 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 preparations, remedies, and treatments for use in the treatment of ailments, diseases, and conditions for which the respondent recommends his said devices, who truthfully advertise the effectiveness and therapeutic value of their respective preparations and devices. 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. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury 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 the 25th day of April 1939, issued and subsequently served its complaint in this proceeding upon the respondent John B. Roche, trading as G-H-R Electric Dilator Co., and as Roche Electric Machine 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 the 14th day of June 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 now being fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, John B. Roche, is an individual trading and doing business as The G-H-R Electric Dilator Co. and as The Roche Electric Machine Co., with his principal place of business at 215 North Division Avenue, Grand Rapids, Mich. Respondent is now, and for several years last past has been, engaged in the sale and distribution of a device under the name Electric Thermitis Dilator for use in the treatment of the prostate gland, and a device under the name of Roche Electric Hygienic Machine, recommended by the respondent for use in the treatment of various ailments, diseases and conditions, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said devices, when sold, to be transported from his place of business in Grand Rapids, Mich., to the purchasers thereof located at various points in the several States of the United States other than the State of Michigan. There is now and has been for several years last past a course of trade in such devices in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his business as aforesaid, the respondent is in competition with other individuals and with corporations and partnerships engaged in the sale and distribution of like or similar devices, and in the sale and distribution of preparations, remedies, and treatments for use and useful in the treatment of the ailments, diseases, and conditions for which respondent recommends his said 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 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 devices, 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 devices; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said devices, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said devices, in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements made in said false advertisements, disseminated and caused to be disseminated as aforesaid, with reference to the device sold under the name Electric Thermitis Dilator, are the following:

Let us by a simple and harmless means restore to normal this very vital and important gland, for upon this gland in a large degree depends the future race. Not only that, but it has been proven in thousands of cases that prostate disorders are as a rule largely responsible for a long list of ailments to which our body is subject.

This can be done by means of our new and improved G-H-R Electric Thermitis Dilator and a few minutes spent each day brings you new health, vigor, and vitality. Those whose vital stamina has been on the decrease, and who have failed in nerve energy, should by all means seek a restoration for this lost power, in order that they may get the best out of life.

Men wonder why they are old at fifty. The knife is a failure in preserving that wonderful gland. Send for our G-H-R Electric Thermitis Dilator.

Women often suffer from various forms of female disorders which can be overcome by this simple and harmless treatment.

Impotency and prostate disorders are very closely related.

WHY PERMIT YOURSELF TO GROW OLD when science has discovered a way out.

The new and improved G-H-R Electric Thermitis Dilator is the one true method for the treatment of bladder or kidney weakness, loss of vitality, prostate gland trouble. Constipation, piles, sexual decline, and other seminal losses can be laid to the birth of prostate gland trouble.

You cannot go wrong when you purchase one of these G-H-R Electric Thermitis Dilators for prostate gland trouble, so get into the highways of strength and preserve this wonderful gland.

Of course, you will notice the years passing by. We cannot prevent it, but you can stop the wasting away of your tissues, and keep your glands vigorous and strong. You can feel and look young at 80 by simply taking the proper treatment.

The principal effect is a typical hyperemia (an increasing blood supply) of the pelvic organs, particularly of the genital organs. Remarkable results have been obtained where frigidity and lack of procreative impulse have been treated with this element of the G-H-R Electric Thermitis Dilator.

The G-H-R Electric Thermitis Dilator produces results when all other treatments fail.

Restore and preserve that wonderful gland and don't be robbed by age.

Among and typical of the statements made in said false advertisements, disseminated and caused to be disseminated as aforesaid, with reference to the device sold under the name of Roche Electric Hygienic Machine, are the following:

The Roche Electric Hygienic Machine has all the value of exercise, hand manipulation, and so-called vibrators, but it goes still further for it relieves the nerves and muscles, reaching you voluntarily and involuntarily. The whole world recognizes the necessity of keeping up a good blood circulation. No man knows of a machine or anything that will do it so effectively as the Roche Electric Hygienic Machine.

We honestly believe, yes, and we know that the Roche Electric Hygienic Machine is the greatest boon that has been granted to intelligent teachers of health.

We claim to be able to show how to restore to your system that perfect stage of health and vital force, probably lost by a too prodigal expenditure of nervous and physical energy.

You might sum up the whole story of the Roche Electric Hygienic Machine by saying that it "renews human vitality, however, and whatever lost." Whatever lengths the various ailments for which it is beneficial may lead us to in the description of its uses, you will find through it all the important facts, that whatever it does is done through the renewed and increased circulation of the blood, the restoration of which by our machine once more establishes a vigorous action of the part of the body that was ailing, and since the cause of the trouble originates in the failure or weakness of some vital organ, rendering it incapable of performing the function expected of it, and anything which will restore the strength to this feeble organ and will set it vigorously to work again, that is a cure.

The failure of medicine and so-called electric machines is no argument against the Roche Electric Hygienic Machine. No other treatment is in the same class with it. Everything else may fail, and still the Roche Electric Hygienic Machine will produce results. The merit of this machine is unquestionable.

The Roche Electric Hygienic Machines satisfy and soothe the nerves of one that is longing for a good night's sleep. They will convince the most skeptical after a few demonstrations. This is the one reason why we ask you to give the machine a trial, showing you that this machine will master the ailments that it is recommended for, such as: Paralysis, locomotor ataxia, vertigo, apoplexy, rheumatism, gout, lumbago, high blood pressure, or hardening of the arteries.

PAR. 3. Through the use of said statements in said advertisements, disseminated as aforesaid, and others similar thereto not herein set out, all of which purport to be descriptive of said devices and their efficacy in the treatment of various ailments, diseases, and conditions of the human body, the respondent represents, directly and by implication, in connection with the offering for sale of said devices, that prostate disorders are responsible for many of the ailments, diseases, and conditions of the human body, including impotency, kidney weaknesses, loss of vitality, constipation, piles, and sexual decline, and that the use of the device known as Electric Thermitis Dilator will cure prostate disorders and the ailments, diseases, and conditions caused thereby; that the use of said dilator will stop the wasting away of tissues and keep glands vigorous and strong, enabling one to feel and look young at 80; that said dilator is useful and effective in the treatment of frigidity and will eliminate the lack of procreative impulse, and that it is useful generally in renewing vigor and vitality and will produce beneficial results where all other treatments and methods have failed, and will restore and preserve the prostate gland; that the use of the device known as Roche Electric Hygienic Machine

will take the place of exercise and massage and all other vibrators and will revive the nerves and muscles, including the involuntary muscles, insure perfect blood circulation, restore health and vital force where health and vital force has been lost by prodigal expenditure of nervous and physical energy; that said machine will renew human vitality, however and whatever lost; that said machine, through increasing the circulation of the blood, will eliminate the failure or weakness of any vital organ and restore such organ so that it will perform its normal functions and set such vital organ vigorously to work; that said machine is a cure for, or beneficial in the treatment of, paralysis, locomotor ataxia, vertigo, apoplexy, rheumatism, gout, lumbago, high blood pressure, hardening of the arteries, and many other ailments, diseases, and conditions afflicting mankind, and that there is no other treatment on the market for the ailments, diseases, and conditions mentioned, as efficacious as respondent's said machine.

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, the device known as Electric Thermitis Dilator, while it may have some beneficial effect on congested prostatic conditions because of the heat generated in said device, has no value in the treatment of prostatic disorders and its use will not cure such disorders. The use of said device is not a cure or remedy for, or a competent treatment of, impotency, kidney weakness, loss of vitality, constipation, piles, or sexual decline. The use of said Electric Thermitis Dilator will not stop wasting away of tissues or keep glands vigorous and strong. Its use will have no effect on conditions due to age and will not make the user thereof feel and look young at 80. The use of said device is of no value in the treatment of frigidity and will not eliminate the lack of procreative impulse or be useful in renewing vigor and vitality.

The device known as Roche Electric Hygienic Machine will not take the place of exercise, massage or all other vibrators and will not revive the nerves and muscles. The use of said device will not insure perfect blood circulation and will not restore health and vital force, or renew human vitality, however and whatever lost. Said device is not effective in the treatment of any weakness of any vital organ, and will not restore such organ so that it will perform its normal functions or set such vital organ vigorously to work. The use of said device is not a cure or remedy for, or a competent treatment of, paralysis, locomotor ataxia, vertigo, apoplexy, rheumatism, gout, lumbago, high blood pressure, hardening of the arteries, or any other ailments, diseases or conditions.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the therapeutic value and effectiveness of his devices, known as Electric Thermitis Dilator and Roche Electric Hygienic Machine, 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 such erroneous and mistaken belief, to purchase respondent's devices. As a result, trade has been diverted unfairly to the respondent from his competitors who are likewise engaged in the sale and distribution in commerce between and among the various States of the United States and in the District of Columbia of preparations, remedies, and treatments for use in the treatment of ailments, diseases, and conditions for which the respondent recommends his said devices, who truthfully advertise the effectiveness and therapeutic value of their respective preparations and devices. 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 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent John B. Roche, individually, and trading as The G-H-R Electric Dilator Co. and as The Roche Electric Machine Co., 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 or distribu-

tion of his devices designated Electric Thermitis Dilator and Roche Electric Hygienic Machine, or any other devices of substantially similar construction or possessing substantially similar qualities, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference:

(*a*) That the use of said device designated Electric Thermitis Dilator will cure or serve as a competent or effective treatment for impotency, sexual decline, kidney weakness, piles, constipation, or prostatic disorders; that the use of such device has any therapeutic value in the treatment of prostatic conditions in excess of the beneficial effect of heat with relation to congested prostatic conditions; that the use of said device will stop the wasting away of tissues or beneficially affect the functioning of glands; that the use of said device will have any effect on conditions due to age; that said device possesses any value in the treatment of frigidity or that it will supply any lack of the procreative impulse; or that the use of said device will supply or renew so-called vigor or vitality.

(*b*) That said device designated Roche Electric Hygienic Machine will cure or serve as a competent or effective treatment for paralysis, locomotor ataxia, vertigo, apoplexy, rheumatism, gout, lumbago, high blood pressure, or hardening of the arteries; that the use of such device is an effective substitute for exercise; that the use of such device will revive the nerves or muscles; that said device will insure perfect blood circulation, or restore health or vital force, or renew vitality; or that said device constitutes an effective treatment for any weakness of any of the vital organs or possesses any therapeutic value with respect thereto.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce as "commerce" is defined in the Federal Trade Commission Act, of said devices, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

VERONICA IGNATOVITCH, TRADING AS MADAME VERA, MADAM VERA, AND MME. VERA

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

Docket 3906. Complaint, Oct. 3, 1939—Decision, July 9, 1940

Where an individual engaged in manufacture of her "Madame Vera Hair Grower Salve" for use on hair and scalp, and in sale thereof to purchasers in various other States and in District of Columbia, in advertisements of her said product, which she disseminated and caused to be disseminated through the mails, insertions in newspapers and periodicals having general circulation, and through other printed or written matter, distributed in commerce among the various States and by other means in commerce, and otherwise, and which advertisements were intended and likely to induce purchase of her said product—

(*a*) Represented, through various statements in said advertisements and including "before and after" pictures, that her said preparation was a competent and effective remedy for conditions known as dandruff and falling hair and that it grew new hair and that it had been used successfully by thousands of persons; facts being, it was not a competent or effective remedy for conditions above set forth, and would not grow new hair and had not been used successfully by thousands of persons or any other number; and

(*b*) Represented that price at which said preparation was offered for sale was a special price and was substantially less than that at which it was customarily offered, through such statement as "Special 30-day offer. Send only $1 for treatment. Regularly $3"; facts being, price at which it was offered was not specially reduced one, but price at which it was regularly and customarily sold;

With capacity and tendency to, and effect of, misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true and to induce substantial portion of such public, because of said belief thus engendered, to purchase her medicinal preparation aforesaid:

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. Lewis C. Russell*, trial examiner.

Mr. John M. Russell for the Commission.

Gould & Price, of Bridgeport, Conn., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Veronica Ignatovitch, trading as Madame Vera, Madam Vera, and as Mme. Vera, 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, Veronica Ignatovitch, is an individual trading as Madame Vera, Madam Vera, and as Mme. Vera, having her office and principal place of business located in Room No. 322, Meigs Building, Bridgeport, Conn.

Respondent is now, and for more than 1 year last past has been, engaged in the business of manufacturing and selling a preparation for use on the hair and scalp known as "Madam Vera Hair Grower Salve." Respondent causes said product, when sold, to be transported from her place of business in the State of Connecticut 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 salve in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of her 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 preparation by the United States mails, by insertions in newspapers and periodicals having a general circulation, and also in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by 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 preparation; and has disseminated and is now disseminating, and has caused and is now causing, the dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated as aforesaid are the following:

Madam Vera Hair Grower Salve.

After washing your head, rub in * * * enough salve to cover the whole scalp. After three or four days * * * repeat this operation until you will find dandruff has entirely disappeared and a new growth of hair started. To obtain permanent results, keep using the salve at weekly intervals.

Picture of man with bald head	Picture of same man with a growth of heavy black hair
BEFORE	AFTER

Stops dandruff and hair loss and grows new hair or money refunded.
Helps grow new hair or no charge.
Used successfully by thousands of men and women.
Special 30-day offer. Send only $1 for treatment. Regularly $3.

PAR. 3. By the use of the representations hereinabove set forth, and other representations similar thereto not specifically set out herein, respondent represents that her said preparation is a competent and effective remedy for the conditions known as dandruff and falling hair; that it grows new hair; that it has been used successfully by thousands of persons; and that the price at which said preparation is offered for sale is a "special" price and is substantially less than the price at which said preparation is customarily offered for sale.

PAR. 4. The statements and representations made by the respondent, as aforesaid, are false, misleading, and untrue. In truth and in fact, said preparation is not a competent or effective remedy for dandruff or falling hair; it will not grow new hair; nor has it been used successfully by thousands of persons, or any other number. The price at which said preparation is offered for sale is not a special or reduced price, but is the price at which said preparation is regularly and customarily sold.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had and now has the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements and representations are true, and to induce a substantial portion of the purchasing public to purchase respondent's medicinal preparation because of such erroneous and mistaken belief engendered as above set forth.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on October 3, 1939, issued and thereafter served its complaint in this proceeding upon said respondent, Veronica Ignatovitch, trading as Madame Vera, Madam Vera, and Mme. Vera, charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On October 20, 1939, the respondent filed her answer in this proceeding. Thereafter, a stipulation was entered into, subject to the approval of the Commission, between Robert H. Gould, attorney for the respond-

ent, the respondent in person, and John M. Russell, attorney for the Federal Trade Commission, wherein it was agreed that the stipulation 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 such stipulation to make its report stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint and answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent Veronica Ignatovitch, is an individual, trading as Madam Vera, Madame Vera, and Mme. Vera, having her office and principal place of business located in Room 322, Meigs Building, Bridgeport, Conn.

Respondent is now, and for more than one year last past has been, engaged in the business of manufacturing and selling a preparation for use on the hair and scalp known as "Madam Vera Hair Grower Salve." Respondent causes said product, when sold, to be transported from her place of business in the State of Connecticut 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 salve in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of her aforesaid business prior to the date of the service of the complaint upon her, the respondent disseminated and caused the dissemination of false advertisements concerning her said preparation by the United States mails, by insertions in newspapers and periodicals having a general circulation, and also in other printed or written matter, all of which are distributed in commerce among and between the various States of the United States, and by 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 preparation; and also disseminated and caused the

dissemination of false advertisements concerning her said preparation by various means for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of said preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

Among and typical of the false representations contained in the advertisements disseminated as aforesaid are the following:

Madam Vera Hair Grower Salve.

After washing your head, rub in * * * enough salve to cover the whole scalp. After three or four days * * * repeat this operation until you will find dandruff has entirely disappeared and a new growth of hair started. To obtain permanent results, keep using the salve at weekly intervals.

Picture of man with bald head	Picture of same man with a growth of heavy black hair
BEFORE	AFTER

Stops dandruff and hair loss and grows new hair or money refunded.
Helps grow new hair or no charge.
Used successfully by thousands of men and women.
Special 30-day offer. Send only $1 for treatment. Regularly $3.

Respondent has not disseminated or issued any such statements or advertisements as hereinbefore set forth since the complaint was served on her herein.

PAR. 3. By the use of the representations herein set forth, and other representations similar thereto not specifically set out herein, respondent represents that her said preparation is a competent and effective remedy for the conditions known as dandruff and falling hair; that it grows new hair; that it has been used successfully by thousands of persons; and that the price at which said preparation is offered for sale is a "special" price and is substantially less than the price at which said preparation is customarily offered for sale.

PAR. 4. The statements and representations made by the respondent, as aforesaid, are false, misleading, and untrue. In truth and in fact, said preparation is not a competent or effective remedy for dandruff or falling hair; it will not grow new hair; nor has it been used successfully by thousands of persons, or any other number. The price at which said preparation is offered for sale is not a special or reduced price, but is the price at which said preparation is regularly and customarily sold.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had the capacity and tendency to and did mislead and deceive a substantial portion of the purchasing public into the errone-

ous and mistaken belief that such false statements and representations are true, and to induce a substantial portion of the purchasing public to purchase respondent's medicinal preparation because of such erroneous and mistaken belief engendered as above set forth.

CONCLUSION

The aforesaid acts and practices of the respondent, Veronica Ignatovitch, trading as Madame Vera, Madam Vera, and Mme. Vera, 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 and a stipulation of facts entered into between Robert H. Gould, attorney for the respondent, the respondent in person, and John M. Russell, attorney for the Federal Trade Commission, which stipulation 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 proceedings, 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, Veronica Ignatovitch, trading as Madame Vera, Madam Vera, and Mme. Vera, or trading under any other name or names, her agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of her medicinal preparation advertised as "Madam Vera Hair Salve", or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent directly or through inference that said preparation is a competent or effective remedy for the condition known as dandruff or falling hair; that it grows new hair; that it has been used successfully by anyone; or that any price which is

the customary and usual price at which said preparation is offered for sale is a special or reduced price.

2. 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 any said preparation which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

IN THE MATTER OF

GEORGE C. HUSKINS, MINA D. HUSKINS, AND HOWARD W. ELLISON, TRADING AS CARTER 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 4028. Complaint, Feb. 8, 1940—Decision, July 9, 1940

Where three individuals engaged in sale and distribution of their "Carter's Special Formula," drug-containing preparation, which they recommended for use as treatment and cure for alcoholism and for liquor habit to purchasers in various other States and in the District of Columbia; in advertisements of their said product which they disseminated and caused to be disseminated through the mails, through insertion in newspapers of general circulation, and 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 otherwise, and which advertisements were intended, and likely to, induce purchase of their said product—

Represented, directly and by implication, that their said formula was a cure or remedy for and a competent and effective treatment for alcoholism and the liquor habit, and that through its use desire for alcoholic stimulants would be eradicated, and that it was absolutely harmless and contained no harmful drugs, through such statements, among others, as "It contains no harmful drugs"; "* * * in most cases at the end of three days the desire for alcohol is gone"; "* * * complete relief from this vicious habit"; and "* * * the modern, inexpensive THREE DAY LIQUOR TREATMENT * * * with an absolute MONEY BACK GUARANTEE CERTIFICATE"; and others of similar tenor; facts being, said product was not a cure or remedy nor competent or effective treatment for alcoholism or liquor habit, use thereof would not eradicate desire for alcoholic stimulants, and product was not absolutely harmless, in that it might, in some cases, cause skin rashes, dermatitis, and injury to liver and intestinal mucosa;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true and to induce substantial portion of said public, because of such belief, to purchase their medicinal 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.

Before *Mr. William C. Reeves*, trial examiner.
Mr. Randolph W. Branch for the Commission.

COMPLAINT

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

Mina D. Huskins, and Howard W. Ellison, individuals trading under the name of Carter 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 issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents are individuals who, trading and doing business under the name of Carter Sales Co., maintained an office and principal place of business in the Arcade Building, Los Angeles, Calif., which was later removed to 208 West Eighth Street, Los Angeles, Calif.

PAR. 2. Respondents, from on or about September 1, 1938, have been engaged in the business of selling and distributing a certain preparation containing drugs, described by them as "Carter's Special Formula" and recommended by them for use as a treatment and cure for alcoholism and for the liquor habit. Respondents cause said preparation, when sold, to be transported from their aforesaid place of business in the State of California, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents at all times mentioned herein 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, respondents have disseminated and caused the dissemination of false advertisements concerning their said preparation 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 have been distributed in commerce among and between the various States of the United States, and by continuities broadcast from radio stations having sufficient power to convey, and which did convey, the programs eminating 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 their said product; and have disseminated and caused the dissemination of false advertisements, concerning their said preparation, by various means, for the purpose of inducing, and which were 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

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

It contains no harmful drugs * * *.

* * * in most cases at the end of three days the desire for alcohol is gone.

* * * complete relief from this vicious habit.

Carter's Special Formula is an effective * * * treatment for habitual drinkers * * * on a full money back guarantee.

* * * satisfaction within even a three-day period * * *.

Alcoholism is being treated successfully * * * with Carter's Special formula.

Now this terrible craving may be conquered easily and inexpensively right in your own home.

* * * the safe * * * treatment.

The Inexpensive Guaranteed Three Day Secret Treatment for Alcoholism.

* * * the modern, inexpensive THREE DAY LIQUOR TREATMENT * * * with an absolute MONEY BACK GUARANTEE CERTIFICATE.

* * * does not contain harmful drugs.

Just suppose disaster * * * should result from the use of liquor to the one you had in mind * * *. You owe it to them and to your own peace of mind to do something right now.

STOP LIQUOR HABIT IMMEDIATELY. Regain the respect of your family and friends. Complete 3-day proven treatment succeeds when all other liquor treatments fail. Given secretly or voluntarily, no loss of time from work. Absolutely harmless. Your satisfaction guaranteed. Send only $1.00 today for complete treatment. CARTER, Box 6055, Los Angeles, Calif.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly and indirectly, that their preparation "Carter's Special Formula" is a cure or remedy for, and a competent and effective treatment for, alcoholism and the liquor habit; that by its use the desire for alcoholic stimulants will be eradicated; that it is absolutely harmless and contains no harmful drugs.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' product is not a cure or remedy nor a competent or effective treatment for alcoholism or the liquor habit. The use of such product will not eradicate the desire for alcoholic stimulants. Said product is not absolutely harmless, in that it may in some cases cause skin rashes, dermatitis, and injury to the liver and the intestinal mucosa.

PAR. 6. The use by the respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their preparation, disseminated as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements

and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

PAR. 7. The aforesaid acts and practices of the respondents, as herein alleged, were all to the prejudice and injury of the public, and constituted 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 8th day of February 1940, issued, and thereafter served, its complaint in this proceeding upon the respondents, George C. Huskins, Mina D. Huskins, and Howard W. Ellison, trading as Carter Sales Co., 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, hearings were held before William C. Reeves, an examiner of the Commission theretofore duly designated by it, at which hearings testimony and other evidence were introduced in support of the allegations of said complaint. Before said hearings were concluded, the respondents filed an answer, in which they 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, answer, testimony, and other evidence, said testimony and other evidence having been duly recorded and filed in the office 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. Respondents are individuals who, trading and doing business under the name of Carter Sales Co., maintained an office and principal place of business in the Arcade Building, Los Angeles, Calif., which was later removed to 208 West Eighth Street, Los Angeles, Calif.

PAR. 2. Respondents, from on or about September 1, 1938, have been engaged in the business of selling and distributing a certain preparation containing drugs, described by them as "Carter's Special Formula" and recommended by them for use as a treatment and cure for alcoholism and for the liquor habit. Respondents cause said preparation, when

sold, to be transported from their aforesaid place of business in the State of California, to purchasers thereof located in various other States of the United States and in the District of Columbia. Respondents at all times mentioned herein 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, respondents have disseminated and caused the dissemination of false advertisements concerning their said preparation 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 have been distributed in commerce among and between the various States of the United States, and by continuities broadcast from radio stations having sufficient power to convey, and which 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 their said product; and have disseminated and caused the dissemination of false advertisements, concerning their said preparation, by various means, for the purpose of inducing, and which were 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 said false advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

It contains no harmful drugs * * *.

* * * in most cases at the end of three days the desire for alcohol is gone.

* * * complete relief from this vicious habit.

Carter's Special Formula is an effective * * * treatment for habitual drinkers * * * on a full money back guarantee.

* * * satisfaction within even a three-day period * * *.

Alcoholism is being treated successfully * * * with Carter's Special Formula.

Now this terrible craving may be conquered easily and inexpensively right in your own home.

* * * the safe * * * treatment.

The Inexpensive Guaranteed Three Day Secret Treatment for Alcoholism.

* * * the modern, inexpensive THREE DAY LIQUOR TREATMENT * * * with an absolute MONEY BACK GUARANTEE CERTIFICATE.

* * * does not contain harmful drugs.

Just suppose disaster * * * should result from the use of liquor to the one you had in mind * * *. You owe it to them and to your own peace of mind to do something right now.

STOP LIQUOR HABIT IMMEDIATELY. Regain the respect of your family and friends. Complete 3-day proven treatment succeeds when all other liquor treatments fail. Given secretly or voluntarily, no loss of time from work. Absolutely harmless. Your satisfaction guaranteed. Send only $1.00 today for complete treatment. CARTER, Box 6055, Los Angeles, Calif.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, respondents have represented, directly or indirectly, that their preparation "Carter's Special Formula" is a cure or remedy for, and a competent and effective treatment for, alcoholism and the liquor habit; that by its use the desire for alcoholic stimulants will be eradicated; that it is absolutely harmless and contains no harmful drugs.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondents' product is not a cure or remedy nor a competent or effective treatment for alcoholism or the liquor habit. The use of such product will not eradicate the desire for alcoholic stimulants. Such product is not absolutely harmless, in that it may in some cases cause skin rashes, dermatitis, and injury to the liver and the intestinal mucosa.

PAR. 6. The use by respondents of the foregoing false, deceptive, and misleading statements and representations with respect to their preparation, disseminated as aforesaid, has the capacity and tendency to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations are true, and to induce a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' medicinal preparation.

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, testimony and other evidence introduced before William C. Reeves, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, 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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents George C. Huskins, Mina D. Huskins, and Howard W. Ellison, individually, and trading as Carter Sales 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 their medicinal preparation designated "Carter's Special Formula," or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a cure or remedy or a competent or effective treatment for alcoholism or the liquor habit; that the use of said preparation will eradicate the desire for alcoholic stimulants; that said preparation is in all cases safe or harmless, or that it contains no harmful drugs.

2. 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 contain any of the representations prohibited in paragraph 1 hereof.

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

SOHN & COMPANY, INC., AND BENJAMIN SOHN, MORRIS SOHN, AND ISADORE SOHN, INDIVIDUALLY AND AS OFFICERS AND DIRECTORS OF SOHN & 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 4072. Complaint, Mar. 28, 1940—Decision, July 9, 1940

Where a corporation and three individuals who were officers and directors thereof and, as such, managed, controlled, and dominated its corporate affairs and activities, and acting in conjunction and cooperation with each other in carrying out the acts and practices and methods below set forth, and engaged in manufacture of mattresses and bedding with old, second-hand, used, and discarded cotton and other materials which they purchased and which, after being combed with a type of machine and reworked, were covered with new coverings and, in sale and distribution to purchasers in various other States and including wholesalers, retailers, and other buyers who resold same to purchasing public, of said products, which, after being fitted with new coverings as aforesaid, had appearance of new mattresses—

Sold said products, with appearance aforesaid, and with no marking or designation clearly and conspicuously stamped thereon, or attached thereto, to indicate to purchasing public that such mattresses were in fact made from old, previously used, discarded, and second-hand mattresses, and in case of certain of said mattresses thus made but with labels bearing terms "Made of previously used materials" stamped thereon with such markings so illegible and inconspicuous that it could not be read by wholesale and retail buyers thereof or by members of the purchasing public, to retailers, and to jobbers and wholesalers, by whom said mattresses were sold to purchasing public without disclosing fact that they were reconditioned and made from old, used, discarded, and second-hand materials which had been remanufactured and fitted with new covering, and so as to indicate products in question were, in fact, composed in their entirety of new materials which had never been previously used, and thereby failed to disclose, through use by corporation and individuals aforesaid of said acts and practices, the kind and type of materials from which their products were made;

With the result that they thereby placed in the hands of unscrupulous and uninformed persons, means and instrumentality whereby such persons had been and were enabled to mislead and deceive members of purchasing and consuming public into erroneous and mistaken belief that their products, nearly all of which were made from old, used, discarded, and second-hand materials covered with new covering, were manufactured from new materials, and with effect, through use of such practices, of misleading and deceiving retail and wholesale dealers who purchase such products and substantial portion of purchasing public into erroneous and mistaken belief that said mattresses, made as aforesaid, were new products manufactured from new and unused materials, and with the result, as consequence of such belief, that said public was induced to, and did, purchase 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 constituted unfair and deceptive acts and practices in commerce.

Mr. Robert Mathis, Jr., for the Commission.

King & Esterman, of Chicago, Ill., for F. E. Hummel, trustee in bankruptcy for respondents, and, along with *Mr. Hamilton Klorfine*, of Chicago, Ill., for Morris Sohn.

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 Sohn & Co., Inc. and Benjamin Sohn, Morris Sohn, and Isadore Sohn, individually and as officers and directors of Sohn & 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 Sohn & 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 Illinois. Respondents Benjamin Sohn, Morris Sohn, and Isadore Sohn are individuals and are president, secretary, and treasurer, respectively, and directors of respondent Sohn & 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 1450 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondents are now and have been for more than two years last past engaged in the manufacture, sale, and distribution of mattresses and bedding. Respondents cause their said merchandise when sold to be transported from their aforesaid place of business in the State of Illinois to various purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in commerce in said merchandise among and between the various States of the United States.

Par. 2. In the course and conduct of their business, respondents have bought and still buy old, second-hand, used, and discarded cotton and other used materials. Such materials are, after being combed with a type of machine and reworked, then used by respond-

ents in the manufacture of mattresses and bedding which are covered with new covering and are sold by the respondents to wholesalers, retailers, and other purchasers who resell the same to the purchasing public.

PAR. 3. Respondents' mattresses made from the aforesaid old, used, discarded, and second-hand materials, after being fitted with new coverings as aforesaid, have the appearance of new mattresses, and said mattresses are sold by respondents to wholesalers, jobbers, and retail dealers without any marking or designation clearly and conspicuously stamped thereon or attached thereto to indicate to the purchasing public that said mattresses were in fact manufactured from old, previously used, discarded, and second-hand materials. Said mattresses are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said mattresses are reconditioned and manufactured from old, used, discarded, and second-hand material which has been remanufactured and fitted with a new covering and so as to indicate that said mattresses are in fact composed in their entirety of new materials which have never been previously used.

Certain of the mattresses manufactured by respondents from old, used, discarded, and second-hand materials do have labels with the terms "Made of previously used materials" stamped thereon, and in such instances where said labels bear these terms the marking is so illegible and inconspicuous that it cannot be read by the wholesale and retail dealers who buy respondents' product or by members of the purchasing public.

PAR. 4. Through the use of the acts and practices as herein set forth, respondents have and do fail to disclose the kind and type of materials from which their products are manufactured and thereby respondents have placed in the hands of unscrupulous and uninformed persons a means and instrumentality whereby such persons have been and are enabled to mislead and deceive members of the purchasing and consuming public into the erroneous and mistaken belief that respondents' products are manufactured from new materials when in truth and in fact nearly all of respondents' mattresses are manufactured from old, used, discarded, and second-hand materials which are covered with a new covering.

PAR. 5. The use by the respondents of the aforesaid acts and practices has had and now has the capacity and tendency to, and does, mislead and deceive retail dealers and wholesale dealers who purchase said products and a substantial portion of the purchasing public into the erroneous and mistaken belief that said mattresses manufactured from old, used, and discarded materials are new mat-

tresses manufactured from new and unused materials. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' 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 March 28, 1940, issued and thereafter served its complaint in this proceeding upon respondents, Sohn & Co., Inc., and Benjamin Sohn, Morris Sohn, and Isadore Sohn, individually and as officers and directors of Sohn & Co., Inc., 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, the respondents herein filed an answer in which they in part admitted and in part denied the allegations of the complaint. Subsequent thereto, under date of June 18, 1940, respondents, with the approval of the Commission, withdrew their original answer and filed herein a substitute answer, admitting all the material allegations of fact set forth in the said complaint and waiving all intervening procedure and further hearing as to said facts.

Thereafter, the proceedings regularly came on for final hearing before the Commission on the said complaint and answer thereto, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Sohn & 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 Illinois. Respondents Benjamin Sohn, Morris Sohn, and Isadore Sohn are individuals and are president, secretary, and treasurer, respectively, and directors of respondent Sohn & 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 stated.

All have their offices and principal place of business at 1450 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondents are now, and have been for more than two years last past, engaged in the manufacture, sale, and distribution of mattresses and bedding. Respondents cause their said merchandise when sold to be transported from their aforesaid place of business in the State of Illinois to various purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in said merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of their business, respondents have bought and still buy old, second-hand, used, and discarded cotton and other used materials. Such materials are, after being combed with a type of machine and reworked, then used by respondents in the manufacture of mattresses and bedding which are covered with new coverings and are sold by the respondents to wholesalers, retailers, and other purchasers who resell the same to the purchasing public.

PAR. 3. Respondents' mattresses made from the aforesaid old, used, discarded, and second-hand materials, after being fitted with new coverings, as aforesaid, have the appearance of new mattresses, and said mattresses are sold by respondents to wholesalers, jobbers, and retail dealers without any marking or designation clearly and conspicuously stamped thereon or attached thereto to indicate to the purchasing public that said mattresses were in fact manufactured from old, previously used, discarded, and second-hand materials. Said mattresses are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said mattresses are reconditioned and manufactured from old, used, discarded, and second-hand material which has been remanufactured and fitted with a new covering and so as to indicate that said mattresses are in fact composed in their entirety of new materials which have never been previously used.

Certain of the mattresses manufactured by respondents from old, used, discarded, and second-hand material do have labels with the terms "Made of previously used materials" stamped thereon, and in such instances where said labels bear these terms the marking is so illegible and inconspicuous that it cannot be read by the wholesale and retail dealers who buy respondents' product or by members of the purchasing public.

PAR. 4. Through the use of the acts and practices as herein set forth, respondents have failed to disclose the kind and type of materials from which their products are manufactured. Respondents

have placed in the hands of unscrupulous and uninformed persons a means and instrumentality whereby such persons have been and are enabled to mislead and deceive members of the purchasing and consuming public into the erroneous and mistaken belief that respondents' products are manufactured from new materials when in truth and in fact nearly all of respondents' mattresses are manufactured from old, used, discarded, and second-hand materials which are covered with a new covering.

PAR. 5. The use by the respondents of the aforesaid acts and practices has had and now has the capacity and tendency to, and does, mislead and deceive retail dealers and wholesale dealers who purchase said products and a substantial portion of the purchasing public into the erroneous and mistaken belief that said mattresses manufactured from old, used, and discarded materials are new mattresses manufactured from new and unused materials. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' products.

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 the respondent, Sohn & Co., Inc., its officers, representatives, agents, and employees, and the respondents, Benjamin Sohn, Morris Sohn, and Isadore Sohn, individually and as officers and directors of Sohn & Co., Inc., their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of mattresses in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, or by any means or device, that mattresses which are composed in whole or in part of old, used, discarded, or second-hand materials are new mattresses or are made from new or unused materials.

2. Failing to permanently affix to mattresses made in whole or in part from old, used, discarded or second-hand materials, labels, or tags which clearly and conspicuously reveal that such mattresses are in fact composed of old, used, discarded, and second-hand materials, and which tags or labels cannot readily be removed, obliterated, obscured, or minimized.

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

BLUE RIBBON CANDY COMPANY, INC., AMERICAN CANDY AND 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 4091. Complaint, Apr. 17, 1940—Decision, July 9, 1940

Where a corporation engaged in manufacture of candy and in sale of certain assortments thereof which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes, when sold or distributed to consumers, and included, as illustrative, assortment of 60 bars of candy of uniform size and shape, together with push card for use in sale and distribution of said bars under a plan by which customer purchasers punching numbers ranging from one to three paid 1 cent, 2 cents, and 3 cents for said product, and purchasers punching number "0" paid nothing, and in furnishing various other push cards for use in the sale and distribution of its candy by means of game of chance, gift enterprise, or lottery scheme, and similar to that above described and varying therefrom in detail only—

Sold such assortments, together with said push cards, to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, they were exposed and sold to purchasing public in accordance with sales plan aforesaid, under which prices of bars in question were determined wholly by lot or chance, and involving game of chance or sale of a chance to procure bars of candy at prices much less than normal retail prices thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with sales plan above set forth, 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 result that many persons, attracted by said sales plan or method employed by it in sale and distribution of its candy and by element of chance involved therein, were thereby induced to buy and sell its said product in preference to candy of said competitors who do not use same or equivalent methods and with result, through use of such method and because of said game of chance of diverting unfairly trade in commerce to it from its competitors aforesaid who do not use same or equivalent methods:

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

PARAGRAPH 1. Respondent, Blue Ribbon Candy Co., Inc., also trading as American Candy and Sales Co., is a corporation organized and doing business under the laws of the State of Georgia, with its office and principal place of business located at 124 Tenth Street, NE., Atlanta, Ga. Respondent is now and for more than 6 months last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from its principal place of business in the city of Atlanta, Ga., to purchasers thereof at their respective points of location in various States of the United States other than Georgia and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3, inclusive. When the disks are pushed

or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1 cent, 2 cents, and 3 cents respectively. Purchasers punching number 0 pay nothing. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said candy, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy 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 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 candy and in the element of chance involved therein and are thereby induced to buy and sell the respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said 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 equivalent methods, and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 17, 1940, issued and subsequently served its complaint in this proceeding upon respondent Blue Ribbon Candy Co., Inc., a corporation, also trading as American Candy and Sales 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. On June 18, 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 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, Blue Ribbon Candy Co., Inc., also trading as American Candy and Sales Co., is a corporation organized and doing business under the laws of the State of Georgia, with its office and principal place of business located at 124 Tenth Street, NE., Atlanta, Ga. Respondent is now and for more than 6 months last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers and retail dealers located at points in the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be transported from its principal place of business in the city of Atlanta, Ga., to purchasers thereof at their respective points of location in various States of the United States other than Georgia and in the District of Columbia. There is now and has been for more than 6 months last past a course of trade by respondent in such candy in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of said business respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 60 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 60 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 0 to 3, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, and 3 pay 1 cent, 2 cents, and 3 cents respectively. Purchasers punching number 0 pay nothing. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's candy, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal price thereof. Many persons, firms, and corporations who

sell and distribute candy in competition with 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 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 candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said 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 equivalent methods.

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 Blue Ribbon Candy Co., Inc., a corporation, also trading as American Candy and Sales Co., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others candy or 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 candy or 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 or distributing any 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 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

ASA L. WOOTEN, TRADING AS UNITED STATES MARBLE & GRANITE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914[1]

Docket 4138. Complaint, May 21, 1940—Decision, July 9, 1940

Where an individual engaged in sale and distribution of marble and granite tombstones and monuments, to purchasers in various other States and in the District of Columbia, and in substantial competition with others engaged in sale and distribution of tombstones and monuments in commerce among the various States and in said District, and including many who sell and distribute like or similar products and do not misrepresent respective qualities thereof or matters pertaining thereto; in advertising his said products in catalogs having general circulation, and in circulars, price lists, and other advertising material distributed among prospective purchasers—

(*a*) Represented that his memorials would stand the ravages of time forever, that they were everlasting and forever durable, would last for all time, would never fade, stain, or tarnish and would always retain their original brightness, and that they were age enduring, facts being they would stain, tarnish, fade, and deteriorate, and would not retain their original brightness, and his said representations and implications as above set forth were false, misleading, and deceptive; and

(*b*) Represented that, through his "Gold Bond Guarantee," purchasers were assured of the everlasting quality and durability of his said products and the freedom thereof from fading, staining, or tarnishing, and that said "Gold Bond Guarantee" protected purchasers of such products if his claims and representations were not true and products did stain, tarnish, fade, and lose their original brightness and were not forever durable and everlasting, facts being said so-called "Gold Bond Guarantee" was not supported by any funds set aside by him or anyone else to assure fulfillment of the terms thereof, and it accordingly in no wise assured purchasers of everlasting quality and durability of said products or freedom thereof from fading, staining, or tarnishing, and did not in any wise protect purchasers of said products if his claims and representations were not true;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and with result, because of such erroneous and mistaken belief, that substantial portion of purchasing public was induced to and did purchase his said products; to the substantial injury of competition in commerce:

[1] Findings made as of date indicated are published as very slightly modified by Commission on October 11, 1940, through deleting few words theretofore included with other quoted matter in par. 3.

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

Mr. B. G. Wilson for the Commission.

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 Asa L. Wooten, an individual, trading as United States Marble and Granite 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, Asa L. Wooten, is an individual trading as United States Marble and Granite Co., with his office and principal place of business located at Oneco, Fla. Respondent is now, and for some time last past has been, engaged in the sale and distribution of marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes his said products, when sold, to be shipped from his place of business in the State of Florida 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 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 said business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. To induce the purchase of his said products, the respondent has disseminated and is now disseminating false and misleading statements and representations with respect to said products. Such statements and representations are inserted in catalogs having a general circulation and in circulars, price lists, and other advertising material

which are distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

Memorials that will stand the ravages of time.
Select white, gray or blue marble.
An everlasting memorial.
Forever durable.
World's best genuine marble or granite.
Good for continuous wear.
To last for all time.
They will never fade but always retain their original brightness.
Age enduring.
These monuments will last for all time.
Quality cannot be excelled.
Gold Bond Guarantee.
The whole memorial is guaranteed to never stain nor tarnish.
Is one of the strongest guarantees ever given.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not set out herein, the respondent represents that his memorials will stand the ravages of time forever; that they are everlasting and forever durable; that they are the world's best genuine marble or granite monuments; that they will last for all time, will never fade, stain, or tarnish and will always retain their original brightness; and that said memorials are age enduring. Respondent represents or implies that through his "Gold Bond Guarantee" purchasers are assured of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true and said products do stain, tarnish, fade, and lose their original brightness and are not forever durable and everlasting.

PAR. 5. The foregoing representations and implications are false, misleading, and deceptive. In truth and in fact, respondent's memorials will not stand the ravages of time forever; they are not everlasting or forever durable but they will stain, tarnish, fade, and deteriorate and will not retain their original brightness. Said memorials are not the world's best genuine marble or granite monuments as there are many other marble or granite monuments on the market which are as good as, or better than, respondent's said products. In truth and in fact, said so-called "Gold Bond Guarantee" in no wise assures purchasers of the everlasting quality and durability of said products or the freedom of such products from fading, staining, or tarnishing and does not in any wise protect purchasers of respondent's said products if respondent's claims and representations are not true because said so-called "Gold Bond Guarantee" is

not supported by any fund set aside by the respondent or anyone else for the purpose of assuring fulfilment of the terms thereof.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who sell and distribute like or similar products who do not misrepresent the respective qualities of said products or matters pertaining thereto.

PAR. 7. The use by the respondent of the false and misleading statements and representations referred to herein 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 because of such erroneous and mistaken belief, a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products. As a result thereof substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. 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.

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 May 1940, issued and thereafter served its complaint in this proceeding upon respondent, Asa L. Wooten, an individual, trading as United States Marble & Granite 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 the 6th day of June 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, Asa L. Wooten, is an individual trading as United States Marble and Granite Co. with his office and principal place of business located at Oneco, Fla. Respondent is now, and for some time last past has been, engaged in the sale and distribution of marble and granite tombstones and monuments in commerce between and among the various States of the United States and the District of Columbia.

Respondent causes his said products, when sold, to be shipped from his place of business in the State of Florida 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 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 said business, respondent is now, and for more than 1 year last past has been, in substantial competition with other individuals, partnerships, firms, and corporations engaged in the sale and distribution of tombstones and monuments in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. To induce the purchase of his said products, the respondent has disseminated and is now disseminating false and misleading statements and representations with respect to said products. Such statements and representations are inserted in catalogs having a general circulation and in circulars, price lists, and other advertising material which are distributed among prospective purchasers. Among and typical of such false and misleading representations are the following:

Memorials that will stand the ravages of time.
An everlasting memorial.
Forever durable.
Good for continuous wear.
To last for all time.
They will never fade but always retain their original brightness.
Age enduring.
These monuments will last for all time.
Quality cannot be excelled.
Gold Bond Guarantee.
The whole memorial is guaranteed to never stain nor tarnish.
Is one of the strongest guarantees ever given.

PAR. 4. By the use of the foregoing representations, together with other representations similar thereto not set out herein, the respondent represents that his memorials will stand the ravages of time forever;

that they are everlasting and forever durable; that they will last for all time, will never fade, stain, or tarnish and will always retain their original brightness; and that said memorials are age enduring. Respondent represents or implies that through his "Gold Bond Guarantee" purchasers are assured of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true and said products do stain, tarnish, fade, and lose their original brightness and are not forever durable and everlasting.

PAR. 5. The foregoing representations and implications are false, misleading, and deceptive. In truth and in fact, respondent's memorials will not stand the ravages of time forever; they are not everlasting or forever durable but they will stain, tarnish, fade, and deteriorate and will not retain their original brightness. In truth and in fact, said so-called "Gold Bond Guarantee" in no wise assures purchasers of the everlasting quality and durability of said products or the freedom of such products from fading, staining, or tarnishing and does not in any wise protect purchasers of respondent's said products if respondent's claims and representations are not true because said so-called "Gold Bond Guarantee" is not supported by any fund set aside by the respondent or anyone else for the purpose of assuring fulfillment of the terms thereof.

PAR. 6. There are among the competitors of respondent, as mentioned in paragraph 2 hereof, many who sell and distribute like or similar products who do not misrepresent the respective qualities of said products or matters pertaining thereto.

PAR. 7. The use by the respondent of the false and misleading statements and representations referred to herein 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 because of such erroneous and mistaken belief a substantial portion of the purchasing public is induced to, and does, purchase respondent's said products. As a result thereof substantial injury has been done, and is being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of 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, Asa L. Wooten, an individual, trading as United States Marble & Granite Co., or under any other trade name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of marble and granite tombstones and monuments in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication:

1. That respondent's memorials will stand the ravages of time forever, or that they are everlasting or forever durable, or that they will never fade, stain, or tarnish.

2. That respondent's said marble and granite tombstones and monuments will always retain their original brightness or that said memorials are age enduring.

3. That respondent has posted a "Gold Bond Guarantee" assuring purchasers of the everlasting quality and durability of his said products and the freedom of such products from fading, staining, or tarnishing and that said "Gold Bond Guarantee" protects purchasers of such products if respondent's claims and representations are not true.

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

CECIL DWIGHT KITCHEN, TRADING AS THE REVA COMPANY

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

Docket 4158. Complaint, June 7, 1940—Decision, July 9, 1940

Where an individual engaged in manufacture of his "Reva" cosmetic preparation for hair and scalp and in sale and distribution thereof to purchasers in various other States and in the District of Columbia; in advertisements of his said product, which he disseminated and caused to be disseminated through the mails and various other means in commerce, and otherwise, and including advertisements in newspapers and periodicals and circulars, leaflets, pamphlets, and other advertising literature, and which various advertisements were intended and likely to induce purchase of the said preparation—

(*a*) Represented that his said Reva product was not a hair dye but a preparation which substituted or replaced the pigment in hair and restored natural, youthlike color thereto, facts being, product in question was a lead and sulphur dye which, among other things, contained sulphur, lead acetate, and ammonia, forming, in combination, lead sulphide, and, applied to hair, dyed exterior of hair shaft, color thus produced was artificial, and it would not supply, substitute, or replace natural pigment in the hair nor restore natural or youthlike color thereto; and

(*b*) Represented that said product stimulated growth of hair and that it constituted a cure or remedy for dandruff, scalp eczema, or falling hair and a competent and effective treatment for such conditions and was safe and harmless for use in treatment of hair and scalp disorders, facts being, it would not stimulate growth of hair, was not a cure or remedy for said various conditions, and had no therapeutic value in treatment thereof in excess of affording temporary relief of itching in some instances, and was not safe or harmless, because use thereof might cause injury, in that application to skin or scalp where abrasions were present might cause absorption of lead into the system;

With capacity and tendency to and effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations in advertisements were true, and to induce portion of such public, because of such erroneous and mistaken belief, to purchase his cosmetic product 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. 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 Cecil Dwight

Kitchen, an individual trading as The Reva 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, Cecil Dwight Kitchen, is an individual trading as The Reva Co., and has his office and principal place of business at 4234 Lincoln Avenue in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now and has been for several years last past, engaged in the business of manufacturing, selling, and distributing a cosmetic preparation for the hair and scalp designated "Reva." Respondent causes said preparation, when sold, to be transported from his aforesaid 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 preparation in commerce among and between various States of the United States and in the District of Columia.

PAR. 3. 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 products by the United States mails and by various 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 respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said products by various means for the purpose of inducing and which are likely to induce directly or indirectly the purchase of his said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature are the following:

Here is a truly amazing preparation which brings a beautiful, lustreful, youth-like color to gray hair. Isn't sticky or greasy.

Even though you washed your face with REVA, and it is perfectly harmless to skin or tissue * * *

HOW REVA IMPARTS COLOR TO GRAY HAIR

Gray hair is caused by the decrease or total failure of the pigment supply * * * When there is no pigment there is no color. Gray hair is merely colorless

hair. It is easy to see then that in order to give color to the hair, it is only necessary to substitute for the missing pigment supply. THIS IS THE WORK THAT REVA DOES, AND IT WILL ALSO KEEP YOUR HAIR SOFT AND YOUTHFUL LOOKING.

Reva is a marvelous aid in checking dandruff, which is the result of a parasitic germ growth and helps to make your scalp clean, healthy and vigorous * * *

It helps banish dandruff and the unclean and untidy appearance due to the development of this white spore or scruff, aids in stopping itching scalp and helps you secure a healthy growth of hair.

* * * * * * *

It must contain BESIDES COLORING PROPERTIES a tonic solution capable of promoting a healthy hair and scalp condition and to aid in checking dandruff, scalp eczema, and falling hair.

Remember, REVA is not a stain or color. The same liquid is used for all colors of hair.

End Gray Hair * * * Here is a marvelous new preparation that changes gray hair to a beautiful, youthful color.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents that his preparation "Reva" is not a hair dye, but instead that it substitutes or replaces the pigment in hair necessary to give it color, stimulates the growth of hair, and will restore natural youthlike color to the hair; and that the use of said preparation will produce no harmful or injurious effects. In the same manner, respondent represents that his preparation "Reva" is a cure or remedy for dandruff, scalp eczema, and falling hair, and that it constitutes a competent and effective treatment for such conditions.

PAR. 5. The aforesaid statements and representations used by the respondent, as hereinabove described, are grossly misleading, exaggerated, and untrue. In truth and in fact, respondent's preparation "Reva" is a lead sulphur dye, which contains, among other ingredients, sulphur, lead acetate, and ammonia, which in combination form lead sulphide. When applied to the hair, this preparation dyes the exterior of the hair shaft, and the color produced by its use is that of an artificial dye. This preparation will not supply, substitute, or replace natural pigment to the hair, and will not restore natural or youthlike color to the hair or stimulate the growth of the hair. Respondent's preparation is not a cure or remedy for dandruff, scalp eczema, or falling hair, and has no therapeutic value in the treatment of such conditions in excess of affording temporary relief from itching in some instances. Respondent's preparation is not safe or harmless because its use may cause injury in that the application of this preparation to the skin or scalp where abrasions are present might cause absorption of lead into the system.

PAR. 6. The use by respondent of the foregoing false and deceptive statements and representations with respect to his cosmetic prepara-

tion 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 and advertisements are true, and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's cosmetic products.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 7th day of June 1940, issued and subsequently served its complaint in this proceeding upon respondent, Cecil Dwight Kitchen, an individual trading as The Reva Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. Thereafter, 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 hearings as to said facts. 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, Cecil Dwight Kitchen, is an individual trading as The Reva Co., and has his office and principal place of business at 4234 Lincoln Avenue in the city of Chicago, State of Illinois.

PAR. 2. The respondent is now, and has been for several years last past, engaged in the business of manufacturing, selling, and distributing a cosmetic preparation for the hair and scalp designated "Reva." Respondent causes said preparation, when sold, to be transported from his aforesaid 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 preparation in commerce among and between various States of the United States and in the District of Columbia.

PAR. 3. 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 the United States mails and by various 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 product; and respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, pamphlets, and other advertising literature are the following:

Here is a truly amazing preparation which brings a beautiful, lustreful, youthlike color to gray hair. Isn't sticky or greasy.

Even though you washed your face with Reva, and it is perfectly harmless to skin or tissue * * *

HOW REVA IMPARTS COLOR TO GRAY HAIR

Gray hair is caused by the decrease or total failure of the pigment supply * * * When there is no pigment there is no color. Gray hair is merely colorless hair. It is easy to see then that in order to give color to the hair, it is only necessary to substitute for the missing pigment supply. THIS IS THE WORK THAT REVA DOES, AND IT WILL ALSO KEEP YOUR HAIR SOFT AND YOUTHFUL LOOKING.

Reva is a marvelous aid in checking dandruff, which is the result of a parasitic germ growth and helps to make your scalp clean, healthy and vigorous * * *

It helps banish dandruff and the unclean and untidy appearance due to the development of this white spore or scruff, aids in stopping itching scalp and helps you secure a healthy growth of hair.

* * * * * * *

It must contain BESIDES COLORING PROPERTIES a tonic solution capable of promoting a healthy hair and scalp condition and to aid in checking dandruff, scalp eczema and falling hair.

Remember, REVA is not a stain or color. The same liquid is used for all colors of hair.

End Gray Hair * * * Here is a marvelous new preparation that changes gray hair to a beautiful, youthlike color.

PAR. 4. Through the use of the aforesaid statements and representations and others of similar import and meaning not specifically set out herein, the respondent represents that his preparation "Reva" is not a hair dye; that said preparation substitutes or replaces the pigment

in hair and restores natural youthlike color to hair; that said preparation stimulates the growth of hair; and that said preparation is safe and harmless for use in the treatment of hair and scalp disorders. In the same manner, respondent represents that the preparation "Reva" is a cure or remedy for dandruff, scalp eczema, and falling hair, and that such preparation constitutes a competent and effective treatment for such conditions.

PAR. 5. The aforesaid statements and representations used by the respondent, as hereinabove described, are grossly misleading, exaggerated, and untrue. In truth and in fact, respondent's preparation "Reva" is a lead and sulphur dye, which contains, among other ingredients, sulphur, lead acetate, and ammonia, which in combination form lead sulphide. When applied to the hair, this preparation dyes the exterior of the hair shaft, and the color produced by its use is artificial. This preparation will not supply, substitute, or replace natural pigment in the hair, and will not restore natural or youthlike color to the hair or stimulate the growth of the hair. Respondent's preparation is not a cure or remedy for dandruff, scalp eczema, or falling hair, and has no therapeutic value in the treatment of such conditions in excess of affording temporary relief from itching in some instances. Respondent's preparation is not safe or harmless because its use may cause injury in that the application of this preparation to the skin or scalp where abrasions are present might cause absorption of lead into the system.

PAR. 6. The use by respondent of the foregoing false and deceptive statements and representations with respect to his cosmetic 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 and advertisements are true, and to induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's cosmetic product.

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 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, Cecil Dwight Kitchen, individually and trading as The Reva Co., 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 his cosmetic preparation designated as "Reva" or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating, or causing to be disseminated, any advertisement by means of the United States mails, or by any means in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements represent directly or through inference:

(*a*) That respondent's preparation is not a dye or is anything other than a dye.

(*b*) That respondent's preparation will supply a substitute for or replace natural pigment or color in the hair.

(*c*) That respondent's preparation will restore natural or youthlike color to the hair.

(*d*) That respondent's preparation will have any effect in stimulating the growth of hair.

(*e*) That respondent's preparation is a cure or remedy for dandruff, scalp eczema, or falling hair, or that it has any therapeutic value in the treatment thereof in excess of affording temporary relief from the symptoms of itching in some instances.

(*f*) That respondent's preparation is a safe or harmless preparation for use in the treatment of hair or scalp disorders.

2. 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 cosmetic preparation in commerce, as commerce is defined in the Federal Trade Commission Act, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

JEFFERSON R. BREWSTER, TRADING AS BREWSTER LABORATORIES AND DR. REECE BREWSTER

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

Docket 3566. Complaint, Aug. 30, 1938—Decision, July 11, 1940

Where an individual engaged in manufacture of various medicinal preparations which he designated as his "Brewster's G-D" and, similarly, as his "T-Z," "Tonic," "Throat Wash," "Thoax-Eaz," "Sinine," "Pain Kill," "Ready Relief," and "Pile Ointment," and of a combination of four preparations referred to above as "G-D," "T-Z," "Tonic," and "Throat Wash," and also of other preparations, and in sale and distribution of his said various products from his Tennessee place of business to purchasers in Kentucky, North and South Carolina, Arkansas, Texas, and other States, in substantial competition with others engaged in sale and distribution among the various States of medicinal preparations for treatment of same ailments as those for which his said products were recommended; in advertising same in circulars distributed among prospective purchasers in several States—

(*a*) Represented, directly and by inference, that his said "G-D" was a remedy for constipation and for running sores, a means of relieving pain in any part of the body, and, in combination with the "Tonic" hereinafter mentioned, a preventive of tuberculosis, and that his "T-Z" would prevent and alleviate coughing spells, would cure hemorrhages, keep the nerves quiet, and women's menstruation regular;

(*b*) Represented that his said "Tonic" and "Throat Wash," respectively, would make the blood circulate properly if there was any disease or other condition of the circulatory system existing, would remedy stomach conditions and keep stomach in good condition, and would produce a good appetite, and constituted a means of preventing colds and would relieve tonsilitis and other throat troubles;

(*c*) Represented that his "Thoax-Eaz" and "Sinine," respectively, constituted a means of relieving and curing croup, diphtheria, whooping cough, common cough, and scarlet fever and of preventing whooping cough or diphtheria in small and delicate children, and treatment and remedy for sinus, mastoid, antrum and nose and ear troubles;

(*d*) Represented that his "Pain Kill" and "Ready Relief" constituted, respectively, a competent and effective germicide and treatment for rheumatism, neuritis, and neuralgia, and a cure for pneumonia, slow fever, and typhoid fever, and that his "Pile Ointment" was a cure for hemorrhoids; and

(*e*) Represented that a combination of the four preparations "G-D," "T-Z," "Tonic," and "Throat Wash" constituted a cure for tuberculosis of the lungs or bone and for asthma, and that he had other preparations which constituted cures for kidney trouble, cancer, female trouble, measles, stomach trouble, gallstones, goiter, sciatica, head troubles, fistula troubles, piles, and nerve disorders;

Facts being that all of his said preparations were combinations in varying proportions of turpentine, kerosene, and edible oil, with traces of water, iron salts, iodides, ammonia, iodine, cresols, and oil of cinnamon, none of said preparations, whether used singly or in combination with others, constituted a cure or remedy or competent or effective treatment for any of the ailments, diseases, or conditions of the human body for which they were recommended by him, nor did said preparations, or any of them, constitute preventives of whooping cough or diphtheria, or constitute competent or effective germicides, and they were wholly without therapeutic value; and

(*f*) Represented that he owned or operated a laboratory in connection with his business, and that his preparations were compounded and tested therein, through such typical representations as "Prepared and guaranteed by Brewster Laboratories" and " Manufactured and guaranteed by Brewster Laboratories," facts being he did not own or operate, and had not at any time owned or operated, a laboratory, but mixed his preparations in his own home, and his equipment consisted only of jugs and bottles, a funnel, and certain measuring cans or vessels;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of substantial quantities of his said preparations, and with result that trade was diverted unfairly to him from his 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 and deceptive acts and practices therein.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Randolph W. Branch and *Mr. DeWitt T. Puckett* for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Jefferson R. Brewster, an individual, trading and doing business in his own name, and also under the names of "Brewster Laboratories" and "Dr. Reece Brewster," 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 said respondent, Jefferson R. Brewster, is an individual trading and doing business under his own name and also under the names of "Brewster Laboratories" and "Dr. Reece Brewster," with his principal place of business at 2609 Latimer Avenue, in the city of Dallas, State of Texas, to which it has recently been moved from 903 Lischey Avenue, in the city of Nashville, State of Tennessee.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the business of manufacturing and selling certain medicinal preparations, intended for use in the relief, remedy, and treatment of or protection against certain diseases, symptoms, and conditions, as follows:

1. Brewster's G-D
2. Brewster's T-Z
3. Brewster's Tonic
4. Brewster's Throat Wash
5. Brewster's Thoax-Eaz, also known as Brewster's Throat Eaz
6. Brewster's Sinine
7. Brewster's Pain Kill
8. Brewster's Ready Relief
9. Brewster's Pyle Ointment
10. A combination of the four preparations referred to above as G-D, T-Z, Tonic, and Throat Wash
11. Other preparations.

Respondent causes and has caused the said preparations, when sold, to be transported from the place where his business is carried on in the State of Tennessee or the State of Texas, to purchasers thereof located in States of the United States other than the States of Tennessee or Texas and in the District of Columbia.

PAR. 3. In the course and conduct of his said business, respondent is now, and has been for more than 3 years last past, in competition with other individuals and with partnerships, firms, and corporations 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 drugs and medicinal preparations intended for use and application in the relief, remedy, and treatment of the various diseases, symptoms, and conditions hereinafter mentioned, and the building up of bodily resistance against the ravages thereof and the alleviation of the pains incident thereto.

PAR. 4. In the course and conduct of his said business, and for the purpose of inducing the purchase of his said preparations, the respondent has caused circulars containing certain claims with respect to the therapeutic value of the said preparations to be distributed between and among the various States of the United States and in the District of Columbia.

Included among and typical of such claims are the following:

(With respect to "Brewster's G-D.")

There is practically no danger of one contracting it (tuberculosis) if he will observe the following rules: Take Brewster's liver tonic regularly and take two treatments of Brewster's G-D each week while you are being constantly exposed to the disease.

For constipation rub G-D on the bowels three times a day.

If you have a pain anywhere about your body, rub G-D on and get relief.

Directions for treatment of cancer and tuberculosis of the bone or any kind of sore on the body no matter how long it has been running.

Directions for using Brewster's G-D for asthma.

Kills stray germs.

(With respect to "Brewster's T-Z.")

If you have a hemorrhage or symptoms of one, just begin rubbing T-Z right where the blood is coming from or feels like it might come and rub on gently until the symptoms disappear. However, it is not often that one of our patients have a hemorrhage after starting our treatment.

Rub T-Z on the spine all the way up and down every night. It will keep your nerves quiet so that you can sleep.

If patient is a woman * * * rub T-Z * * *. That will keep her periods regular * * *.

(With respect to "Brewster's Tonic.")

Give Brewster's Liver Tonic as directed; it will keep the blood circulating, the stomach in good condition, and the appetite good.

(With respect to "Brewster's Throat Wash.")

If—taking cold, gargle with Throat Wash as directed for tonsil trouble. One or two gargles will stop the cold.

(With respect to "Brewster's Throat Eaz" or "Brewster's Thoax Eaz.")

If you notice at any time of day or night that you are taking cold, gargle the throat with Throat Eaz as directed for tonsil trouble.

It will keep off colds. As soon as you notice that your throat is getting sore or that you are taking cold, gargle one time. Will stop if you do as directed. Also relieves tonsillitis and other throat trouble.

Rub * * * on the spine all the way up and down every night. It will keep your nerves quiet so that you can sleep.

If patient is a woman * * * she will rub Throat-Eaz on both sides * * *. That will keep periods regular.

A quick and sure relief for croup, diphtheria, whooping cough, scarlet fever, or cough from colds.

Brewster's Thoax-Eaz will absolutely remove the cause of the cough and if used according to directions will cure your cold.

Relieves whooping cough and coughs from colds, croup, and diphtheria as soon as applied.

If you have a small or delicate child that you want to keep from taking whooping cough or if you have one exposed to diphtheria, rub their throats with Thoax-Eaz six nights after such exposure. There will be no danger of them contracting either.

(With respect to "Brewster's Sinine.")

As treatment for sinus, mastoid, anthrum, nose or ear trouble.

(With respect to "Brewster's Pain Kill.")

It stops rheumatic and other body pains.

For Neuralgia.

For Rheumatism and Neuritis.

(With respect to "Brewster's Ready Relief.")

It is unnecessary to be over three or four days in getting a patient over an attack of pneumonia.

Not over a week with typhoid or slow fever.

(With respect to the treatment of tuberculosis of the bone or lungs and asthma by the combined use of the four preparations mentioned in paragraph 2 hereof.)

We were * * * restoring poor tuberculosis sufferers back to health. We do it in a few months.

The one right medicine would have healed every tuberculosis patient that has ever fallen.

We are successfully treating tuberculosis of all kinds.

The patient, if not altogether relieved, will show such improvement that they will be anxious to order the second treatment.

(With respect to the other preparations.)

Don't allow Stomach Trouble, Kidney Trouble, Female Trouble, After Effect of Flu, Fever, Whooping Cough, Measles, or any other trouble that is calculated to pull down your power of resisting disease.—We have a treatment for most all of the diseases mentioned above.

Brewster's guaranteed treatment for goiter.

We also treat under a guarantee—Sciatica, mastoid, ear and head troubles; fistula and pile troubles, stomach and nerve troubles, gallstone and many other bodily ills.

By the said statements and others of like import and effect in his said circulars, respondent directly and by inference represents:

That "Brewster's G-D" is a protection and preventative against tuberculosis, a remedy for constipation, a remedy for asthma, a means of relieving pain in any part of the body, a germicide, and, in combination with the "Tonic" hereinafter mentioned, a remedy for cancer or any sore on the body.

That "Brewster's T-Z" is a means of preventing or alleviating coughing spells and tubercular hemorrhages, keeping the nerves quiet, and women's menstruation regular.

That "Brewster's Tonic" is a means of keeping the blood circulating, the stomach in good condition, and the appetite good.

That "Brewster's Throat Wash" is a means of preventing colds.

That "Brewster's Throat Eaz" is a preventive of, and a remedy for, colds, and a means of relieving coughing spells, tonsilitis, and other throat troubles, keeping the nerves quiet, and women's menstruation regular; a sure and quick relief and cure for croup, diphtheria, whooping cough, common cough, and scarlet fever, and a means of preventing whooping cough or diphtheria in small and delicate children.

That "Brewster's Sinine" is a treatment for sinus, mastoid, antrum, nose, or ear trouble.

That "Brewster's Pain Kill" is a treatment for rheumatism, neuritis, neuralgia, a means of stopping rheumatic and other body pains, and a cure for pneumonia and diphtheria.

That "Brewster's Ready Relief" is a remedy for head, chest, or lung colds, pneumonia, flu, typhoid fever, and childbed fever, and a means of warding off after effects of flu, pneumonia, or deep colds.

That "Brewster's Pyle Ointment" is of value for the relief and cure of hemorrhoids.

That a combination of the four preparations referred to above as "G-D," "Tonic," and "Throat Wash" together constitute a complete course of treatment for the cure of relief of tuberculosis of lungs or bone.

That he has other preparations which constitute treatments for kidney trouble, female trouble, measles, stomach trouble, gall stones, and goiter.

PAR. 5. In addition to the claims set forth in paragraph 4, the respondent, in like manner, has caused certain claims to be made as to his business and professional status.

Included among and typical of such claims are the following:

Prepared and guaranteed by Brewster Laboratories.
Manufactured and guaranteed by Brewster Laboratories.
Dr. Reece Brewster.

By the said statements, and others of like import and significance, respondent directly and by inference represents that the said preparations are compounded or manufactured in "laboratories," within the common and usual meaning of the word when used in connection with the preparation of drugs and medicines, i. e., place appropriately equipped for, and devoted to, experimental study in medical or pharmaceutical science, or the application of medical or pharmaceutical principles in the testing and analysis, or in the preparation of drugs and medicines, by persons skilled in those arts, and that the respondent is a physician entitled to use the designation or style of "Doctor" or "Dr."

PAR. 6. The representations made by respondent directly or by inference, with respect to the said medicinal preparations and to the curative or therapeutic value thereof, and the results to be obtained from the use thereof, are false, misleading, and untrue. In truth and in fact, "Brewster's G-D" will not, singly or in combination with other preparations of the respondent, constitute either a competent remedy or an adequate treatment for tuberculosis of the lungs or bone, cancer, asthma, or running sores. It will neither relieve constipation, nor afford protection against tuberculosis. It will not relieve pain and will not kill germs. "Brewster's T-Z" will not allay or avert

coughing spells or tubercular hemorrhages, and will neither quiet the nerves nor keep women's periods regular. "Brewster's Tonic" has no tonic qualities nor does it affect the circulation of the blood. "Brewster's Throat-Eaz" (or "Thoax Eaz") is not a preventative of or a remedy for colds and does not constitute an effective treatment for any diseased condition of the throat, will not quiet the nerves and will not keep women's periods regular, will not relieve or cure croup, diphtheria, whooping cough, or scarlet fever, nor protect small or delicate children from contracting whooping cough or diphtheria. "Brewster's Sinine" is of no value in the treatment of sinus, mastoid, antrum, nose, or ear trouble. "Brewster's Pain Kill" is not a competent treatment or adequate remedy for rheumatism, neuritis, neuralgia, pneumonia, or diphtheria nor will it stop rheumatic and other bodily pain. "Brewster's Ready Relief" is not a competent remedy or adequate treatment for colds, pneumonia, flu, typhoid fever, or childbed fever, nor will it ward off the after effects of any of them. "Brewster's Pyle Ointment" is of no value in the treatment of piles. None of the said preparations, singly or in conjunction, constitute a competent remedy or adequate treatment for kidney trouble, female trouble, measles, stomach trouble, gallstones, or goiter.

The true facts are that the said preparations named herein consist essentially of mixtures of turpentine, kerosene, and edible oil in varying proportions. None of them are of value in the relief, remedy, and treatment of or protection against the diseases, symptoms, or conditions as represented by respondent. In addition, the preparations known as "G-D," "T-Z," and "Throat Wash" which are offered in combination with the "Tonic" as a cure for tuberculosis, contain iodides which have the property of breaking down the walled-off tubercular lesions.

PAR. 7. The representations made by respondent directly or by inference with respect to his business and professional status are false, misleading, and untrue. In truth and in fact, the said preparations are not prepared or manufactured in laboratories within the common and usual conception of the word when used in connection with drugs and medical preparations; respondent has had no medical training or laboratory experience, and is not qualified under the laws of the State of Tennessee or Texas as a person entitled to practice medicine.

PAR. 8. There are among the competitors of respondent, many who are engaged in the business of selling and distributing drugs and medicinal preparations intended for use in the relief, remedy, and treatment of the diseases, symptoms, and conditions hereinbefore set forth, and the building up of bodily resistance against the ravages thereof and the alleviation of the pains incident thereto, who do not in any

way misrepresent the therapeutic value of their said drugs and medicinal preparations or their respective business status.

PAR. 9. Each and all of the foregoing false and misleading representations and implications made by respondent, 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 false and erroneous belief that the said representations and implications are true. As a direct result of such false and erroneous belief a number of the consuming public have purchased substantial amounts of respondent's preparations, with the result that trade has been diverted unfairly to respondent from respondent's competitors as aforesaid who do not resort to such false and deceptive representations. As a consequence thereof injury has been done, and is now being done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 10. 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 30th day of August 1938, issued and thereafter served its complaint in this proceeding upon the respondent, Jefferson R. Brewster, an individual trading as the Brewster Laboratories and as Dr. Reece Brewster, 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, the respondent having failed to file any answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, before John J. Keenan, 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. The respondent appeared in person at said hearing, but offered no evidence in opposition to said complaint. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, and brief in support of the complaint (respondent not having filed any brief and oral argument not having been

requested), and the Commission having duly considered the matter and now being fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Jefferson R. Brewster, of 1908 Joe Johnson Avenue, Nashville, Tenn., is an individual trading at this address under his own name and also under the name Brewster Laboratories.

PAR. 2. Respondent is engaged in the business of manufacturing, selling, and distributing various medicinal preparations designated by him as—

1. Brewster's G-D
2. Brewster's T-Z
3. Brewster's Tonic
4. Brewster's Throat Wash
5. Brewster's Thoax-Eaz
6. Brewster's Sinine
7. Brewster's Pain Kill
8. Brewster's Ready Relief
9. Brewster's Pile Ointment
10. A combination of the four preparations referred to above as G-D, T-Z, Tonic, and Throat Wash.
11. Other preparations.

PAR. 3. Respondent causes, and has caused, his said preparations, when sold, to be shipped from his place of business in Tennessee to purchasers thereof located in the States of Kentucky, North and South Carolina, Arkansas, Texas, and other States of the United States. Respondent maintains and has maintained a course of trade in his products in commerce between and among the various States of the United States.

PAR. 4. The respondent is in substantial competition with other individuals and with corporations, firms, and partnerships engaged in the sale and distribution among and between the various States of the United States of medicinal preparations designed for the treatment of the same ailments of the human body as those for which the respondent's preparations are recommended.

PAR. 5. The respondent, to promote the sale of his preparations, has caused circulars containing representations and claims with respect to his products to be distributed among prospective purchasers located in several States of the United States.

Among and typical of the representations and claims contained in said circulars are the following:

(With respect to "Brewster's G-D.")

There is practically no danger of one contracting it (tuberculosis) if he will observe the following rules: Take Brewster's liver tonic regularly and take two treatments of Brewster's G-D each week while you are being constantly exposed to the disease.

For constipation rub G-D on the bowels three times a day.

If you have a pain anywhere about your body, rub G-D on and get relief.

* * * many large running sores, * * * Brewster's G-D cured her in 30 days.

(With respect to "Brewster's T-Z.")

If you have a hemorrhage or symptoms of one, just begin rubbing T-Z right where the blood is coming from or feels like it might come and rub on gently until the symptoms disappear. However, it is not often that one of our patients have a hemorrhage after starting our treatment.

Rub T-Z on spine all the way up and down every night. It will keep your nerves quiet so that you can sleep.

If patient is a woman * * * rub T-Z * * *. That will keep periods regular * * *.

(With respect to "Brewster's Tonic.")

Give Brewster's Liver Tonic as directed; it will keep the blood circulating, the stomach in good condition, and the appetite good.

(With respect to "Brewster's Throat Wash.")

It will keep off cold. As soon as you notice that your throat is getting sore or that you are taking cold, gargle one time. Will stop if you do as directed Also relieves tonsilitis and other throat troubles.

(With respect to "Brewster's Thoax-Eaz.")

A quick and sure relief for croup, diphtheria, whooping cough, scarlet fever, or cough from colds.

Brewster's Thoax-Eaz will absolutely remove the cause of the cough and if used according to directions will cure your child.

Relieves whooping cough and coughs from colds, croup, and diphtheria as soon as applied.

If you have a small or delicate child that you want to keep from taking whooping cough or if you have one exposed to diphtheria, rub their throats with Thoax-Eaz six nights after such exposure. There will be no danger of them contracting either.

(With respect to "Brewster's Sinine.")

For sinus, mastoid, antrum, nose, and ear troubles.

(With respect to "Brewster's Pain Kill.)

For Neuralgia.

For rheumatism and neuritis. It stops the pain.

You will catch the stray germs * * *.

(With respect to "Brewster's Ready Relief.")

It is unnecessary to be over three or four days in getting a patient over an attack of pneumonia.

Not over a week with typhoid or slow fever.

(With respect to the treatment of tuberculosis of the bone or lungs and asthma by the combined use of the four preparations mentioned in paragraph 2 hereof.)

We were * * * restoring poor tuberculosis sufferers back to health. We do it in a few months.

The one right medicine would have healed every tuberculosis patient that has ever fallen.

Brewster's Treatment for T. B. of Lung and Bone and Asthma.

We are successfully treating tuberculosis of all kinds.

The patient, if not altogether relieved, will show such improvement that they will be anxious to order the second treatment.

(With respect to the other preparations.)

Don't allow Stomach Trouble, Kidney Trouble, Female Trouble, After Effect of Flu, Fever, Whooping Cough, Measles, or any other trouble, that is calculated to pull down your power of resisting disease—protect yourself against cancer—. We have a treatment for most all of the diseases mentioned above.

Brewster's guaranteed treatment for goiter.

We also treat under a guarantee—Sciatica, mastoid, ear and head troubles; fistula and pile troubles, stomach and nerve troubles, gallstones and many other bodily ills.

PAR. 6. By the use of said statements and representations, and others of like import and effect in the said circulars, respondent, directly and by inference, represents that his preparations possess remedial and curative qualities; that "Brewster's G-D" is a remedy for constipation, and for running sores, a means of relieving pain in any part of the body, and, in combination with the "Tonic" hereinafter mentioned, a preventive of tuberculosis; that "Brewster's T-Z" will prevent and alleviate coughing spells, will cure hemorrhages, keep the nerves quiet, and women's menstruation regular; that "Brewster's Tonic" will make the blood circulate properly if there is any disease or other condition of the circulatory system existing, will remedy stomach conditions and keep the stomach in good condition, and will produce a good appetite; that "Brewster's Throat Wash" is a means of preventing colds, and will relieve tonsilitis and other throat troubles; that "Brewster's Thoax-Eaz" is a means of relieving and curing croup, diphtheria, whooping cough, common cough, and scarlet fever, and a means also of preventing whooping cough or diphtheria in small and delicate children; that "Brewster's Sinine" is a treatment and remedy for sinus, mastoid, antrum, and nose and ear troubles; that "Brewster's Pain Kill" is a competent and effective germicide and a competent and effective treat-

ment for rheumatism, neuritis, and neuralgia; that "Brewster's Ready Relief" is a cure for pneumonia, slow fever, and typhoid fever; that "Brewster's Pile Ointment" is a cure for hemorrhoids; that a combination of the four preparations "G-D," "T-Z," "Tonic" and "Throat Wash" constitutes a cure for tuberculosis of the lungs or bone and for asthma; that respondent has other preparations which constitute cures for kidney trouble, cancer, female trouble, measles, stomach trouble, gallstones, goiter, sciatica, head troubles, fistula troubles, piles, and nerve disorders.

PAR. 7. The Commission finds that all of the respondent's preparations are combinations in varying proportions of turpentine, kerosene, and edible oil, with traces of water, iron salts, iodides, ammonia, iodine, cresols, and oil of cinnamon. None of the preparations, whether used singly or in combination with others, constitute a cure or remedy or a competent or effective treatment for any of the ailments, diseases, or conditions of the human body for which they are recommended by the respondent. Nor do said preparations or any of them constitute preventives of whooping cough or diphtheria, or constitute competent or effective germicides. The preparations are wholly without therapeutic value.

PAR. 8. In addition to the representations made by the respondent with respect to his preparations as herein set forth, the respondent has also made in his said advertising material certain representations with respect to his business status.

Among and typical of such representations are the following:

Prepared and guaranteed by Brewster Laboratories.
Manufactured and guaranteed by Brewster Laboratories.

By the use of said statements and representations and others of like import, the respondent represents that he owns or operates a laboratory in connection with his business, and that his said preparations are compounded and tested in such laboratory.

The Commission finds that the respondent does not now own or operate, nor has he at any time owned or operated, a laboratory. Respondent mixes his preparations in his own home, and his equipment consists only of jugs and bottles, a funnel, and certain measuring cans or vessels.

PAR. 9. 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 a substantial portion 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 preparations. As a result, trade has been di-

verted unfairly to the respondent from his competitors, and in consequence thereof substantial injury has been done and is being done by the respondent to competition in commerce among and between the various States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (the respondent having filed no answer thereto), 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 (the respondent having offered no evidence in opposition thereto) and brief in support of the complaint (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, Jefferson R. Brewster, individually and trading as Brewster's Laboratories, 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 in commerce, as "commerce" is defined in the Federal Trade Commission Act, of his medicinal preparations designated "Brewster's G-D," "Brewster's T-Z," "Brewster's Tonic," "Brewster's Throat Wash," "Brewster's Thoax-Eaz," "Brewster's Sinine," "Brewster's Pain Kill," "Brewster's Ready Relief," and "Brewster's Pile Ointment," or any other preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from:

1. Representing that said preparations, or any of them, or any combination of two or more of them, are cures or remedies for, or possess any therapeutic value in the treatment of, constipation, running sores, pains in the body, tuberculosis, coughing spells, hemorrhages, nervousness, irregular menstruation, disorders of the circula-

tory system, stomach disorders, lack of appetite, colds, tonsilitis, throat troubles, croup, diphtheria, whooping cough, common coughs, scarlet fever, sinus disorders, mastoid disorders, nose troubles, antrum, ear troubles, rheumatism, neuritis, neuralgia, pneumonia, slow fever, typhoid fever, hemorrhoids, asthma, kidney trouble, cancer, female troubles, measles, gallstones, goiter, sciatica, head troubles, fistula troubles, piles, or nerve disorders.

2. Representing that any of said preparations constitute preventives of whooping cough or diphtheria.

3. Representing that any of said preparations constitute competent or effective germicides.

4. Using the word "Laboratories" or any other word of similar import or meaning in his trade name, or otherwise representing that he owns or operates a laboratory.

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

SAN PEDRO FISH EXCHANGE, SEAFOOD BROKERAGE, INC., SOUTHERN CALIFORNIA WHOLESALE FISH DEALERS ASSOCIATION AND THE RESPECTIVE OFFICERS, ETC., OF SAID ASSOCIATIONS AND CORPORATION, AND LOS ANGELES FISH EXCHANGE, M. N. BLUMENTHAL AND SOUTHERN SEA PRODUCTS BROKERAGE CORPORATION, AND OFFICERS, DIRECTORS AND STOCKHOLDERS THEREOF

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND 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 3739. Complaint, Mar. 17, 1939—Decision, July 13, 1940

Where distributors or wholesale fish dealers who (1) were engaged in purchasing, selling, and distributing fish and sea products from their respective places of business on the Municipal Wharf in San Pedro, Calif., 20 miles from city proper in metropolitan Los Angeles, and principal fresh fish market in southern California, through which pass most of fish caught locally and marketed in commerce, (2) purchased, until recently, when situation was affected by demands and activities of one of unions of fishermen who had brought fish to said point, entire supply of fish caught locally and moving across San Pedro wharf, and part of which was shipped to customers in States lying east and northeast of southern California and to dealers in San Francisco and other places in State, (3) handled, prior to unaccommodated price demand of one of fishermen's unions, through their Fish Exchange, the entire commercial supply of fresh fish caught locally and coming to said point, (4) bought fish and sea products originating elsewhere from shippers, and usually through their Seafood Brokerage concern, and (5) sold fresh fish moving across said wharf to wholesalers in Los Angeles and other California points, to retailers in states outside of California and those within said State, and to stock wagons and peddlers operating in Los Angeles area—

(*a*) Entered into an understanding and agreement, as members of their said San Pedro Fish Exchange association, organized and composed of all wholesale fish and sea food dealers at said point, to effect that each would observe prices fixed by price committee of Exchange, and that each should pay to Exchange, as liquidated damages for all fish sold other than in accordance with uniform price quotation of executive committee thereof, 5 cents per pound for entire shipment wherein any item thereof was so sold in violation of such quotations, and with minimum penalty of $5; and

Where aforesaid unincorporated association, organized in December 1936, under laws of said State, as San Pedro Fish Exchange, with principal office and place of business at said point, composed as aforesaid, and to which no new members, under agreement and articles of association limiting such members to those receiving two-thirds favorable vote and paying initiation fee of $5,000, had been admitted since organization, and executive committee of

which, under such agreement, was to keep all members posted "upon price conditions, necessary overhead expense * * * for the purpose of giving the members accurate information as to the margin of profit they should have so that the members may be better enabled to proceed to some degree of uniformity," and with all members agreeing thereunder "that they shall accept the advice given them by the executive committee and conduct their respective businesses accordingly"—

(*b*) Issued weekly price lists which (1) showed buying prices for various varieties of fish and sea food, and selling prices therefor, including wholesale, stock wagon, shipping, and peddling prices, with understanding among members that such prices would be adhered to as a minimum, and (2) included selling prices not only for fish caught locally coming over San Pedro wharf, but also for fish and shell food shipped in from northern California and points outside, with selling based on buying prices; and

Where an association, members of which were distributor or wholesale fish dealers engaged in purchasing, selling, and distributing fish and sea food products from their respective places of business in Los Angeles, and which, (1) under name Southern California Wholesale Fish Dealers' Association, embraced practically all the wholesalers in said city, whose business consisted in selling fish and sea products at wholesale in Los Angeles area principally, and in supplying, also, customers in States to north and northeast of southern California and in other parts of State, and who (*a*) purchased local fish from San Pedro dealers, and (*b*) from market set up by one of fishermen's union following price disagreement with San Pedro dealers, and (*c*) from other southern California markets, and who (*d*) obtained other fish and sea food from shippers located in other parts of the United States and in foreign countries through purchase through their Southern Sea Products Brokerage Corporation, as below more particularly referred to, or through other brokers; and which (2) succeeded, in spring of 1937, to similar association formed by Los Angeles fish wholesalers in preceding October, and used somewhat same policies as those of latter, activities or policies of which had included limitation of broker members' activities to handling sea products on brokerage basis only, discussions relative to activities of certain firms doing combined wholesale and retail business, handling of trade practice matters with dealers in San Pedro and other California points and in Seattle, employment of investigator relative to violation of its rules and regulations, establishment of price committee and fixing of selling prices, expulsion of member for price cutting, and attempts to prevent price cutting by retailers and solicitation by one member of another's accounts—

(*c*) Issued weekly minimum selling prices on all varieties of sea food handled by its members, and consisting of "trade" or prices to retailer and "stock wagon" prices, which various prices, as thus published, but with no penalty imposed by association for nonconformance, were, in the main, accepted and adhered to by association members; and

Where said San Pedro dealers, acting with and through their Seafood Brokerage, Inc., purchasing and brokerage agency, stock of which they owned and controlled, and with and through its manager—

(*d*) Entered into a combination and agreement to eliminate price competition in sale of Mexican sea bass in market concerned, through series of transactions under which, with money raised on note of said dealers, contract was secured with Mexican cooperatives of fishermen through loan of money thereto and offer of more favorable terms than those under consideration, and

under which contract and outlet, as assisted by Mexican government in interest of stabilizing sea bass industry in behalf of Mexican fishermen, control of at least 95 percent of all said choice fish sold to trade in southern California territory, on basis of minimum contract price, and with selling price from day to day dependent upon price dealers were willing to pay and figure asked by cooperatives' representative, was secured by aforesaid individual, manager of said brokerage and purchasing agency, in its behalf and interest and in that of said San Pedro dealers, its owners, and under which supply of said bass was allotted by such individual to wholesalers in Los Angeles, San Pedro, or Long Beach, or to any buyer, according to needs and conditions which said individual considered to be fair and equitable; and

Where Los Angeles dealers here involved, members of aforesaid Southern California Association—

(*e*) Made use of their Southern Sea Products Brokerage Corporation, purchasing and brokerage agency, stock of which they owned and controlled, to supersede arrangements theretofore made under which they designated as their sole and exclusive purchasing agent and broker, for period of 5 years, corporation formed by their predecessor association under designation Los Angeles Fish Exchange, for use, in various ways, of said association; and

Where said Los Angeles and San Pedro dealers herein concerned—

(*f*) Agreed on plan to employ as broker to purchase all their supplies except local fish bought at San Pedro wharf, one Blumenthal, by whom letters were sent to suppliers notifying them of arrangement and threatening that they would not get their share of business unless they recognized and adhered to such agreement, and under which contract or arrangement purchase and sale of commodity was controlled and directed by buyers herein concerned, through acts and agency of said broker individual; and

Where said Los Angeles Fish Exchange and said San Pedro dealers—

(*g*) Drew, or caused to be drawn, up contract between them in which said dealers engaged said exchange to act as their sole and exclusive broker for 3 months' period; and

Where said Sea Food Brokerage, Inc., owned, controlled and directed, as above noted, by said San Pedro dealers, along with said manager, and as a result of transactions indicated with respect to supply of Mexican sea bass coming into southern California market—

(*h*) Contracted at least 95 percent of said supply of Mexican sea bass;

With result that, through operations of said Sea Food Brokerage, Inc., and Southern Sea Products Brokerage Corporation, instrumentalities owned, controlled, and made use of as purchasing agents and brokers by said San Pedro and Los Angeles dealers respectively, as hereinbefore indicated, many shippers were forced to discontinue relations with independent brokers and were compelled to give their accounts to said brokerage companies, general brokerage business in area concerned was adversely affected through their said plan of operation, which enabled wholesalers to secure brokerage fees on their purchases of sea products as a result of operations in question of such corporate purchasing agencies, with their respective stockholder wholesalers constituting practically only customers and buyers, and by whom were determined their policies and to whom net profits realized by said corporate brokerage and purchasing agencies on purchases made, in effect, for their stockholders; and

Where said various dealers, banded and allied together in said associations, organizations, and corporations to carry into effect programs and policies described, and during and in period of three or more years last past, as hereinbefore noted—

(*i*) Combined and agreed, together and with others, and united in and pursued a common and concerted course of action among themselves and with others, to adopt, carry out, and maintain, in the trade areas above referred to, a program, and policy of establishing, fixing, and maintaining the prices at which, and the conditions upon which, fish and sea products were sold by said distributors to other dealers and to consumers, of seeking to acquire and maintain a monopoly in sale and distribution of fish and sea products in said trade territory, and of seeking to impose said prices and policies on all dealers in fish and sea products therein and require observance thereof and adherence thereto; and

Where said members of San Pedro Fish Exchange, stockholders of said Sea Food Brokerage, Inc., banded and allied together to carry into effect program and policies herein described—

(*j*) Agreed and combined together and with others, and initiated and pursued a common and concerted course of action and undertaking among themselves and with others, to adopt, carry out, maintain in trade area above referred to a plan and policy of establishing, fixing, and maintaining prices at which and conditions upon which fish and sea food products were purchased by said distributors from shippers and producers, of establishing, fixing, and maintaining the prices at which, and the conditions upon which, Mexican sea bass was sold by said distributors to other dealers and to consumers, and of acquiring and maintaining, as aforesaid, a monopoly in the purchase, sale, and distribution of Mexican sea bass in said trade territory;

With result that capacity, tendency, and effect of said agreements, combinations, and undertakings, and their said acts and practices, as set forth, were and had been, in said trade area and other related or connected territory, frequently comprising more than one State—

(1) To tend to monopolize, in said various dealers, etc., the business of dealing in and distributing fish and sea products;

(2) To unreasonably lessen, eliminate, restrain, hamper, and suppress competition in said sea products trade and industry, and to deprive the purchasing and consuming public of advantages in price, service, and other consideration which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry;

(3) To oppress, eliminate, and discriminate against small business enterprises which were or had been engaged in purchasing, selling, and distributing such products;

(4) To obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in Mexican sea bass in, to, and from such trade area; and to injure competitors of said individual dealers in unfairly diverting business and trade from them, depriving them thereof, and otherwise oppressing or driving them out of business; and

(5) To prejudice and injure the public and shippers, producers, dealers, distributors, wholesalers, and others who do not conform to program of said various dealers, etc., or who do not desire, but are compelled to conform therewith:

Held, That said acts and practices of said various dealers, etc., as above set forth, were all to the prejudice of the public and had a dangerous tendency to and actually did hinder and prevent price competition between and among themselves in sale of fish and seafood products in commerce, and placed in themselves power to control and enhance prices and created in themselves monopoly in sale of Mexican sea bass in said commerce, and unreasonably restrained such commerce in sea products, and constituted unfair methods of competition; and

Where members of said San Pedro Fish Exchange, in course of their said purchasing transactions, which resulted in delivery of fish and sea products from one or more of the producers, suppliers or shippers to members of said Exchange by means of the purchasing services of their said Sea Food Brokerage, Inc., or without such services—

(*a*) Caused and required said producers, suppliers, and shippers, and each of them, to transmit, pay to, and deliver to said Sea Food Brokerage, Inc., brokerage fee or commission, consisting of a certain percentage of purchase price agreed upon by buyers concerned and seller; and

Where said Sea Food Brokerage, Inc., in course of such purchasing transactions—

(*b*) Received and accepted such fees and commissions, for which no services connected with said purchases by members of said Exchange were rendered to said producers, etc., and in receipt and acceptance of which it acted as agent for and for the use and benefit of said purchaser members of said Fish Exchange and under their control:

Held, That receipt and acceptance of such brokerage fees and commissions by said Sea Food Brokerage, Inc., and plan and policy of aforesaid members, and of said Seafood Brokerage, Inc., of exacting such fees and commissions from sellers of said products, were in violation of Subsection (c) of Section 2 of Clayton Act, as amended; and

Where members of said Southern California Wholesale Fish Dealers' Association and of said San Pedro Fish Exchange, purchasing fish and sea products from various producers, suppliers and shippers, directly or through the agency of said Los Angeles Fish Exchange and said Blumenthal, upon orders which were placed by said various members with said Los Angeles Exchange and said Blumenthal, and caused such producers, etc., to ship or transport said products from places of origin outside of State into said State, and resulted in delivery thereof from one or more of said producers, etc., to such members through means of purchasing services of said Los Angeles Exchange and said Blumenthal, or without such services—

(*a*) Caused and required said producers, etc., to pay to and deliver to said Blumenthal brokerage fee or commission consisting of certain percentage of purchase price agreed upon by said various buyers and seller; and

Where said Blumenthal, in course of such purchasing transactions—

(*b*) Received and accepted such fees and commissions, for which no services connected with purchase of said products by such members were rendered to said producers, etc., and in receipt and acceptance of which fees and commissions said Blumenthal was agent for said purchaser members and their representative, acting for them and in their behalf and under their control:

Held, That such receipt and acceptance of said brokerage fees and commissions by said individual was in violation of Subsection (c) of Section 2 of Clayton Act, as amended; and

Where members of said Southern California Wholesale Fish Dealers' Association, purchasing fish and sea products from various producers, suppliers, and shippers, directly or through agency of their said Sea Products Brokerage Corporation or through said corporation as intermediary, upon orders placed by such members with said corporation, and which caused, as result of such purchases, such producers, etc., to ship or transport said products from place of origin thereof outside of State into said State, and resulted in delivery of said products from one or more of said producers, etc., to said members by means of the purchasing services of their said brokerage corporation, or without such services—

(*a*) Caused and required said producers, etc., and each of them, to transmit, pay to, and deliver to their said Brokerage Corporation, brokerage fee or commission constituting certain percentage of purchase price agreed upon by such buyer members and the seller; and

Where said Southern Sea Products Brokerage Corporation, in course of such purchasing transactions—

(*b*) Received and accepted such fees and commissions, for which no services in connection with said purchases were rendered by members in question of said Wholesale Fish Dealers' Association to said producers, etc., and in which receipt and acceptance it was agent for said purchasers and at all times, in conduct of its said business, their agent and representative, and acting for them and in their behalf and under their control:

Held, That such receipt and acceptance of such so-called brokerage fees and commissions by said brokerage corporation for use and benefit of members herein of said Wholesale Fish Dealers' Association in the manner and under the circumstances above set forth, and the plan and policy of said members and said Association of exacting such fees and commissions from said sellers of such fish and seafood products, were in violation of Subsection (c) of Section 2 of Clayton Act, as amended.

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

Mr. Allen C. Phelps for the Commission.

Mr. Clifton A. Hix, of San Pedro, Calif., for San Pedro Fish Exchange, its officers and members, Seafood Brokerage, Inc., its officers and stockholders, and, along with *Mr. Ben A. Hill*, of San Pedro, Calif., for Paul A. Marencovich.

Mr. Vernon S. Gray and *Covey & Covey*, of Los Angeles, Calif., for Southern California Wholesale Fish Dealers Ass'n, Los Angeles Fish Exchange, Southern Sea Products Brokerage Corp., various officers, members, and stockholders, thereof, and M. N. Blumenthal.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (U. S. C., title 15, sec. 13, the Clayton Act), as amended, and by virtue of the authority vested in it by said acts, the Federal Trade Com-

mission, having reason to believe that respondents named herein, and each of them have violated the provisions of said Federal Trade Commission Act and of subsection (*a*) of section 2 of said Clayton Act, as amended, 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 those respects as follows:

Charge 1

PARAGRAPH 1. Respondent San Pedro Fish Exchange, is an unincorporated association organized under the laws of the State of California, with its principal office and place of business at the Municipal Wharf, Los Angeles Harbor, San Pedro, Calif.

The officers of said San Pedro Fish Exchange are, or have been, respondents Anthony B. Jaconi, president, Giosue Di Massa, vice president, and Albert H. Finch, secretary, all of the Municipal Wharf, San Pedro, Calif. Respondent Hugh Reves is, and has been, the manager of said respondent Seafood Brokerage, Inc., and as such manager has been in immediate charge of its business.

The members of said Exchange are distributors or wholesale fish dealers engaged in purchasing, selling, and distributing fish and sea products from their respective places of business on the Municipal Wharf in San Pedro, Calif. Among the members of said San Pedro Fish Exchange are the following respondents:

American Fisheries, Inc., a corporation.

Star Fisheries, Inc., a corporation.

Mutual Fish Company, Ltd., a corporation.

Seiichi Nakahara, trading as Pacific Coast Fish Company.

Gennaro Mineghino, trading as Independent Fish Company.

Vincent DiMeglio, trading as Ocean Fish Company.

Standard Fisheries Company, a copartnership consisting of John Ivancich, John Sulentor, and Andrew Fishtonich.

Central Fish Company, a corporation, consisting of Yoshitsura Kamiya, Leo T. Toyama, and Y. Uyeda.

Tomich Brothers Fish Company, a copartnership, consisting of Peter Tomich and Frank Tomich.

Catalina Fish Company, a copartnership, consisting of Vincent Vitalich and George Stanovich.

Harbor Seafood Company, a copartnership, consisting of Andrew Petrasich, Martin Zuanich, and Joe Evich.

State Fish Company, a copartnership, consisting of Gerald Cigliano and Jack Deluca.

Los Angeles Fish and Oyster Company, a copartnership, consisting of Giosue Di Massa, John DiMeglio, and Frank Glynn.

Zankich Brothers Fish Company, a copartnership, consisting of Jerry Zankich and Vincent Zankich.

Pioneer Fisheries, a copartnership, consisting of Anthony B. Jaconi and Paul A. Marencovich.

PAR. 2. Respondent Seafood Brokerage, Inc., is a corporation organized and doing business under the laws of the State of California, with its principal office and place of business located at the Municipal Wharf in San Pedro, Calif. This respondent is engaged in acting as purchasing agent and broker for the members of the respondent San Pedro Fish Exchange enumerated in paragraph 1 above. All of the outstanding stock of Seafood Brokerage, Inc., is held and owned by said respondent members of San Pedro Fish Exchange, or by representatives of said members, and collectively they own and control said respondent Seafood Brokerage, Inc.

The officers of respondent Seafood Brokerage, Inc., are or have been, respondents John Ivancich, president, Giosue Di Massa, vice president, and Yoshitsura Kamiya, secretary-treasurer; and the stockholders are, or have been, the following respondents:

Arthur W. Ross, who is also president of respondent American Fisheries, Inc.
Peter A. Kuglis, who is also president of respondent Star Fisheries, Inc.
Tokutaro Furukawa, who is also president of respondent Mutual Fish Co., Ltd.
Seiichi Nakahara, who owns and operates the Pacific Coast Fish Company.
Gennaro Mineghino, who owns and operates the Independent Fish Co.
Vincent DiMeglio, who owns and operates The Ocean Fish Company.
John Ivancich, who is also a partner in respondent Standard Fisheries Company.
Yoshitsura Kamiya, who is also a partner in respondent Central Fish Company.
Peter Tomich, who is also a partner in respondent Tomich Bros. Fish Company.
Vincent Vitalich, who is also a partner in respondent Catalina Fish Company.
Andrew Petrasich, who is also a partner in respondent Harbor Seafood Company.
Gerald Cigliano, who is also a partner in respondent State Fish Company.
Giosue Di Massa, who is also a partner in respondent Los Angeles Fish and Oyster Company.
Jerry Zankich, who is also a partner in respondent Zankich Bros. Fish Company.
Anthony B. Jaconi, who is also a partner in respondent Pioneer Fisheries.

PAR. 3. Respondent Southern California Wholesale Fish Dealers Association is an unincorporated association with its headquarters at 1211 East Olympic Boulevard, Los Angeles, Calif. Respondent Chas. Rennick is secretary and manager of said association. The members of said association are distributors or wholesale fish dealers engaged in purchasing, selling, and distributing fish and seafood products from their respective places of business in Los Angeles, Calif. Among the members of said Southern California Wholesale Fish Dealers Association are the following respondents:

Superior Seafood Company, Ltd., a corporation, 624 Ceres Ave., Los Angeles.
Los Angeles Fish and Oyster Company, Inc., Ltd., a corporation, 1320 Newton St., Los Angeles.
Central Fish and Oyster Company, a corporation, 1217 Birch St., Los Angeles.
Western Fish Company, a copartnership, consisting of Stephen Gentry and George Kriste, 514 Gladys Avenue, Los Angeles.

Morris Isenberg, trading as Mermaid Fish and Oyster Company, 1246 East 6th Street, Los Angeles.

National Seafood Company, a copartnership, of which John Di Massa is a partner, 1812 South Central Street, Los Angeles.

Respondent Southern California Wholesale Fish Dealers Association is a successor to the Los Angeles Wholesale Fish Dealers Association, which was disbanded about April 1, 1937.

PAR. 4. Respondent Los Angeles Fish Exchange is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 914 Bankers Building, Los Angeles, Calif. This respondent was during 1937 employed as purchasing agent and broker by the members of respondent Southern California Wholesale Fish Dealers Association enumerated in paragraph 3 above and for the members of respondent San Pedro Fish Exchange, enumerated in paragraph 1 above.

Respondent M. N. Blumenthal, 405 Stanford Avenue, Los Angeles, Calif., is a broker and in 1937 he was employed by respondent Los Angeles Fish Exchange and by respondent members of said Southern California Wholesale Fish Dealers Association and San Pedro Fish Exchange.

PAR. 5. Respondent, Southern Sea Products Brokerage Corporation, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 415½ South Central Avenue, Los Angeles, Calif. This respondent is engaged in the business of acting as purchasing agent and broker for respondent members of the Southern California Wholesale Fish Dealers Association, enumerated in paragraph 3 above. The outstanding capital stock of this respondent has been issued to, and is owned by, or is controlled by, said respondent members of the Southern California Wholesale Fish Dealers Association. Respondent Elmo C. Jack is manager of the Southern Sea Products Brokerage Corporation, and as such manager, is in immediate charge of its operations.

The stockholders of said Southern Sea Products Brokerage Corporation are the following respondents:

Max Freeman and Arthur Freeman, 624 Ceres Ave. Los Angeles, Calif., who are also holders of a majority of the stock in respondent Superior Sea Food Co., Ltd.

Jack De Luca, 1320 Newton St., Los Angeles, Calif., who is also the sole owner of the stock of respondent Los Angeles Fish and Oyster Co., Ltd.

Louis G. Beverino, 1012 Central Ave., Los Angeles, Calif., who is secretary, treasurer, and manager of respondent Central Fish and Oyster Co.

Stephen Gentry and George Kriste, 514 Gladys Ave., Los Angeles, Calif., who compose the partnership of respondent Western Fish Co.

Morris Isenberg, 1246 East 6th St., Los Angeles, Calif., who owns and operates respondent Mermaid Fish and Oyster Co.

John Di Massa, 1812 South Central Ave., Los Angeles, Calif., who is a partner in respondent National Seafood Co.

Guiseppe Alioto, 535 Washington St., San Francisco, California, who is also the president of the San Francisco International Fish Company, which owns one-third of the stock of respondent Central Fish and Oyster Company.

PAR. 6. Respondent distributors and wholesale fish dealers, members of said San Pedro Fish Exchange and Southern California Wholesale Fish Dealers Association, purchase their fish and sea products, in the course and conduct of their respective businesses, from producers, shippers, and distributors located in various States and foreign countries, and cause such fish and sea products to be shipped and transported to their respective headquarters and places of business and/or to their customers, from points in States other than the State of California and from foreign countries and from waters adjacent to the United States and foreign countries. In the course of the sale and distribution of their fish and sea products such respondent members of said San Pedro Fish Exchange and Southern California Wholesale Fish Dealers Association, cause such fish and sea products when sold to be shipped and transported, pursuant to purchase orders, from their headquarters or places of business, or direct from their suppliers, to their customers at points in States other than the State of California or the place or origin of such shipments. There is a continuous flow and current of commerce in fish and sea products from respondent members' suppliers, through respondent members, to dealers and consumers located within and without the State of California. In the course and conduct of their respective business, respondent members are and have been engaged in commerce among the several States and with foreign countries and in trade, business, and commerce, directly affecting interstate and foreign commerce in fish and sea products. Except insofar as competition has been restrained, stifled, lessened, suppressed, eliminated or destroyed by the respondent members, as hereinafter alleged, each of said respondent members is and has been in actual and potential competition with the other respondent members and other dealers in the purchase, sale, and distribution of fish and sea products. Respondents Seafood Brokerage, Inc., Los Angeles Fish Exchange, M. N. Blumenthal and Southern Sea Products Brokerage Corporation act, or have acted, as purchasing agents for respondent members, or some of them, and are, or have been, likewise engaged in interstate and foreign commerce in fish and sea products and in providing facilities and performing functions in connection with the flow of such commerce.

PAR. 7. The distributors and wholesale fish dealers making up the memberships of respondents San Pedro Fish Exchange and Southern California Wholesale Fish Dealers Association together hold a monopoly on the purchase, sale, and distribution of certain varieties of fish and sea products in the trade territory extending inland from San Pedro and Los Angeles, Calif., through adjacent parts of California and into various States of the United States to the eastward, and together they constitute a group so powerful as to be able to dominate and control the sources of supply and channels of distribution in all fresh fish and sea products in such trade territory.

PAR. 8. Respondents are banded and allied together in the aforesaid associations, organizations, and corporations to carry into effect the program and policies hereinbelow described and to enhance and promote the volume of trade, business and profits of respondent distributors and wholesale fish dealers; and the respondents, namely the said associations, corporations, partnerships, and individuals, and the officers, members, agents, and employees thereof, parties respondent herein, during and in the period of three or more years last past, have agreed, conspired, combined, and confederated together and with others, and have united in and pursued a common and concerted course of action and undertaking among themselves and with others, to adopt, follow, carry out, enforce, and maintain, in the trade areas above referred to, a program, and certain policies and practices, to wit:

1. To establish, fix, and maintain the prices at which and conditions upon which fish and sea products were purchased by respondent members and competing dealers from shipper and producers.

2. To establish, fix, and maintain the prices at which, and the conditions upon which, fish and sea products were sold by respondent members and competing dealers to other dealers and to consumers.

3. To interfere with and shut off the sources of supply of some varieties of fish and sea products, particularly Mexican sea bass, to dealers, distributors, and wholesalers competing with respondent members in the purchase of such products and the sale and distribution thereof, or to dealers desiring to so compete.

4. To acquire and maintain a monopoly in the purchase, sale, and distribution of fish and sea products in said trade territory.

5. To impose said prices and policies on all dealers in fish and sea products in said trade territory and to require universal observance and adherence thereto.

PAR. 9. The parties respondent herein have agreed, combined, confederated, and conspired together for the purpose and with the intent of carrying out the aforesaid program and policies, and they have been and are now engaged in carrying into effect and maintaining said

program and policies, and the said agreement, combination, confederation, conspiracy, and undertaking as set forth in paragraph 8 hereof. Pursuant to and for the purpose of effecting and carrying out the said program and policies and said agreement, combination, confederation, conspiracy, and undertaking, the respondents have, among other things, done the following:

(*a*) Mutually pledged and promised to support, adhere to, and enforce the foregoing program and policies, alleged in paragraph 8 above, and entered into contracts and agreements relating thereto.

(*b*) Used and continued to use, in concert and agreement among themselves, and with others, coercive and concerted action, boycott, threats of boycott, and other united action against producers, shippers, wholesalers, distributors, dealers, and others to induce and require them, and to attempt so to induce and require them, to agree and conform to, and to support and enforce the said program and policies of respondents.

(*c*) Held meetings of respondent associations and organizations, their officers and members, to devise means of exerting influence, pressure, coercion or other means of inducing, coercing, and requiring shippers, producers, distributors, dealers, and others engaged in said fish and sea products trade and industry to abide by and adhere to said program and policies.

(*d*) Respondent members of San Pedro Fish Exchange have acted in concert and agreement to control the policies and practices of respondent Seafood Brokerage, Inc., and by exercising such control and have caused it to adopt and pursue policies and practices conforming to and in harmony with the program and policies above described.

(*e*) Respondent members of Southern California Wholesale Fish Dealers Association have acted in concert and agreement to control the policies and practices of respondents Los Angeles Fish Exchange, M. N. Blumenthal, and Southern Sea Products Brokerage Corporation, and by exercising such control have caused said corporations and said individual to adopt and pursue policies and practices conforming to and in harmony with the program and policies above described.

(*f*) Excluded from membership in said respondent associations and organizations distributors and dealers who failed or refused to support, abide by or cooperate in carrying out said program and policies of respondents.

(*g*) Disciplined certain members and imposed penalties on them for acts in violation of the tenets and requirements of said program and policies.

(*h*) Exchanged information between one another concerning the prices and trade policies and practices used by them individually

and issued and distributed bulletins, circulars, letters, price lists, and other printed matter and distributed the same among the members of said associations and others, announcing the adoption of said policies, practices, and requirements and the imposition of the same upon all those affected thereby.

(*i*) Used and engaged in other acts, cooperative and concerted action, and coercive methods and practices in promoting, establishing, and carrying out the foregoing program and agreement, policies, combinations, conspiracy, confederation, and undertaking set forth in paragraph 8 hereof.

PAR. 10. The capacity, tendency, and effect of said agreement, combination, conspiracy, confederation, and undertaking, and the said acts and practices of respondents, set forth above, are and have been in said trade area and other related or connected territory, frequently comprising more than one State or portions of more than one State, are and have been:

(*a*) To tend to monopolize, in said respondents, the business of dealing in and distributing fish and sea products.

(*b*) To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said fish and sea products trade and industry, and to deprive the purchasing and consuming public of advantages in price, service, and other consideration which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

(*c*) To substantially increase the cost to purchasers of such fish and sea products.

(*d*) To oppress, eliminate, and discriminate against small business enterprises which are or have been engaged in purchasing, selling, and distributing such products.

(*e*) To obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in fish and sea products in, to, and from such trade area; and to injure respondent's competitors in unfairly diverting business and trade from them, depriving them thereof, and otherwise oppressing or driving them out of business.

(*f*) To prejudice and injure the public and shippers, producers, dealers, distributors, wholesalers, and others who do not conform to respondent's program or who do not desire, but are compelled to conform therewith.

PAR. 11. 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 fish and sea 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 fish and sea products in such commerce; have unreasonably restrained such commerce in fish and sea products, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Charge 2

PARAGRAPH 1. The pertinent allegations of charge 1 hereof are hereby incorporated herein as though fully set forth verbatim.

PAR. 2. Respondent members of the respondent San Pedro Fish Exchange, in the ordinary course and conduct of their respective businesses, purchase fish and sea products from various producers, suppliers, and shippers, directly, or through the agency of respondent Seafood Brokerage, Inc., or through respondent Seafood Brokerage, Inc., as intermediary, upon orders placed by said respondent members with said Seafood Brokerage, Inc.; and as a result of such purchases or orders respondent members, and each of them, cause such producers, suppliers, and shippers to ship or transport fish and sea products from the places of origin thereof outside of the State of California into said State.

PAR. 3. In the course of said purchasing transactions above referred to, resulting in the delivery of fish and sea products from one or more of said producers, suppliers, or shippers to said respondent members by means of the purchasing services of respondent Seafood Brokerage, Inc., or without such services, respondent members of said San Pedro Fish Exchange have and do cause and require said producers, suppliers, and shippers, and each of them, to transmit, pay to, and deliver to respondent Seafood Brokerage, Inc., a so-called brokerage fee or commission, being a certain percentage of the purchase price agreed upon by buyer respondents and the seller. In the course of such purchasing transactions, respondent Seafood Brokerage, Inc., has received and accepted, and is receiving and accepting, such fees and commissions for which no services connected with such purchases of said products by respondent members of San Pedro Fish Exchange were rendered to said producers, suppliers, or shippers, and the said Seafood Brokerage, Inc., has and does receive and accept such so-called brokerage fees and commissions as agent for and for the use and benefit of said purchasers, being respondent members of San Pedro Fish Exchange, or one or more of them. In receiving and accepting said so-called brokerage fees and commissions, and at all

times in the conduct of its business respondent Seafood Brokerage, Inc., is the representative or purported representative of respondent members of San Pedro Fish Exchange and acts for them and in their behalf and is under their control.

PAR. 4. The receipt and acceptance of such so-called brokerage fees and commissions by respondent Seafood Brokerage, Inc., for the use and benefit of respondent members of San Pedro Fish Exchange, in the manner and under the circumstances hereinabove set forth, and the plan and policy of said respondent members and said Seafood Brokerage, Inc., of exacting such fees and commissions from the sellers of said products is in violation of subsection (c) of Section 2 of said Clayton Act, as amended.

Charge 3

PARAGRAPH 1. The pertinent allegations of charge 1 hereof are hereby incorporated herein as though fully set forth verbatim.

PAR. 2. During part of the year 1937, respondent members of respondents Southern California Wholesale Fish Dealers Association and San Pedro Fish Exchange, in the course and conduct of their respective businesses, purchased fish and sea products from various producers, suppliers, and shippers, directly, or through the agency of respondents Los Angeles Fish Exchange and M. N. Blumenthal, upon orders placed by said respondent members with said Los Angeles Fish Exchange and M. N. Blumenthal; and as a result of such purchases and orders respondent members, and each of them, caused such producers, suppliers, and shippers to ship or transport fish and sea products from the places of origin thereof outside of the State of California into said State.

PAR. 3. In the course of said purchasing transactions above referred to, resulting in the delivery of fish and sea products from one or more of said producers, suppliers, or shippers to said respondent members, by means of the purchasing services of respondents Los Angeles Fish Exchange and M. N. Blumenthal, or without such services, respondent members of Southern California Wholesale Fish Dealers Association and San Pedro Fish Exchange, caused and required said producers, suppliers, and shippers to transmit, pay to, and deliver to respondents Los Angeles Fish Exchange and M. N. Blumenthal, a so-called brokerage fee or commission, being a certain percentage of the purchase price agreed upon by buyer respondents and the seller. In the course of such purchasing transactions respondents Los Angeles Fish Exchange and M. N. Blumenthal received and accepted such fees and commissions for which no services connected with the purchase of such products by said respondent members were rendered to said producers, shippers,

or suppliers, and the said Los Angeles Fish Exchange and M. N. Blumenthal received and accepted such so-called brokerage fees and commission as agent for and for the use and benefit of said purchasers, being said respondent members above referred to, or one or more of them. In receiving and accepting said fees and commissions, respondents Los Angeles Fish Exchange and M. N. Blumenthal were the representatives or purported representatives of respondents' members of said Southern California Wholesale Fish Dealers Association and San Pedro Fish Exchange, and acted for them and in their behalf and under their control.

PAR. 4. The receipt and acceptance of such so-called brokerage fees and commissions by respondents Los Angeles Fish Exchange and M. N. Blumenthal, for the use and benefit of said respondent members of said associations, in the manner and under the circumstances hereinabove set forth, was in violation of subsection (c) of section 2 of said Clayton Act, as amended.

Charge 4

PARAGRAPH 1. The pertinent allegations of charge 1 hereof are hereby incorporated herein as though fully set forth verbatim.

PAR. 2. Respondent members of the respondent Southern California Wholesale Fish Dealers Association, in the ordinary course and conduct of their respective businesses, purchase fish and sea products from various producers, suppliers, and shippers, directly, or through the agency of respondent Southern Sea Products Brokerage Corporation, or through respondent Southern Sea Products Brokerage Corporation, as intermediary, upon orders placed by said respondent members with said Southern Sea Products Brokerage Corporation; and as a result of such purchases or orders respondent members, and each of them, cause such producers, suppliers, and shippers to ship or transport fish and sea products from the places of origin thereof outside of the State of California into said State.

PAR. 3. In the course of said purchasing transactions above referred to, resulting in the delivery of fish and sea products from one or more of said producers, suppliers, or shippers to said respondent members by means of the purchasing services of respondent Southern Sea Products Brokerage Corporation, or without such services, respondent members of said Southern California Wholesale Fish Dealers Association have and do cause and require said producers, suppliers and shippers, and each of them, to transmit, pay to and deliver to respondent Southern Sea Products Brokerage Corporation a so-called brokerage fee or commission, being a certain percentage of the purchase price agreed upon by buyer respondents and the seller. In the course of

such purchasing transactions, respondent Southern Sea Products Brokerage Corporation has received and accepted, and is receiving and accepting, such fees and commissions for which no services connected with such purchases of said products by respondent members of Southern California Wholesale Fish Dealers Association were rendered to said producers, suppliers, or shippers, and the said Southern Sea Products Brokerage Corporation has and does receive and accept such so-called brokerage fees and commissions as agent for and for the use and benefit of said purchasers, being respondent members of Southern California Wholesale Fish Dealers Association, or one or more of them. In receiving and accepting said so-called brokerage fees and commissions, and at all times in the conduct of its business respondent Southern Sea Products Brokerage Corporation is the representative or purported representative of respondent members of Southern California Wholesale Fish Dealers Association and acts for them and in their behalf and is under their control.

PAR. 4. The receipt and acceptance of such so-called brokerage fees and commissions by respondent Southern Sea Products Brokerage Corporation, for the use and benefit of respondent members of Southern California Wholesale Fish Dealers Association, in the manner and under the circumstances hereinabove set forth, and the plan and policy of said respondent members and said Southern Sea Products Brokerage Corporation of exacting such fees and commissions from the sellers of said products is in violation of subsection (c) of section 2 of said Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, and pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (U. S. C., title 15, sec. 13, the Clayton Act), as amended, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that respondents named herein, and each of them have violated the provisions of said Federal Trade Commission Act and of subsection (c) of section 2 of said Clayton Act, as amended, the Federal Trade Commission on March 17, 1939, issued and served its complaint in this proceeding upon the parties respondent, named in the caption hereof, charging them with violation of the provisions of the said act, and the said amendment thereto. 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 Allen C. Phelps, attorney for the Commis-

sion, before Robert S. Hall, an examiner for the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Jules J. Covey, Vernon S. Gray, and Clifton A. Hix, attorneys 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 Allen C. Phelps for the Commission and Clifton A. Hix for some of the respondents, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent San Pedro Fish Exchange, is an unincorporated association organized under the laws of the State of California, with its principal office and place of business at the Municipal Wharf, Los Angeles Harbor, San Pedro, Calif. The officers of said San Pedro Fish Exchange have been respondents Anthony B. Jaconi, president, Giosue Di Massa, vice president, and Albert H. Finch, secretary, all of the Municipal Wharf, San Pedro, Calif. The members of said Exchange are distributors or wholesale fish dealers engaged in purchasing, selling, and distributing fish and sea products from their respective places of business on the Municipal Wharf in San Pedro, Calif. Among the members of said San Pedro Fish Exchange are the following respondents:

American Fisheries, Inc., a corporation.

Star Fisheries, Inc., a corporation.

Mutual Fish Company, Ltd., a corporation.

Seiichi Nakahara, trading as Pacific Coast Fish Co.

Gennaro Mineghino, trading as Independent Fish Co.

Vincent DeMeglio, trading as Ocean Fish Company.

Standard Fisheries Company, a copartner consisting of John Ivancich, John Sulentor, and Andrew Fishtonich.

Central Fish Company, a copartnership, consisting of Yoshitsura Kamiya, Leo T. Toyama, and Y. Uyeda.

Tomich Brothers Fish Company, a copartnership, consisting of Peter Tomich and Frank Tomich.

Catalina Fish Company, a copartnership, consisting of Vincent Vitalich and George Stanovich.

Harbor Seafood Company, a copartnership, consisting of Andrew Petrasich, Martin Zuanich and Joe Evich.

State Fish Company, a copartnership, consisting of Gerald Cigliano and Jack Deluca.

Los Angeles Fish and Oyster Company, a copartnership, consisting of Giosue Di Massa, John DiMeglio, and Frank Glynn.

Zankich Brothers Fish Company, a copartnership, consisting of Jerry Zankich and Vincent Zankich.

Pioneer Fisheries, a copartnership, consisting of Anthony B. Jaconi and Paul A. Marencovich.

PAR. 2. Respondent Seafood Brokerage, Inc., is a corporation. Respondent Hugh Reves is, and has been, the manager of said respondent Seafood Brokerage, Inc., and as such manager has been in immediate charge of its business. The corporation is organized and doing business under the laws of the State of California with its principal office and place of business located at the Municipal Wharf in San Pedro, Calif. This respondent is engaged in acting as purchasing agent and broker for the members of the respondent San Pedro Fish Exchange enumerated in paragraph 1 above. All of the outstanding stock of Seafood Brokerage, Inc., is held and owned by said respondent members of San Pedro Fish Exchange, or by representatives of said members, and collectively they own and control said respondent Seafood Brokerage, Inc.

The officers of respondent Seafood Brokerage, Inc., are or have been, respondents John Ivancich, president, Giosue Di Massa, vice president, and Yoshitsura Kamiya, secretary-treasurer; and the stockholders are, or have been, the following respondents:

Arthur W. Ross, who is also president of respondent American Fisheries, Inc.

Peter A. Kuglis, who is also president of respondent Star Fisheries, Inc.

Tokutaro Furukawa, who is also president of respondent Mutual Fish Co., Ltd.

Seiichi Nakahara, who owns and operates the Pacific Coast Fish Company.

Gennaro Mineghino, who owns and operates the Independent Fish Co.

Vincent DiMeglio, who owns and operates The Ocean Fish Company.

John Ivancich, who is also a partner in respondent Standard Fisheries Company.

Yoshitsura Kamiya, who is also a partner in respondent Central Fish Company.

Peter Tomich, who is also a partner in respondent Tomich Bros. Fish Company.

Vincent Vitalich, who is also a partner in respondent Catalina Fish Company.

Andrew Petrasich, who is also a partner in respondent Harbor Seafood Company.

Gerald Cigliano, who is also a partner in respondent State Fish Company.

Giosue Di Massa, who is also a partner in respondent Los Angeles Fish and Oyster Company.

Jerry Zankich, who is also a partner in respondent Zankich Bros. Fish Company.

Anthony B. Jaconi, who is also a partner in respondent Pioneer Fisheries.

PAR. 3. Respondent Southern California Wholesale Fish Dealers Association is an unincorporated association with its headquarters at 1211 East Olympic Boulevard, Los Angeles, Calif. Respondent Chas. Rennick is secretary and manager of said association. The members of said association are distributors or wholesale fish dealers engaged in purchasing, selling, and distributing fish and seafood products from

their respective places of business in Los Angeles, Calif. Among the members of said Southern California Wholesale Fish Dealers Association are the following respondents:

Superior Seafood Company, Ltd., a corporation, 624 Ceres Ave., Los Angeles, Calif.

Los Angeles Fish and Oyster Company, a corporation, 1320 Newton St., Los Angeles.

Central Fish and Oyster Company, a corporation, 1217 Birch St., Los Angeles.

Western Fish Company, a copartnership, consisting of Stephen Gentry and George Kriste, 514 Gladys Avenue, Los Angeles.

Morris Isenberg, trading as Mermaid Fish and Oyster Company, 1246 East 6th Street, Los Angeles.

National Seafood Company, a copartnership, of which John Di Massa is a partner, 1812 South Central Street, Los Angeles.

Respondent Southern California Wholesale Fish Dealers Association is a successor to the Los Angeles Wholesale Fish Dealers Association, which was disbanded about April 1, 1937.

PAR. 4. Respondent Los Angeles Fish Exchange is a corporation, organized and existing under the laws of the State of California, with its principal office and place of business located at 914 Bankers Building, Los Angeles, Calif. This respondent was during 1937 employed as purchasing agent and broker by the members of respondent Southern California Wholesale Fish Dealers Association enumerated in paragraph 3 above and for the members of respondent San Pedro Fish Exchange, enumerated in paragraph 1 above.

PAR. 5. Respondent M. N. Blumenthal, 405 Stanford Avenue, Los Angeles, Calif., is a broker and in 1937 he was employed in the capacity of a broker by respondent Los Angeles Fish Exchange and by respondent members of said Southern California Wholesale Fish Dealers Association and San Pedro Fish Exchange.

PAR. 6. Respondent, Southern Sea Products Brokerage Corporation, is a corporation organized and existing under the laws of the State of California, with its principal office and place of business located at 415½ South Central Avenue, Los Angeles, Calif. This respondent is engaged in the business of acting as purchasing agent and broker for respondent members of the Southern California Wholesale Fish Dealers Association, enumerated in paragraph 3 above. The outstanding capital stock of this respondent has been issued to and is owned by the individual respondents hereafter named who manage and control the respective respondent members of the Southern California Wholesale Fish Dealers Association. Respondent Elmo C. Jack is manager of the Southern Sea Products Brokerage Corporation, and as such manager is in immediate charge of its operations.

The stockholders of said Southern Sea Products Brokerage Corporation are the following respondents:

Max Freeman and Arthur Freeman, 624 Ceres Ave., Los Angeles, Calif., who are also holders of a majority of the stock in respondent Superior Sea Food Co., Ltd.

Jack DeLuca, 1320 Newton St., Los Angeles, Calif., who is also the sole owner of the stock of respondent Los Angeles Fish and Oyster Co.

Louis G. Beverino, 1012 Central Ave., Los Angeles, Calif., who is secretary, treasurer, and Manager of respondent Central Fish and Oyster Co.

Stephen Gentry and George Kriste, 514 Gladys Ave., Los Angeles, Calif., who compose the partnership of respondent Western Fish Co.

Morris Isenberg, 1246 East 6th St., Los Angeles, Calif., who owns and operates respondent Mermaid Fish and Oyster Co.

John Di Massa, 1812 South Central Ave., Los Angeles, Calif., who is a partner in respondent National Seafood Co.

Guiseppe Alioto, 535 Washington Street, San Francisco, California, who is also the president of the San Francisco International Fish Company, which owns one-third of the stock of respondent Central Fish and Oyster Company.

PAR. 7. San Pedro, which is a part of metropolitan Los Angeles, but which is located about 20 miles from the city proper, is the principal fresh fish market in southern California. There are, however, two other fish exchanges, one in Santa Barbara and one in San Diego. Across the San Pedro wharf come most of the fish caught locally, which are marketed in commerce. Until recently the entire supply of this fish was purchased by the members of the San Pedro Fish Exchange from the fishermen and sold by such members to the trade, i. e., to other wholesalers (including the Los Angeles wholesalers), to stock wagons, to peddlers, and to retailers. A part of this supply is shipped to customers in States lying east and northeast of southern California and to dealers in San Francisco and other places in California. Extensive supplies of fish and sea foods also come into the southern California markets from San Francisco, Seattle, Japan, Mexico, and the eastern seaboard. These products are usually bought and sold through brokers or on a brokerage basis. There are at least four fish brokers in the Los Angeles area and two brokerage concerns, the latter being respondents Seafood Brokerage, Inc., and Southern Sea Products Brokerage Corporation.

Prior to June 1939, all of the commercial supply of fresh fish caught locally and coming into San Pedro was handled by the San Pedro Fish Exchange, which includes in its membership all of the wholesale fish dealers in San Pedro. In June 1939, the Gill Net Fishermen's Union, affiliated with the C. I. O., asked the San Pedro dealers for a minimum price guarantee on fish marketed by them, and when this demand was refused a so-called C. I. O. Fishermen's Market was set up to sell fish direct to the trade in competition with the San Pedro

dealers. The San Pedro dealers continued to buy fish from other fishermen who belonged to a union affiliated with the A. F. of L. The C. I. O. market was said to be selling to Los Angeles wholesalers at lower prices than the San Pedro dealers could quote and at the time of the hearings sales of fish by the San Pedro dealers to Los Angeles wholesalers had been practically stopped for this reason.

The San Pedro dealers buy fish and sea products originating elsewhere from shippers, usually through Seafood Brokerage, Inc.

The members of the Southern California Wholesale Fish Dealers' Association constitute practically all of the wholesalers in Los Angeles. Their principal business consists of selling fish and sea products at wholesale in the Los Angeles area, but they also supply customers in the States to the north and northeast of southern California, and in other parts of California. They purchase local fish from the San Pedro dealers, the C. I. O. market and from other southern California markets. They obtain other fish and sea food from shippers located in other parts of the United States and in foreign countries, buying either through the Southern Sea Products Brokerage Corporation or through other brokers.

Fresh fish moving across the San Pedro wharf is sold by the San Pedro dealers to wholesalers in Los Angeles and other California points, to retailers in States outside of California and to retailers in California and to stock wagons and peddlers operating in the Los Angeles area.

Fish and sea food not caught locally (except Mexican sea bass which will be considered separately) move from the shipper to the Los Angeles and San Pedro wholesalers and from them to the trade. Some of this supply is sold to customers in States to the east and northeast of southern California.

Wholesalers sell these products to stock wagons, who resell to small retailers; to retailers; to peddlers who resell from house-to-house; and direct to the institutional trade, such as hotels, restaurants, institutions, etc. Stock wagons compete with wholesalers in selling the same class of trade, and in some cases may be owned by wholesalers. Wholesalers compete with retailers in selling the institutional trade.

Shippers may be wholesalers in the local market in which they operate, as for example, some shippers in Seattle and San Francisco. Shippers sell as jobbers and also as wholesalers. Wholesalers sell at wholesale and at times at retail. Large retailers and chain stores attempt to and often do buy at prices lower than the prices quoted to retailers generally. Brokers at time have bought and sold on their own account and also sold direct to stock wagons and even to the retail trade.

Stock wagons compete with wholesalers, but do not have the overhead expense of maintaining regular establishments. The wholesalers think it is unfair for stock wagons to buy at the wholesale buying price through brokers. A distinction has been made between "first line wholesalers" and stock wagons. Both the Los Angeles wholesalers and the San Pedro dealers established prices to stock wagons. In Los Angeles those prices were midway between the wholesaler's cost price and the price to the retailer. In San Pedro the stock wagon price was about the same as the so-called wholesale price, these two prices being below the "shipping" price to outside customers and the "peddler" price, which were likewise about equal.

PAR. 8. The San Pedro Fish Exchange was organized in December 1936. It is composed of all of the wholesale fish and sea food dealers in San Pedro.

The agreement and Articles of Association of the San Pedro Fish Exchange, signed by all of the members, limits new members to those receiving a two-thirds favorable vote and paying an initiation fee of $5,000. No new members have been admitted since organization. This agreement further provides that the Executive Committee shall keep all members posted "upon price conditions, necessary overhead expense, which shall be for the purpose of giving the members accurate information as to the margin of profit they should have so that the members may be better enabled to proceed to some degree of uniformity" * * * "and all of the members agree that they shall accept the advice given them by the Executive Committee and conduct their respective businesses according."

During 1937 and 1938 the Exchange issued weekly price lists showing the buying prices for the various varieties of fish and sea food and the selling prices therefor. Four different selling prices were shown, being the wholesale selling price, the stock wagon price, the shipping price, and the peddler price. It was the understanding among the members of the Exchange that these prices would be adhered to as a minimum and, with few exceptions, they were so followed. These price lists included selling prices not only on fish caught locally coming over the San Pedro wharf, but also for fish and shell food shipped in from northern California and points outside of California. The selling prices on such price lists were figured from the buying prices, the prices to wholesalers being from 2 cents to 4 cents per pound above the San Pedro cost price. Prices to stock wagons on local fish were practically the same as the prices to wholesalers. The "shipping" prices were prices governing sales to retailers and lot shipments to points outside of the Los Angeles area. The "peddler" prices were quoted to house-to-house peddlers selling to consumers. The

"shipping" prices and "peddler" prices tended to be the same, and were usually about a cent a pound above the wholesale and stock wagon prices.

Each member of the San Pedro Fish Exchange, by agreement, pays 1 cent per pound on all large local fish handled and ½ cent per pound on all small local fish handled, into the treasury of the San Pedro Fish Exchange. Overhead expenses are paid out of this fund, and the balance is divided annually in equal parts among all members, except one (Harbor Sea Food Co.), which receives a ½ share. In 1938 under this arrangement eight of the members of the Exchange paid more money into this fund than was returned to them; seven received more in payments out of the fund than they paid into it. Of $34,167.41 collected and disbursed, only $4,638.51 was required for expenses.

It was understood and agreed by the members of the San Pedro Fish Exchange that each would observe the prices fixed by the Price Committee of the Exchange. The agreement signed by all members provided that each member should pay to the Exchange as liquidated damages for all fish sold other than in accordance with the uniform price quotation of the Executive Committee, 5 cents per pound for the entire shipment wherein any one item of such shipment was so sold in violation of such price quotations, with a minimum penalty of $5. On February 11, 1938, fines were levied against several members for violation of the rules of the Exchange, such fines ranging from $5 to $100 in amount.

PAR. 9. About October 1936, the fish wholesalers of Los Angeles formed the Los Angeles Wholesale Fish Dealers' Association. This Association continued in existence until March 31, 1937, when it was dissolved to be succeeded by the Southern California Wholesale Fish Dealers' Association, one of the respondents herein. This latter Association ceased its activities about October 21, 1938.

The original association, the Los Angeles Wholesale Fish Dealers Association, was composed of eleven wholesalers of Los Angeles, three affiliated wholesale dealers (one at Santa Barbara and two at Long Beach) and five brokers. During its lifetime this association took action:

To require broker members to handle sea products on brokerage basis only, i. e., not to buy and sell on their own account "for the purpose of speculation"; discussed questions arising from the activities of certain firms doing a combined wholesale and retail business; set initiation fees for members of the Association at $2,500 for all except original members and later raised this to $5,000; took up trade practice matters with dealers in San Pedro, San Diego, San Francisco, and

Seattle; employed an investigator to handle complaints of violations of the Association's rules and regulations; set up a price committee and fixed selling prices for sea products; discussed "unfair and unethical" methods as used by some members; expelled one member (Blue Shell Oyster Co.) for alleged "lack of cooperation in association affairs and non-payment of dues"—(the real reason being the cutting of prices by this member below prices fixed by the price committee); attempted to prevent price cutting by retailers and solicitation by one member of another's accounts.

The Los Angeles Wholesale Fish Dealers Association was dissolved on April 1, 1937. The Southern California Wholesale Fish Dealers' Association was organized the same day. This association was organized by and included all members of the Los Angeles Association except the United Fish Co., Blue Shell Oyster Co., Long Beach Fish Co., and A. K. Koulouris & Co., a broker. To all intents and purposes the Southern California Wholesale Fish Dealers Association was the successor to the Los Angeles Association and the former continued to use somewhat the same policies as the latter had followed.

The Southern California Wholesale Fish Dealers Association issued weekly minimum selling prices on all varieties of sea food handled by its members. The prices quoted were "trade" (to retailers) prices and "stock wagon" prices. Prices to stock wagons were usually 2 cents per pound less than prices to the trade. The published prices were, in the main, accepted and adhered to by the members of the Association, although there was no penalty imposed by the Association for nonconformity with such prices.

PAR. 10. One of the choice varieties of fresh fish coming into the southern California market is Mexican sea bass or totoaba. This fish is caught by Mexican fishermen in the Gulf of California in Mexican waters off the coasts of Sonora and Lower California, whence it is trucked to the southern California market. Prior to the season of 1937–38 (the season is during the winter, spring, and early summer) this fish was brought into the southern California market by truckers or fishermen who sold their truckloads of fish to brokers and dealers. In the early part of 1939 the supply of this fish coming into Los Angeles and San Pedro ran from 350,000 to over 600,000 pounds per month.

By November 1937, the Mexican fishermen had been organized into cooperatives ("cooperativas") with the help of the Mexican Government. At that time a contract was made between the cooperatives and respondent Jack DeLuca, who was a wholesaler in Los Angeles, whereby the representatives agreed to sell and DeLuca agreed to buy all the Mexican sea bass caught during the 1937–38 season at 8 cents a

pound. In November 1937, after the contract was made DeLuca received some 300,000 or 400,000 pounds of this fish and the Los Angeles and San Pedro wholesalers suddenly stopped purchasing. As a result, DeLuca was unable to dispose of this supply and it became a glut on the market. DeLuca was given to understand that the dealers had encouraged the fishermen to send an unusual supply so that "they could break up my contract that much faster." Prior to that time the market had been absorbing from 200,000 to 300,000 pounds a week. As a result of this over-supply DeLuca negotiated a cancellation of his agreement with the Mexican cooperatives and made a settlement with them. At the time of the cancellation of his agreement DeLuca had on hand about 100,000 pounds of Mexican sea bass in his icebox which he sold out to his trade in 2 or 3 weeks. There were at the same time 200,000 or 300,000 pounds of this fish in trucks on which DeLuca had been unable to accept delivery. This supply was taken by the dealers in Los Angeles and San Pedro within 12 to 24 hours after DeLuca's contract with the Mexican cooperatives had been canceled.

In November 1937, while DeLuca's contract was still in effect, respondents Vincent Vitalich, Peter Tomich, and Andrew Fishtonich, San Pedro dealers, went to San Luis, Mexico (on the Arizona border), and met some of the Mexican fishermen and truckers. They went to arrange for a supply of Mexican sea bass, although they knew that Jack DeLuca had a contract with the cooperatives. However, they claimed they were not getting any sea bass, a statement contradicted elsewhere in the record. A short time afterward the DeLuca contract was canceled and the San Pedro dealers received adequate supplies after that.

DeLuca's avowed purpose in contracting for the Mexican sea bass was to stabilize the market. He resold the sea bass to wholesalers at 8½ cents or 9 cents a pound and also sold to his own trade (retailers). During the time he held his contract he controlled the available supply of this fish. After cancellation of the DeLuca contract the supply was brought in by truckers and sold by them to brokers and wholesalers during the balance of the 1937–38 season.

In November 1938, the Mexican cooperatives, with the Mexican Government, went ahead with the plan to sell all sea bass through one channel. At the request of the Minister of Agriculture, A. K. Koulouris, a wholesale broker, went to Mexico City where a contract was signed on December 10, 1938, whereby Koulouris was to act as sales agent on a commission basis. In this contract Koulouris guaranteed to dispose of 68 tons of Mexican sea bass weekly during the fishing season. This contract provided that a ratification meeting

of the cooperatives should be called and such a meeting was held at Nogales, Sonora, on December 22, 1938. Respondent Hugh Reves, manager of respondent Sea Food Brokerage, Inc., appeared at said meeting and offered to advance the cooperatives $15,000 or more in cash and to sell a larger percentage of fish at a better price than Koulouris. Reves got the contract in which he agreed to advance $15,000, to sell 91 metric tons of sea bass weekly at a minimum price of 8 cents a pound. He was to receive a 3 percent commission on all sales. Reves asserted that some Mexican cooperatives exist other than those who are parties to this contract and that such other cooperatives sent sea bass into the Los Angeles market. However, at least 95 percent of all the sea bass sold to the trade in the southern California territory is handled by Reves under his contract with the Mexican cooperatives, on the basis of a minimum contract price of 8 cents per pound. The selling price from day to day depends on the price the dealers are willing to pay and the figure asked for by the cooperatives' representative. The price in July 1939, was 9 cents a pound, although it sometimes has reached 14 cents or 15 cents.

Previous to 1938, trouble had been experienced by some dealers, who advanced money to truckers to go to Mexico for a load of sea bass, in getting the truckers to deliver the fish contracted for. Sometimes the trucker did not come back and sometimes he sold the fish to other dealers. Sea bass sold to Reves is resold to Los Angeles dealers at the same price as to San Pedro dealers.

Reves acted as agent for the San Pedro dealers in making the contract with the Mexican cooperatives. The contract, in fact, was a joint venture of the San Pedro dealers and was assigned by Reves to respondent John Ivancich, who is president of respondent Sea Food Brokerage, Inc. Ivancich advanced the $15,000 ($17,000 actually sent) payment to Reves, who loaned it to the Mexican cooperatives. This money was borrowed from the bank on a note signed by all the San Pedro dealers. The purchase of Mexican sea bass under the terms of the Reves contract is actually made by the Sea Food Brokerage, Inc. The Mexican cooperatives pay Reves a commission or brokerage of 3 percent and all commissions received under the contract go into the treasury of Sea Food Brokerage, Inc. This sea bass is sold by Sea Food Brokerage, Inc., to dealers in southern California and in States other than the State of California. Sea Food Brokerage, Inc., has continued to aid and finance the Mexican cooperatives.

The control of the Mexican sea bass by Reves under his contract has enabled him to determine the allotment of the commodity to wholesale dealers in Los Angeles, San Pedro, Long Beach, or any buyer thereof, according to the needs and conditions which Reves con-

sidered to be fair and equitable. When Mexican sea bass is scarce Reves, acting through Sea Food Brokerage, Inc., allocates the supply on a percentage basis according to the sea bass previously purchased by the dealer. The dealer having purchased large quantities receives a larger allotment than one having purchased smaller quantities. The Los Angeles wholesale dealers have no connection with or control of the sea bass agreement between Reves and the Mexican cooperatives. The contract was suggested and assisted in by the Mexican Government in order that the sea bass industry might be stabilized in the interests of the Mexican fishermen.

PAR. 11. Early in 1937 and while the Los Angeles Wholesale Fish Dealers Association was in existence, its attorney was directed to form a corporation, the Los Angeles Fish Exchange. The original purpose of this corporation was to collect money from the members of the wholesalers association to be used for advertising the fish industry. This purpose was never carried out because of a price war that broke out upon the entry of the United Fish & Oyster Co. into business. However, a plan was later formulated to use the corporation as a brokerage company to buy sea products for both the Los Angeles and San Pedro dealers and others. It was also contemplated that the corporation would finance purchases of frozen fish from Japan and buy shrimps in carload lots and market these products as far east as Kansas City, Mo. On August 20, 1937, the members of the Southern California Wholesale Fish Dealers Association designated the Los Angeles Fish Exchange as their sole and exclusive purchasing agent and broker for a period of five years, but this arrangement was never effectuated and later was superseded by the formation of Southern Sea Products Brokerage Corporation. On June 15, 1937, the Los Angeles and San Pedro dealers, respondents herein, agreed on a plan to employ respondent M. N. Blumenthal, a broker, to purchase all their supplies, except the local fish purchased at the San Pedro wharf. Letters were sent to suppliers by Blumenthal notifying them of the arrangement and threatening that they would not get their share of the business unless they recognized and adhered to this agreement. A contract was also drawn between Los Angeles Fish Exchange and San Pedro dealers in which the San Pedro dealers engaged the Los Angeles Fish Exchange to act as their sole and exclusive broker for three months, from June 15, 1937, to September 15, 1937. A contract was also drawn between the Los Angeles Fish Exchange and the dealers of Los Angeles and San Pedro (executed only by the Los Angeles Fish Exchange and the San Pedro dealers) providing that all money received by the Los Angeles Exchange from its brokerage operations should be paid into a general welfare fund, and it was

also stipulated that the Los Angeles dealers were to receive 50 percent of this fund, and the San Pedro dealers the other 50 percent. An agreement was made between Los Angeles Fish Exchange and the Los Angeles dealers dividing up this 50 percent among the dealers. The entire arrangement, as finally agreed upon by Blumenthal and the dealers became operative.

Blumenthal acted for three monthly only, and had at the end of that time about $4,000 which he still holds, but to which he disclaims title.

The purchase and sale of the commodity, therefore, was controlled and directed by the respondent buyers, through the acts and agency of M. N. Blumenthal, the broker.

PAR. 12. Respondent Seafood Brokerage Inc. and respondent Reves contract at least 95 percent of the supply of Mexican sea bass coming into the southern California market. The contract herein set out growing out of the collective action of the Mexican fishermen and the Government of Mexico in compelling the supply to be sold through one outlet on one hand and the combination and agreement among the San Pedro Fish Exchange members, who are likewise stockholders in Seafood Brokerage, Inc., and Seafood Brokerage, Inc., itself, and respondent Reves, to jointly purchase and resell this fish, on the other hand, the daily fixing of the price at which this fish is sold by the Mexican Cooperatives and purchased by respondent dealers and other dealers, by agreement between the representative of the cooperatives and Reves, acting pursuant to the contract and agreement among the San Pedro dealers to receive and sell this fish on a commission basis, constitute a combination and agreement eliminating price competition in this line of commerce.

PAR. 13. Since operations of the respondents Seafood Brokerage, Inc., and Southern Sea Products Brokerage Corporation, many shippers were forced to discontinue relations with independent brokers and they were compelled to give their accounts to respondent brokerage companies. The general brokerage businesses in this area have been adversely affected by the operations of these two respondents. Their plan of operation enables wholesalers to secure brokerage fees on their purchases of sea products. Such corporations thus created are purchasing agencies and practically the only customers they have are the respective stockholders or such wholesalers themselves.

PAR. 14. The following circumstances and conditions exist as between the Seafood Brokerage, Inc., and its stockholders, and the Southern Sea Products Brokerage Corporation and its stockholders:

The stockholders, in the case of each corporation, are the buyers of sea products; they or their representatives own the stock in the respective brokerage corporations, determine the policy of such corporations, elect the directors, who in turn designate the executive officers, agents, and employees. Brokerage fees are collected by said Seafood Brokerage, Inc., and Southern Sea Products Brokerage Corporation from sellers of sea products on purchases of such products made for and at the instance of the individual dealer respondents, who own or control the stock of said respective corporations. The net profits of said brokerage corporations belong to the stockholders and may be paid to them as dividends.

PAR. 15. Respondents have been banded and allied together in the aforesaid associations, organizations and corporations to carry into effect the program and policies hereinafter described, and during and in the period of 3 or more years last past, they have combined and agreed together and with others, and united in and pursued a common and concerted course of action among themselves and with others, to adopt, carry out, and maintain, in the trade areas above referred to, a program, and policy of establishing, fixing, and maintaining the prices at which, and the conditions upon which, fish and sea products were sold by respondent distributors to other dealers and to consumers; of seeking to acquire and maintain a monopoly in the sale and distribution of fish and sea products in said trade territory; and of seeking to impose said prices and policies on all dealers in fish and sea products in said trade territory and to require observance thereof and adherence thereto.

PAR. 16. Respondent members of San Pedro Fish Exchange and stockholders of Seafood Brokerage, Inc., have been banded and allied together to carry into effect the program and policies herein described and have agreed, and combined together and with others, and have initiated and pursued a common and concerted course of action and undertaking among themselves and with others to adopt, carry out, maintain in the trade areas above referred to a plan and policy of establishing, fixing, and maintaining the prices at which and conditions upon which products were purchased by respondent distributors from shippers and producers; of establishing, fixing, and maintaining the prices at which, and the conditions upon which, Mexican sea bass was sold by respondent distributors to other dealers and to consumers; and of acquiring and maintaining a monopoly in the purchase, sale, and distribution of Mexican sea bass in said trade territory.

PAR. 17. The capacity, tendency, and effect of said agreements, combinations, and undertakings and the said acts and practices of respond-

ents, set forth above, are and have been in said trade area and other related or connected territory, frequently comprising more than one State or portions of more than one State:

(*a*) To tend to monopolize, in said respondents, the business of dealing in and distributing fish and sea products.

(*b*) To unreasonably lessen, eliminate, restrain, hamper, and suppress competition in said sea products trade and industry, and to deprive the purchasing and consuming public of advantages in price, service, and other consideration which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

(*c*) To oppress, eliminate, and discriminate against small business enterprises which are or have been engaged in purchasing, selling, and distributing such products.

(*d*) To obstruct, hamper, and interfere with the normal and natural flow of trade and commerce in Mexican sea bass in, to, and from such trade area; and to injure competitors of the individual respondents in unfairly diverting business and trade from them, depriving them thereof, and otherwise oppressing or driving them out of business.

(*e*) To prejudice and injure the public and shippers, producers, dealers, distributors, wholesalers, and others who do not conform to respondent's program or who do not desire, but are compelled to conform therewith.

PAR. 18. 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 fish and sea 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 Mexican sea bass products in such commerce; have unreasonably restrained such commerce in sea products, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

PAR. 19. Respondent members of the respondent San Pedro Fish Exchange in the course of said purchasing transactions referred to herein, resulting in the delivery of fish and sea products from one or more of said producers, suppliers, or shippers to said respondent members by means of the purchasing services of respondent Seafood Brokerage, Inc., or without such services, respondent members of

said San Pedro Fish Exchange have and do cause and require said producers, suppliers, and shippers, and each of them, to transmit, pay to, and deliver to respondent Seafood Brokerage, Inc., a brokerage fee or commission, being a certain percentage of the purchase price agreed upon by buyer respondents and the seller. In the course of such purchasing transactions, respondent Seafood Brokerage, Inc., has received and accepted, and is receiving and accepting, such fees and commission for which no services connected with such purchases of said products by respondent members of San Pedro Fish Exchange were rendered to said producers, suppliers, or shippers, and the said Seafood Brokerage, Inc., has and does receive and accept such brokerage fees and commissions as agent for and for the use and benefit of said purchasers, being respondent members of San Pedro Fish Exchange, or one or more of them. In receiving and accepting said brokerage fees and commissions, and at all times in the conduct of its business, respondent Seafood Brokerage, Inc., is the agent and representative of respondent members of San Pedro Fish Exchange and acts for them and in their behalf and is under their control.

PAR. 20. The receipt and acceptance of such brokerage fees and commissions by respondent Seafood Brokerage, Inc., and the plan and policy of said respondent members and said Seafood Brokerage, Inc., of exacting such fees and commissions from the sellers of said products is in violation of subsection (c) of section 2 of said Clayton Act, as amended.

PAR. 21. Respondent members of respondents Southern California Wholesale Fish Dealers Association and San Pedro Fish Exchange, in the course and conduct of their respective businesses, purchased fish and sea products from various producers, suppliers, and shippers, directly, or through the agency of respondents Los Angeles Fish Exchange and M. N. Blumenthal, upon orders placed by said respondent members with said Los Angeles Fish Exchange and M. N. Blumenthal; and as a result of such purchases and orders respondent members, and each of them, caused such producers, suppliers, and shippers to ship or transport fish and sea products from the places of origin thereof outside of the State of California into said State.

PAR. 22. In the course of said purchasing transactions above referred to, resulting in the delivery of fish and sea products from one or more of said producers, suppliers, or shippers to said respondent members, by means of the purchasing services of respondents Los Angeles Fish Exchange and M. N. Blumenthal, or without such services, respondent members of Southern California Wholesale Fish Dealers Association and San Pedro Fish Exchange, caused and required said producers, suppliers, and shippers to transmit, pay to

and deliver to respondent M. N. Blumenthal, a brokerage fee or commission, being a certain percentage of the purchase price agreed upon by buyer respondents and the seller. In the course of such purchasing transactions respondent M. N. Blumenthal received and accepted such fees and commissions for which no services connected with the purchase of such products by said respondent members were rendered to said producers, shippers, or suppliers, and the said M. N. Blumenthal received and accepted such brokerage fees and commissions as agent for said purchasers, being said respondent members above referred to, or one or more of them. In receiving and accepting said fees and commissions, respondent M. N. Blumenthal was the agent and representative of respondent members of said Southern California Wholesale Fish Dealers Association and San Pedro Fish Exchange, and acted for them and in their behalf and under their control.

PAR. 23. The receipt and acceptance of such brokerage fees and commissions by respondent M. N. Blumenthal, was in violation of subsection (c) of section 2 of said Clayton Act, as amended.

PAR. 24. Respondent members of the respondent Southern California Wholesale Fish Dealers Association, in the ordinary course and conduct of their respective businesses, purchase fish and sea products from various producers, suppliers, and shippers, directly, or through the agency of respondent Southern Sea Products Brokerage Corporation, or through respondent Southern Sea Products Brokerage Corporation, as intermediary, upon orders placed by said respondent members with said Southern Sea Products Brokerage Corporation; and as a result of such purchases or orders respondent members and each of them, cause such producers, suppliers, and shippers to ship or transport fish and sea products from the places of origin thereof outside of the State of California into said State.

PAR. 25. In the course of said purchasing transactions referred to herein, resulting in the delivery of fish and sea products from one or more of said producers, suppliers, or shippers to said respondent members by means of the purchasing services of respondent Southern Sea Products Brokerage Corporation, or without such services, respondent members of said Southern California Wholesale Fish Dealers Association have and do cause and require said producers, suppliers, and shippers, and each of them, to transmit, pay to, and deliver to respondent Southern Sea Products Brokerage Corporation a brokerage fee or commission, being a certain percentage of the purchase price agreed upon by buyer respondents and the seller. In the course of such purchasing transactions, respondent Southern Sea Products Brokerage Corporation has received and accepted, and is

receiving and accepting, such fees and commissions for which no services connected with such purchases of said products by respondent members of Southern California Wholesale Fish Dealers Association were rendered to said producers, suppliers, or shippers, and the said Southern Sea Products Brokerage Corporation has and does receive and accept such brokerage fees and commissions as agent for said purchasers, being respondent members of Southern California Wholesale Fish Dealers Association, or one or more of them. In receiving and accepting said brokerage fees and commissions, and at all times in the conduct of its business respondent Southern Sea Products Brokerage Corporation is the agent and representative of respondent members of Southern California Wholesale Fish Dealers Association and acts for them and in their behalf and is under their control.

PAR. 26. The receipt and acceptance of such so-called brokerage fees and commissions by respondent Southern Sea Products Brokerage Corporation, for the use and benefit of respondent members of Southern California Wholesale Fish Dealers Association, in the manner and under the circumstances hereinabove set forth, and the plan and policy of said respondent members and said Southern Sea Products Brokerage Corporation of exacting such fees and commissions from the sellers of said products is in violation of subsection (c) of section 2 of said Clayton Act, as amended.

CONCLUSION

The aforesaid acts and practices of respondents, constitute either unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act, or violations of subsection (c) of section 2 of the Clayton Act, as amended, as hereinabove specified.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on 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 the allegations of said complaint and in opposition thereto, and the oral arguments of Allen C. Phelps, counsel for the Commission and Clifton A. Hix, counsel for respondents, San Pedro Fish Exchange and Seafood Brokerage, Inc., and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the pro-

visions of the Federal Trade Commission Act and of subsection (c) of section 2 of the Clayton Act, as amended, by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act);

It is ordered, That the respondent, San Pedro Fish Exchange, an unincorporated association, its officers:

Anthony B. Jaconi, president,
Giosue Di Massa, vice president,
Albert H. Finch, secretary,

and their successors; and the following named members of said San Pedro Fish Exchange:

American Fisheries, Inc., a corporation.
Star Fisheries, Inc., a corporation.
Mutual Fish Company, Ltd., a corporation.
Seiichi Nakahara, trading as Pacific Coast Fish Co.
Gennaro Mineghino, trading as Independent Fish Co.
Vincent DiMeglio, trading as Ocean Fish Co.

Standard Fisheries Co., a copartnership, and John Ivancich, John Sulentor and Andrew Fishtonich, partners thereof.

Central Fish Co., a copartnership, and Yoshitsura Kamiya, Leo T. Toyama, and Y. Uyeda, partners thereof.

Tomich Brothers Fish Co., a copartnership, and Peter Tomich and Frank Tomich, partners thereof.

Catalina Fish Co., a copartnership, and Vincent Vitalich and George Stanovich, partners thereof.

Harbor Seafood Co., a copartnership, and Andrew Petrasich, Martin Zaunich, and Joe Evich, partners thereof.

State Fish Co., a copartnership, and Gerald Cigliano and Jack DeLuca, partners thereof.

Los Angeles Fish and Oyster Co., a copartnership, and Giosue Di Massa, John DiMeglio, and Frank Glynn, partners thereof.

Zankich Brothers Fish Co., a copartnership, and Jerry Zankich and Vincent Zankich, partners thereof.

Pioneer Fisheries, a copartnership, and Anthony B. Jaconi and Paul A. Marencovich, partners thereof.

and their agents, servants, and employees; and the Southern California Wholesale Fish Dealers Association, an unincorporated association, and Charles Rennick, its secretary and manager, and the following members of said association:

Superior Seafood Co., Ltd., a corporation.
Los Angeles Fish and Oyster Co., a corporation.
Central Fish and Oyster Co., a corporation.

Western Fish Co., a copartnership, and Stephen Gentry and George Kriste, partners thereof.

Morris Isenberg, trading as Mermaid Fish and Oyster Co.

National Seafood Co., a copartnership, and John Di Massa, a partner thereof.

and their agents, servants, and employees:

Cease and desist, From directly or indirectly, jointly or severally, entering into or carrying out any understanding, arrangement, agreement, combination or conspiracy with each other, or with any other person, association or corporation, to hinder or suppress competition in the interstate sale and distribution of fish or sea products; or to hinder or suppress competition among producers, suppliers, wholesalers, stock wagons, or retailers of such fish or sea products in the sale and distribution thereof, and particularly from directly or indirectly in pursuance of any such understanding, arrangement, agreement, combination or conspiracy, from:

1. Establishing, fixing, or maintaining the prices at which and conditions upon which fish and sea products are purchased from the shippers or producers thereof by respondent members of the San Pedro Fish Exchange, or others.

2. Establishing, fixing, or maintaining the prices at which and the conditions upon which fish and sea products are sold by the members of the San Pedro Fish Exchange or Southern California Wholesale Fish Dealers Association, or either or any of them.

3. Issuing, publishing, or circulating price lists or price information for the purpose of or with the effect of establishing, fixing or maintaining prices as herein prohibited.

4. Interfering with or monopolizing the sources of supply of fish or sea products to the detriment of dealers, distributors, or wholesalers competing with respondent members of the San Pedro Fish Exchange or others.

5. Acquiring or maintaining a joint control over the purchase, sale or distribution of fish or sea products in any trade territory in which any of the members of the San Pedro Fish Exchange or the Southern California Wholesale Fish Dealers conduct their individual businesses.

6. Imposing prices or policies on any dealer, distributor or wholesaler competing in the sale of fish or sea products with the members of the San Pedro Fish Exchange or the Southern California Wholesale Fish Dealers Association.

It is further ordered, That Seafood Brokerage, Inc., a corporation, and its officers as follows:

John Ivancich, president,
Giosue Di Massa, vice president,
Yoshitsura Kamiya, secretary-treasurer,
Hugh Reves, manager,

and the following named stockholders of said Seafood Brokerage, Inc.:

Arthur W. Ross, president of respondent American Fisheries, Inc.
Peter A. Kuglis, president of respondent Star Fisheries, Inc.
Tokutaro Furukawa, president of respondent Mutual Fish Co., Ltd.
Seiichi Nakahara, owning and operating the Pacific Coast Fish Co.
Gennaro Mineghino, owning and operating the Independent Fish Co.
Vincent DiMeglio, owning and operating The Ocean Fish Co.
John Ivancich, a partner in respondent Standard Fisheries Co.
Yoshitsura Kamiya, a partner in respondent Central Fish Co.
Peter Tomich, a partner in respondent Tomich Bros. Fish Co.
Vincent Vitalich, a partner in respondent Catalina Fish Co.
Andrew Petrasich, a partner in respondent Harbor Seafood Co.
Gerald Cigliano, a partner in respondent State Fish Co.
Giosue Di Massa, a partner in respondent Los Angeles Fish and Oyster Co.
Jerry Zankich, a partner in respondent Zankich Bros. Fish Co.
Anthony B. Jaconi, a partner in respondent Pioneer Fisheries.

and respondent Los Angeles Fish Exchange, a corporation, and respondent M. N. Blumenthal, and respondent Southern Sea Products Brokerage Corporation and Elmo C. Jack, manager, and the following-named respondents, stockholders of said Southern Sea Products Brokerage Corporation:

Max Freeman and Arthur Freeman, holders of a majority of the stock in respondent Superior Sea Food Co., Ltd.

Jack DeLuca, sole owner of the stock of respondent Los Angeles Fish and Oyster Co.

Louis G. Beverino, secretary, treasurer and manager of respondent Central Fish and Oyster Co.

Stephen Gentry and George Kriste, partners of respondent Western Fish Co.

Morris Isenberg, owning and operating respondent Mermaid Fish and Oyster Co.

John Di Massa, a partner in respondent National Seafood Co.

Guiseppe Alioto, president of the San Francisco International Fish Co., which owns one-third of the stock of respondent Central Fish & Oyster Co.

Cease and desist, In connection with purchases of fish and sea products in interstate commerce by any of respondent stockholders of either respondent Seafood Brokerage, Inc., or respondent Southern Sea Products Brokerage Corporation, or by any of respondent wholesale fish dealers whom any such stockholders owns, controls, or represents or with whom he is associated or affiliated, as hereinabove specified, from

receiving and accepting and from the practice of receiving or accepting, either directly or indirectly, from suppliers or sellers of such products, any brokerage fees or commission or any allowance or discount in lieu thereof.

It is further ordered, That respondent Seafood Brokerage, Inc., in connection with purchases of fish or sea products hereafter made by its stockholders in interstate commerce, or those respondent dealers whom such stockholders represent or are affiliated with, as hereinabove specified, through the medium of said Seafood Brokerage, Inc., cease and desist from paying or granting to such stockholders any brokerage fees or commissions, or any dividends, disbursements or payments in lieu thereof.

It is further ordered, That respondent Southern Sea Products Brokerage Corporation, in connection with purchases of fish or sea products hereafter made by its stockholders in interstate commerce, or those respondent dealers whom such stockholders represent or are affiliated with, as hereinabove specified, through the medium of said Southern Sea Products Brokerage Corporation, cease and desist from paying or granting to such stockholders any brokerage fees or commissions, or any dividends, disbursements, or payments in lieu thereof.

It is further ordered, That respondent members of San Pedro Fish Exchange or Southern California Fish Dealers Association, in connection with the purchase of fish or sea products in interstate commerce hereafter made by them or any of them, cease and desist from receiving or accepting, either directly or indirectly, from respondents Seafood Brokerage, Inc., or Southern California Sea Products Brokerage Corporation, any brokerage fees or commission, or any dividends, disbursements or payments in lieu thereof.

It is further ordered, That each of the respondents shall within 60 days 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 he or it has complied with this order.

IN THE MATTER OF

GEORGE G. NEFF, DOING BUSINESS UNDER THE TRADE NAME OF PROSTEX COMPANY

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

Docket 3291. Complaint, Jan. 4, 1938—Decision, July 16, 1940

Where an individual engaged in manufacture of its "Glantex" medicinal preparation 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 similar preparations or others intended for similar usage in commerce as aforesaid; in advertisements of its said Glantex which it inserted in newspapers and periodicals and through circulars, booklets, form letters, and other advertising material sent through the mails and circulated among the various States and in the District of Columbia and through broadcasts from radio stations of extra-State audience—

Represented expressly and by implication that said Glantex was a safe, competent, and reliable remedy and treatment for prostatitis, cystitis, urethritis, dropsy, sugar diabetes, illio-colitis, inflammation of the bladder, ptomaine poison, and worn out or run down feeling, and that it had curative value for diseases generally known to mankind;

Facts being that none of the drugs contained in the formula of aforesaid preparation had any proper bearing on the genito-urinary tract and such product had no value in the treatment of any diseases or disorders thereof, it was not a safe, competent, and reliable remedy or treatment for prostatitis, cystitis, or any of the other diseases and symptoms for which it was claimed to be as above set forth, was of no value whatever in treatment of hypertrophied prostrate glands and would not reduce such glands, when enlarged and congested, to normal size, no internal medication alone constitutes competent treatment for prostatic ailments, and it contained no drug that would in any way aid nature in causing the various glands of the body to function in more normal manner, but chemical composition thereof was such that it could not be expected to produce any therapeutic effect upon any known disease or pathological condition, and it had no other therapeutic value other than that, when taken internally and in large quantity, it was a laxative and nothing more;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such false statements and representations were true, and of inducing purchase of its said product because of such belief, and with result, as consequence, that trade was diverted unfairly to it from competitors engaged in selling preparations designed for treatment of same diseases and conditions, and who do not misrepresent their preparations or 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 constitute unfair methods of competition in commerce.

Before *Mr. Arthur F. Thomas* and *Mr. John J. Keenan*, trial examiners.

Mr. William L. Taggart for the Commission.

Hall & Cotten, of Oklahoma City, Okla., and *Mr. R. A. Wilkerson*, of Pryor, Okla., 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 George G. Neff, an individual, doing business under the trade name Prostex Co., hereinafter referred to as respondent, has been and is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent, George G. Neff, an individual, doing business under the trade name Prostex Co., has been, and is now, engaged in the business of offering for sale and selling a medical preparation for the treatment of various diseases, ailments, and conditions afflicting mankind. The principal office and place of business of respondent is Miami, Okla. The preparation marketed by respondent is known and described as "Glantex." The respondent causes the preparation, when sold, to be transported from his aforesaid place of business in the State of Oklahoma to purchasers thereof located in various States of the United States other than the State of Oklahoma and in the District of Columbia.

Respondent maintains a course of trade and commerce in said preparation so distributed and sold by him between the State of Oklahoma and the various other States of the United States and the District of Columbia.

Par. 2. In the course and conduct of said business, 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 individuals, and with firms, corporations, and partnerships engaged in the distribution and sale of preparations used and useful for the treatment of the diseases, ailments, and conditions for which the respondent recommends his said preparation.

PAR. 3. In the operation of his said business and for the purpose of inducing the purchase of said preparation by members of the public, the respondent causes advertisements to be published in various newspapers in the United States, distributes booklets, pamphlets, circulars, and labels, and broadcasts radio programs containing advertisements regarding said preparation. In said advertisements respondent makes many statements purporting to be descriptive of said preparation and regarding its efficacy as a treatment for various diseases, ailments, and conditions afflicting mankind. Among and typical of the statements so made and used by the respondent are the following representations and claims:

PROSTATE SUFFERERS. Prostate gland acute or chronic, rheumatism, kidney and bladder sufferers send for free trial package, amazing results. Endorsed by doctors.

PROSTEX COMPANY, Dept. 7, Miami, Oklahoma.

* * * For the agonizing pains and discomforts caused by prostitis, cystitis, urethritis, difficult urination, dribbling, getting up nights, catarrhal conditions of urinary tract and prostate gland. Its influence will be manifested as a relief or arthritis and neuralgia occasioned by acute or chronic congestion of the prostate gland. There is no use in wasting time with anything that does not stop your pain, and if it does, then you know that you are going to get relief. Order a bottle of GLANTEX today. * * *

* * * It is so effective and quick acting in the relief of prostate gland disorders, that 90 to 95% of the sufferers who have used GLANTEX say that one dose generally relieves some of the pain and inconveniences caused by a congested and inflamed prostate gland. This single dose of GLANTEX might give you more relief than all of the treatments you have ever tried. It has been proven in Clinical tests.

If your bladder is highly inflamed this dose of GLANTEX may give you prompt relief and might cause you to pass a quantity of pus with your urine or from your gland. If you are suffering a chronic discharge the first dose may stop the same. GLANTEX acts by reducing the congestion and inflammation, and its internal antiseptic effect. * * *

* * * GLANTEX is absolutely harmless, but has a very powerful tonic effect and your backaches, leg aches, worn out and run down feeling will in all probability disappear in most instances. * * *

* * * If results are obtained, it may be attributed to the fact that GLANTEX is helping nature to cause the gland to function in a more normal manner. * * *

* * * GLANTEX is also very good for all forms of bowel trouble. * * * GLANTEX actually reduces a congested and inflamed prostate gland to normal size, * * * in most instances. * * *

* * * this medicine has a very high potency in the treatment of these various diseases some of which I will mention: prostatitis, acute indigestion, ptomaine poison, sugar diabetes, dropsy, illiocolitis, gastritis, malaria, and common physic.

Acute Indigestion: Most always one dose will relieve the pain almost immediately, even quicker than morphine. A few doses, one a day, will soon get the patient O. K.

Ptomaine Poison: A dose an hour apart for two or three doses soon eliminates the poison and the patient is fine in a short time.

Rheumatism: When caused as an after effect of prostatitis, venereal disease, cystitis, etc., it acts very quickly.

Dropsy: In light cases, sometimes one dose completely removes all signs of dropsy. A year or so ago we had a case of dropsy, a lady weighing nearly 300 pounds. The swelling was very bad, both shins broken from knee to ankle and wasted as much as a gallon a day or night. In three months there was not a sign of swelling and the patient was doing her housework and was happy. We have known of other similar cases that responded more quickly.

Illio-colitis, colitis, dysentery: A few doses relieves them in a few hours.

In said statements, and in other similar statements not herein set out with respect to the preparation, respondent directly and by implication represents that the preparation forms a safe, competent, and reliable remedy and treatment for such physical troubles as prostatitis, cystitis, urethritis, for backaches, leg aches, worn out or rundown feeling, acute indigestion, ptomaine poisoning, sugar diabetes, dropsy, illio-colitis, gastritis, malaria, and that it acts as an effective physic without pain or cramping, and generally has a curative effect for diseases known to man.

In truth and in fact the said preparation is not a safe, competent, and reliable remedy and treatment for prostatitis, cystitis, urethritis, for backaches, leg aches, worn out or rundown feeling, acute indigestion, ptomaine poisoning, sugar diabetes, dropsy, illio-colitis, gastritis, malaria, and does not act as an effective physic without pain or cramping, and generally is not a remedy and has no curative effect for diseases known to man; and such statements are false and misleading.

PAR. 4. 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 preparations.

PAR. 5. The aforesaid false and misleading statements and representations used by the respondent in offering for sale and selling the said preparation in commerce as herein set out, have had, and now have, the tendency and capacity to, and do, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that said representations are true and into the purchase of substantial quantities of respondent's preparation on account of said erroneous and mistaken belief.

As a result thereof trade in said commerce is unfairly diverted to respondent from his competitors who do not, in the sale and distribution of their respective preparations, make use of the same or sim-

ilar misrepresentations. In consequence 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.

PAR. 6. 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 January 4, 1938, issued and thereafter served its complaint in this proceeding upon the respondent George G. Neff, an individual doing business under the trade name of Prostex Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by attorneys for the Commission, and in opposition to the allegations of the complaint by attorneys for the respondent before trial examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent George G. Neff, is an individual doing business under the trade name of Prostex Co., having his principal office and place of business located in the city of Miami, State of Oklahoma, and is engaged in the manufacture, sale, and distribution of a liquid medicinal preparation known as Glantex. Respondent causes said product, when sold, to be transported from his place of business in Miami, Okla., to purchasers thereof located in various

States of the United States other than the State of Oklahoma, 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. Respondent is, and has been, in substantial competition with other individuals and with corporations and firms who are also engaged in the sale and distribution of similar preparations or other preparations intended for similar usage in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business as aforesaid, and for the purpose of inducing the purchase of the product Glantex, respondent has caused advertisements to be inserted in newspapers, magazines, and periodicals, and has sent through the United States mails circulars, booklets, form letters, and other advertising material, all of which were circulated between and among the various States of the United States and in the District of Columbia, and has caused advertisements to be broadcast over radio stations, which radio stations were of such power to cause their said broadcast to be transmitted to States of the United States other than the State of origin. Typical of said advertisements, thus disseminated by the respondent, are the following:

PROSTATE SUFFERERS. Prostate gland, acute or chronic rheumatism, kidney and bladder sufferers send for trial package, amazing results. Endorsed by doctors.

PROSTEX COMPANY, Department 7, Miami, Oklahoma.

* * * Agonizing pains and discomforts caused by prostitis, cystitis, urethritis, difficult urination, dribbling, getting up nights, catarrhal conditions of urinary tract and prostate gland. Its influence will be manifested as a relief for arthritis, neuralgia, occasioned by an acute or chronic congestion of the prostate gland. It's no use in wasting time with anything that does not stop your pain, and if it does, then you know that you are going to get relief. Order a bottle of GLANTEX today. * * *

If your bladder is highly inflamed this dose of GLANTEX may give you prompt relief and might cause you to pass a quantity of pus with your urine or from your gland. If you are suffering a chronic discharge the first dose may stop the same. GLANTEX acts by reducing the congestion and inflammation, and its internal antiseptic effect * * *.

* * * if results are obtained, it may be attributed to the fact that GLANTEX is helping nature to cause the gland to function in a more normal manner.

GLANTEX is also very good for all forms of bowel trouble * * * GLANTEX actually reduces a congested and inflamed prostate gland to normal size * * * in most instances * * *.

This medicine has a very high potency in the treatment of these various diseases, some of which I will mention: Prostatitis, acute indigestion, ptomaine poison, sugar diabetes, dropsy, illio-colitis, gastritis, malaria, and common physic.

Rheumatism: When caused as an after-effect of prostatitis, venereal disease, cystitis, etc., it acts very quickly.

The aforesaid statements and representations, together with similar statements and representations appearing in respondent's advertising, but not set out herein, purport to be descriptive of respondent's preparation Glantex and of its effectiveness in use. In the manner and by the means aforesaid, respondent represents expressly and by implication that Glantex is a safe, competent, and reliable remedy and treatment for the following diseases and symptoms: Prostatitis, cystitis, urethritis, dropsy, sugar diabetes, illio-colitis, inflammation of the bladder, ptomaine poison, rheumatism, backaches, leg aches, gastritis, malaria, acute indigestion, and worn out or rundown feeling. In the same manner, respondent also represents that the preparation "Glantex" has curative value for diseases generally known to mankind.

PAR. 3. The formula for respondent's preparation is as follows:

A solution in water of

Alum (approximately)	7.3%
Epsom salts (approximately)	33.0%
Quinine sulphate (approximately)	½ grain per fluid ounce
Sulphuric acid	Small proportion
Potassium nitrate	Small proportion

The recomended dosage of the preparation is one tablespoonful to a teaspoonful graduated down.

PAR. 4. The Commission finds that the statements made by respondent with respect to its aforesaid preparation are misleading and false. None of the drugs contained in the formula for Glantex have any proper bearing on the genito-urinary tract and such product has no value in the treatment of any disease or disorders of the genito-urinary tract. Said preparation is not a safe, competent, and reliable remedy or treatment for any of the following diseases and symptoms: Prostatitis, systitis, urethritis, dropsy, sugar diabetes, illio-colitis, inflammation of the bladder, ptomaine poison, rheumatism, backaches, leg aches, gastritis, malaria, acute indigestion, or the feeling of being run down. The preparation Glantex is of no value whatever in the treatment of hypertrophied prostrate glands and will not reduce enlarged and congested prostate glands to normal size. No internal medication alone constitutes a competent treatment for prostatic ailments. There is no drug in the preparation that would in any way aid nature in causing the various glands of the body to function in a more normal manner. The chemical composition of the product Glantex is such that it could not be expected to produce any therapeutic effect upon any known disease or pathological condition. The preparation Glantex when taken internally is nothing more than a laxative and then only provided it is taken in a large quantity. It has no other therapeutic value.

PAR. 5. The use by the respondent of the foregoing deceptive, false, and misleading statements in describing the preparation Glantex and its effectiveness in use 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 induces the purchase of respondent's preparation because of said erroneous and mistaken belief. As a result thereof, trade has been diverted unfairly to respondent from competitors engaged in selling preparations designed for the treatment of these diseases and conditions who do not misrepresent their preparations or their effectiveness in use. In consequence thereof, injury has been done by respondent to competition in commerce, among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondent, 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 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 counsel for the Commission and by 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 George G. Neff, an individual doing business under the trade name of Prostex Co., or trading under any other name, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a medicinal preparation known as Glantex, or any other preparation composed of similar ingredients or possessing similar properties whether sold under the name or under any other name in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication:

1. That said preparation will cure prostatitis, cystitis, urethritis, sugar diabetes, dropsy, illio-colitis, gastritis, malaria, inflammation of

the bladder, acute indigestion, ptomaine poisoning, rheumatism, backaches, leg aches, or worn out or rundown feeling, or will serve as a safe, competent, or effective treatment for any of such diseases or conditions.

2. That said preparation will cure any disease or pathological condition or will serve as a competent or effective treatment therefor or that said preparation possesses any therapeutic value in excess of that due to its laxative properties.

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 is complying with this order.

IN THE MATTER OF

SILVER SERVICE CORPORATION AND EDWIN I. GORDON

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

Docket 3654. Complaint, Nov. 30, 1938—Decision, July 16, 1940

Where a corporation and an individual, who was its president and treasurer and dominated and controlled its business activities and practices, engaged in sale and distribution to retail merchants of a sales promotion plan, under which they supplied to merchants entering into contracts with them, advertising material with which to conduct a "Count-the-dot" sale, and which contemplated use by local merchants of newspaper material supplied, reproducing pictures or photographs of various articles of plated silverware, with numerous dots imposed thereon, and offer by local merchant in local newspaper to award certain prizes of silverware free to person most nearly estimating correct number of dots, and also to give to stated number of persons whose answers were nearest to prize-winning answer certain credit checks" or coupons redeemable in silverware, and, as thus engaged, in substantial competition with others also engaged in sale and distribution of various sales promotion plans in commerce among the various States and in the District of Columbia, and including among such competitors many who do not engage in methods and practices as herein set forth—

(*a*) Represented said sales promotion plan to particular merchants contacted and solicited as being a special campaign to introduce and advertise silverware in question, facts being it was in no sense such a special or introductory offer or advertising campaign, but merely method adopted by them for marketing said silverware, on sale of which, under an agreement between them and manufacturer of product, they received stated commission on each set sold;

(*b*) Represented or caused or assisted purchasers of such a plan to represent as aforesaid that plan in question was a contest, facts being it was not such within real meaning of term, in many instances no prizes of any kind were awarded but credit checks or coupons were forwarded by them or by merchant under their direction to all persons sending in answers to purported contest, without regard to correctness of answers submitted, and purported contest actually was merely means of obtaining names of members of public who might be interested in purchasing silverware, and of inducing, through issuance of such credit checks or coupons, purchase thereof;

(*c*) Represented or caused or assisted purchasers, as aforesaid indicated, to represent that through credit voucher, checks, or other form of prize or gift award, in connection with such plan, recipients were to be enabled to receive a credit, reduction, or other financial advantage in purchase of merchandise, facts being credit checks or coupons issued by them or by merchants under their direction did not have any value or represent any prize or discount to prospective purchaser, but represented merely difference between fictitious value advertised and regular retail price of silverware, and recipients of said vouchers or checks did not in fact receive any such credit, reduction, or other financial advantage based upon usual customary retail price of merchandise involved; and

(*d*) Represented or caused or assisted purchasers, as above indicated, to represent as customary or regular price or value of merchandise offered for sale in connection with plan in question prices or values which were in fact fictitious, and in excess of those at which such merchandise was regularly and customarily offered for sale at retail in usual and normal course of business, and which, in some instances, were twice as much as regular retail prices of silverware involved;

With effect of misleading and deceiving substantial number of retail merchants into purchase of their said sales promotional plan, and substantial number of purchasing public into purchase of merchandise offered for sale in connection therewith, and with results that trade was diverted unfairly to them 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 of the public and constituted unfair methods of competition in commerce and unfair and deceptive acts and practices therein.

Before *Mr. Robert S. Hall* and *Mr. Edward E. Reardon*, trial examiners.

Mr. James L. Fort for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Silver Service Corporation, a corporation, and Edwin I. Gordon, an individual, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Silver Service Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 58 East Washington Street, Chicago, Ill. Respondent Edwin I. Gordon is the president and treasurer of respondent Silver Service Corporation and as such operates, dominates, and controls the business activities and affairs of respondent, Silver Service Corporation.

Respondent Silver Service Corporation, and respondent Edwin I. Gordon are engaged in the business of selling and offering for sale to retail merchants throughout the various States of the United States a certain sales promotion plan.

In the course and conduct of their said business respondents maintain and at all times mentioned herein have maintained a course of trade in said sales promotion plan in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondents enter into contracts with various retail merchants throughout the various States of the United States, under and by the terms of which, for a stated consideration, respondents agree, among other things, to furnish to such merchants advertising mats and other supplies to be used by retail merchants in the conduct of a "Count-the-dot" sale. The mats, when used, reproduce what are known to the trade as "Count-the-Dot" puzzles, which consist of a reproduction or photograph of various articles of plated silverware featured by such retail merchants. Superimposed upon such reproduction or photograph are numerous dots. Retail merchants are instructed by the respondents to cause the insertion of such reproduction or photograph in a paper or periodical of general circulation within the trade area of such merchants for a contracted and stated period of time. Accompanying such picture is a representation made by the retail merchant, acting under instructions by the respondents, that upon a given day the retail merchant will give free of charge to the person most closely approximating the number of dots in the picture certain described merchandise which is represented to be of considerable value.

Further representations are made that a stated number of persons submitting answers or solutions to such puzzles nearest the correct answer or solution of the same will receive vouchers or checks redeemable in merchandise only and sold only at the store of such retail merchant.

PAR. 3. In truth and in fact such credit vouchers or checks are indiscriminately distributed without regard to the solution submitted by contestants and are intended to be used and are used solely for the purpose of stimulating trade by enticing customers into the store of the merchant.

PAR. 4. The contract between the respondents and retail merchants also provides, among other things, that the merchants shall be entitled to the services of a representative to advise them during the course of the sale or contest. Acting under the direction and advice of the respondents, retail merchants procure from Oneida, Ltd., a corporation manufacturing plated silverware and located at Oneida, N. Y., certain silver-plated articles which, upon instruction of respondents, are falsely represented to be in value more than the real worth thereof; such increase in represented value amounting to approximately the purported value of said credit vouchers.

The conditions and terms of the purchase of the plated silverware by the retail merchant from Oneida, Ltd., are fixed in a certain contract existing between said Oneida, Ltd., and respondents.

These false and fictitious values are widely advertised by circulars, handbills, periodicals, magazines, newspapers, and by other means

throughout the trade area where the retail merchants operate, and the publishing of such fictitious prices has a tendency to and does mislead and deceive a substantial number of purchasers into the false belief that by purchasing the merchandise so advertised and represented during the period of the sale hereinbefore described, they effect economies and make pecuniary gains and savings. Relying upon such belief, a substantial number of the members of the purchasing public have purchased said merchandise.

PAR. 5. In engaging in the business of stimulating trade and holding itself out as business consultants, the respondents are in competition with a substantial number of other persons, firms, copartnerships, and corporations who likewise represent themselves to be business consultants and are engaged in the business of stimulating trade, but who do not engage in the practice of fostering false or fictitious prices, and who do not cause those with whom they contract falsely to represent to the purchasing public that the commodity offered for sale is of a superior quality to such articles ordinarily sold at a price for which it is offered for sale and who do not mislead and deceive or cause a deception of the members of the purchasing public by issuing, or causing to be issued, trade or credit vouchers for various stated amounts which are actually of no monetary value in purchasing from the merchants so issuing.

PAR. 6. The aforesaid acts and practices of the respondents have a tendency and capacity to and do in fact cause a substantial diversion of trade from their competitors. As a consequence thereof, 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. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and of respondents' competitors, and constitute unfair methods of competition 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 30th day of November 1938, issued, and thereafter served, its complaint in this proceeding upon respondents, Silver Service Corporation, a corporation, and Edwin I. Gordon, an individual, 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 said complaint were introduced by James L. Fort, attorney for the Commission, before Robert S. Hall and Edward E. Reardon, 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. No testimony or other evidence was offered by the respondents. 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 (no brief having been filed on behalf of the respondents, 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, Silver Service Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business located at 58 East Washington Street, Chicago, Ill. Respondent Edwin I. Gordon, is the president and treasurer of respondent Silver Service Corporation and as such dominates and controls the business activities and practices of respondent Silver Service Corporation.

The respondents are now and since the year 1936 have been engaged in the sale and distribution of a sales-promotion plan to retail merchants, which plan includes certain purported contests and certain newspaper mats and other advertising material. Respondents cause and have caused their said plan and the contests and advertising material used in connection therewith, when sold, to be transported from their 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. Respondents maintain and since 1936 have maintained a course of trade in their said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondents are in substantial competition with other corporations and individuals and with firms and partnerships engaged in the sale and distribution of various sales promotion plans in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business the respondents, acting through agents or solicitors, contact retail merchants and undertake to sell such merchants the respondents' sales promotion plan. If the merchant is induced to purchase the plan a written contract is entered into whereby the respondents agree, for a stated consideration, to supply to the merchant certain advertising material with which to conduct what is known as a "Count-the-dot" sale. The advertising material includes, among other things, certain newspaper mats which, when used, reproduce pictures or photographs of various articles of plated silverware. Superimposed upon such photographs are numerous dots. The retail merchant, acting under directions supplied to him by the respondents, causes these photographs to appear in local newspapers, along with representations that on a certain designated day the merchant will award certain pieces of silverware free to the person most nearly estimating the correct number of dots on the photographs appearing in such advertisements.

Further representations are made in the advertisements that in addition to the prize awarded for the most nearly correct answer in the contest, the merchant will give to a stated number of persons whose answers are nearest to the prize-winning answer certain "credit checks" or coupons redeemable in silverware.

While all of the operations in connection with the sale, including the advertising, are carried on in the name of the merchant, such operations are in fact planned and directed in their entirety by the respondents, acting through their agents. All mats and other advertising material are supplied by the respondents, and the merchant is guided and instructed by the respondents, through their agents, as to all of the details involved in putting the sale into operation.

PAR. 4. Under an agreement existing between respondents and the manufacture of the silverware used in the operation of the plan, the respondents receive a stated commission on each set of silverware sold during the sale.

The entire sales promotion plan is represented to the merchant by respondents as being a special campaign for the purpose of introducing and advertising the silverware. The Commission finds, however, that in fact the plan is in no sense a special or introductory or advertising campaign but is merely a method adopted by the respondents for marketing the silverware.

PAR. 5. The Commission further finds that the so-called "Count-the-dot" contest is not in fact a contest within the real meaning of the term. In many instances no prizes of any kind are awarded, but credit checks or coupons are forwarded by the respondents or by the merchant, under the respondents' direction, to all persons sending

in answers to the purported contest, without regard to the correctness of the answers submitted by such persons. Actually, the purported contest is merely a means of obtaining the names of members of the public who might be interested in purchasing silverware, and of inducing, through the issuance of such credit checks or coupons, the purchase of such silverware.

PAR. 6. The Commission further finds that the values ascribed to such silverware in said advertising are highly fictitious, being greatly in excess of the prices at which such silverware is regularly and customarily sold at retail in the usual and normal course of business. In some instances the values advertised have been twice as much as the regular retail prices of the silverware. The credit checks or coupons issued by the respondents, or by the merchants under the respondents' direction, do not in fact have any value, and do not represent any prize or discount to the prospective purchaser, but merely represent the difference between the fictitious values advertised and the regular retail prices of the silverware.

PAR. 7. There are among the competitors of the respondents as referred to in paragraph 2 hereof many who do not engage in the methods and practices herein set forth.

PAR. 8. The use by the respondents of the acts, practices, and methods herein set forth has the tendency and capacity to, and does, mislead and deceive a substantial number of retail merchants into the purchase of respondents' sales promotional plan, and a substantial number of the purchasing public into the purchase of the merchandise offered for sale in connection with such plan. As a result trade has been diverted unfairly to the respondents from their competitors and in consequence substantial injury has been done and is being done by the 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.

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 Robert S.

Hall and Edward E. Reardon, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and brief filed by James L. Fort, 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, Silver Service Corporation, a corporation, and its officers, and Edwin I. Gordon, an individual, their respective agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any sales promotion plan or of any merchandise which is to be resold through use of a sales promotion plan furnished by respondents, do forthwith cease and desist from:

1. Representing that the respondents are conducting any special campaign or advertising campaign to introduce or advertise silverware or other merchandise.

2. Representing, or causing or assisting the purchasers of said plan to represent, that any sales promotion plan in which credit vouchers, checks, gifts, or any form of so-called prizes, are given to the entrants or contestants therein without regard to the relative correctness of the answers or solutions submitted by said entrants or contestants, is a contest.

3. Representing, or causing or assisting the purchasers of said plan to represent, that credit vouchers or checks, or any other form of prizes or gifts awarded in connection with such sales promotion plan, enable the recipients thereof to receive a "credit," "reduction," or other financial advantage in the purchase of merchandise when the recipients thereof do not in fact receive a credit, reduction, or other financial advantage based upon the usual and customary retail price of such merchandise.

4. Representing, or causing or assisting the purchasers of said plan to represent, as the customary or regular prices or values of merchandise offered for sale in connection with the said sales promotion plan, prices or values which are in fact fictitious and in excess of the prices at which such merchandise is regularly and customarily offered for sale.

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

IN THE MATTER OF

HY-TEST CEMENT COMPANY

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

Docket 3779. Complaint, May 2, 1939—Decision, July 16, 1940

Where a corporation engaged for more than 15 years past in sale and distribution of certain masonry cement under trade name of Hy-Test and which, through its president and principal executive officer who owned controlling interest therein, had taken part, along with other members and organizations of general trade and industry concerned, in tests conducted by Bureau of Standards of the various products involved of the different participating members in the interest of the public, the trade, State governments, and the United States Government, and which, through active participation therein by its said president and through conferences with officials of said Bureau and notices therefrom and otherwise, was fully advised as to the policy adopted and respected generally in said connection of divulging to participant's results of said tests only as concerned particular participant's product and of not divulging at all to general public results thereof as respects particular products or manufacturers' data—

(*a*) Divulged and made public results of such research by overprinting on Bureau's circular describing same, symbol identifying its own particular product, and distributed and made known to its salesmen and through them to general public, results of the tests or research by said Bureau as they affected not only its own product but those of competitors;

(*b*) Published under same title as made use of by chief of section concerned of said Bureau in article entitled, "Brick Laying to Avoid Leaks," and included in its own article thus published, and at its own expense, statement identifying and praising its own particular product, and on a comparative basis, as a result of particular tests in question and investigations and research by said Bureau; and

(*c*) Published, through its agents and through advertising in sales promotional literature from time to time during the years, the results of said tests of the Bureau and information with reference thereto, in which it identified all masonry cements as used therein and not disclosed in the Bureau's research paper, in violation, as aforesaid, of the established policy and practice in the Bureau, and contrary to its rules and instructions, and understandings between it and participants and in bad faith;

With results, through its said acts and practices in advising purchasing public as to identity of cements used in said tests, made under supervision of said Bureau as aforesaid, and through use of reports of tests and articles prepared by said section chief, for advertising publicity and sales promotion purposes, of placing it at a competitive advantage over its competitors who participated in said tests under the Research Associates plan of bureau in question, above described, and were unwilling to adopt and use such or any other method or methods contrary to policy of said Bureau with reference to plan in question, and complied with rules, regulations, and instructions issued by said Bureau, and did not use reports of tests

for advertising publicity or sales promotion purposes, or divulge identity of products used in making tests in question, and with consequence and as a result that substantial portion of purchasing public was induced to buy its said product, and trade in commerce among the various States and in said District of Columbia was diverted unfairly to it from its competitors:

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 C. Shears for the Commission.

Mr. Percy H. Russell, Jr., and *Mr. Edward K. Wheeler* of Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., for respondent.

COMPLAINT [1]

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Hy-Test Cement 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, Hy-Test Cement 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 in the Fox Building, Philadelphia, Pa. Respondent is now, and for some time last past has been, engaged in the business of advertising, offering for sale and selling masonry cement under the trade name "Hy-Test" Masonry Cement. In the conduct of its business, as aforesaid, respondent causes and has caused said cement when sold to be transported from its place of manufacture in Pennsylvania to purchasers thereof in various other States of the United States and in the District of Columbia, at their respective places of busi-

[1] By order dated August 10, 1939, and in response to motion of acting chief counsel and counsel for Commission pars. 4 and 5 of the complaint as originally issued were amended to read as set forth in the complaint as published herewith.

Said order in response to such motion of said acting chief counsel and trial attorney for the Commission in the proceedings in question further provided, "that all testimony and other evidence heretofore received at hearings held in this proceeding be made a part of the record in connection with the complaint as amended and be considered in like manner and to the same effect as though said testimony and other evidence had been originally received at hearings held upon the allegations contained in said complaint as amended, saving, however, to the respondent its right to rebut said testimony or other evidence by any proper means at any such subsequent hearings as may be held therein.

ness. There is now and has been for some time last past, a course of trade in said cement by said 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 said business, respondent is in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cement in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The National Bureau of Standards in the Department of Commerce of the United States, hereinafter referred to as the Bureau, has as one of its chief functions the discovery and evaluation of material standards and the solution of basic technical problems by the use of its unique research and testing facilities. Its establishment of more precise values for the standard constants furnishes an exact basis for scientific experiment and design and makes possible the efficient technical control of industrial processes. Its work on standards of quality sets up attainable standards to assure high utility in the products of industry and furnishes a scientific basis for cooperation between the Bureau and industry in research charged with the public interest. In the course of its work in the fields involving the standards above described, it makes researches and tests for the determination of the properties of stone, clays, cement, and other structural materials. The Bureau's functions are exercised for the United States Government, State governments, and the general public. In the case of the general public, researches are made by persons designated as "Research Associates," assigned to the Bureau by an association representing an industry, or by a group of associations. Researches made by Research Associates have for their object the solution of problems considered important to the entire industry concerned. In such cases, the facts found are made public in order that the industry as a whole and the public dealing with it may benefit. In order to obtain the cooperation of industry, it is necessary that all members of an industry be assured that no one member shall profit at the expense of the other members of the industry. To secure the benefits resulting to the public from such researches, it is the rule and policy of the Bureau to omit from the report the names of the manufacturers whose products are utilized, as well as the names or other identification of their brands. Each such manufacturer is given a key which will enable him to identify in such report his own product, but not the products of other participants. In transmitting this key number, it is the practice of the Bureau to inform each manufacturer receiving the same that he may not utilize the information so disclosed for advertising or sales promotion purposes.

PAR. 3. During the years 1931–32 an investigation of masonry mortars was undertaken by said bureau, at the request of the American Face Brick Association, the National Lime Association, and certain producers of masonry cements, under the "Research Associate" procedure described in paragraph 2 hereof, and more fully outlined in Bureau Circular 296, entitled "Research Associate Plan." Upon the completion of such investigation, the results were printed in the Bureau's "Research Paper 683, A study of the properties of mortars and bricks and their relation to bond"; and information respecting the same was also given out in the following papers:

"Permeability Tests of 8-inch brick wallettes."

Proceedings of the American Society for Testing Materials, 1934.

"Rate of stiffening of mortars on a porous base," Rock Products, September 10, 1932.

All of the manufacturers whose products had been used in carrying out such tests were sent by the Bureau a copy of its Research Paper No. 683 containing the results of the investigation, and informed of the key numbers of their products, as used in the test and shown by said report; and all of said manufacturers were at the same time informed that the information contained in the report was not to be used for advertising, publication, or sales promotion, as provided in said Circular 296, "Research Associate Plan."

The respondent was one of the manufacturers whose product was used in making the tests described and a report upon which formed part of Research Paper No. 683. On or about July 5, 1934, respondent was informed in writing by the Bureau:

> Replying to your letter of July 2, your material is designated in Research Paper 683 as masonry cement No. 6 used in making mortar B–VI. This information is not to be used for advertising, publication, or sales promotion.

PAR. 4. In the course and conduct of its business as described in paragraph 1 hereof, and for the purpose of inducing the purchase of said products in said commerce, respondent is now and for some time last past has been, publishing in connection with its advertising and sales promotion of said cement the identity of the various brands of cement of the manufacturers participating in said investigation as described in paragraph 3 hereof, and particularly the identity and information that the masonry cement used in making mortar B–VI as designated in said Research Paper 683 was "Hy-Test" Masonry Cement, and is now and has been distributing said information widely in commerce. The use by respondent of said method of sales promotion in revealing said information, is a practice of the sort which is contrary to the established rules and policies of the Bureau and the public policy of the United States. Many persons, firms, and corpo-

rations, participating in said tests as described in paragraph 2 hereof, who are in competition with the respondent, as above alleged, are unwilling to adopt and use said methods or any methods that are contrary to a policy or rule of practice established by the Bureau in connection with the Bureau's said "Research Associate Plan." Many persons, firms, and corporations are induced by said method employed by respondent in the sale of said cement to buy respondent's cement in preference to cement 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 of not observing the policy and rules of the Bureau, 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 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.

PAR. 5. In the course and conduct of its business as aforesaid and for the purpose of inducing the purchase of said cement in said commerce, respondent is making and has made many misleading representations, among and typical of which are representations contained in a booklet respondent has caused to be prepared, published and circulated, entitled "Bricklaying To Avoid Leaks." In addition to publishing in said booklet the information alleged in paragraph 4 hereof showing the identity of respondent's said product as used in said test in violation of the rules and policy of the Bureau and of the public policy of the United States as hereinbefore alleged, said booklet is and has been prepared, published, and circulated in such a manner as to import and imply that it is in whole or substantially an official report of the Bureau, when in truth and in fact it is not a report of said Bureau, but contains many misleading representations as well as containing in a changed and modified form, an altered reprint of an article written by one D. E. Parsons, chief of the Masonry Construction Section of the Bureau. Among and typical of said representations used and caused to be used by the said respondent are and have been the following:

Does not this report of the Bureau of Standards point to the following essential conclusions?

Here is real information from the Bureau of Standards, real help-worthy views. The Bureau of Standards' report points out the danger of depending on single walls to keep water out.

Here is what the U. S. Bureau of Standards says on the subject.

Listen to the views of your own Bureau of Standards.

Each and all of said statements and representations and other statements contained in said booklet made by respondent were and are calculated to and have had a tendency and capacity to and do mislead

and deceive a substantial portion of the purchasing public into the erroneous belief that said publication is in whole or substantially an official report of said Bureau, and that statements which are quoted in said booklet are taken from official reports of said Bureau. The use of said booklet containing said representations and the information of the purchasing public as to the identity of said keys used in said test as aforesaid by respondent 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 the Federal Trade Commission Act, the Federal Trade Commission, on the 2nd day of May 1939, issued, and subsequently served, its complaint herein charging Hy-Test Cement Co., a corporation, 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. Said complaint was amended on the 10th day of August 1939. After issuance of said complaint and the filing of answer thereto by respondent, testimony and other evidence in support of the allegations of the complaint were introduced by Curtis C. Shears, attorney for the Commission, and in opposition to the allegations of the complaint by Percy H. Russell, Jr., of the firm of Kirkland, Fleming, Green, Martin & Ellis, attorneys 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 said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and oral argument of counsel for the Commission and 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.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Hy-Test Cement 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 in the Fox Building, Philadelphia, Pa. Abraham T. Malmed is, and since the organization of the corporation has been, its president and principal executive officer, owning a controlling interest in said corporation.

Respondent is now and for more than 15 years has been engaged in the sale and distribution of a certain masonry cement under the trade name Hy-Test Masonry Cement.

PAR. 2. The National Bureau of Standards of the Department of Commerce of the United States, hereinafter referred to as "The Bureau," has as one of its chief functions the discovery and evaluation of materials, standards, and the solution of basic technical problems by the use of its unique and unusually efficient research and testing facilities; its establishment of more precise values for the standard constants furnishes an exact or approximately exact basis for scientific experiments and designs, and thus makes possible a more efficient and technical control of various industrial processes. The Bureau's work on standards of quality thus sets up practical and attainable standards for assuring better utility of the products of the industry and furnishes a scientific basis for cooperation between the said Bureau and industry in reasearches which are in the public interest.

In the course of the aforesaid work, the Bureau makes researches and tests for the determination of the purposes and comparative usefulness in structural work of stone, clays, cement, and other similar materials. These functions and activities are exercised for the United States Government, for the various State governments and for the general public. In the case of investigations on behalf of the general public, researches are made by persons designated as "Research Associates," assigned to the Bureau by some individual or individuals, association or group of associations, connected with the production and use of the materials thus to be investigated. The researches made by said Research Associates have for their object the solution of problems considered important to the entire industry concerned. In such cases, the facts found are made public, in order that the industry as a whole and the public dealing with it may be benefited thereby. In order to obtain the cooperation of industry, the Bureau has had a general policy of assuring all persons and associations thus cooperating that the work of a Research Associate is one of peculiar trust, often confidential, on problems of concern to the entire industry; that the work of such Associates is

directed exclusively to research projects approved by the director of the Bureau of Standards; that no member participating shall profit thereby at the expense of other members of said industries or industry. Such policy and rules have been authorized by acts of Congress.

To secure the benefits resulting to the public from such researches, it is and has been the rule and policy of the Bureau to omit from the report of its findings upon materials submitted as aforesaid, the names of the manufacturers or other persons whose products are thus tested, as well as the trade names or other identification of the particular brands or products submitted. Each participant is given a key, or symbol, which will enable him to identify in such report his own product, but is given no information whereby he may identify the products of the other participants. In transmitting this key it is and has been the practice of the Bureau to inform each participant receiving the same that he may not utilize the information thus furnished him for advertising or sales-promotional purposes.

As early as March 27, 1929, respondent had notice of the policy of the Bureau with respect to the use of reports of its findings upon materials tested for advertising or sales promotional purposes and the divulgence of the identity of products tested, for on that date the Director of the Bureau wrote the president of respondent a letter which was in part as follows:

> We have received from an architect in New Jersey a copy of your advertisement the first page of which contains in large print the heading, "U. S. Bureau of Standards," and following this, various excerpts and references to our Circular 360.
>
> * * * * * * *
>
> The Bureau does not wish its publications to be used in this manner and would like very much for you to withdraw this circular of yours from circulation.

PAR. 3. Beginning with the year 1931 and continuing until the year 1934, under the plans and policies of the Bureau above set forth, and at the request of the American Face Brick Association, the National Lime Association, the respondent Hy-Test Cement Co., and certain other producers of masonry cement, the Bureau conducted, under its Research Associate procedure as described in paragraph 2, supra, a certain series of tests in regard to mortars, bricks, their relation to bond, and other related questions.

During the period of the said investigation there were many conferences and much correspondence between the various firms above mentioned (hereinafter called "participants") and the Bureau, with reference to the nature and progress of said investigation. The respondent through its president, Malmed, actively participated in prac-

tically all of same and was fully advised as to the methods, policies, and practice of the Research Associates in making the test as to respondent's products and those of other participants.

Respondent was present at one or more meetings when a paper writing entitled "Tentative Outline of Proposed Investigation of Masonry Mortar" was discussed. Paragraph 4 of same contains, in part, the following language:

In any report or publication of results, no material will be designated by its trade name. Any organization may learn of the performance of its own material provided it adheres to the Bureau's policy of regarding all of the information as strictly confidential.

PAR. 4. A final report of the results of the test was embodied in and formed a part of Bureau's Research Paper No. 683, which bears date March 14, 1934, and which was generally distributed, to respondent and the other participants, some time thereafter. In said research paper, respondents product, Hy-Test Masonry Cement, was referred to by the symbol "B–VI," and all cements tested were designated by similar symbols.

Shortly thereafter, respondent, in violation of the rules and policy of the Bureau, to which it had agreed, made known to the public in various ways that the said symbol referred to its product, one of such ways being by overprinting, in large blue type, on the first page of said Bureau's Research Paper 683, the following words and figures, to wit:

Hy-Test Cement in this paper is designated as B–VI. See pages 638–39,—'41–42.

On April 13, 1934, the respondent through its president, Malmed, wrote a letter to said Bureau which contained the following among other statements:

We originally agreed to all rules for conducting these tests.

In the month of May or early part of June 1934, respondent distributed to its salesmen information regarding "Secret tests made by the Bureau of Standards on various types of mortar and brick—1931–34." The identification on all of the key numbers of the masonry cement used in the mortars represented by the symbols were by this means made known to the agents of respondent and, through them, to a substantial portion of the purchasing public.

On July 2, 1934, respondent wrote said Bureau, requesting that it be officially notified as to the key number used to identify its product. Malmed had theretofore known this and had distributed information identifying respondent's symbols and those of other participants in the said tests.

On July 5, 1934, the said Bureau advised respondent, in writing, of the symbol used to designate its cement only, and it further cautioned respondent as follows:

This information is not to be used for advertising, publication, or sales promotion.

On July 7, 1934, all the other participants were similarly advised.

In the month of July 1934, Malmed, president of the respondent, had a conference in Washington, D. C., with Dr. Bates, chief of the Clay and Silicate Products Division of the said Bureau, with reference to the Bureau's letter prohibiting disclosure of the identity of the symbols, which had been so generally done by respondent and its agents. Thereafter there was some correspondence and conversations between the Bureau and Malmed and other participants as to the divulgence of said symbols.

On July 5, 1935, respondent wrote to said Bureau in part as follows:

I thoroughly understand that they (results of tests and symbols) must not be used for advertising purposes, and you have my word of honor on this.

On July 30, 1935, the said Bureau advised Malmed:

This information (as to said tests) is confidential and not to be used for advertising, publication, or sales promotion.

Said respondent was at other times advised by the said Bureau to the same effect.

During the years 1935 to 1938, inclusive, respondent continued to insert an advertisement in Sweet's Catalogue, a publication in general use by architects, engineers, and contractors in the United States, which advertisement contained much of the confidential information which respondent had obtained as the result of being a participant in said tests.

PAR. 5. In September 1937, an article entitled "Bricklaying to Avoid Leaks," prepared by D. E. Parsons, chief of the Masonry Construction Section of said Bureau, was published in "The American Builder and Building Age," a magazine generally used and relied upon by the building trades in the United States.

In the early part of the year 1938 respondent, at his own expense, caused to be published and distributed in commerce, as an advertisement in promotion of the sale in commerce of respondent's product, a pamphlet bearing the same title "Bricklaying to Avoid Leaks," which pamphlet contained what erroneously purported to be an exact reprint of the said Parsons article of the same title, and which gave the impression to the general public that it was a Government pub-

lication. On page 10 of this second, or private, publication, in the last paragraph, it is stated:

> An investigation took place at the Bureau of Standards from 1931 to 1934, which was paid for by the American Face Brick Association, the Portland Cement Association, and a group of cement manufacturers. The Hy-Test Masonry Cement, known as "Mortar B-VI," was mentioned as one of the five outstanding mortars that provided good bonding efficiency, and it is a matter of record that it is the only one of the five leaders that came forth with a perfect record on durability of bond tests.

Said pamphlet also contained other statements and conclusions which greatly praised the Hy-Test Masonry Cement.

Shortly thereafter, Dr. L. J. Briggs, and other officials of said Bureau, called said Malmed, president of respondent, to Washington for a conference and directed that he cease the distribution of said pamphlet until he had obliterated therefrom all the confidential information obtained from the said tests. To this Malmed agreed, but the first copies sent out did not completely obliterate such information, if at all. After subsequent communications from the Bureau the said obliteration was made.

Most of the other participants in said tests neither identified their cements nor otherwise made public any of the results of said tests, but abided by their understanding and agreement with said Bureau to conform to its policy as to maintaining the confidential nature of the results of said tests.

PAR. 6. In the course and conduct of its business as hereinbefore described, during the years 1934 to 1939, inclusive, and for the purpose of promoting the purchase of its products in commerce, the respondent from time to time published, through its agents and by advertising in sales promotional literature, the results of said tests and information with reference thereto, identifying all masonry cements used in said tests but not disclosed in said Research Paper 683. The use by the respondent of said information was in violation of the established policy and practices of said Bureau of Standards, and contrary to the rules and written instructions of said Bureau and the understanding between said Bureau and the participants in said tests—all of which was done in bad faith; and persons, firms, and corporations have been induced by said methods employed by respondent as aforesaid to buy respondent's cement in preference to cement offered for sale and sold by competitors of respondent who do not use the same or similar methods.

PAR. 7. The other participants in said tests hereinbefore described, and who are in competition with respondent in said cement business, have been and are unwilling to adopt and use such methods, or any

other method or methods contrary to the policy of the said Bureau with reference to the said Research Associates plan as hereinbefore described.

PAR. 8. The aforesaid acts and practices of the respondent in advising the purchasing public as to the identity of the cements used in said tests made under the supervision of the National Bureau of Standards of the Department of Commerce as aforesaid and the use of the reports of tests and the articles prepared by the said D. E. Parsons, chief of the Masonry Construction Section of said Bureau, for advertising, publicity, and sales-promotion purposes, places the respondent at a competitive advantage over its competitors who participated in said test but who comply with the rules, regulations, or instructions issued by said Bureau of Standards and do not use reports of tests for advertising, publicity, or sales-promotion purposes or divulge the identity of the products used in making such tests. As a result a substantial portion of the purchasing public has been induced to buy said product and trade in commerce between and among the States and in the District of Columbia has been diverted unfairly to the respondent from its competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before 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 oral argument by Curtis C. Shears, counsel for the Commission, and by Percy H. Russell, Jr. (with Edward K. Wheeler on the brief) of Kirkland, Fleming, Green, Martin & Ellis, of Washington, D. C., 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, Hy-Test Cement Co., a corporation, its officers, 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 Hy-Test Masonry Cement or any other cement, or any other product, in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Divulging, in any manner, or assisting the purchasing public in determining, by any means, the identity of the manufacturer or the brand name of any cement which was tested by the Bureau of Standards of the United States Department of Commerce; the results of which tests were published by the Bureau of Standards of the United States Department of Commerce in "Research Paper 683, A Study of the Properties of Mortars and Brick and Their Relation to Bond."

2. Using, in whole or in part, for advertising, publicity, or sales-promotion purposes, any report by any bureau, department, or other agency of the United States Government, or by any official or employee thereof, where such use of said report is violative of any rule, regulation, or instruction issued by said bureau, department or other agency, or where such use imports or implies, directly or inferentially, that said bureau, department, or other agency has approved or recommended the use of respondent's 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.

IN THE MATTER OF

ROY T. EHRENZELLER, TRADING AS MAPLE LAWN POULTRY FARM AND MAPLE LAWN HATCHERY

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

Docket 3941. Complaint, Nov. 3, 1939—Decision, July 16, 1940

Where an individual doing business as Maple Lawn Poultry Farm and Maple Lawn Hatchery and engaged in sale and distribution of baby chicks; in advertisements which he disseminated through newspapers, trade magazines, and other publications having general circulation throughout various States, and through letters, catalogues, circulars, leaflets, and other printed and written matter distributed among prospective purchasers—

(*a*) Represented that he personally supervised and controlled flocks from which his eggs were produced and owned and controlled same, through statements referring to his flocks, trade name, alleged methods, etc., such as "We leave in our breeding flocks only those birds," etc., "We will not tolerate any unsanitary or careless management of breeders," etc., and "our careful selection of breeding stock," etc.;

Facts being he did not own, control, or supervise any of the flocks of poultry supplying the eggs used in his hatchery and incubation business, but purchased same from various sources and had no personal knowledge as to whether or not the flocks producing such eggs were blood-tested or culled or free from disease; and

(*b*) Represented that the eggs from which his baby chicks were hatched were from blood-tested and culled flocks and that his said eggs and chicks were of superior grade, origin, quality, and type, character, and nature, and were from blood-tested and culled flocks and free from disease, through such statements among others as "Every Breeder is BLOOD-TESTED," "Blood-testing means the testing of a sample of blood, * * *" and "We leave in our breeding flocks only those birds which we are sure have not the slightest trace of this (pullorum) disease in their veins," and all flocks "are of superior worth, coming from proven varieties * * * all from vigorous, hardy breeders blood-tested annually * * *";

Facts being that, as above indicated, he purchased eggs from various sources, and had no personal knowledge as to whether or not flocks producing such eggs were blood tested or culled or free from disease, purchased in many instances eggs from flocks which had not been thus blood tested, etc., and, as understood from term "bloodtested" by purchasers of baby chicks, all chicks sold by him were hatched from eggs purchased as above detailed, and he therefore could not truthfully represent that chicks hatched by him from eggs purchased as aforesaid from flocks which were not blood tested nor culled nor free from disease, were themselves from blood tested and culled flocks or, as aforesaid, free from disease;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such representations were true and with result, as consequence, that substantial portion of purchasing public, because of such belief, was induced to purchase his said chicks:

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 in commerce.

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

Mr. John R. Phillips, Jr., for the Commission.

Berman & Smith, of Washington, D. C., and *Mr. Edred J. Pennell*, of Mifflintown, Pa., for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Roy T. Ehrenzeller, trading as Maple Lawn Poultry Farm and Maple Lawn Hatchery, 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, Roy T. Ehrenzeller, is an individual, residing at McAlisterville, Pa., trading as Maple Lawn Poultry Farm and Maple Lawn Hatchery, with his principal place of business located at McAlisterville in the State of Pennsylvania. Respondent is now and for several years last past has been engaged in the sale and distribution of baby chicks in commerce among and between the various States of the United States and in the District of Columbia.

Par. 2. The respondent causes his said baby chicks, when sold, to be shipped from his place of business in the State of Pennsylvania 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 baby chicks 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, and for the purpose of inducing the purchase of his baby chicks by members of the purchasing public, respondent has made false and misleading representations with respect to the grade, origin, quality, and type, character, and nature of his baby chicks. Such representations are disseminated by means of advertisements inserted in newspapers, trade

magazines, and other publications having a general circulation throughout various States of the United States and by means of letters, catalogs, circulars, leaflets, and other printed and written matter distributed among prospective purchasers. Among and typical of such false and misleading representations disseminated, as aforesaid, are the following:

Every Breeder is BLOODTESTED

* * * * * * *

Bloodtesting means the testing of a sample of blood from an individual bird to find out whether or not the bird is a carrier of pullorum disease (B. W. D.). This is one of the most dreaded and destructive of baby chick diseases. It is transmitted to the chick through the egg. The only sure way to prevent it is to eliminate from the flock every breeder which shows through bloodtesting that it is a reactor to pullorum disease.

Every breeder, male and female, used for Maple Lawn Hatchery, is bloodtested annually and any reactors are immediately removed.

* * * * * * *

We leave in our breeding flocks only those birds which we are sure have not the slightest trace of this disease in their veins.

We will not tolerate any unsatisfactory or careless management of breeders from which eggs for Maple Lawn Chicks are produced. This assures your getting big, healthy chicks—chicks that will live, grow and make greater profits for you. It pays to be sure you are buying chicks from bloodtested parentage—from parents that are known to be free of disease.

* * * * * * *

It is because we know that our careful selection of breeding stock has given to our chicks greater health and potential earning power, because our hatching methods have turned out the most vigorous chicks possible to hatch, and because our entire method of operation enables us to offer a better chick for less money, that we can say with confidence, "Maple Lawn Chicks will make you greater profits during 1939."

We do not mean to infer that our chicks are all hatched from eggs produced right here on our own farm. It would take hundreds of acres for that, as well as a breeding flock of more than 30,000 females. But we do have access to a large number of high class flocks, many of which are under our direct, personal supervision, and as we have stated elsewhere in this folder, every breeder is bloodtested for B. W. D. These birds receive more individual care and attention than could possibly be devoted to birds in huge breeding flocks.

* * * * * * *

All Maple Lawn Chicks are of superior worth, coming from proven varieties of both the most popular heavy and light breeds—all from vigorous, hardy breeders bloodtested annually for pullorum disease. Maple Lawn Chicks are disease-free and were bred to step out and bring larger profits during 1939.

FOLKS! Here is Something to Remember:—For the past twelve years we have been producing "MAPLE LAWN CHICKS THAT LIVE AND GROW." Each year finds us improving our flock by bloodtesting more closely. Nothing but high-producing male birds are used on our flocks. We want you to have the best.

* * * * * * *

BLOOD-TESTED

These chicks were hatched from Breeders Blood-Tested for Pullorum Disease B. W. D. by the Antigen Stain Method, all reactors were removed from flocks. Testing done in the present year by Roy T. Ehrenzeller.

PAR. 4. By means of the foregoing representations, together with other representations of similar import not specifically set out herein, all of which purport to be descriptive of respondent's business status and of his products, the respondent represents that he personally supervises and controls the flocks from which his eggs are produced; that such eggs are from blood-tested and culled flocks; that his eggs and baby chicks are of superior grade, origin, quality and type, character and nature, and that said baby chicks are from blood-tested and culled flocks and are free from disease.

To purchasers of baby chicks, the term "blood-tested" means and refers to poultry flocks that have been tested for certain diseases common to poultry, and from which flocks diseased poultry has been eliminated. It is believed by such purchasers that baby chicks hatched from the eggs of blood-tested flocks are less likely to be infected with certain diseases than chicks hatched from the eggs of flocks which have not been blood tested and culled. There is a decided preference among the purchasers for baby chicks hatched from eggs from poultry flocks that have been blood tested, culled, and personally supervised and controlled.

PAR. 5. In truth and in fact these representations thus made are false and misleading. The respondent does not own, control, nor supervise any of the flocks of poultry supplying the eggs used in his hatchery and incubation business. Respondent purchases eggs from various sources and has no personal knowledge as to whether or not the flocks producing such eggs were blood tested or culled or free from disease. In truth and in fact, in many instances, respondent purchases eggs from flocks which were not blood tested, nor culled, nor free from disease.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said product has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true and as a result thereof a substantial portion of the purchasing public, because of such erroneous and mistaken belief, is induced to and does purchase respondent's baby chicks.

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 3, 1939, issued, and on November 4, 1939, served, its complaint in this proceeding upon respondent Roy T. Ehrenzeller, trading as Maple Lawn Poultry Farm and Maple Lawn Hatchery, 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 the said complaint, were introduced by John R. Phillips, Jr., attorney for the Commission, and in opposition to the allegations of the complaint by Sidney Smith, attorney for the respondent, before W. W. Sheppard, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently, the Commission, by order entered herein, granted respondent's motion for permission to withdraw his original answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to the said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, 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, Roy T. Ehrenzeller, is an individual, residing at McAlisterville, Pa., trading as Maple Lawn Poultry Farm and Maple Lawn Hatchery, with his principal place of business located at McAlisterville in the State of Pennsylvania. Respondent is now and for several years last past has been engaged in the sale and distribution of baby chicks in commerce among and between the various States of the United States and in the District of Columbia.

Par. 2. The respondent causes his said baby chicks, when sold, to be shipped from his place of business, in the State of Pennsylvania, 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 baby chicks 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, and for the purpose of inducing the purchase of his baby chicks by members of the purchasing public, respondent has made false and misleading representations with respect to the grade, origin, quality, and type, character, and nature of his baby chicks. Such representations are disseminated by means of advertisements inserted in newspapers, trade magazines, and other publications having a general circulation throughout various States of the United States, and by means of letters, catalogs, circulars, leaflets, and other printed and written matter distributed among prospective purchasers. Among and typical of such false and misleading representations disseminated, as aforesaid, are the following:

Every Breeder is BLOODTESTED.

* * * * * * *

Bloodtesting means the testing of a sample of blood from an individual bird to find out whether or not the bird is a carrier of pullorum disease (B. W. D.). This is one of the most dreaded and destructive of baby chick diseases. It is transmitted to the chick through the egg. The only sure way to prevent it is to eliminate from the flock every breeder which shows through bloodtesting that it is a reactor to pullorum disease.

Every breeder, male and female, used for Maple Lawn Hatchery, is bloodtested annually and any reactors are immediately removed.

* * * * * * *

We leave in our breeding flocks only those birds which we are sure have not the slightest trace of this disease in their veins.

We will not tolerate any unsanitary or careless management of breeders from which eggs for Maple Lawn Chicks are produced. This assures your getting big, healthy chicks—chicks that will live, grow and make greater profits for you. It pays to be sure you are buying chicks from bloodtested parentage—from parents that are known to be free of disease.

* * * * * * *

It is because we know that our careful selection of breeding stock has given to our chicks greater health and potential earning power, because our hatching methods have turned out the most vigorous chicks possible to hatch, and because our entire method of operation enables us to offer a better chick for less money, that we can say with confidence, "Maple Lawn Chicks will make you greater profits during 1939."

We do not mean to infer that our chicks are all hatched from eggs produced right here on our own farm. It would take hundreds of acres for that, as well as a breeding flock of more than 30,000 females. But we do have access to a large number of high class flocks, many of which are under our direct, personal supervision, and as we have stated elsewhere in this folder, every

breeder is bloodtested for B. W. D. These birds receive more individual care and attention than could possibly be devoted to birds in huge breeding flocks.

* * * * * * *

All Maple Lawn Chicks are of superior worth, coming from proven varieties of both the most popular heavy and light breeds—all from vigorous, hardy breeders bloodtested annually for pullorum disease. Maple Lawn Chicks are disease-free and were bred to step out and bring larger profits during 1939.

FOLKS! Here is Something to Remember:—For the past twelve years we have been producing "MAPLE LAWN CHICKS THAT LIVE AND GROW." Each year finds us improving our flock by bloodtesting more closely. Nothing but high-producing male birds are used on our flocks. We want you to have the best.

* * * * * * *

BLOOD-TESTED

These chicks were hatched from Breeders Blood-Tested for Pullorum Disease B. W. D. by the Antigen Stain Method, all reactors were removed from flocks. Testing done in the present year by Roy T. Ehrenzeller.

PAR. 4. By means of the foregoing representations, together with other representations of similar import not specifically set out herein, all of which purport to be descriptive of respondent's business status and of his products, the respondent represents that he personally supervises and controls the flocks from which his eggs are produced; that such eggs are from blood-tested and culled flocks; that his eggs and baby chicks are of superior grade, origin, quality, and type, character, and nature, and that said baby chicks are from blood-tested and culled flocks and are free from disease.

To purchasers of baby chicks, the term "blood-tested" means and refers to poultry flocks that have been tested for certain diseases common to poultry, and from which flocks diseased poultry has been eliminated. It is believed by such purchasers that baby chicks hatched from the eggs of blood-tested flocks are less likely to be infected with certain diseases than chicks hatched from the eggs of flocks which have not been blood tested and culled. There is a decided preference among the purchasers for baby chicks hatched from eggs from poultry flocks that have been blood tested, culled, and personally supervised and controlled.

PAR. 5. In truth and in fact these representations thus made are false and misleading. The respondent does not own, control, nor supervise any of the flocks of poultry supplying the eggs used in his hatchery and incubation business. Respondent purchases eggs from various sources and has no personal knowledge as to whether or not the flocks producing such eggs were blood tested or culled or free from disease. In truth and in fact, in many instances, respondent purchases eggs from flocks which were not blood tested nor culled nor free from disease. All of the chicks sold by the respondent are

hatched from eggs purchased by him as hereinabove detailed, and when the respondent purchases eggs from flocks which were not blood tested nor culled nor free from disease, the chicks hatched from such eggs cannot be truthfully represented as being from blood tested and culled flocks or as being free from disease.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his said eggs and chicks has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations are true. As a result thereof a substantial portion of the purchasing public, because of such erroneous and mistaken belief, is induced to, and does, purchase respondent's baby chicks.

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, testimony, and other evidence introduced before W. W. Sheppard, an examiner of the Commission, theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Roy T. Ehrenzeller, individually and trading as Maple Lawn Poultry Farm and as Maple Lawn Hatchery, 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 baby chicks in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the flocks of poultry supplying the eggs from which respondent's baby chicks are produced are owned, controlled, or supervised by respondent.

2. Representing that eggs obtained from flocks which have not been blood tested and found free from disease or which have not been culled are from blood tested and culled flocks or are free from disease.

3. Representing that the chicks hatched from eggs obtained from flocks which have not been blood tested and found free from disease or which have not been culled are from blood-tested and culled flocks or are free from disease.

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

IN THE MATTER OF

ARTHUR SOHN AND CARL SOHN, INDIVIDUALS, TRADING AS SOHN BROS.

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

Docket 4073. Complaint, Mar. 28, 1940—Decision, July 16, 1940

Where two individuals engaged in manufacture of mattresses and bedding with old, second-hand, used, and discarded cotton which they purchased, and which, after being combed by machine and reworked, was used by them in making said products, with new coverings, and in sale and distribution to purchasers in various other States, including wholesalers, retailers, and other buyers, who resold same to purchasing public of said products which, after being fitted with new coverings as aforesaid, had appearance of new mattresses—

Sold said products with appearance aforesaid and with no marking or designation clearly and conspicuously stamped thereon or attached thereto to indicate to purchasing public that such mattresses were in fact made of old, previously used, discarded, and second-hand materials and, in case of said mattresses thus made but with labels bearing terms "Made of previously used materials" stamped thereon, with such marking so illegible and inconspicuous that it could not be read by wholesale and retail buyers thereof or by members of purchasing public, to retailers and jobbers and wholesalers, by whom said products were sold to purchasing public without disclosing fact that they were reconditioned and made from old, used, discarded, and second-hand material fitted with new covering, and under such conditions as to cause members of purchasing public erroneously to believe that they were in fact composed in their entirety of new materials which had never been previously used;

With result that through their said acts and practices in placing new coverings on mattresses made from old, used, discarded, and second-hand materials, without disclosing fact that such materials were old, etc., they placed in hands of unscrupulous or uninformed persons means and instrumentality whereby they had been and were enabled to mislead and deceive members of purchasing and consuming public into erroneous and mistaken belief that their said products were manufactured from new materials, and with effect of misleading and deceiving retail and wholesale dealers who purchased such products, and substantial portion of purchasing public, into erroneous and mistaken belief that products in question, manufactured from old, used, and discarded materials, were new mattresses made from new and unused materials, and with result and consequence that purchasing public was induced to and did buy 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 constituted unfair and deceptive acts and practices in commerce.

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

Mr. Robert Mathis, Jr., for the Commission.

Weinstein, Murray & Weinstein and *Dubrow & Sohn*, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Arthur Sohn and Carl Sohn, individuals, trading as Sohn Bros., 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 Arthur and Carl Sohn are individuals trading under the firm name Sohn Bros., with their office and principal place of business located at 1709 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondents are now and have been for more than 2 years last past engaged in the manufacture, sale, and distribution of mattresses and bedding. Respondents cause their said merchandise when sold to be transported from their aforesaid place of business in the State of Illinois to various purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois. Respondents maintain and at all times mentioned herein have maintained a substantial course of trade in commerce in said merchandise among and between the various States of the United States.

PAR. 2. In the course and conduct of their business, respondents have bought and still buy old, second-hand, used, and discarded cotton and other used materials. Such materials are, after being combed with a type of machine and reworked, then used by respondents in the manufacture of mattresses and bedding which are covered with new coverings and are sold by the respondents to wholesalers, retailers, and other purchasers who resell the same to the purchasing public.

PAR. 3. Respondents' mattresses made from the aforesaid old, used, discarded, and second-handed materials, after being fitted with new coverings as aforesaid, have the appearance of new mattresses, and said mattresses are sold by respondents to wholesalers, jobbers, and retail dealers without any marking or designation clearly and conspicuously stamped thereon or attached thereto to indicate to the purchasing public that said mattresses were in fact manufactured from old, previously used, discarded, and second-hand materials. Said mattresses are also resold by jobbers and wholesalers to retail dealers who sell them to the purchasing public without disclosing the fact that said mattresses are reconditioned and manufactured from old, used, discarded, and second-hand material which has been remanufactured and fitted with a new covering and so as to indicate that said mattresses

are in fact composed in their entirety of new materials which have never been previously used.

Certain of the mattresses manufactured by respondents from old, used, discarded, and second-hand material do have labels with the terms "Made of previously used materials" stamped thereon, and in such instances where said labels bear these terms the marking is so illegible and inconspicuous that it cannot be read by the wholesale and retail dealers who buy respondents' product or by members of the purchasing public.

PAR. 4. Through the use of the acts and practices as herein set forth, respondents have and do fail to disclose the kind and type of materials from which their products are manufactured and thereby respondents have placed in the hands of unscrupulous and uninformed persons a means and instrumentality whereby such persons have been and are enabled to mislead and deceive members of the purchasing and consuming public into the erroneous and mistaken belief that respondents' products are manufactured from new materials when in truth and in fact nearly all of respondents' mattresses are manufactured from old, used, discarded, and second-hand materials which are covered with a new covering.

PAR. 5. The use by the respondents of the aforesaid acts and practices has had and now has the capacity and tendency to, and does, mislead and deceive retail dealers and wholesale dealers who purchase said products and a substantial portion of the purchasing public into the erroneous and mistaken belief that said mattresses manufactured from old, used, and discarded materials are new mattresses manufactured from new and unused materials. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' 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 the 28th day of March 1940, issued and thereafter served its complaint in this proceeding upon the respondents, Arthur Sohn and Carl Sohn, individuals, trading as Sohn Bros., 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 said substitute answer, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this, its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Arthur and Carl Sohn are individuals trading under the firm name Sohn Bros., with their office and principal place of business located at 1709 West Roosevelt Road, in the city of Chicago, State of Illinois. Respondents are now and have been for more than 2 years last past engaged in the manufacture, sale, and distribution of mattresses and bedding. Respondents cause their said merchandise when sold to be transported from their aforesaid place of business in the State of Illinois to various purchasers thereof at their respective points of location in various States of the United States other than the State of Illinois. Respondents maintain and and at all times mentioned herein have maintained a substantial course of trade in said merchandise in commerce among and between the various States of the United States.

PAR. 2. In the course and conduct of their business, respondents have bought and still buy old, second-hand, used, and discarded cotton, which material, after being combed with a machine and reworked, then is used by respondents in the manufacture of mattresses and bedding which are covered with new coverings and are sold by the respondents to wholesalers, retailers, and other purchasers who resell the same to the purchasing public.

PAR. 3. Respondents' mattresses made from the aforesaid old, used, discarded, and second-hand material, after being fitted with new coverings as aforesaid, have the appearance of new mattresses, and said mattresses are sold by respondents to wholesalers, jobbers, and retail dealers without any marking or designation clearly and conspicuously stamped thereon or attached thereto to indicate to the purchasing public that said mattresses were in fact manufactured from old, previously used, discarded, and second-hand materials. Said mattresses are also resold by jobbers and wholesalers to retail dealers

who sell them to the purchasing public without disclosing the fact that such mattresses are reconditioned and manufactured from old, used, discarded, and second-hand material which has been fitted with a new covering, and under such conditions as to cause members of the purchasing public to erroneously believe that said mattresses are in fact composed in their entirety of new materials which have never been previously used.

Certain of the mattresses manufactured by respondents from old, used, discarded, and second-hand material do have labels with the terms "Made of previously used materials" stamped thereon, and in such instances where said labels bear these terms the marking is so illegible and inconspicuous that it cannot be read by the wholesale and retail dealers who buy respondents' product or by members of the purchasing public.

PAR. 4. The acts and practices of the respondents in placing new coverings on mattresses made from old, used, discarded, and second-hand materials without disclosing the fact that such materials are old, used, discarded, and second-hand places in the hands of unscrupulous or uninformed persons a means and instrumentality whereby such persons have been and are enabled to mislead and deceive members of the purchasing and consuming public into the erroneous and mistaken belief that respondents' products are manufactured from new materials.

PAR. 5. The use by the respondents of the aforesaid acts and practices has had, and now has, the capacity and tendency to, and does, mislead and deceive retail dealers and wholesale dealers who purchase said products and a substantial portion of the purchasing public into the erroneous and mistaken belief that said mattresses manufactured from old, used, and discarded materials are new mattresses manufactured from new and unused materials. As a result of such erroneous and mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondent's products.

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 of the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusions that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Arthur Sohn and Carl Sohn, individuals, trading as Sohn Bros., or under any other trade name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of mattresses in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, or by any means or device, that mattresses which are composed in whole or in part of old, used, discarded, or second-hand materials are new mattresses or are made from new or unused materials.

2. Failing to permanently affix to mattresses made in whole or in part from old, used, discarded, or second-hand materials, labels, or tags, which cannot readily be removed, obliterated, obscured, or minimized and, which clearly and conspicuously reveal that such mattresses are in fact composed of old, used, discarded, and second-hand materials in whole or in part, as the case may be.

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

IN THE MATTER OF

JOHN H. MULKEY, 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 4082. Complaint, Apr. 4, 1940—Decision, July 16, 1940

Where an individual engaged in offering for sale novelty jewelry, including finger rings with setting of hematite or certain nonprecious crystal, to dealer purchasers in various States and in the Territory of Alaska, and in substantial competition as thus engaged with others engaged in sale of novelty jewelry and gem jewelry, including rings as aforesaid, and including some who sell rings set with nonprecious crystals, including hematite, and who do not in any manner misrepresent their products or origin thereof—

Represented and implied that hematite settings in his said rings were diamonds or gem or jewel stones of dark or unusual color produced in Alaska, through such typical statements, etc., in advertisements circulated among prospective purchasers, as "Alaska Black Diamond" and "Genuine Laska Black Diamond" and through latter words also on metal tag customarily attached to such rings, and through statements on placards circulated by him among tourists journeying to Alaska and advertising his said products as "sold at all reliable curio and jewelry stores in Alaska—Watch for this label (meaning tag above referred to and depicted in advertisement)—There are imitations on the market";

Fact being none of his said rings were set with diamonds or gem or jewel settings but, as indicated, with ground, shaped, polished settings of hematite crystals, substance of which is not precious stone or gem, but is an ore of iron and called also in crystal form "Specular Iron" and constitutes nonprecious crystal of variable dark colors;

With result that purchasing public was deceived and erroneously led to believe and understand that his said rings were in fact set with diamonds or jewels or gems of dark and unusual color, produced in Alaska, and with consequence, as result of such belief, that number of purchasing public bought his said rings and trade was thereby diverted unfairly to him from his competitors in commerce between and among the various States and with said Territory; to their injury and that of public:

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

Mr. Wm. T. Chantland 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 H. Mulkey, an individual, trading as Western Novelty Co., has violated the pro-

visions 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 H. Mulkey, an individual, trading as Western Novelty Co., with his office and principal place of business at 305 Southwest Third Avenue, Portland, Oreg., is now and for several years last past has been, engaged in the business of offering for sale and selling novelty jewelry, including finger rings with settings of hematite, a nonprecious crystal, to dealer purchasers in various States of the United States and in the Territory of Alaska, and in so offering said wares for sale, and when so sold to dealer purchasers outside of the State of Oregon, respondent has caused said wares to be transported from his principal place of business in Oregon to said dealer purchasers in various States of the United States and the Territory of Alaska.

PAR. 2. In the course and conduct of his said business, respondent is now, and for more than 2 years last past has been, in substantial competition with corporations and with individuals, firms, and partnerships engaged in the business of selling novelty jewelry and gem jewelry, including finger rings, in commerce among and between the various States of the United States and with the Territory of Alaska. Among said competitors are many who sell rings set with nonprecious crystals, including hematite, and who do not in any manner misrepresent their products or the origin thereof.

PAR. 3. In the course and conduct of his business in said commerce as aforesaid and to induce the purchase of his said rings, respondent has circulated among prospective purchasers of such rings advertisements containing statements and representations with reference to said rings and with reference to the material of which the ring sets are composed. Among and typical of the statements and representations so made and circulated by the respondent are the following:

Alaska Black Diamond and
Genuine Laska Black Diamond

On a metal tag customarily attached to said rings appears the statement—"Genuine Laska Black Diamond." In circulars circulated among prospective purchasers, and more particularly among tourists journeying to the Territory of Alaska, the respondent has and does circulate placards advertising said rings, upon which appears the following statement:

Sold at all reliable curio and jewelry stores in Alaska. Watch for this label. There are imitations on the market.

The warning in such statement to watch for "this label" refers to the metal tag above mentioned which is depicted in said advertisement.

PAR. 4. By the means and in the manner aforesaid, respondent represents that the sets in said rings are diamonds, or stones or jewels produced in Alaska and known as Alaska Black Diamond, and through the use of the aforesaid statement warning prospective purchasers that "there are imitations on the market" imports and implies that rings manufactured by competitors and offered for sale and sold to the public containing sets of hematite, as do respondent's rings, are imitations and that respondent's rings contain the "genuine" stone or jewel.

In truth and in fact the sets in said rings are not diamonds, or a stone or jewel produced in Alaska known as Alaska Black Diamonds, but are composed of a nonprecious crystal hematite, as hereinabove alleged.

PAR. 5. The acts and practices of the respondent, as aforesaid, in designating, describing, and referring to said hematite sets as "Alaska Black Diamond" and "Genuine Laska Black Diamond" and warning the public to beware of imitations, have the capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said rings are set with diamonds, or with stones or jewels produced in Alaska and known as Alaska Black Diamonds. As a result of said erroneous and mistaken belief, members of the purchasing public have purchased a substantial volume of respondent's said hematite rings, thereby unfairly diverting trade to 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 are to the prejudice and injury of the public and of respondent's competitors and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 4, 1940, issued and thereafter caused its complaint to be served in this proceeding upon respondent John H. Mulkey, an individual trading as Western Novelty Co., charging him with the use of unfair methods of competition in commerce and 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, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of

the charges stated in the complaint or in opposition thereto, and that the Commission may proceed upon such statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without further presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, the 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, John H. Mulkey, is an individual, trading as Western Novelty Co., with his office and principal place of business at 305 Southwest Third Avenue, Portland, Oreg., and is now and for several years last past has been, engaged in the business of offering for sale and selling novelty jewelry, including finger rings with settings of hematite, a nonprecious crystal, to dealer purchasers in various States of the United States and in the Territory of Alaska, and in so offering said wares for sale, and when so sold to dealer purchasers outside of the State of Oregon, respondent has caused said wares to be transported from his principal place of business in Oregon to said dealer purchasers in various States of the United States and in the Territory of Alaska.

PAR. 2. In the course and conduct of his said business, respondent is now, and for more than 2 years last past has been, in substantial competition with corporations, individuals, firms, and partnerships engaged in the business of selling novelty jewelry and gem jewelry, including finger rings, in commerce among and between the various States of the United States and with the Territory of Alaska. Among said competitors are some who sell rings set with nonprecious crystals, including hematite, and who do not in any manner misrepresent their products or the origin thereof.

PAR. 3. In the course and conduct of his business in said commerce as aforesaid and to induce the purchase of his said rings, respondent has circulated among prospective purchasers of such rings advertisements containing statements and representations with reference to said rings and with reference to the material of which the ring sets are composed. Among and typical of the statements and representations so made and circulated by the respondent are the following:

Alaska Black Diamond and
Genuine Laska Black Diamond

On a metal tag customarily attached to said rings appears the statement—"Genuine Laska Black Diamond." In circulars circulated among prospective purchasers, and more particularly among tourists journeying to the Territory of Alaska, the respondent has and does circulate placards advertising said rings, upon which appears the following statement:

Sold at all reliable curio and jewelry stores in Alaska. Watch for this label. There are imitations on the market.

The warning in such statement to watch for "This label" refers to the metal tag above mentioned which is depicted in said advertisement.

None of respondent's said finger rings transported and sold under the advertising and representations stated above, are set with diamonds or gem or jewel settings, but are, in fact, set with ground, shaped, polished settings of hematite crystals. Hematite is not a precious stone or gem, but is an ore of iron, and in crystal form is also called "Specular Iron," a nonprecious crystal of variable dark colors.

By the means and in the manner above described, respondent implied and represented that the settings in his said rings were diamonds or gem or jewel stones of dark and unusual color produced in Alaska, when such are not the facts.

PAR. 4. As a result of the above stated acts and practices of respondent in making the aforesaid representations with regard to said hematite set finger rings, the purchasing public has been and is being deceived and erroneously led to believe and understand that respondent's said rings are, in fact, set with diamonds, or jewels or gems of dark and unusual color produced in the Territory of Alaska, and as a result of this mistaken and erroneous belief a number of the purchasing public have purchased respondent's said rings and as a consequence trade has been unfairly diverted to the respondent from his competitors in commerce between and among the various States of the United States and with the Territory of Alaska to their injury and the injury of the public.

CONCLUSION

The acts and practices of the respondent as herein found are all to the prejudice and injury of the public and competitors of the respondent 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.

ORDER TO CEASE AND DESIST

This proceeding having been heard and considered by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and a stipulation as to the facts entered into by and between W. T. Kelley, chief counsel for the Commission, and John H. Mulkey, respondent, which has been duly approved by the Commission, and the Commission having made its findings as to the facts and its conclusion that respondent John H. Mulkey, trading as Western Novelty Co., has violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent John H. Mulkey, individually, or trading as Western Novelty Co., or under any other trade or through any corporate or other device, his agents, representatives and employees in connection with the offering for sale, sale and distribution of rings in commerce between and among the various States of the United States and within the Territory of Alaska, do forthwith cease and desist from:

Representing, directly or by implication, that rings set with hematite, or any nonprecious crystal or stone, are set with diamonds, "Alaska Black Diamonds," or "Genuine Laska Black Diamonds"; or that such rings are set with any precious or semiprecious stones; or that the sets in said rings are produced in the Territory of Alaska.

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

ATLANTIC COMMISSION 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 AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3344. Complaint, Mar. 2, 1938—Decision, July 24, 1940

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (C)—BROKERAGE OR COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS—SERVICES RENDERED CLAUSE.

The payment of brokerage to, and the receipt thereof by, a buyer upon his own purchases of commodities in interstate commerce is prohibited by paragraph (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C., sec. 13 (c)), and the services rendered clause of that paragraph sets up no condition upon which such brokerage may be paid or received. *Biddle Purchasing Co.* v. *Federal Trade Commission*, 96 F. (2d) 687 (C. C. A. 2d, 1938) 26 F. T. C. 1511, cert. denied 305 U. S. 634 (1938); *Oliver Brothers* v. *Federal Trade Commission*, 102 F. (2d) 763 (C. C. A. 4th, 1939) 28 F. T. C. 1926; *The Great Atlantic & Pacific Tea Co.* v. *Federal Trade Commission*, 106 F. (2d) 667 (C. C. A. 3d, 1939) 29 F. T. C. 1591, cert. denied 308 U. S. 625, 60 S. Ct. 380 (1940), rehearing denied 309 U. S. 694, 60 S. Ct. 466 (1940); and *Webb-Crawford Co.* v. *Federal Trade Commission*, 109 F. (2d) 268 (C. C. A. 5th, 1940) 30 F. T. C. 1630, cert. denied 310 U. S. 638, 60 S. Ct. 1080 (1940).

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (C)—BROKERAGE OR COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS—BUYER BROKERAGE CONCERN ON OWN ACCOUNT PURCHASES—SERVICES RENDERED CLAUSE.

Where a corporate concern which (1) was a wholly owned subsidiary of a corporation engaged, through several other wholly owned corporate subsidiaries bearing same name, in retail grocery business and in operation of several thousand retail grocery stores owned by it and located in 38 States of the United States, and in the District of Columbia, and which (2) was engaged in buying, selling, and distributing fresh fruits and vegetables and other commodities on and for its own account and on and for the account of aforesaid corporations, and also in thus buying, selling, and distributing such various products and commodities as a broker and on consignment as a commission merchant for the accounts of other sellers and buyers, and which, along with aforesaid corporations, was in substantial competition with others engaged in like businesses;

In purchasing in interstate commerce from various sellers, on and for its own account, substantial quantity of fresh fruits and vegetables—

(*a*) Received and accepted allowances and discounts in lieu of brokerage upon its own purchases of commodities in interstate commerce, and without the intervention of a broker, through practice of making such purchases at a "net price" or "net basis" reflecting a reduction from the prices at which sellers were currently selling commodities to other buyers, many of

whom were engaged in competition with it, of an amount representing and reflecting, in whole in some instances and in part in others, amount of brokerage currently being paid by sellers to brokers representing them in effecting sales of their commodities to buyers other than it, and irrespective of whether quantity purchased by it from such sellers was large or small; and

(*b*) Received and accepted allowances and discounts in lieu of brokerage upon its own purchases of commodities in interstate commerce, and without the intervention of a broker, through practice of negotiating with many sellers who did not sell to it at "net price" or on "net basis," so-called "quantity discount agreements" under which, without being obligated itself and generally irrespective of quantities purchased, there were paid to it so-called "quantity discounts," upon its purchases, of an amount which represented and reflected, in whole in some instances and in part in others, brokerage which sellers were currently paying to their brokers on sales of commodities made for them by latter:

Held, That, on basis of said facts, as a matter of law, no services in connection with the sale of commodities within the meaning of section 2 (c) were or could be rendered to sellers by it on its own purchases of such commodities, and that said concern, in thus accepting and receiving discounts and allowances in lieu of brokerage upon purchases of commodities for its own account in interstate commerce, as above set forth, violated provisions of section 2 (c) of an act of Congress approved October 15, 1914, as amended by an act of Congress approved June 19, 1936.

Mr. J. J. Smith, Jr., for the Commission.

Mr. Caruthers Ewing, of New York City, and *Watson, King & Brode* and *Feldman, Kittelle, Campbell & Ewing*, of Washington, D. C., for respondent.

Complaint

The Federal Trade Commission having reason to believe that the Atlantic Commission Company, hereinafter called respondent, since June 19, 1936, has violated and is now violating the provisions of section 2 (c) of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the act of Congress entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), hereby issues this its complaint against respondent and states its charges with respect thereto as follows, to wit:

Paragraph 1. Respondent is a corporation organized and existing under the laws of the State of New York and has its principal office and place of business at 102 Warren Street in the city of New York, N. Y.

PAR. 2. For several years prior to and on June 19, 1936, and ever since that date, the respondent was, has been, and is now engaged in the business of buying, selling, and distributing fresh fruits and vegetables and other commodities on and for its own account and in the business of selling fresh fruits and vegetables and other commodities as a broker for other sellers thereof.

PAR. 3. In the course and conduct of its business as aforesaid, since June 19, 1936, the respondent has been and is now making purchases in commerce of fresh fruits and vegetables and other commodities on and for its own account from various sellers thereof, which said fresh fruits and vegetables and other commodities purchased on and for its own account the respondent has been and is now causing to be shipped to it in commerce by said sellers from various States of the United States through, across and into other States of the United States and the District of Columbia, and in the course of making said purchases of fresh fruits and vegetables and other commodities on and for its own account since June 19, 1936, the respondent has been and is now receiving and accepting thereon from said sellers allowances and discounts in lieu of brokerage, for which said allowances and discounts in lieu of brokerage no services whatsoever in connection with said purchases, or in connection with the sale to the respondent of said fresh fruits and vegetables and other commodities purchased by the respondent on and for its own account, have been rendered or are now being rendered to, for or on behalf of the sellers of said fresh fruits and vegetables and other commodities by the respondent or by any agent, representative or intermediary subject to the direct or indirect control of the respondent.

PAR. 4. The receipt and acceptance by the respondent of allowances and discounts in lieu of brokerage, as aforesaid, constitutes a violation of the provisions of section 2 (c) of the abovementioned 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).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Clayton Act, approved October 15, 1914 (38 Stat. 730), as amended by the Robinson-Patman Act,

approved June 19, 1936 (49 Stat. 1526; 15 U. S. C., sec. 13) the Federal Trade Commission on March 2, 1938, issued and served its complaint in this proceeding upon the respondent, Atlantic Commission Co., charging it with violating the provisions of section 2 (c) of the Clayton Act. On March 30, 1938, the respondent filed its answer to said complaint. Thereafter, on June 26, 1940, a stipulation was entered into, signed, and executed by the executive vice president and general manager and by the general counsel of the respondent and by W. T. Kelly, chief counsel for the Federal Trade Commission, whereby it was stipulated and agreed, subject to the approval of the Commission, that a statement of facts set forth in said stipulation may be made a part of the record and taken as the facts in this proceeding in lieu of testimony in support of and in opposition to the charges stated in the complaint herein, and that the Federal Trade Commission, upon said statement of facts, may make and enter in this proceeding its report stating its findings as to the facts and conclusion based thereon, and enters its order disposing of this proceeding without the taking of testimony, presentation of argument, filing of briefs, or other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint, answer and stipulation, said stipulation 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, makes this its report, setting forth its findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Atlantic Commission Co., is a corporation organized and existing under the laws of the State of New York and has its principal office and place of business at 102 Warren Street in the city of New York, N. Y.

PAR. 2. Respondent is a wholly owned subsidiary of The Great Atlantic & Pacific Tea Co. of America, a corporation organized and existing under the laws of the State of Maryland. The said The Great Atlantic & Pacific Tea Co. of America, through several wholly owned corporate subsidiaries bearing the name "The Great Atlantic & Pacific Tea Co." and incorporated, severally, under the laws of Arizona, Nevada, and New Jersey, is engaged in the retail grocery business, and owns and operates several thousand retail grocery stores located in 38 States of the United States and in the District of Columbia.

PAR. 3. For several years prior to, and since, June 19, 1936, the respondent was, has been, and is now, engaged in the business of buying, selling, and distributing in interstate commerce, fresh fruits and vegetables and other commodities on and for its own account, and on and for the accounts of the corporations above referred to in paragraph 2, and also in the business of buying, selling, and distributing in interstate commerce, fresh fruits and vegetables and other commodities as a broker and on consignment as a commission merchant for the accounts of other sellers and buyers thereof. For the purpose of conducting its said business the respondent has continuously maintained and does now maintain offices in various cities throughout the United States.

PAR. 4. In the course and conduct of their respective businesses the respondent and the corporations above referred to in paragraph 2 are engaged in substantial competition in interstate commerce with other persons, firms, and corporations engaged in like businesses in interstate commerce.

PAR. 5. In the course and conduct of its business since June 19, 1936, respondent has purchased in interstate commerce from various sellers on and for its own account substantial quantities of fresh fruits and vegetables on the following bases, to wit:

(*a*) At a price or on a basis, commonly referred to in the food and produce industry as a "net price" or "net basis," reflecting a reduction from the prices at which sellers were currently selling commodities to other buyers, many of whom were engaged in competition with the respondent, of an amount representing and reflecting, in whole in some cases and in part in others, the amount of brokerage which was currently being paid by sellers to brokers representing them in effecting sales of their commodities to buyers other than respondent. For example, in many instances where commodities were being sold by a seller at a price of $1 and the rate at which brokerage was currently being paid by the seller to brokers representing him in effecting sales of commodities for him was 5 percent, respondent purchased said commodities direct from the seller without the intervention of a broker at a price of 95 cents net. The 5-cent differential between these two prices in a substantial number of instances represented and reflected, and was granted and received in lieu of, brokerage which the seller was currently paying to his brokers on sales of commodities made by them for him. Where respondent was able to effect a net price or a net basis arrangement with a seller, respondent's purchases of commodities were made from such seller at such a price or on such basis irrespective of whether the quantity purchased was large or small.

(*b*) With many sellers who did not sell to respondent at a net price or on a net basis, as above referred to, respondent negotiated and executed so-called "quantity discount agreements," a typical form of which is as follows:

QUANTITY DISCOUNT AGREEMENT

PURCHASER: THE ATLANTIC COMMISSION COMPANY, INC.

ADDRESS: _____

_____

SELLER: _____

ADDRESS: _____

_____

THE PURCHASER HAS OBLIGATED ITSELF TO BUY FROM THE SELLER A LARGE QUANTITY OF MERCHANDISE AND, IN VIEW OF THE PURCHASES IN LARGE QUANTITY, PRESENT AND PROSPECTIVE, THE SELLER AGREES TO ALLOW THE FOLLOWING QUANTITY DISCOUNT ON AMOUNTS BOUGHT BY THE PURCHASER, BEGINNING _____ AND CONTINUING UNTIL CANCELLED BY EITHER PARTY.

THE SELLER AVOWS ITS WILLINGNESS TO MAKE THE SAME AGREEMENT AS IS HERE MADE WITH ANY OTHER PURCHASER SIMILARLY SITUATED AND ON PROPORTIONALLY EQUAL TERMS.

_____ SELLER.

By _____

ATLANTIC COMMISSION COMPANY, INC.,
Purchaser.

By _____

Such agreements in many instances provided for the payment to the respondent, as a so-called "quantity discount" upon respondent's purchases, of an amount to be computed on the basis of the rate at which the contracting-seller was currently paying brokerage to his brokers representing him in effecting sales of commodities to buyers other than respondent, many of which buyers were engaged in competition with the respondent. Such agreements did not obligate the respondent to purchase any commodities from the contracting-sellers, and respondent had no obligation apart from such agreements to purchase any commodities from the contracting-sellers. Pursuant to the terms of many of such agreements contracting-sellers paid to the respondent, and the respondent received and accepted from contracting-sellers, on purchases of commodities made direct from the sellers for respondent's own account, without the intervention of a broker, sums of money which represented and reflected, in whole in some cases and in part in others, and were paid and received in lieu of, brokerage which the sellers were currently paying to their brokers on sales of commodities

made for them by their brokers. Generally such sums were paid to the respondent monthly upon the purchases made by the respondent during the preceding month and irrespective of whether the quantity of commodities purchased by the respondent was large or small.

PAR. 6. In purchasing commodities for its own account at prices reflecting reductions of amounts representing, in whole or in part, brokerage which was currently being paid by sellers to brokers, as referred to in subparagraph (*a*) of paragraph 5, *supra*, the respondent received and accepted allowances and discounts in lieu of brokerage upon its own purchases of commodities in interstate commerce.

PAR. 7. In receiving and accepting upon purchases of commodities made for its own account so-called "quantity discounts" representing and reflecting, in whole or in part, brokerage which was currently being paid by sellers to brokers, as referred to in subparagraph (*b*) of paragraph 5, *supra*, the respondent received and accepted allowances and discounts in lieu of brokerage upon its own purchases of commodities in interstate commerce.

CONCLUSION

The payment of brokerage to, and the receipt thereof by, a buyer upon his own purchases of commodities in interstate commerce is prohibited by paragraph (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C. sec. 13 (c)), and the services rendered clause of that paragraph sets up no condition upon which such brokerage may be paid or received (*Biddle Purchasing Co.* v. *Federal Trade Commission*, 96 F. (2d) 687 (C. C. A. 2d, 1938), [26 F. T. C. 1511], cert. denied 305 U. S. 634 (1938); *Oliver Brothers* v. *Federal Trade Commission*, 102 F. (2d) 763 (C. C. A. 4th, 1939), [28 F. T. C. 1926]; *The Great Atlantic & Pacific Tea Co.* v. *Federal Trade Commission*, 106 F. (2d) 667 (C. C. A. 3rd, 1939), [29 F. T. C. 1591], cert. denied 308 U. S. 625, 60 S. Ct. 380 (1940), rehearing denied 309 U. S. 694, 60 S. Ct. 466 (1940); and *Webb-Crawford Co.* v. *Federal Trade Commission*, 109 F. (2d) 268 (C. C. A. 5th, 1940), [30 F. T. C. 1630], cert. denied 310 U. S. 638, 60 S. Ct. 1080 (1940)). Moreover, on the basis of the facts above found, the Commission concludes as a matter of law that no services in connection with the sale of commodities within the meaning of section 2 (c) were or could be rendered to sellers by the respondent on the respondent's own purchases of such commodities.

In accepting and receiving discounts and allowances in lieu of brokerage upon purchase of commodities for its own account in interstate

commerce as set forth in paragraphs 5, 6, and 7 of the foregoing findings as to the facts, the respondent, Atlantic Commission Co., violated the provisions of section 2 (c) 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 answer of the respondent, Atlantic Commission Co., and a stipulation as to the facts executed by the executive vice president and general manager and by the general counsel of the said respondent and by W. T. Kelley, chief counsel for the Federal Trade Commission, which said stipulation waived the taking of testimony, presentation of argument, and filing of briefs and provided that without further intervening procedure the Commission may make and enter in this proceeding its report stating its findings as to the facts and conclusion based thereon and its order disposing of this proceeding, and said stipulation having been approved by the Commission, and the Commission having made its findings as to the facts and its conclusion that the respondent violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act (15 U. S. C. sec. 13 (c)).

It is ordered, That in purchasing commodities in interstate commerce and the District of Columbia the respondent, Atlantic Commission Co., its officers, representatives, agents, and employees, do forthwith cease and desist from:

1. Making purchases of commodities for the respondent's own account at a so-called net price or on a so-called net basis, and at any other price and on any other basis, which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

2. Accepting from sellers on purchases of commodities made for the respondent's own account any so-called quantity discounts and payments of all kinds representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

3. Accepting from sellers directly or indirectly on purchases of commodities made for the respondent's own account any brokerage and

any allowances and discounts in lieu of brokerage, in whatever manner or form said allowances and discounts may be offered, allowed, granted, paid or transmitted; and

4. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof upon purchases of commodities made for respondent's own account.

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

IN THE MATTER OF

WILLIAM VORUNION AND BENJAMIN VORUNION, DOING BUSINESS UNDER THE TRADE NAMES OF HOWARD SALES COMPANY AND BERWICK PEN COMPANY

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

Docket 3514. Complaint, July 27, 1938—Decision, July 24, 1940

Where two individuals engaged in assembling fountain pens and pencils and in sale and distribution thereof and in regularly advertising, offering, and selling said pens at 59 cents and pencils at 29 cents, through various retail outlets and under special sales promotion scheme which included the shipping to various retailers and merchants of such pens and pencils, shipping charges prepaid, the supplying of advertising material, the payment by them of retailers' expense in advertising in the local papers, the remission to them by retailers and merchants of the proceeds, after deducting 30 percent of gross sales and all advertising costs, and the returning of all unsold goods at expense of said individuals, and which further included pretended special sale as below more fully set forth—

(*a*) Represented through statements in their advertising material which they thus disseminated and which was in turn communicated or distributed among purchasers and prospective purchasers by retail sales dealers and customers, that customary and usual retail price at which said pens were sold was $5 and that at which pencils were sold was $1.50, and that they were being sold at 59 cents and 29 cents, respectively, for 1 or 2 days only and for purpose of introducing said articles, and that after special sale, prices thereof would be as above set forth; facts being pens in question were not $5 vacuum filler, sackless fountain pens and such price was greatly exaggerated and fictitious, and much in excess of customary price at which products in question were intended to be and were customarily sold; and pencils likewise had no such regular market price of $1.50, which was also greatly exaggerated and fictitious and much in excess of contemplated and customary selling price thereof, and "Sale" was not an introductory one for 1 or 2 days only, nor a special one at which said products were sold at reduced prices, but they conducted other sales through same dealers short time after, offering same merchandise at same alleged special prices, and using same type of advertising;

(*b*) Represented that said pens and pencils were of quality and character different from or superior to those offered and sold by competitors at comparable prices and that pen held 200 percent more ink than any of the fountain pens on the market; facts being that they did not have any such capacity as claimed, and that such statements and representations were false and misleading;

(*c*) Represented that pens in question had been tested and were guaranteed by the factory to be unbreakable for life, and that in case of breakage or other unsatisfactory service they would be repaired free of charge or exchanged

for new pens upon return; with 25 cents to cover cost of handling, postage, and insurance; the sum of 25 cents charged purchaser for replacement of broken or unsatisfactory pens covered only cost aforesaid; facts being said products were not tested and guaranteed as aforesaid, nor repaired free of charge or exchanged for new pen when returned with 25 cents in stamps or coin covering cost of handling, postage, and insurance, and said sum included also cost of providing and furnishing new pen;

(*d*) Represented through symbols and letters "14K" in conspicuous type, along with "Gold Plated" in small inconspicuous type, in an obscure place, on said pen tips and nibs, that tips or nibs were composed of 14-carat gold; facts being said tips or nibs of pens were not 14-carat gold as represented; and

(*e*) Represented that certificate cut from newspaper advertisements of said products was worth $4.41 as applied, along with 59 cents, on such supposed $5 pens, through such statements as "The Pen That Makes Writing a Pleasure 59¢ Friday and Saturday—This Certificate is worth $4.41" in their advertisements and "This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible $5.00 Vacuum Filler Sackless Fountain Pens," etc., facts being certificate cut from newspaper advertisement did not become one worth $4.41 in purchase of said pen, which never had any such value as assigned thereto, and regular and customary retail price of which was the 59 cents charged therefor;

With effect of misleading and deceiving purchasing public into erroneous belief that such representations were true, and, by reason such belief, thus engendered, inducing purchase of substantial quantity of their said pens and pencils, and with result, through such methods and representations, of placing in hands of dealers means by which said public might be misled and deceived and business diverted to them from those with whom they were in substantial competition in sale and distribution of said products in commerce, and including many who do not employ methods used by them as herein set forth, or any similar methods involving use of misleading representations in sale of their pen and pencil products, and do not place in hands of distributors means of deceiving public in regard thereto, and from whom trade and commerce was unfairly diverted to said individuals; to the injury of their competitors and that of the public:

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

Before *Mr. John J. Keenan*, trial examiner.
Mr. John R. Phillips, Jr. for the Commission.
Mr. Nathan H. Stryker, of Newark, N. J., for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that William Vorunion and Benjamin Vorunion, doing business under the trade names and styles of Howard Sales Co. and Berwick Pen 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. William Vorunion and Benjamin Vorunion are individuals who are now, and have been for all times mentioned herein, doing business under the trade names and styles of Howard Sales Co. with offices and a place of business at 17–19 Williams Street, Newark, N. J.; and Berwick Pen Co. with offices and a place of business at 726 Lyons Avenue, Irvington, N. J., which is and was the apartment where the respondent William Vorunion then and there resided. The respondents are now and for many years last past have been engaged in the business of selling and distributing fountain pens and pencils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Said respondents being engaged in the business as aforesaid, caused and still cause said fountain pens and pencils, when sold, to be transported from their places of business in the State of New Jersey or from the residence of the respondent, William Vorunion, at Irvington, N. J., to those who have ordered or purchased thereof, located in the various States of the United States other than New Jersey, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said fountain pens and pencils 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 their said business, respondents are now and have been in substantial competition with other individuals and with partnerships, firms, and corporations likewise engaged in the business of selling and distributing fountain pens and pencils in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. Respondents in the course and conduct of their business, as aforesaid, cause to be inserted in newspapers having a general local and interstate circulation advertisements containing statements purporting to be descriptive of the merchandise which has been ordered or sold and offered for sale or resale by or through respondents, together with throw circulars to be distributed in connection with the sale of said pens and pencils to ultimate purchasers thereof. The articles offered for sale by or through the respondents as an "introductory offer" are described in said advertisements and throw circulars as possessing retail values and prices many times in excess of the actual price at which the respondent sell said merchandise to purchasers, and

are many times in excess of the actual selling price of the said articles to the consuming public, and are many times in excess of their true and actual value. The value as set forth in said advertisements is false and fictitious, in no sense represents the true value or the true selling price of the articles described in said advertisements, and in truth and in fact said price is not an "introductory offer" but the actual and customary price at which such articles are generally sold.

Among the said advertisements so used are the following:

The Pen That Makes Writing a Pleasure

59¢ ONLY FRIDAY AND SATURDAY 59¢

This certificate is Worth $4.41

(cut of Pen)

This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible $5.00 VACUUM FILLER SACKLESS FOUNTAIN PENS. Visible Ink Supply. You See the Ink. A lifetime guarantee with each pen. Sizes for ladies, men, boys, and girls. This pen will not leak, blot or break. THE NEW PLUNGER FILLER—VACUUM ZIP—ONLY ONE PULL AND IT'S FULL. This PEN holds 200% more ink than any ordinary fountain pen on the market! You can Write for Three Months on One Filling! No Repair Bills. No Lever Filler! No Pressure Bar. Every Pen tested and guaranteed by the factory to be unbreakable for life. Get yours NOW. THIS PEN GIVEN FREE if you can buy one in the city for less than FIVE DOLLARS! This Certificate good only while advertising sale is on.

*INTRODUCTORY OFFER—This Pen will be $5.00 after sale. Also $1.50 Pencils to Match Above Pens, only 29¢

ADD 6¢ Extra for Mail Orders LIMIT 3 Pens to Each Certificate

Through such statements and others similar thereto not herein set out, it is represented that the customary and usual retail value or price of said pens and pencils is greatly in excess of their advertised price, that they are sold as an "introductory offer" at the advertised price for only a limited time; that said pens and pencils are of a quality and character different from and superior to other pens and pencils of comparable price, and that said pens and pencils are equal in value to pens costing from $5 upward.

PAR. 5. In truth and in fact the respondents' pens are not a $5 value and are not equal in value or price to pens having such value or price, but are of a type having a value much less than $5, and are ordinarily sold in the usual course of trade for approximately the price as advertised as an "introductory offer" price for said pens. The certificate referred to in said advertisement does not have a value of $4.41 or any value whatever, as said pens are intended to be, and are, sold in the usual course of trade without a certificate, for the price of approximately 59 cents as advertised. Said pens and pencils are not

different from or superior to competitors' pens or pencils selling for approximately the same amount. The statement in the advertisement of the sale of the pens and pencils for only a limited time and that "the pen will be $5 after sale" is false and misleading, for the offer to sell said pens and pencils at the price advertised was not and is not limited as to time but is in truth and in fact the regular or customary price at which said pens and pencils are offered for sale and sold in the usual course of trade. The statement that each of said pens "holds 200 percent more ink than any ordinary fountain pen on the market" is false and misleading, for in truth and in fact said pens do not hold 200 percent more ink than many ordinary fountain pens on the market. The statement that "every pen was tested and guaranteed by the factory to be unbreakable for life" is false, misleading, and untrue. The "certificate of guarantee" accompanying the pen leads the prospective purchaser to believe that the pen has been carefully inspected and tested and in case of any dissatisfaction whatever may be returned to the Berwick Pen Co., Irvington, N. J., where it will be repaired free of charge or exchanged for a new pen upon remittance of 25 cents in stamps or coin to cover cost of handling, postage, and insurance. The representation in said "certificate of guarantee" is false and misleading, in that the 25 cents is not to cover repair or exchange of said pens but covers and is in excess of the total cost of said pens to the respondents.

The pen point or nib in said pen is conspicuously marked with the letter and symbol "14k" and the informative phrase "gold plated" which appears thereunder is in inconspicuous and small type. This means of stamping, branding, or imprinting pen points may cause a substantial portion of the purchasing public to purchase such pens in the belief that said pen points or nibs are of 14-carat fineness, when in truth and in fact such points or nibs are not of such carat fineness and are thinly gold plated or washed.

Respondents' pencils advertised to be of $1.50 value in this "introductory offer" for a limited time for only 29 cents are not of such value nor are they equal in value or price to pencils of comparable price and are generally and customarily sold at the price advertised as the special introductory price. The 29-cent price stated in said "introductory offer" is the regular or customary price at which said pencils are offered for sale and sold.

PAR. 6. The respondents' foregoing acts and practices, as hereinabove set out, in the sale and distribution of their fountain pens and pencils, have had, and have, the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public

into the mistaken and erroneous beliefs induced as aforesaid. As a result thereof trade has been, and is, unfairly diverted to respondents from competitors in commerce among and between the various States of the United States and in the District of Columbia who do not adopt, use, or follow similar acts and practices in connection with the sale of their respective products.

PAR. 7. There are among competitors of respondents many individuals, firms, and corporations who sell and distribute fountain pens and pencils in commerce as hereinbefore described, who do not misrepresent the character or quality of their fountain pens. As a consequence of respondents' practices substantial competition in commerce among and between the various States of the United States and in the District of Columbia has been substantially injured.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 27th day of July 1938, issued and thereafter served its complaint in this proceeding upon respondents William Vorunion and Benjamin Vorunion, individuals, doing business under the trade names of Howard Sales Co. and Berwick Pen Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony, and other evidence in support of the allegations of said complaint were offered by John R. Phillips, Jr., attorney for the Commission, and in opposition to the allegations of said complaint by Nathan H. Stryker, attorney for the respondents, before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. 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

PARAGRAPH 1. The respondents, William Vorunion and Benjamin Vorunion, are individuals doing business under the trade names of Howard Sales Co. and Berwick Pen Co., with their offices and principal places of business located at 17–19 William Street, Newark, N. J., and at 726 Lyons Avenue, Irvington, N. J. They are now engaged, and for more than a year prior to issuance of the complaint herein were engaged, in the business of assembling fountain pens and pencils 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. Respondents cause their products, when sold, to be transported from their places of business in the State of New Jersey to the purchasers thereof located in States of the United States other than the State of New Jersey, and in the District of Columbia.

PAR. 2. In the course and conduct of their said business respondents have regularly advertised, offered for sale and sold their said fountain pens at 59 cents and their pencils at 29 cents through various retail outlets. The pens so sold by the respondents have on the tip or nib thereof conspicuously displayed the letter and symbol "14K" and above and considerably removed therefrom, and in inconspicuous small type, the phrase "Gold Plated."

PAR. 3. In the course and conduct of their business respondents solicit the sale of and sell their pen and pencil products by means of advertising, including literature and circular letters sent through the mails, and by personal calls by representatives, offering a special sales promotion scheme to purchasers and prospective purchasers. Among and typical of the statements in such advertisements and literature offering respondent's pens and pencils through said sales plan is the following:

This letter introduces a simple plan which will bring you a lot of additional business in two days—every month. The merchandise is on consignment. You run local newspaper advertising at our expense (with other advtg., if desired) and a good *profit* goes into your pocket.

This plan is a fine business-getter and is reserved for only *one* store in a town. IT BRINGS MANY ADDITIONAL CUSTOMERS INTO YOUR STORE ALREADY "SOLD" READY TO BUY. A large number of stores are making real money with our merchandise which sells throughout the year.

HERE'S THE PLAN! We send you a quantity of fountain pens and pencils on consignment, prepaid, for a profitable sale. You run local newspaper advertising *at our expense.* After the sale, DEDUCT 30% FROM GROSS SALES FOR YOUR PROFIT; then deduct your newspaper advertising and charges for returning any unsold goods. Thus without any displays, "sales talk" or much extra effort, you make 30% clear profit on all this extra business and get MANY MORE CUSTOMERS INTO YOUR STORE.

* * * * * * *

Pens retail at 59¢; pencils at 29¢.

PAR. 4. Under this sales plan, respondents ship quantities of fountain pens and pencils, shipping charges prepaid, to various retail dealers and merchants located in States other than the State of New Jersey, to be there sold by them. Advertising material furnished such retail dealers by respondents is run in local papers at the expense of respondents. After the sale under said sales promotion plan, the retail dealers and merchants deduct 30 percent of the gross sales, the cost of all advertising, and remit the balance to the respondents. All unsold goods are returned to the respondents at their expense.

Among and typical of the statements and representations disseminated, as aforesaid, by respondents, and which have been and are in turn communicated to or distributed among purchasers and prospective purchasers by the retail dealers or merchants, are the following:

The Pen That Makes Writing a Pleasure

59¢ FRIDAY and SATURDAY ONLY 59¢

This Certificate is Worth 4.41

(cut of pen)

This certificate and 59¢ entitles the bearer to one of our Genuine Indestructible $5.00 VACUUM FILLER SACKLESS FOUNTAIN PENS. Visible Ink Supply. you SEE the Ink. A lifetime guarantee with each pen. Sizes for ladies, men, boys and girls. This pen will not leak, blot or break. THE NEW PLUNGER FILLER—VACUUM ZIP—ONLY ONE PULL AND IT'S FULL. This PEN holds 200% more ink than any ordinary fountain pen on the market! You can Write for Three Months on One Filling! No Repair Bills. No lever Filler! No Pressure Bar. Every Pen tested and guaranteed by the factory to be unbreakable for life. Get yours NOW. THIS PEN GIVEN FREE if you can buy one in the city for less than FIVE DOLLARS! This certificate good only while advertising sale is on.

* INTRODUCTORY OFFER—This pen will be $5.00 after Sale. Also $1.50 Pencils to Match Above Pens, only 29¢.

Add 6¢ Extra for Mail Orders LIMIT 3 Pens to Each Certificate

All of the aforesaid statements and representations by respondents, together with similar statements appearing in respondents' other advertising matter, purport to be descriptive of respondents' merchandise and of their sales methods in disposing of the same. Through said advertising and by other means respondents represent that their pens and pencils are sold at 59 cents and 29 cents for 1 or 2 days only; that their pens ordinarily sell for $5 but that the certificate supplied retailers "worth" $4.41, which is given with the special sale on pens, reduces the price to 59 cents; that pens and pencils are offered to the public at special prices only for the purpose of introducing same and that after the special sale the prices will be

$5 for the pen and $1.50 for the pencil; that said pens and pencils are of a quality and character different from and superior to other pens and pencils of comparable price; that every pen has been tested and is guaranteed by the factory to be unbreakable for life; that in case of breakage or other unsatisfactory service, each pen will be repaired free of charge or exchanged for a new pen upon remittance of 25 cents in stamps or coin to cover the cost of handling, postage, and insurance; that said pens are equal in value to pens costing from $5 upward, and that the pencils have a regular market value of $1.50; and that said pens hold 200 percent more ink than any other pen. Through the use of, and by means of, the symbol and letter "14K," in conspicuous type and the words "Gold Plated" in small inconspicuous type in an obscure place, on said pen tips and nibs, respondents represent that the tips or nibs of their pens are composed of 14-carat gold.

PAR. 5. In truth and in fact, all of the said statements and representations are false and misleading. The fountain pens offered for sale and sold by the respondents are not $5 vacuum filler sackless fountain pens. Said price is greatly exaggerated and fictitious and much in excess of the prices at which said pens were and are intended to be and are customarily sold. The pens do not hold 200 percent more ink than any ordinary fountain pen on the market. The pencils do not have a regular market price and value of $1.50, said price bring greatly exaggerated and fictitious and much in excess of the price at which said pencils were and are intended to be and are customarily sold. The "sale" is not an introductory sale for 1 or 2 days only, nor is it a special sale at which respondents' pens and pencils are sold at reduced prices. Respondents have conducted other sales through the same dealers a short time after the original sale, offering the same merchandise at the alleged special prices of 59 cents and 29 cents, respectively, and using the same type of advertising. The certificate cut from the newspaper advertisement does not become a certificate worth $4.41 in the purchase of said fountain pen, because said pens do not have and never have had a value or price of $5 and were never intended to be and are never sold for $5, and 59 cents is the regular and customary retail price of such pens. The nibs or tips of said pens are not 14-carat gold as represented by the respondents. Respondents' pens are not tested and guaranteed by the factory to be unbreakable for life and they are not repaired free of charge or exchanged for a new pen upon remittance of 25 cents in stamps or coin to cover cost of handling, postage, and insurance, for the sum of 25 cents includes the cost of providing and furnishing a new pen.

PAR. 6. The use by respondents of the foregoing false and misleading representations is calculated to, and does, mislead and deceive the purchasing public into the erroneous belief that said representations are true, and by reason of such belief so engendered induces the purchase of substantial quantities of respondents' pens and pencils. The respondents further, by the aforesaid methods and representations, have placed in the hands of dealers the means by which the purchasing public may be misled and deceived and business diverted to respondents from their competitors.

PAR. 7. There are now, and have been during all the time herein mentioned, persons and partnerships and corporations engaged in the sale and distribution of fountain pens and pencils in commerce between and among the various States of the United States and in the District of Columbia, with whom respondents have been and are in substantial competition. Among such competitors are many who do not employ the methods used by the respondents, as herein set forth, or any similar methods involving the use of misleading representations in the sale of their pen and pencil products, and who do not place in the hands of others the means of deceiving the public in regard to their products.

As a result trade in said commerce has been and is unfairly diverted to the respondents from their competitors in said commerce to their injury, and to the injury of the public.

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 respondents, testimony, and other evidence taken before John J. Keenan, an examiner of the Commission theretofore duly designated by it, and 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 the respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, William Vorunion and Benjamin Vorunion, doing business under the trade names of Howard Sales Co. and Berwick Pen Co., their agents, employees, and representatives, directly or indirectly, through any corporate or other device, or through the use of any other trade name or names, in connection with the offer-

ing for sale, sale and distribution of fountain pens and pencils in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the customary and usual retail price at which said fountain pens are sold is $5, and that the customary and usual retail price of said pencils is $1.50, or any other sums in excess of the price at which such pens and pencils are usually and customarily sold at retail.

2. Representing that said pens are being sold at 59 cents and said pencils at 29 cents, or at any other specified prices as an introductory offer for a limited period of time only, when the prices so quoted are the prices at which said pens and pencils are usually and customarily offered for sale and sold.

3. Representing that said pens and pencils are of a quality and character different from or superior to pens and pencils offered for sale and sold by competitors at comparable prices.

4. Representing that said pens have been tested and are guaranteed by the factory to be unbreakable for life, and that in case of breakage or other unsatisfactory service said pens will be repaired free of charge or exchanged for a new pen upon remittance to cover the cost of handling, postage, and insurance, when any charge is made in excess of handling, postage, and insurance costs.

5. Representing that the sum of 25 cents charged purchasers for replacement of broken or unsatisfactory pens covers only the cost of handling, postage, and insurance.

6. Representing that said fountain pens hold 200 percent more ink than any ordinary fountain pen on the market.

7. Representing, through the use of the symbol "14K," or any other symbol, or any figures, letters, or words of similar import and meaning, or otherwise, that the point or nib of said pen is composed of 14-carat gold or gold of the fineness indicated by the symbol, figures, letters, or words used, when such is not the fact.

8. Representing that certificates cut from newspaper advertisements of said pens and pencils are worth $4.41 or any other sum in connection with the purchase of such 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

THE PERFECT MANUFACTURING COMPANY, TRADING AS R. E. ENGINEERS

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

Docket 4163. Complaint, June 13, 1940—Decision, July 24, 1940

Where a corporation engaged in the manufacture, sale, and distribution of radio receiving sets, electrical devices, rubber products, chemical specialties and like products, and electrical and mechanical devices for attachment to such sets, and marketed and sold under trade name "Add-A-Tube," to purchasers of various States and in the District of Columbia; in advertising said last-named device through advertising folders, pamphlets, circulars, and other literature, and newspapers published throughout the United States, and including reproduction or purported reproduction of testimonial statements,

(*a*) Represented that such device would give longer life to radio tubes and improve reception and make possible broadcasts from domestic and foreign stations which could not be otherwise received, and bring set up to date and give any radio tone or selectivity and static free reception found in most expensive sets on the market; and

(*b*) Represented that such device would improve reception on every type of radio and give it automatic volume control, and guaranteed clear and long distance reception and enabled user to tune out local and tune in distant stations free from interference, and would make any old radio receiving set as efficient as modern ones;

Facts being said electrical and mechanical device attachments aforesaid would not give longer life to tubes, improve reception, make set more efficient in receiving broadcasts from domestic or foreign stations, bring set up to date or enable users to tune out local stations and tune in distant ones, except to reduce interference from local stations, and claims otherwise and representations made therefor, as above set forth, were deceptive, false and misleading; and

(*c*) Represented and implied through use of name "Add-A-Tube" as trade name for and on said device that use thereof on radio receiving set, when attached, gave radio an additional tube;

Facts being it did not add a tube to or have effect of an additional tube in set to which it was attached;

With effect of misleading and deceiving, through use of such false, deceptive, and misleading statements and representations and use of said trade name on device in question, substantial portion of purchasing public into erroneous and mistaken belief that such statements and representations were true and inducing portion of said public, because of such belief, to purchase its said device:

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.

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 Perfect Manufacturing Co., a corporation, operating and doing business under the trade name of R. E. Engineers, 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, The Perfect Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio. Said respondent conducts its business in the name of R. E. Engineers, with its principal office and place of business located at Madison Road at B. & O. R. R., Cincinnati, Ohio.

PAR. 2. Respondent is now, and for more than 3 years last past has been, engaged in the business of manufacturing, selling and distributing radio receiving sets, electrical devices, rubber products, chemical specialties and like products and an electrical and mechanical device for attachment to radio receiving sets under the brand and trade name "Add-A-Tube." Said respondent now causes, and for more than 3 years last past has caused, its said products to be sold directly by mail to dealers for resale and to the purchasing public and has caused the same, when sold, to be transported from its principal place of business in Cincinnati, Ohio, to purchasers thereof located at points in the State of Ohio and various States of the United States other than the State of Ohio, and in the District of Columbia.

There is now, and has been for more than 3 years last past, a course of trade in said products so sold by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as described in paragraphs 1 and 2 hereof, respondent, for the purpose of inducing the purchase of an electrical and mechanical device sold under the name "Add-A-Tube" for use in radio receiving sets offered for sale and sold by it, has circulated, by mail and otherwise, among purchasers and prospective purchasers throughout the United States, advertising folders, pamphlets, circulars, letters and other literature and advertisements in newspapers published and circulated throughout the United States, certain statements and representations concerning

the adaptability, functions and uses of its said device "Add-A-Tube." Typical of said statements and representations are the following:

Amazing new invention improves reception on every type of set, battery or electric. Easily installed in a few minutes.

Remember—ADD-A-TUBE saves tubes, improves radio reception.

Tune out strong local stations—tune in Los Angeles, Canada, Mexico! Increase selectivity, improve tone, cut out static, distortion, interference, with amazing new ADD-A-TUBE.

Add-A-Tube gives your radio automatic volume control, and prevents overloading, exactly the same as newest, latest-improved sets. Anyone can install.

Do your strong local stations come in all over the dial? Do they keep you from listening to out-of-town stations you have always wanted to hear? We guarantee Add-A-Tube to bring your radio up to date and to correct these conditions, or your money back. Add-A-Tube gives any radio the same mellow tone, the same sharpness of selectivity, the same static-free reception as the latest, most expensive sets on the market. OPERATES BOTH ON LONG AND SHORT WAVES AND ON INSIDE OR OUTSIDE AERIALS. Amazing new invention improves reception on every type of set, battery or electric.

If you are bothered by local stations, if electrical noises interfere with your reception, if you desire better tone from your loud-speaker, if you wish longer life from your tubes—in general, if you want improved reception from your radio—use ADD-A-TUBE.

"I have given the ADD-A-TUBE a thorough test and am more than gratified. We had to content ourselves with Canadian daylight reception with the exception of two small nearby stations. Since adding ADD-A-TUBE I can pick up Denver, Salt Lake City, Chicago, St. Paul, Fargo, Oklahoma City, Billings, and Great Falls at any time during the day with good volume. I can also get foreign stations that I never heard before."

Said statements and representations, together with other similar statements and representations not herein set out, purport to be descriptive of respondent's device "Add-A-Tube" and serve as representations on the part of the respondent to members of the purchasing public that the use of said device will give longer life to radio tubes; will improve radio reception; will make it possible to receive radio broadcasts from domestic and foreign stations which could not be received without the use of said device; will bring the user's radio up to date; will give any radio the tone, sharpness of selectivity and the static-free reception found in the most expensive radio receiving sets on the market; will improve reception on every type of radio receiving set; will give the user's radio automatic volume control and guarantee clear local and long-distance reception; will enable the user to tune out local stations and tune in distant stations free from interference; and will make any old radio receiving set as efficient as modern radio receiving sets.

PAR. 4. In truth and in fact, the statements and representations hereinabove set out are deceptive, false and misleading. Respond-

ent's aforesaid "Add-A-Tube" electrical and mechanical device when attached to a radio receiving set will not give longer life to radio tubes; will not improve radio reception; will not render the radio receiving set more efficient in receiving broadcasts from domestic or foreign stations; will not bring the radio set up to date; will not give any radio set the tone, sharpness of selectivity, and the static-free reception found in more expensive sets; will not improve reception on every type of set; will not give a radio receiving set automatic volume control or render local or distant reception clear and free from static; will not enable the user to tune out local stations and tune in distant stations, except to reduce interference from local stations; and it will not cut out static distortion and interference.

PAR. 5. The respondent represents and implies, through the use of the name "Add-A-Tube" on its device, that said device when attached to a radio receiving set gives such radio set an additional or extra tube. In truth and in fact, the use of said device does not add a tube or have the effect of an additional tube in the radio receiving set to which it is attached.

PAR. 6. The use by respondent of the foregoing false, deceptive and misleading statements and representations with respect to its "Add-A-Tube" electrical and mechanical device and like 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 to induce a substantial portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's "Add-A-Tube" device and other like products.

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 June 13, 1940, issued and thereafter served its complaint in this proceeding upon respondent, The Perfect Manufacturing Co., a corporation trading as R. E. Engineers, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 27, 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 inter-

vening 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 fully advised in the premises, finds that this proceeding is in the interest 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 Perfect Manufacturing Company, is a corporation organized, existing, and doing business under the laws of the State of Ohio, with its office and principal place of business located at Madison Road at B. & O. R. R., Cincinnati, Ohio.

PAR. 2. Respondent is now, and has been for more than three years last past, engaged in the business of manufacturing, selling, and distributing radio receiving sets, electrical devices, rubber products, chemical specialties and like products, and electrical and mechanical devices for attachment to radio receiving sets marked and sold under the trade name "Add-A-Tube."

The respondent causes said products, when sold, to be transported from its place of business in the State of Ohio to purchasers thereof, some located in the State of Ohio, and others located in various other States of the United States and in the District of Columbia.

The respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as described in paragraphs 1 and 2 hereof, respondent, for the purpose of inducing the purchase of an electrical or mechanical device offered for sale and sold by it under the name, "Add-A-Tube" for use in radio receiving sets, has circulated among purchasers and prospective purchasers throughout the United States, through advertising folders, pamphlets, circulars, letters, and other literature, and through advertisements in newspapers published throughout the United States, certain false and misleading statements and representations concerning the adaptability, functions, and uses of its said device "Add-A-Tube." Typical of said statements and representations, among others, are the following:

Amazing new invention improves reception on every type of set, battery or electric. Easily installed in a few minutes.

Remember—ADD-A-TUBE saves tubes, improves radio reception.

Tune out strong local stations—tune in Los Angeles, Canada, Mexico! Increase selectivity, improve tone, cut out static, distortion, interference, with amazing new ADD-A-TUBE.

"Add-A-Tube" gives your radio automatic volume control, and prevents overloading, exactly the same as newest, latest-improved sets. Anyone can install.

Do your strong local stations come in all over the dial? Do they keep you from listening to out-of-town stations you have always wanted to hear? We guarantee Add-A-Tube to bring your radio up to date and to correct these conditions, or your money back. Add-A-Tube gives any radio the same mellow tone, the same sharpness of selectivity, the same static-free reception as the latest, most expensive sets on the market. OPERATES BOTH ON LONG AND SHORT WAVES AND ON INSIDE OR OUTSIDE AERIALS. Amazing new invention improves reception on every type of set, battery or electric.

If you are bothered by local stations, if electrical noises interfere with your reception, if you desire better tone from your loud-speaker, if you wish longer life from your tubes—in general, if you want improved reception from your radio—use ADD-A-TUBE.

"I have given the ADD-A-TUBE a thorough test and am more than gratified. We had to content ourselves with Canadian daylight reception with the exception of two small nearby stations. Since adding ADD-A-TUBE I can pick up Denver, Salt Lake City, Chicago, St. Paul, Fargo, Oklahoma City, Billings, and Great Falls at any time during the day with good volume. I can also get foreign stations that I never heard before."

The aforesaid statements and representations, together with similar statements and representations not herein set out in full, purport to be descriptive of respondent's said device and serve as representations on the part of the respondent to members of the purchasing public that the use of said device will give longer life to radio tubes; improve radio reception; will make it possible to receive radio broadcasts from domestic and foreign stations which could not be received without the use of said device; will bring the radio up to date; will give any radio the tone, sharpness of selectivity and the static-free reception found in the most expensive radio receiving sets on the market; will improve reception on every type of radio receiving set; will give the user's radio automatic volume control and guarantee clear local and long distance reception; will enable the user to tune out local stations and tune in distant stations free from interference; and will make any old radio receiving set as efficient as modern radio receiving sets.

PAR. 4. In truth and in fact, the statements and representations hereinabove set out are deceptive, false, and misleading. Respondent's said electrical and mechanical device when attached to a radio receiving set will not give longer life to radio tubes, will not improve radio reception, will not render the radio receiving set more efficient in receiving broadcasts from domestic or foreign stations; will not bring the radio set up to date; will not give any radio set the tone, sharpness of selectivity and static-free reception found in more expensive sets; will not improve reception on every type of set; will not give a radio receiving set automatic volume control or render local or long-distance reception clear and free from static; will not enable the user to tune out local

stations and tune in distant stations, except to reduce interference from local stations; and it will not eliminate static, distortion, and interference.

PAR. 5. The respondent represents and implies, through the use of the name "Add-A-Tube" as a trade name for and on said device, that said device when attached to a radio receiving set gives to such radio set an additional or extra tube, whereas in truth and in fact, the use of said device does not add a tube to, or have the effect of an additional tube in, the radio receiving set to which it is attached.

PAR. 6. The use by respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its said electrical and mechanical radio device and the use of the trade name "Add-A-Tube" for said device 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 and mistaken belief that such statements and representations are true, and induce a portion of the purchasing public because of such erroneous and mistaken belief to purchase respondent's said device.

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 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, The Perfect Manufacturing Company, a corporation, trading as R. E. Engineers, or trading under any other name or names, its agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of a device now designated by it by the name, "Add-A-Tube," or any other similar device or devices to be used for the same or similar purposes, whether sold under the same name or under any other name or names, in commerce, as

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

1. Representing that said device, when attached to a radio receiving set, adds to such set an extra tube or gives to it the effect of an additional tube; or that such device adds life to the tubes therein; or that it improves reception or renders the radio receiving set more efficient in receiving broadcasts from domestic or foreign stations; or that it brings the radio receiving set up to date and gives to such set additional sharpness, tone and selectivity; or that it gives a radio receiving set automatic volume control or renders long distance reception free from static, distortion or interference.

2. Using the term "Add-A-Tube," or any other term, phrase or designation of similar import or meaning, to designate or describe said electrical or mechanical device, which device, when added or attached to a radio receiving set, does not perform the functions of an additional tube in such set.

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

INDUSTRIAL PLANTS CORPORATION

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

Docket 3835. Complaint, June 27, 1939—Decision, July 30, 1940

Where a corporation engaged in sale and distribution of various products, including pliers, to purchasers in various other States and in District of Columbia, in substantial competition with others engaged in sale and distribution of said last-named product in commerce as aforesaid; in describing its said pliers in advertisements and catalogs and other printed matter distributed to members of the purchasing public in the various States and the District of Columbia—

Falsely represented said products as nickel plated, through such statements as "Machine nickel pliers are furnished and nickel plated" and "Nickel plated pliers are ground and polished all over, heavily nickel plated and buffed to a high luster";

With effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantity of its said product by reason of such belief, and with direct result that trade in commerce was diverted unfairly to it from its said competitors who do not falsely represent as nickel plated their respective products; to the injury of competition in commerce:

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

Mr. Maurice C. Pearce for the Commission.

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

PARAGRAPH 1. Respondent Industrial Plants Corporation, 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 90 West Broadway in the city of New York, State of New York.

PAR. 2. Respondent is now, and has been for several years last past, engaged in the business of selling and distributing various products, including pliers and wrenches. Respondent causes said pliers and wrenches, when sold, 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 said pliers and wrenches in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, individuals and partnerships selling and distributing pliers and wrenches 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 and for the purpose of inducing the purchase of its said pliers and wrenches, respondent has caused various statements and representations relative to said pliers and wrenches to be inserted in advertisements in catalogues and other printed matter all of which are distributed to members of the purchasing public situated in the various States of the United States and in the District of Columbia. Among and typical of said statements and representations by respondent relative to said pliers and wrenches are the following:

Machine Nickel Pliers are finished and nickel plated.

Nickel Plated Pliers are ground and polished all over, heavily nickel plated and buffed to a high lustre.

Nickel Plated Wrenches.

Through the use of the aforesaid statements and representations, and others of similar import and meaning not herein set out, the respondent has represented that the aforesaid pliers are nickel plated, and that the aforesaid wrenches are nickel plated.

PAR. 5. The aforesaid statements and representations by respondent relative to said pliers and wrenches are false and misleading. In truth and in fact, the pliers which the respondent represents as aforesaid as being nickel plated are not nickel plated. The wrenches which the respondent represents as aforesaid as being nickel plated are not nickel plated.

PAR. 6. There is a preference on the part of a substantial number of members of the purchasing public for pliers and wrenches which are nickel plated because of the durability and resistance to rust and corrosion of such pliers and wrenches.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations has the tendency and capacity to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that the aforesaid false and misleading statements and representations are true and into the purchase of substantial quantities of respondent's pliers and wrenches because of said erroneous and mistaken belief. As a direct result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not falsely represent that their respective pliers and wrenches are nickel plated. 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. 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 the 27th day of June 1939, issued and thereafter served its complaint in this proceeding upon respondent, Industrial Plants Corporation, 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. 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 dated June 19, 1940, admitting all the material allegations of fact set forth in said complaint, except those allegations contained therein referring to wrenches, which are denied, and waived all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and the substitute answer and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Industrial Plants Corporation, 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 90 West Broadway, in the city of New York, State of New York.

PAR. 2. Respondent is now and has been for several years last past, engaged in the business of selling and distributing various products including pliers. Respondent causes said pliers when sold 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 said pliers in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and has been during all the times mentioned herein, in substantial competition with other corporations and with firms, individuals, and partnerships selling and distributing pliers 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 aforesaid business and for the purpose of inducing the purchase of its said pliers, respondent has caused various statements and representations relative to said pliers to be inserted in advertisements and catalogues and other printed matter, all of which are distributed to members of the purchasing public situated in the various States of the United States and in the District of Columbia. Among and typical of said statements and representations by respondent relative to said pliers are the following:

Machine nickel pliers are furnished and nickel plated.

Nickel plated pliers are ground and polished all over, heavily nickel plated and buffed to a high lustre.

Through the use of the aforesaid statements and representations and others of similar import and meaning, not herein set out, the respondent has represented that the aforesaid pliers are nickel plated.

PAR. 5. The aforesaid statements and representations by respondent relative to said pliers are false and misleading. In truth and in fact the pliers which the respondent represents as aforesaid as being nickel plated are not nickel plated.

PAR. 6. There is a preference on the part of a substantial number of the members of the purchasing public for pliers which are nickel plated because of the durability and resistance to rust and corrosion of such pliers.

PAR. 7. The use by the respondent of the aforesaid false and misleading statements and representations has had and now has the capacity and tendency to, and does, mislead and deceive 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 respondent's pliers, because of said erroneous and mistaken belief. As a direct result thereof trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted unfairly to the respondent from its said competitors who do not falsely represent that their respective pliers are nickel plated. 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 of the material allegations of fact set forth in said complaint except those allegations contained therein referring to wrenches which are denied, 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 the said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Industrial Plants 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 its products in commerce, as commerce is defined by the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, that pliers or any other tools which are not plated with the metal nickel are nickel plated.

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

LUXOR, LTD.

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

Docket 3736. Complaint, Mar. 10, 1939—Decision, July 31, 1940

Where a corporation which was engaged in manufacture of toilet articles and cosmetics and in sale thereof to purchasers in each of the several States and in the District of Columbia, and which, as thus engaged in sale of its said products to retailers in the various States, was in competition with others who made and thus sold like articles and products to retailers who purchased products of said corporation and those of said other manufacturers and were in competition with each other in business of selling and reselling same to purchasing public;

In carrying on its business as above indicated and set forth, in connection with which it (1) sold and shipped its products to retail druggists and drug jobbers in every State, (2) made contracts fixing minimum resale price thereof in all States in which it was permissible by law so to do, called on retail druggists who did not receive direct shipments from it, and maintained its pricing policies with druggists not under contract and who purchased indirectly through jobbers, and (3) packaged for resale some of its most popular complexion powders, creams and rouge in "standard" or "regular" size packages and in "junior" size containers having about one-fifth capacity of others and resale price of 10 cents, as compared with 49 cent resale price of "standard" or "regular" size packages; and (4) accorded to novelty, variety, syndicate and five and ten cent stores both service or facility of such "standard" size packaging or packages, further division of which by retailer was impracticable and undesirable, and such "junior" size packaging, for which there was public demand from all classes of consumers, irrespective of financial conditions or position in life, by reason, in part, of convenience, reduction of waste and retention of fragrance and freshness, and by which packaging resale was facilitated.

Refused to furnish service or facility of such "junior" size packaging to competing purchasers of identical products, including retail druggists upon whom there was demand for its products in said "junior" size and whose practice it was to seek to maintain stock in their stores for which there was public demand, and who endeavored to obtain its products in such "junior" size and were in direct competition in same cities with, and often in close proximity to, said novelty, variety, syndicate and five and ten cent stores to whom it furnished its "junior" size facilities, in or through which convenience in display and sale was promoted, and lack of which, through such druggists' inability to furnish same in response to public call therefor, resulted in loss of sale and sometimes loss of regular customer:

Held, Subsection (e) of Section 2 of act of Congress approved October 15, 1914, as amended by act of Congress approved June 19, 1936, violated by it.

Before *Mr. Webster Ballinger*, trial examiner.
Mr. P. C. Kolinski for the Commission.
Mr. R. F. Feagans, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an act of Congress approved October 15, 1914 (The Clayton Act), as amended by an act approved June 19, 1936, the Robinson-Patman Act (15 U. S. C. A. sec. 13 (e)), the Federal Trade Commission hereby issues its complaint against Luxor, Ltd., stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Luxor, Ltd., is a corporation organized and existing under the laws of the State of Maine, with its principal place of business at 1355 West Thirty-first Street, Chicago, Ill. For more than a year last past respondent has been engaged in the manufacture of toilet articles and cosmetics and the sale thereof to retail dealers, causing the said products when sold to be shipped from its place of business in the State of Illinois to purchasers thereof located in the several States of the United States and in the District of Columbia. Such customers of respondent have been and are now in competition with each other in the business of selling and retailing said products to the purchasing public.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent, since June 19, 1936, has been and now is discriminating in favor of certain of its purchasers against other purchasers of its said products bought for resale, by contracting to give and furnish, and by giving and furnishing, certain services and facilities in connection with the handling, sale, or offering for sale, of its said products so purchased by its customers, not accorded to all such purchasers on proportionally equal terms. Specifically, said respondents are favoring certain purchasers, as aforesaid, of their said commodities, cosmetics, and toilet preparations bought for resale, by contracting to furnish or furnishing to such favored purchasers, packages, containers, and mounted sales cards of a special size and capacity for the vending of certain of their toilet articles and cosmetics known as Luxor Complexion Powder, Luxor Rouge, and Luxor Cold, and Cleansing, Vanishing, and Foundation, Special Formula, Tissue, and Hand Creams, without similarly according such said package, container and sales card facilities to other such purchasers on proportionally equal terms.

PAR. 3. The services and facilities in connection with the handling, sale and offering for sale of its products furnished by respondent to certain of its customers consist of the following:

The toilet and cosmetic article known as "Luxor Complexion Powder" is packed in square cardboard containers with approximate dimensions of 3¼ inches per side, and a depth of 1⅜ inches. The capacity of such container is approximately 2½ ounces of said complexion powder, and to its customers respondent suggests the price of this article for resale to the public at 55 cents.

To certain other of its customers respondent furnishes said complexion powder of identical grade and quality in smaller square cardboard containers with approximate dimensions of 2⅝ inches per side and a depth of five-eighths of an inch. The capacity of such smaller container is approximately one-half ounce, and to its customers respondent suggests the price of this article for resale at the public at 10 cents.

The toilet and cosmetic articles known as Luxor Cold and Cleansing Cream, Luxor Vanishing and Foundation Cream, Luxor Tissue Cream, and Luxor Hand Cream, are packed in opaque glass jars of an approximate capacity of 4 ounces of such creams, and respondent suggests to its customers the resale of said products to the public at the price of 55 cents. To some of its customers, respondent furnishes the same grade and quality of Luxor Cold and Cleansing Cream, Luxor Vanishing and Foundation Cream, Luxor Tissue Cream, and Luxor Hand Cream in opaque glass jars of a much smaller size with a capacity of approximately three-quarters of an ounce, and to such customers respondent suggests the price of said articles for resale to the public at 10 cents.

Respondent manufactures and sells an additional cosmetic cream known as Luxor Special Formula Cream. This article is packed in a collapsible metal tube of a capacity of approximately 2 ounces of said cream, and its resale to the public is suggested by respondent at a price of 55 cents. To some of its customers respondent furnishes the identical cream, as to grade and quality, in small opaque glass jars having a capacity of approximately one-half ounce of said cream. To customers who are supplied with this article respondent suggests a price of 10 cents for its resale to the public.

The cosmetic article known as Luxor Rouge is packed in metal containers known as compacts, having a capacity of approximately one-fifth ounce of said produce. Respondent suggests to customers to whom it sells this product a price of 55 cents for its resale to the public. For some of its customers respondent packs Luxor Rouge of the identical grade and quality in much smaller metal compacts. The capacity of such smaller compacts is approximately one-twentieth of an ounce, and they are mounted singly on paper cards of the approximate dimensions—3 by 4 inches. Respondent suggests to customers to whom

it supplies this produce on mounted sales cards, a resale price to the purchasing public of 10 cents.

Respondent designates its said toilet and cosmetic products packed and mounted as aforesaid in smaller containers, "Luxor 10 Cent Toiletries," and accords the facilities of small packaging and sales card mounting only to so-called novelty, variety, syndicate and 5- and 10-cent stores.

There exists among the purchasing and consuming public a demand for said cosmetic and toilet products, designated "Luxor 10 Cent Toiletries."

Respondent furnishes the services and facilities of small packaging and sales card mounting in the 10-cent size designated as aforesaid, to certain of its said customers. Respondent does not accord said services and facilities to other of its said customers competitively engaged with the favored customers. Respondent's failure to accord to the latter class of customer the services and facilities hereinbefore described, has the capacity and tendency to divert trade from, and to cause competitive disadvantage to, such latter class of customer.

PAR. 4. The foregoing alleged acts of said respondent are a violation of subsection (e) of section 2 of the act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by said act approved June 19, 1936.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as amended by an act of Congress approved June 19, 1936, entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,'" the Federal Trade Commission, on the 10th day of March 1939, issued, and on the 13th day of March 1939, served its complaint in this proceeding upon the respondent, Luxor, Ltd., charging said respondent with violating the provisions of subsection (e) of section 2 of said act as amended. After the issuance of said complaint, and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by P. C. Kolinski, attorney for the Commission, and in opposition to the allegations of the complaint by R. F. Feagans, attorney for the respondent, before Webster Ballinger, an examiner of the Commission, theretofore duly appointed by it, and said testimony and other evidence

were duly 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, respondent having waived oral argument, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Luxor, Ltd., is a corporation organized and existing under the laws of the State of Maine, with its principal place of business at 1355 West Thirty-first Street, Chicago, Ill.

PAR. 2. Respondent is now, and has been since June 19, 1936, engaged in the manufacture of toilet articles and cosmetics, and in the sale thereof has caused, and is causing said products, when sold, to be shipped from its said place of business in Illinois to the purchasers thereof located in each of the several States of the Union, and in the District of Columbia.

PAR. 3. Respondent is now, and has been since June 19, 1936, in competition with other manufacturers of like toilet articles and cosmetics, and in the sale thereof to retail dealers located in the various States of the Union, which said manufacturers cause their said products, when sold, to be shipped from their respective places of business in certain States of the Union to said purchasers located in other and different States of the Union. The said retail dealers, located in various States of the Union, purchase respondent's products and the products of other manufacturers, and are in competition with each other in the business of selling and retailing said products to the purchasing public.

Respondent sells and ships its products to retail druggists and drug jobbers in every State of the Union, and employs 20 salesmen to call on this particular trade, which salesmen frequently secure orders from retailers which orders they turn over to jobbers for delivery of respondent's products. Respondent makes contracts fixing the minimum resale price of its products in all of the States of the Union wherein it is permissible by law to make such contracts. Respondent's salesmen call on retail druggists who do not receive direct shipments from respondent, and respondent's pricing policies on its products are maintained as to retail druggists who are not under contract and purchase indirectly through drug jobbers in the same manner in which they are maintained in the case of druggists who are under contract to maintain prices and receive direct shipments from respondent. The Com-

mission finds that retail druggists who purchase the respondent's products indirectly from drug jobbers are under the circumstances of this case purchasers within the meaning of section 2 (e) hereinabove cited.

PAR. 4. The respondent, in connection with the sale of some of its most popular complexion powders, creams and rouge, packages each of such products in both "standard" or "regular" size packages, and in containers known as "junior" size which have approximately one-fifth the capacity of the "regular" or "standard" packages. The resale prices of the "regular" size are 49 cents, and of the "junior" size, 10 cents. Each of the respective products packages in the two sizes are identical. These products packaged in the "regular" or "standard" size are sold to all types of retailers, novelty, variety, syndicate, 5- and 10-cent stores, and retail druggists both directly from the respondent and indirectly through jobbers. The Commission finds that the "junior" size packaging facilitates the resale of products so packaged.

The respondent, in connection with the sale of these products, accords the service or facility of the "junior" size packaging and the "standard" size packaging to purchasers known as novelty, variety, syndicate and 5- and 10-cent stores, and refuses to furnish the service or facility of such "junior" size packaging to competing purchasers of the identical products. The Commission further finds that the furnishing of the "junior" size packaging constitutes a service or facility supplied in connection with the handling, sale, or offering for sale of such commodities.

PAR. 5. In the course and conduct of its business respondent, since June 19, 1936, continuously in selling its aforesaid products to various classes of purchasers has refused and now refuses to accord the service or facility of packaging in small sized containers for all competing purchasers of such commodities upon proportionally equal terms, or upon any terms whatsoever.

PAR. 6. The Commission finds that the public demand for the "junior" size of cosmetics comes from all classes of consumers irrespective of financial condition or position in life, and is in part due to the fact that such "junior" size is more convenient to carry, that such size reduces the element of waste, and adds to the retention of fragrance and freshness. The retail drug stores have demand for respondent's products in the "junior" size and have endeavored to obtain respondent's "junior" size products. Retail druggists seek to maintain stock in their stores for which there is a public demand. The novelty, variety, syndicate, and 5- and 10-cent stores, to whom respondent furnishes its "junior" size facilities, are located in the

same cities of the various States of the Union in which the retail drug stores to whom respondent refuses to accord its "junior" size facilities are located, the two classes of stores being in direct competition and often located in close proximity to each other. Thirty-eight percent of the dollar volume of respondent's products is packaged for customers in the "junior" size. The aforesaid "junior" size facilities promote convenience in display and sale of respondent's products, and it is impractical and undesirable for retailers to divide the "standard" size packages into smaller quantity units. The inability of the retail druggists to furnish the "junior" size of respondent's products when called for by the public results in the loss of a sale and sometimes the loss of a regular customer.

CONCLUSION

The Commission concludes that subsection (e) of section 2 of the said 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 the 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' " has been violated by the respondent.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, testimony and other evidence, taken before Webster Ballinger, 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 respondent having waived oral argument, 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 respondent Luxor, Ltd., and its officers, representatives, agents, and employees, in connection with the sale and

distribution of toilet articles and cosmetics in commerce among the several States and in the District of Columbia, cease and desist from furnishing any such commodity packaged in containers of a certain size and style unless all purchasers competing in the resale of such commodities are accorded the facility of packaging in containers of like size and style, on proportionally equal terms.

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

MONROE CHEMICAL COMPANY AND MARY T. GOLDMAN COMPANY[1]

COMPLAINT, MODIFIED 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, Aug. 5, 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 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 to every hair in your head," facts being product in question does not restore original color to gray, faded or streaked hair or 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 letters and advertisements concerned were published and used by corporation and concern aforesaid;

[1] The Commission on August 5, 1940, modified findings as to the facts, through modifying, as published herein, par. 10 of the original findings.

With capacity and tendency to mislead and deceive 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 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, MODIFIED 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 Company, 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 Min-

nesota 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 had the tendency and

capacity to 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 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 cosmetc 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

CONSOLIDATED SIGN LETTER 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 3539. Complaint, Aug. 17, 1938—Decision, Aug. 5, 1940

Where a corporation engaged in manufacture of metallic sign letters and numbers, known in trade as "ready-made" products, as distinguished from "hand-letter" work, and in sale and distribution thereof to purchasers in various States and in the District of Columbia, in active and substantial competition with others engaged in commerce, as aforesaid, in sale of similar letters and numbers; in advertising its products through circulars, pamphlets, price lists, and in periodicals and newspapers circulating in various States—

(*a*) Made use of statements, in referring to certain of its said sign letters and numbers, "Genuine Gold Leaf Sign Letters" and "Genuine Gold Leaf," and statement that "Our Gold Leaf is Made of Pure 24 Karat and Contains no Alloy," and represented and implied thereby that its said products were composed of 24 carat pure gold exclusively, facts being products in question were not composed of 24 carat pure gold exclusively, and were not, as signified and understood from use of terms "gold leaf" or "genuine gold leaf" to designate, describe or refer to products of type sold by said corporation, signs produced by the more expensive and generally preferred "hand letter" work or process of gold leaf exclusively, but were made of combination of gold leaf and silver leaf mounted on tinfoil, long labeled and sold as "Half Gold" by manufacturers thereof, with gold leaf, under process employed by said corporation, exposed to view and silver leaf concealed between other and tinfoil back; and

(*b*) Made use of statement, in describing certain other of its said sign letter and number products, "The New Modernistic One Piece Silver and Black Sign Letters," and represented and implied thereby that signs so designated, described, or referred to were made from silver leaf, notwithstanding fact they contained no silver metal or leaf, as signified and understood from use of word "silver" to designate, describe, or refer to sign letters or numbers of type produced by it;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that such representations were true, and into purchase of substantial quantities of its product as result thereof, and with result that trade in commerce was diverted to it from its competitors who do not use deceptive and misleading representations in connection with sale and distribution of their products:

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

Before *Mr. W. W. Sheppard* and *Mr. L. C. Russell*, trial examiners.

Mr. E. P. Schrup and *Mr. DeWitt T. Puckett* for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Consolidated Sign Letter 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, Consolidated Sign Letter Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its principal place of business located at 416 South Dearborn Street, Chicago, Ill.

Respondent is engaged in the manufacture and sale of metallic sign letters and numbers, and causes said products when sold to be transported from its place of business in Chicago, State of Illinois, to the purchasers thereof located in States of the United States other than the State of Illinois, and in the District of Columbia.

PAR. 2. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in the said metallic sign letters and numbers sold and distributed by it, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its said business, respondent is in active and substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of metallic sign letters and numbers and with others engaged in the sale and distribution of gold leaf and silver leaf, all of said competitors being engaged in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business, and for the purpose of inducing the purchase of said metallic sign letters and numbers, respondent has made many representations concerning the character and quality of said products, by means of advertising circulars, folders, and price lists circulated generally, and by means of advertisements inserted in magazines and newspapers having an interstate circulation. Among said representations made by the respondent are the following:

Genuine Gold Leaf Sign Letters.
Genuine Gold Leaf.
Our Gold Leaf is made of Pure 24 Karat and Contains no Alloy.
The New Modernistic one piece Silver and Black Sign Letters.

All of said statements, together with similar statements appearing in the respondent's advertising literature, purport to be descriptive of respondent's products and representative of the character and quality thereof. In all of its advertising literature 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 its "Genuine Gold Leaf" metallic sign letters and numbers are actually made and composed of genuine gold leaf; that said "Genuine Gold Leaf" is 24 carat pure gold containing no alloy and that "The New Modernistic one piece Silver and Black Sign Letters" actually contain the element of silver.

PAR. 5. The said representations as made by the respondent with respect to the character and quality of its metallic sign letters and numbers are false, misleading and untrue.

In truth and in fact, the products described as being made and composed of "Genuine Gold Leaf" are not made and composed of genuine gold leaf, nor are they made and composed of pure 24-carat gold containing no alloy as represented by the respondent. Further, "The New Modernistic one piece Silver and Black Sign Letters" contain no silver, contrary to respondent's description and representation.

The true facts are that respondent's so-called Genuine Gold Leaf is not the product correctly known, described and accepted as genuine gold leaf nor does it contain gold of the absolute standard of 24 carat fineness and purity. Respondent's "Genuine Gold Leaf" is actually made and composed of a very thin strip of gold superimposed upon a very thin strip of silver, the two strips together forming a single leaf, the top portion being gold and the bottom portion silver. Respondent's so-called piece Silver and Black Sign Letters contain no silver, the same being made and composed entirely of lead foil and tin foil.

The words "Gold Leaf," "Genuine Gold Leaf," "24 Karat," and "Silver" as used herein have a definite well-known, generally understood and accepted meaning. Products so described represent to the purchasing public that they are in fact real gold leaf made and composed entirely of gold; that the gold used therein is pure unalloyed 24 carat fine; that the products as so described contain the element of silver. It is common knowledge that the inherent qualities of genuine gold leaf and real silver are such that they are of superior value and adaptability for the particular usage herein required and for which usage respondent's products are represented to be designed.

PAR. 6. There are among respondent's competitors many who sell and distribute metallic sign letters and numbers who do not misrepresent the character or quality of their respective products, and many who sell and distribute gold leaf and silver leaf who do not misrepresent the character or quality thereof.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in describing the character, content, and quality of its products, as hereinabove set out, were and are calculated to have, have had, and now have, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true. As a direct result of this erroneous and mistaken belief, a number of the public have purchased a substantial volume of respondent's products with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in selling and distributing metallic sign letters and numbers, and from competitors engaged in selling and distributing gold leaf and silver leaf, who truthfully advertise their respective products and the character and quality thereof.

Respondent's acts and practices, as herein detailed, serve to place in the hands of unscrupulous or uninformed retail dealers a means and instrumentality whereby said dealers may mislead the purchasing public into the erroneous belief that respondent's products are of the character and quality indicated by respondent's description and representations.

As a consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 17, 1938, issued, and subsequently served, its complaint in this proceeding charging respondent, Consolidated Sign Letter Co., Inc., a corporation, 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 respond-

ent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by John L. Larkin and Rudolph Winter, president and vice president, respectively, of respondent before W. W. Sheppard and L. C. Russell, 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 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

PARAGRAPH 1. The respondent, Consolidated Sign Letter Co., Inc., is an Illinois corporation with its office and place of business located at 416 South Dearborn Street, Chicago, Ill. Respondent is now, and has been for several years last past, engaged in the manufacture and sale of metallic sign letters and numbers.

Respondent ships its said products, when sold, from its place of business in Chicago, Ill., to purchasers thereof located in various States of the United States and in the District of Columbia. During all the time mentioned herein, respondent has maintained a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

Respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale of metallic sign letters and numbers, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, respondent advertised its products by the use of circulars, pamphlets, price lists, and in magazines and newspapers circulated in various States of the United States. Among the statements used to describe its said products are the following:

Genuine Gold Leaf Sign Letters.
Genuine Gold Leaf.
Our Gold Leaf is Made of Pure 24 Karat and Contains no Alloy.
The New Modernistic One Piece Silver and Black Sign Letters.

PAR. 3. Respondent's sign letters and numbers are known in the trade as "ready-made" products, as distinguished from "hand-letter" work. Respondent's products, designated and described as above set forth, as "Genuine Gold Leaf Sign Letters" and "Genuine Gold Leaf," are made of a combination of gold leaf and silver leaf mounted on tinfoil. The gold leaf and silver leaf combination is made by welding the two leaves together by a heating process. This processing is done by the H. J. Weickman Co. of Hicksville, N. Y., which has been manufacturing the product for many years. That company labels and sells the product as "Half Gold." Respondent purchases this "Half Gold" leaf from said company and cuts the combination of gold leaf and silver leaf in sized letters and numbers and mounts them on a backing of tinfoil which gives added strength and makes them easier to handle. In the finished letter or number the gold leaf is exposed to view but the silver leaf is concealed between the gold leaf and the tinfoil back. This processing is done by the respondent in its factory in Chicago, Ill. Such letters and numbers are then sold to sign painters and others who apply them to glass or other substances by means of a glue which holds the letters in place.

Respondent's "New Modernistic One Piece Silver and Black Sign Letters" are made from a combination of lead and tinfoil. They contain no silver metal. The edges of the letters and numbers are colored with black paint, leaving the center or face thereof a silver color.

PAR. 4. Gold leaf is made from gold alloy. The purest gold leaf known is approximately 23 Carat or 0.999 fine gold. Silver leaf is made from silver alloy and the purest silver leaf known is 0.999 fine silver. Both are used for sign and gilding purposes and are applied to an object such as glass by a brush. A certain degree of skill is required in applying the leaf properly and the application thereof in the sign painting trade is known as "hand-letter" work. "Hand-letter" work is more expensive than, and generally preferred to, "ready-made" letter work such as is sold by respondent.

PAR. 5. The testimony shows and the Commission finds that respondent's aforesaid advertising representations are false, deceptive and misleading. The term "gold leaf" and the word "silver," when used to describe or refer to sign letters or numbers, have well-established and generally understood meanings. The use of the term "gold leaf" or "genuine gold leaf" to designate, describe or refer to sign letters or numbers of the type sold by the respondent or signs produced by the method known as "hand-letter" work means that the leaf used in the manufacture of such letters or numbers is gold leaf exclusively. The use of the word "silver" to designate, describe or refer

to sign letters or numbers of the type produced by the respondent means that silver leaf has been used in the manufacture of such letters and numbers.

The respondent, through the use of the statements "Genuine Gold Leaf Sign Letters" or "Genuine Gold Leaf" and "Our Gold Leaf is Made of Pure 24 Karat and Contains no Alloy," as hereinabove set out, represents and implies that its so-called "gold leaf" sign letters and numbers are composed of 24 Carat pure gold exclusively, and through the use of the statement "The New Modernistic One Piece Silver and Black Sign Letters," represents and implies that the signs so designated, described, or referred to are manufactured from silver leaf.

In truth and in fact, the gold leaf used in respondent's said products is not 24 Carat pure gold and said gold leaf does contain an alloy. The so-called "gold-leaf" sign letters and numbers designated, described, and referred to by the respondent as "gold leaf" and "genuine gold leaf" are not composed exclusively of gold leaf, and the products designated, described, and referred to as "The New Modernistic One Piece Silver and Black Sign Letters" are not composed of silver leaf and contain no silver metal.

PAR. 6. The use by respondent of the foregoing false, deceptive, and misleading representations, disseminated as aforesaid, 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 products as a result of such erroneous belief. As the result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted to respondent from its competitors who do not use deceptive and misleading representations in connection with the sale and distribution of their products.

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 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 W. W. Shep-

pard and L. C. Russell, examiners 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, Consolidated Sign Letter 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 metallic sign letters and numbers in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Representing, through the use of the terms "genuine gold leaf sign letters" or "genuine gold leaf" or any other words of similar import or meaning, that sign letters or numbers composed of a combination of gold and silver leaf on a backing of lead and tinfoil are composed of gold, gold leaf, or genuine gold leaf.

2. Representing that the gold leaf used in the manufacture of its products is 24 Carat fine gold, or that said leaf contains an amount of gold in excess of its actual content.

3. Representing that the gold leaf used in the manufacture of its products is made exclusively from gold and does not contain an alloy.

4. Representing, through the use of the word "silver" in the trade name, or in any other manner, that letters or numbers manufactured from a combination of lead and tinfoil contain, or are composed of, silver metal.

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

SAMUEL SWIMMER, DOING BUSINESS AS SEABOARD PAINT & VARNISH COMPANY

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

Docket 4014. Complaint, Feb. 5, 1940—Decision, Aug. 5, 1940

Where an individual engaged in reconditioning "Spray Booth Off Fall" paint, or product lost in painting of various products with spray guns, and in sale and distribution of such reconditioned product as outside paint to purchasers in various other States and in the District of Columbia; in letters mailed to prospective purchasers in various States—

(*a*) Represented that the usual, regular and customary price of said product was $2.65 a gallon, and that it was being offered and would be sold at a sacrifice price of $1.55, and that he had, in a warehouse located in the vicinity of the recipient, some 100, or other specified number, of gallons of such product, accounting for reputed sacrifice in price, facts being regular price thereof was that at which offered, and he did not have said quantity thereof, or any other number of gallons of paint, in a warehouse in recipient's vicinity, but product was warehoused at his place of business in New York State and shipments made therefrom to purchasers; and

(*b*) Represented that said product was manufactured for use on surfaces exposed to the weather and was clean, fresh stock in perfect condition and of extremely high quality, and would last practically a lifetime, facts being it was not made for use on outside or exposed surfaces, but for use in the painting of "frigidaires," ice boxes and other articles of merchandise not exposed to the weather, was not clean, fresh stock, as aforesaid, but made from paint lost or wasted in painting of various products with spray guns, and did not last practically a lifetime;

With effect of misleading substantial portion of purchasing public into mistaken and erroneous belief that such representations were true and, by reason of such belief, of causing substantial portion of such purchasing public to buy 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.

Before *Mr. L. C. Russell*, trial examiner.

Mr. Clark Nichols 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 Samuel Swimmer, an individual doing business under the firm name of Seaboard Paint

& Varnish 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, Samuel Swimmer, is an individual, trading and doing business under the firm name of "Seaboard Paint & Varnish Co." with its principal place of business at 275 Russell Street, Brooklyn, N. Y. Respondent is now and has been for more than 2 years last past engaged in the sale and distribution of paint. The paint offered for sale and sold by respondent is commonly known as "spray booth off fall" paint, which is paint that is lost in the painting of various products with spray guns. This paint is reconditioned by the respondent and sold as an outside paint. Respondent causes said product, when sold by him, 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 other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce among the between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business and for the purpose of inducing the purchase of his said product, the respondent has mailed to prospective purchasers located in various of the several States of the United States, letters containing representations as to the price and quality of such product. Typical of the letters mailed to prospective purchasers by the respondent as aforesaid, containing such representations is the following:

In a warehouse near you, we have 100 one gallon cans, packed in cartons, of our Outside White Paint, guaranteed to be clean fresh stock in perfect condition which we will sacrifice for $1.55 per gallon, delivered, freight prepaid; original price was $2.65 per gallon.

This material is superior in quality and composition to the most expensive made well known brands of Outside White and is far superior to White Lead as to whiteness and durability.

Its unusual high quality makes it ideal for inside and outside painting on wood, metal, concrete or over old paint. It covers solid in one coat, brushes easily and dries in six hours. Endures severest exposures without cracking, chipping or flaking and lasts practically a life time.

Through the use of the foregoing statements and others of similar import and meaning not set out herein, the respondent represents and implies that the regular and customary price of said paint is $2.65 per gallon and that it is being offered for sale and will be sold at a sacrifice price of $1.55 per gallon; that said paint was

manufactured for use on surfaces exposed to the weather; and that the respondent has, in a warehouse located in the vicinity of the recipient of the letter, some 100 or other specified number of gallons of such paint, which accounts for the sacrifice he is reputedly making in price, and that such paint is of clean fresh stock, in perfect condition, and that it is of extremely high quality and "lasts practically a life time."

PAR. 3. The above representations are false, misleading, and deceptive, for in truth and in fact, the usual, regular and customary price of the paint referred to in said letters is not $2.65 per gallon but is $1.55 per gallon, the price at which it is offered for sale to the recipients of such letters. The respondent does not have 100 gallons of paint or any other number of gallons of paint at a warehouse located in the vicinity of the recipient of the letter containing such representation for, in truth and in fact, all of respondent's paint is warehoused at his place of business in the State of New York and all shipments are made therefrom to purchasers. Respondent's paint was not manufactured for use on outside or exposed surfaces, but was manufactured for use in the painting of "frigidaires," ice boxes and other articles of merchandise which are not exposed to the weather. Respondent's paint is not of clean fresh stock, but is made as alleged from paint lost or wasted in the painting of various products with spray guns, and it does not "last practically a lifetime" or any other such extended period of time.

PAR. 4. The use by the respondent of the foregoing false and misleading representations and implications respecting his said product as to its price, quality and location has had, and now has, the capacity and tendency to and does mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that such representations and implications are true, and causes a substantial portion of the purchasing public, because of such mistaken and erroneous belief, to purchase said product.

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 5th day of February 1940, issued and served its complaint in this proceeding upon respondent Samuel Swimmer, doing business as Seaboard Paint & Varnish Co.,

charging him 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 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 filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Samuel Swimmer, is an individual trading and doing business under the firm name of Seaboard Paint & Varnish Co., with his principal place of business at 275 Russell Street, Brooklyn, N. Y. Respondent is now, and has been for more than 2 years last past, engaged in the sale and distribution of paint. The paint offered for sale and sold by respondent is commonly known as "Spray Booth Off Fall," which is paint that is lost in the painting of various products with spray guns. This paint is reconditioned by respondent and sold as an outside paint. Respondent causes said product, when sold by him, 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 other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said product in commerce 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 and for the purpose of inducing the purchase of his said product, the respondent has mailed to prospective purchasers located in various of the several States of the United States, letters containing representations as to the price and quality of such product. Typical of the letters mailed to prospective purchasers by respondent as aforesaid, containing such representations, is the following:

In a warehouse near you we have 100 one-gallon cans, packed in cartons, of our Outside White Paint, guaranteed to be clean fresh stock in perfect condition which we will sacrifice at $1.55 per gallon, delivered, freight prepaid; original price was $2.65 per gallon.

This material is superior in quality and composition to the most expensively made well-known brands of Outside White and is far superior to White Lead as to whiteness and durability.

Its unusual high quality makes it ideal for inside and outdoor painting on wood, metal, concrete or over old paint. It covers solid in one coat, brushes easily and drys in six hours. Endures severest exposures without cracking, chipping or flaking and lasts practically a lifetime.

Through the use of such statements, the respondent represents and implies that the regular and customary price of said paint is $2.65 per gallon and that it is being offered for sale and will be sold at a sacrifice price of $1.55 per gallon; that said paint was manufactured for use on surfaces exposed to the weather; that the respondent has, in a warehouse located in the vicinity of the recipient of the letter, some one hundred or other specified number of gallons of such paint, which accounts for the sacrifice he is reputedly making in the price, and that such paint is of clean fresh stock, in perfect condition, and that it is of extremely high quality, and lasts practically a lifetime.

PAR. 3. The above representations are false, misleading, and deceptive. The usual, regular, and customary price of the paint referred to in said letters is not $2.65 per gallon, but is $1.55 per gallon, the price at which it is offered for sale to the recipients of such letters. The respondent does not have 100 gallons of paint or any other number of gallons of paint in a warehouse located in the vicinity of the recipient of the letter containing such representations. All of respondent's paint is warehoused at his place of business in the State of New York and all shipments are made therefrom to purchasers. Respondent's paint was not manufactured for use on outside or exposed surfaces, but was manufactured for use in the painting of "frigidaires," ice boxes and other articles of merchandise which are not exposed to the weather. Respondent's paint is not of clean, fresh stock, but is made from paint lost or wasted in the painting of various products with spray guns, and it does not last practically a lifetime.

PAR. 4. The use by the respondent of the foregoing false and misleading representations and implications respecting his said product as to its price, quality, or location has had, and now has, the capacity and tendency to mislead, and does mislead, a substantial portion of the purchasing public into the mistaken and erroneous belief that said representations are true and causes a substantial portion of the purchasing public to purchase said products because of such mistaken and erroneous 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 [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Samuel Swimmer, his representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of reclaimed or reconditioned paint in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the usual, regular, or customary price per gallon of said paint is $2.65, or any sum in excess of the price at which said paint is usually and customarily sold.

2. Representing that respondent has a quantity of said paint warehoused at any point other than his place of business, when in fact he does not have any of said paint warehoused at such other point or points.

3. Representing that said paint was manufactured for use on outside or exposed surfaces or that said paint is clean, fresh stock and will last practically a lifetime.

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.

[1] Order published as modified as of October 1, 1940.

IN THE MATTER OF

CHARLES POLK, TRADING AS SALES PROMOTING COMPANY

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

Docket 4175. Complaint, July 6, 1940—Decision, Aug. 5, 1940

Where an individual engaged in sale and distribution of watches, clocks, leather goods, electric lamps, and various other articles of merchandise, to purchasers in various States; in soliciting the sale of and in selling and distributing his said products—

Furnished various devices and plans of merchandising which involved operation of games of chance, gift enterprise, or lottery schemes, including plan under which he sold to fraternal and charitable organizations contacted by him articles of merchandise dealt in by him as above indicated, together with push cards for use in sale and distribution of merchandise in question to purchasing public by said organizations' members, under scheme or plan by which person selecting by chance one of feminine names displayed corresponding to name concealed under card's master seal became entitled to one of articles of merchandise being thus disposed of, and operator and seller of chances was similarly compensated for his services, and amount paid by each purchaser of chance was dependent upon number concealed and secured under disk selected; and

Supplied thereby to and placed in the hands of others, in accordance with aforesaid and similar plans involving the furnishing of other push cards and lottery devices for use in sale and distribution of such merchandise, means of conducting lotteries in sale of his said products in accordance with such plans, as above set forth, involving game of chance or sale of a chance to procure an article of merchandise at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise, and element of chance involved therein, and were thereby induced to buy and sell same in preference to that offered and sold by competitors aforesaid, who do not use such or equivalent method, and with effect through use of such method and game of chance aforesaid, of unfairly diverting trade to him from his said competitors who do not use such or equivalent method; 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 practice 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 Charles Polk, individually and trading as Sales Promoting 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, Charles Polk, is an individual doing business under the trade name Sales Promoting Co., with his principal office and place of business located at 160 Fifth Avenue, New York, N. Y., and residence at 205 West Eighty-ninth Street, New York, N. Y. Respondent is now and for more than 5 years last past has been engaged in the offering for sale and selling watches, clocks, leather goods, electric lamps, quilts, blankets, waffle irons, radios, toilet sets, tourists sets, and other articles of merchandise to purchasers thereof located in various States of the United States. Respondent causes and has caused said merchandise when sold to be shipped or transported from his aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States. There is now and for more than 5 years last past has been a course of trade in such merchandise in commerce between and among various States of the United States. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof and in soliciting the sale of and in selling and distributing said merchandise respondent has furnished various devices and plans of merchandising which involves the operation of games of chance, gift enterprises, or lottery schemes. One method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent contacts fraternal and charitable organizations located in various States of the United States and sells and distributes to such organizations said articles of merchandise, together with devices commonly known as push cards. The said organizations in turn distribute said push cards to the members of such organizations and such members, in turn, distribute said merchandise to the

purchasing public in substantially the following manner. The push card contains a number of partially perforated disks, within each of which disks there is concealed a number. Immediately beneath each of said disks there appears a feminine name. Said push cards contain also a master seal which conceals a name corresponding to one of said feminine names. Sales are from 1 cent to 35 cents and the purchaser pays in cents the amount of the number appearing within the disk selected and removed from said card by him unless the number is in excess of 35, in which event the purchaser pays only 35 cents. The purchaser pushing the disk beneath which is the feminine name corresponding with the one under the master seal which is removed after all of said disks have been sold is entitled to and receives one of said articles of merchandise, and the person who sells the chances on said push card is also entitled to and receives one of said articles of merchandise for his services. Persons who are not successful in selecting the winning number receive nothing for their money. The numbers within said disks are effectively concealed from purchasers and prospective purchasers until the said disks have been pushed or removed from said card. All the said articles of merchandise have retail values greater than the amounts to be paid therefor. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes and has furnished various other push cards and other lottery devices for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme.

PAR. 3. The persons to whom respondent furnishes the push cards use 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 said plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of said 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 sales of chance to procure an article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent as above alleged are unwilling to adopt and use said method or

any method involving a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondent in the sale and distribution of his merchandise and the element of chance involved therein, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to and does unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 6, 1940, issued and served its complaint in this proceeding upon respondent Charles Polk, individually, and trading as Sales Promoting Co., charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 24, 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, Charles Polk, is an individual doing business under the trade name Sales Promoting Co., with his prin-

cipal office and place of business located at 160 Fifth Avenue, New York, N. Y., and residence at 205 West Eighty-ninth Street, New York N. Y. Respondent is now and for more than 5 years last past has been engaged in the offering for sale and selling watches, clocks, leather goods, electric lamps, quilts, blankets, waffle irons, radios, toilet sets, tourists sets, and other articles of merchandise to purchasers thereof located in various States of the United States. Respondent causes and has caused said merchandise when sold to be shipped or transported from his aforesaid place of business in the State of New York to the purchasers thereof at their respective points of location in various States of the United States. There is now and for more than 5 years last past has been a course of trade in such merchandise in commerce between and among various States of the United States. In the course and conduct of his business respondent is in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like and similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business as described in paragraph 1 hereof and in soliciting the sale of and in selling and distributing said merchandise respondent has furnished various devices and plans of merchandising which involves the operation of games of chance, gift enterprises, or lottery schemes. One method or sales plan adopted and used by respondent was and is substantially as follows:

Respondent contacts fraternal and charitable organizations located in various States of the United States and sells and distributes to such organizations said articles of merchandise, together with devices commonly known as push cards. The said organizations, in turn, distribute said push cards to the members of such organizations and such members, in turn, distribute said merchandise to the purchasing public in substantially the following manner: The push card contains a number of partially perforated disks, within each of which disks there is concealed a number. Immediately beneath each of said disks there appears a feminine name. Said push cards contain also a master seal which conceals a name corresponding to one of said feminine names. Sales are from 1 cent to 35 cents and the purchaser pays in cents the amount of the number appearing within the disk selected and removed from said card by him unless the number is in excess of 35, in which event the purchaser pays only 35 cents. The purchaser pushing the disk beneath which is the feminine name corresponding with the one under the master seal which is removed after all of said disks have been sold is entitled to and receives one

of said articles of merchandise, and the person who sells the chances on said push card is also entitled to and receives one of said articles of merchandise for his services. Persons who are not successful in selecting the winning number receive nothing for their money. The numbers within said disks are effectively concealed from purchasers and prospective purchasers until the said disks have been pushed or removed from said card. All the said articles of merchandise have retail values greater than the amounts to be paid therefor. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes and has furnished various other push cards and other lottery devices for use in the sale and distribution of their merchandise by means of a game of chance, gift enterprise, or lottery scheme.

PAR. 3. The persons to whom respondent furnishes the push cards use 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 said plans hereinabove set forth. The use by respondent of said sales plan or method in the sale of said 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 sales of 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 described are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance, or any 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 offerred for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method

and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

CONCLUSION

The aforesaid acts and practices of respondent as herein found are all to the prejudice and the 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 Charles Polk, individually and trading as Sales Promoting 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 watches, clocks, leather goods, electric lamps, quilts, blankets, waffle irons, radios, toilet sets, tourist sets, or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing any merchandise so packed and assembled that sales of said 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 other devices, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said 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 push or pull cards, punchboards, or other devices either with merchandise or sep-

arately, which said push or pull cards, punchboards, or other devices are to be used or may be used in selling or distributing such 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 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

UNION FOUNTAIN PEN COMPANY, AND PAULINE JOAB, ISADORA SANDROW AND LOUIS MORRISON

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

Docket 3522. Complaint, Aug. 2, 1938—Decision, Aug. 6, 1940

Where a corporation and three individuals, who were officers thereof, managed, directed, and controlled its policies, practices, and business affairs, and participated in below acts and practices, engaged in sale and distribution of fountain pens to purchasers in other States and in District of Columbia, and in thus offering and selling to wholesalers certain pens at 33⅓ cents each, in substantial competition with others also engaged in such sale and distribution of fountain pens and including many who are unwilling to employ methods used by them, as below set forth, or any similar methods involving use of misleading and deceptive representations in sale of their respective products, and who do not place in the hands of others means of deceiving public in regard thereto—

(*a*) Offered and sold their said "Tourist" pens with price mark or band affixed to each disclosing figure $3.75, and designation "The Tourist," wrapped in so-called "Guaranteed Lifetime Service" "certificate"; and

(*b*) Represented their said "Tourist" pens as "custom-built" in advertising thereof;

Facts being pens' regular retail price was from 89 cents to $1, purported resale price placed thereon was greatly exaggerated and fictitious and much in excess of that contemplated and in no wise represented pens' regular retail price or value, neither pens nor parts were, as understood by purchasing public from term "custom-built," "hand-made," but were assembled by them from parts purchased from different manufacturers, and they were not, as thus understood, "custom-built" nor with points such as last, ordinarily, two years or thereabouts, of grade and quality that would last for lifetime of purchaser, and they did not make repairs and replacements without cost to purchaser, but only upon payment of postage and insurance;

With result of placing in hands of retailers, through practice of affixing said price mark or band, means by which purchasing public was misled or deceived as to pens' true retail price and value, and of leading said public, through such so-called "Guarantee," to believe that product was of grade and quality that would last for purchaser's lifetime, with any repairs necessary made without cost to purchaser, and of misleading and deceiving it further as to real grade and quality of said pens, thus banded, and into belief that they were in fact of grade and quality which ordinarily sell for and have retail value of $3.75, and were "custom-built" or "hand-made," and with effect of misleading and deceiving substantial portion thereof into erroneous and mistaken belief that said pens did in fact have such value and ordinarily sell for said sum, and were "custom-built" or "hand-made," with repairs and replacements without cost to purchaser, and of causing such portion of public, because of said erroneous and mis-

taken belief, to purchase said pens, and thereby unfairly divert trade to them from their competitors in commerce; to injury of said competitors and that of public:

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

Before *Mr. John J. Keenan* and *Mr. Miles J. Furnas*, trial examiners.

Mr. John R. Phillips, Jr., for the Commission.

Block & Shlivek, of New York City, for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Union Fountain Pen Co., a corporation, doing business as "Morrison Fountain Pen Co.," and Pauline Joab, Isadora Sandrow, and Louis Morrison, individually and as officers of said 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, Union Fountain Pen Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 79 Fifth Avenue, city of New York, State of New York. Respondent, Union Fountain Pen Co., also trades as Morrison Fountain Pen Co. Said respondent is engaged in the manufacture of fountain pens known as "Morrison's" and "Morrison Pens." Respondents, Pauline Joab, Isadora Sandrow, and Louis Morrison, whose address is 79 Fifth Avenue in the city of New York, State of New York, are officers of the aforesaid respondent corporation and manage, control, and direct the policies, practices, and business affairs of said corporation, and participate in the acts and practices herein charged.

The above-named corporate respondent caused and causes its products, when sold, to be transported from its place of business in New York City in the State of New York to purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia.

Respondent corporation now maintains, and for more than 2 years last past has maintained, a course of trade in the aforesaid fountain

pens so sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondent corporation, in the course and conduct of its business, is now selling and distributing in commerce, and has been for more than 2 years last past selling and distributing in commerce, certain fountain pens designated as "No. 90 Morrison Tourist Pens," which have been and are now uniformly banded with a price mark of $3.75, and which are sold to wholesalers at an average cost of 33⅓ cents each, and to retailers at an average cost of 50 cents each, and have been, and are, customarily retailed to the ultimate purchaser at from 89 cents to $1. In truth and in fact the said fountain pens of respondent corporation are not of $3.75 value and are not equal in value or price to fountain pens having such value or price, but are of the type having a value of much less than $3.75, and are ordinarily sold in the usual course of trade for approximately the sum of 89 cents or $1 and were never intended to be sold for $3.75.

PAR. 3. In some of its literature the respondent corporation represents, and has for more than 2 years last past represented, that the pen point or nib of the "No. 90 Morrison Tourist Pen" is 14-carat gold, by the use of a placard or poster upon which appears a large picturization of a fountain pen with the figures and letters "14Kt." on the point or nib thereof. Although the pen point or nib itself does not bear this mark, a substantial portion of the purchasing public is nevertheless led to believe from these pictorial representations that said pens are equipped with a 14-carat point or nib, when in truth and in fact said points do not contain such a carat fineness and are of inferior quality. Said fountain pens are and have been represented as "custom built" and are sold under a purported "guaranteed lifetime service." These representations convey to a substantial portion of the purchasing public the impression that special care has been employed in the construction of said pens, and that they are guaranteed for life. In truth and in fact respondents do not employ any special care in the construction of said pens nor is the lifetime guarantee provision fully carried out by the respondents.

PAR. 4. There are among the competitors of the respondents hereinabove described corporations, partnerships, and individuals likewise engaged in the sale and distribution of fountain pens in commerce between and among the various States of the United States and in the District of Columbia, who do not misrepresent the price of their products or falsely represent their products, but who truthfully represent the same.

PAR. 5. The acts and practices of the respondents as aforesaid in using said price labels or bands showing the price of said pens to

be "3.75," said representations to the effect that said fountain pen is custom built and sold under a lifetime guarantee, and said pictorial representations to the effect that the pen point or nib is 14-carat gold, have a capacity and tendency to and do mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that respondents' said fountain pen is in truth and in fact of the value of, and ordinarily sells for, the sum of $3.75, that the point or nib of said pen is 14-carat gold, and that said pen is of a grade, quality, and value equal to pens which ordinarily sell for the sum of $3.75 and up; and cause many members of the purchasing public, on account of said erroneous and mistaken belief, to purchase fountain pens from respondents, thereby unfairly diverting trade in said commerce to the respondents from their competitors to the injury of such competitors and the injury of the public.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 2d day of August A. D. 1938, issued, and thereafter served, its complaint in this proceeding, charging respondents, Union Fountain Pen Co., a corporation, Pauline Joab, Isadore Sandrow, and Louis Morrison, with unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by John R. Phillips, attorney for the Commission, and in opposition to the allegations of the complaint by Max Shlivek, counsel for the respondents, before John J. Keenan and Miles J. Furnas, examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on 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, Union Fountain Pen 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 at 79 Fifth Avenue, in the city of New York, State of New York. Respondents, Pauline Joab, Isadore Sandrow (named in the complaint as Isadora Sandrow), and Louis Morrison are officers of the aforesaid corporation and manage, direct, and control the policies, practices, and business affairs of said corporation and participated in the acts and practices alleged in the complaint.

For more than 1 year prior to the issuance of the complaint herein, the above-named respondents have been, and now are, engaged in the business of selling and distributing fountain pens in commerce between and among various States of the United States and in the District of Columbia. In addition to conducting their said business under the name of Union Fountain Pen Co., respondents also conducted, prior to October 1938, their business under the name, "Morrison Fountain Pen Co."

Respondents have caused and cause their products, when sold, to be transported from their place of business in the State of New York to purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia.

PAR. 2. There are now, and have been during all the time respondents have been engaged in business, persons, firms, and corporations likewise engaged in the sale and distribution of fountain pens in commerce between and among the several States of the United States and in the District of Columbia, with whom the respondents are and have been in substantial competition. Among such competitors are many who are unwilling to employ the methods used by the respondents, as hereinafter set forth, or any similar methods involving the use of misleading and deceptive representations in the sale of their respective products, and who do not place in the hands of others the means of deceiving the public in regard to their respective products.

PAR. 3. In the course and conduct of their business, as hereinabove set out, respondents offer for sale and sell their "Morrison's No. 90 'Tourist' Pen" to wholesalers at 33⅓ cents each. These wholesalers, in turn, resell such pens to the retail trade at 50 cents each and the retail merchants sell these pens to ultimate purchasers at prices ranging from 89 cents to $1 each. These fountain pens, when sold by the respondents and when delivered to the retailers

for resale to the purchasing public, have a price mark or band affixed to each pen bearing the following statement:

$3.75—Morrison's No. 90.
1/20—18 K. Band "The Tourist."

Through said price mark or band, the respondents represent to the purchasing public that the regular retail price of said pens is $3.75 each.

Respondents in their advertising used in connection with the sale of said "Tourist" pens represent that the pens are "custom-built."

Each of said pens, when sold by the respondents and when delivered to ultimate purchasers, is wrapped in a "certificate" bearing the caption "Guaranteed Lifetime Service."

PAR. 4. The purported retail price of $3.75 placed on the price marks or bands attached to said "Tourist" pens by the respondents is a greatly exaggerated and fictitious price and is much in excess of the price at which respondents intend that said pens are to be sold, and in nowise represents either the regular retail price or value of said pens, which ranges as above found from 89 cents to $1. The use of this exaggerated and fictitious price mark or band leads the purchasing public to believe that $3.75 is the regular retail price of said "Tourist" pens, and that said pens are of the grade and quality of pens which ordinarily or regularly retail for $3.75. In truth and in fact, the regular retail price of said pens so price marked by the respondents is from 89 cents to $1 each.

Respondents, by affixing said price mark or band to their said fountain pens, place in the hands of retail dealers the means by which the purchasing public is misled and deceived as to the true retail price and the true value of said "Tourist" pens.

The term "custom-built," when used in connection with fountain pens, is understood by the purchasing public to mean that said pens are "hand-made." Through the use of the term "custom-built" in designating and describing said pens in their advertising matter, respondents lead members of the purchasing public to believe that said pens are hand-made, when in truth and in fact the component parts of said pens are purchased from a number of different manufacturers and are assembled by the respondents into a finished pen. Neither the pen as a whole nor any of the component parts thereof are hand-made, and said pens are not "custom-built" as that term is understood by the purchasing public.

The use by the respondents of the "Guaranteed Lifetime Service" certificate in connection with the sale of said "Tourist" pens leads the purchasing public to believe that the pen is of a grade and quality that will last for the lifetime of the purchaser and that any repairs

necessary will be made by the respondents without cost to the purchaser. In truth and in fact, said pens will not last a "lifetime." Expert witnesses who testified in this proceeding estimate, and the Commission finds, that, under ordinary usage, the point or nib used in said pens would last for approximately 2 years, when it would have to be replaced. Repairs and replacements are not made by the respondents without cost to the purchasers of said pens, but only upon payment of a charge covering postage and insurance. The use of said "Guaranteed Lifetime Service" certificate in connection with the fictitious price mark or band showing a price of $3.75 for each of said pens misleads and deceives the purchasing public as to the real grade and quality of said pens and leads the public to believe that said pens are of the grade and quality of pens which ordinarily sell for, and have a retail value of, $3.75.

PAR. 5. The use of the aforesaid acts and practices by the respondents in connection with the offering for sale, sale and distribution of said "Tourist" fountain pens 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 each of said fountain pens is in truth and in fact of the value of, and ordinarily sells for, the sum of $3.75, and that said fountain pens are "custom-built" or "hand-made" and will last a lifetime, and that repairs and replacements will be made without any cost to the purchaser, and causes a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondents' said fountain pens, thereby unfairly diverting trade to the respondents from their competitors in commerce between and among the several States of the United States and in the District of Columbia, to the injury of said competitors and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice and injury of the public and of respondents' competitors and constitute unfair methods of competition in commerce 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 in support of the allegations of said complaint, and in opposition thereto, taken before John J. Keenan and Miles J. Furnas, examiners of the Commission there-

tofore duly designated by it, and briefs filed herein, and no request for oral argument having been made, 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, Union Fountain Pen Co., its officers, agents, employees, and representatives, and Pauline Joab, Isadore Sandrow, and Louis Morrison, their agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of fountain pens in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that the customary and usual retail price at which said fountain pens are sold is $3.75, or any other sum in excess of the price at which such pens are usually and customarily sold at retail.

2. Affixing to said fountain pens price marks or bands containing purported retail prices, when the prices stated on said marks or bands are fictitious and in excess of the prices at which said pens are usually and customarily offered for sale and sold.

3. Using the term "custom-built" in designating, describing, or referring to said pens.

4. Representing, through the use of a "Guaranteed Lifetime Service" certificate, or in any other manner, that said fountain pens will last a lifetime.

5. Representing that respondents will repair said pens or replace damaged parts thereof without cost, when any charge is made for such service.

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

HARDWOOD CHARCOAL COMPANY, MANUFACTURERS CHARCOAL COMPANY, TENNESSEE EASTMAN CORPORATION, CLIFFS-DOW CHEMICAL COMPANY, ET AL

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

Docket 3670. Complaint, Feb. 17, 1939.[1]*—Decision, Aug. 9, 1940*

Where two corporate entities which, (1) together with two other aggregations of concerns and individuals, as below set forth, produced about 65 percent of all the hardwood charcoal made in the United States, (2) were, along with said aggregations and the component concerns and individuals making up the same, in active and substantial competition with one another in sale of said product in trade and commerce among the various States and in the District of Columbia, prior to and but for the acts and practices below set forth, and which, (3) along with said other groups, etc., in various combinations, and as below described, entered into and carried out agreements to suppress and eliminate price competition among themselves in sale and distribution of said product, and which two, respectively, were—

I. Tennessee selling agency organized in 1932 to act as exclusive agent in sale and distribution of hardwood charcoal produced by its three corporate "hardwood members" in certain areas of the United States and particularly in the southern part thereof, and including the States of Arkansas, Tennessee, Mississippi, Alabama, and some parts of Louisiana, Georgia, Texas, Oklahoma, Missouri, Kentucky, and Florida, and which, as such exclusive agent and within said area, handled entire charcoal output of its members and set prices at which said product was sold throughout such area, and shipped or caused to be shipped said product to the purchasers at their respective points of location in the several States other than the States of origin of such shipments; and

II. Tennessee producing company, engaged among other things, in producing charcoal as byproduct of hardwood distillation, and in selling and distributing same to distributors and dealers at various points throughout the United States and in said District, and in shipping or causing its product to be shipped to purchasers at their respective points of location, in substantial competition with pit or kiln produced hardwood charcoal and pine charcoal for same common purposes—

(a) Entered into and, since 1932, had, and carried out, a continuous understanding and agreement whereby said agency filled orders received by said producer from latter's customers (in cases in which producer had insufficient supply of own product so to do), and under practice by which particular member of said agency filling order (contract for which was between said producer and its purchaser-customer and with price of which particular member filling order had nothing to do), placed in bags bearing trade name of producer charcoal produced by particular member, with no indication on bags or receptacles that contents were packed for seller, contrary to

[1] Amended.

sellers' common practice throughout the United States of placing upon merchandise not made, produced, or packed by said sellers, or upon containers thereof, sellers' own trade-mark, trade name or other trade identification, accompanied by statement that such merchandise was manufactured or packed for sellers in question; and

Where said Tennessee selling agency, as above described, and Pennsylvania sales organization which operated substantially on nonprofit basis in sale of hardwood charcoal produced by distillation method by its various Pennsylvania and New York members, under agency contracts therewith, and which, acting as such sales agent, sold and distributed hardwood charcoal to distributors and dealers thereof at various points throughout the United States—

(*b*) Entered into agreement to fix and maintain identical delivered prices at which hardwood charcoal was to be sold at destination points in the United States, and, since 1932 organization of said Tennessee agency, entered into and carried out an understanding or agreement to exchange information as to delivered prices at which each sold its charcoal to distributors and dealers and as to sales policies, accounting methods and charcoal situation in their respective territories, and other information, with intent better to effectuate said delivered price agreement aforesaid;

(*c*) Entered into and carried out 1933 agreement or understanding in behalf of said Pennsylvania agency concern and its members and said Tennessee agency, for allocation of certain territories of the United States to one another, and, under quota system adopted, severally and reciprocally limited, for period of years in furtherance thereof, respective amounts of hardwood charcoal which each might and did seek to sell and deliver to customers in territory allotted, under which, as brokerage arrangement, latter paid former certain amount per ton for handling charcoal of latter's members, with former, or Pennsylvania agency, assuming credit responsibility as sole brokers for other in eastern market, and with other's accounts in eastern area protected so far as concerned receipt of sufficient tonnage;

(*d*) Entered into and carried out 1934 agreement or understanding as to distributors in eastern market to whom neither would sell as, in their joint opinion, neither substantial nor reliable, and limited thereby number of dealers to whom they would sell their respective products;

(*e*) Entered into and carried out 1935 and 1936 understanding and agreement to fix and maintain uniform resale prices at which hardwood charcoal was to be sold at retail at certain destination points; and

(*f*) Entered into and carried out 1935 understanding and agreement not to solicit one another's customers; and

Where said four corporate organizations, i. e., said Tennessee and Pennsylvania selling concerns or agencies, said Tennessee producer, and Michigan producer which, among other activities, produced charcoal as byproduct of hardwood distillation and sold and distributed the same throughout the United States to distributors and dealers at various points—

(*g*) Entered into and carried out June 4, 1935, understanding and agreement to fix and maintain identical delivered prices at which they would sell hardwood charcoal to dealers and distributors thereof at destination points throughout the United States; and

Where some fifteen Pennsylvania and New York corporate, partnership or individual businesses engaged as small producers in manufacture of hardwood

charcoal by distillation method, and in sale and distribution thereof to distributors and dealers at various points throughout the United States; with intent, tendency and effect of suppressing and eliminating all substantial price competition between said Pennsylvania selling agency and members thereof, and between and among such members themselves, and between said members and said Tennessee selling agency and its members, and said Tennessee and Michigan and other producers, and sales agents for producers of hardwood charcoal in making and seeking to make sales of said product in trade and commerce among the various States and in the District of Columbia, and as the case might be—

(*h*) Entered into and carried out 1935 exclusive sales contracts with said Pennsylvania selling agency, under which the 13 then involved could sell product only to said sales agency, and under which exact price to be received as agency members, unknown at time of various sales, was determined by price received by agency, less amount fixed by latter to cover its operations, with credit risks assumed by it; and

(*i*) Entered into 1936 contracts, in response to said selling agency's expressed desire to act as selling agency for two concerns involved and eliminate their competition with it in sale of their products, under which agency was granted right to purchase concerns' entire output, excepting certain specified customers only, and producer, who exchanged information with said Pennsylvania and Tennessee selling agencies as to prices to be charged for product, received from agency specified sum therefor; and

(*j*) Entered into 1936 agreement with producer under which business and successor business concerned agreed to sell entire output to said Pennsylvania selling agency, with 3-month retort shut down annually, shipments to be made as directed by agency, and monthly payments to be amount equal to market price at time of purchase, less amount fixed by agency to cover its costs of operation; and

Where said Pennsylvania selling agency, or such various producers acting through it, pursuant to and as result of agreements or understandings between and among said agency's members, as hereinabove set forth—

(*k*) Purchased from Canadian concern 35 cars of charcoal, or entire Canadian charcoal output entering United States during 2 or 3 month period involved; with intent to prevent Canadian product from competing with that produced by said producer members and sold and distributed by said agency on its own behalf and for benefit of such members in commerce among the States;

With result that tendency and capacity of such agreements, and acts and practices performed pursuant thereto and in furtherance thereof, as above set forth, were, during periods involved, to unduly and unlawfully restrict and restrain sale of hardwood charcoal to distributors and dealers thereof in United States, and to wholesale and retail trade therein, in trade and commerce in said product between and among the several States and in the District of Columbia, and were to, and did actually, hinder and prevent price competition between and among all of said groups, members, concerns, and individuals in sale and distribution of said product in commerce, and were to enhance substantially prices to consuming public and maintain same at artificial levels and otherwise deprive public of benefits that would flow from normal competition between and among said groups, members, concerns, and individuals:

Held, That such acts and practices of said groups, members, concerns, and individuals, under the circumstances set forth, were all to the prejudice of the public, and had dangerous tendency to hinder and prevent competition in sale and distribution of hardwood charcoal in trade in commerce among the several States, and to place in said various groups, etc., power to control such sale and distribution in the United States, and constituted unfair methods of competition.

Mr. Fletcher G. Cohn for the Commission.

Dixon & Edmondson, of Memphis, Tenn., *Mr. John Gosnell*, of Crossett, Ark., *McConnico, Hatcher & Waller* and *Gaughan, Sifford & Gaughan*, of Nashville, Tenn., for Hardwood Charcoal Co., Tennessee Products Corp., Forest Products Chemical Co., and Crossett Chemical Co.

Downey, Lipper, Shinn & Keeley, of New York City, for Manufacturers Charcoal Co., Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Oswayo Chemical Co., Otto Chemical Co., and Union Charcoal Co.

Kelly, Penn & Hunter, of Kingsport, Tenn., for Tennessee Eastman Corp.

Mr. Calvin A. Campbell, of Midland, Mich., for Cliffs-Dow Chemical Co.

Mr. Paul F. Eaton, of Walton, N. Y., for G. H. Treyz & Co. and the estate of G. I. Treyz.

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 corporations, firms and individuals, hereinafter described and named, have been and are now using unfair methods of competition in commerce, as "commerce" is defined by 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 amended complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Hardwood Charcoal Co., hereinafter referred to as "Hardwood," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and having its principal office in the Sterick Building, Memphis, Tenn. It was organized in 1932 for the purpose of acting, has since acted and is now acting, as the exclusive agent for respondents, Tennessee Products Corporation, Forest Products Chemical Co. and Crossett Chem-

ical Co., hereinafter referred to as "Hardwood Members," in the sale and distribution of hardwood charcoal produced by said respondents, who each owns one-third of its stock; respondent, Hardwood, handles all of the charcoal output of said three respondents, setting the price at which said charcoal is sold; it produces no charcoal itself but maintains distribution warehouses at Atlanta, Ga., Birmingham, Ala., and Chattanooga, Tenn.

Respondent, Tennessee Products Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee and having its principal office located in Nashville, Tenn.

Respondent, Forest Products Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Tennessee, with its principal office and place of business located in Memphis, Tenn.

Respondent, Crossett Chemical Co. 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 located at Crossett, Ark.

All of said three respondents, Hardwood Members, produce charcoal as a byproduct of hardwood distillation. Each sells its entire output of hardwood charcoal to respondent Hardwood at cost; respondent Hardwood fixes the price at which the charcoal is sold to the purchasers thereof; each Hardwood Member secures its proportionate share of the profits of Hardwood based on the sales and shipments from its particular plant; each Hardwood Member bears its proportional share of the costs of operating and maintaining Hardwood.

PAR. 2. Respondent, Manufacturers Charcoal Co., hereinafter referred to as "Manufacturers," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in Bradford, Pa. It is a nonprofit sales organization which has acted, and still acts, as exclusive sales agent for certain persons, partnerships, and corporations located in the States of Pennsylvania and New York, which produce charcoal as a byproduct of hardwood distillation, most of whom are stockholders in respondent manufacturers.

Under its sales agency contracts, which are entered into semiannually with said producers of charcoal, each producer sells its entire output of charcoal to Manufacturers and, in return, secures the net amount received by Manufacturers from the ultimate purchasers less the pro rata sales expense to Manufacturers computed on a per bushel basis. Respondent Manufacturers is not a producer of charcoal and neither owns nor operates any plants engaged in the production of

charcoal or wood chemicals. It solicits orders for hardwood charcoal on the basis of carload lots, upon receipt of an order, it purchases the charcoal from one of the producers for which it acts as sales agent at said producer's plant, and forwards same to the purchaser thereof.

Respondents, all hardwood charcoal producers, hereinafter referred to as "Manufacturers Members," for which respondent Manufacturers has acted and is now acting as sales agent, are as follows:

Clawson Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Ridgway, Pa., and with charcoal retort plants located at Hallton and Gilson, Pa.

Custer City Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Custer City, Pa.

Genesee Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Genesee, Pa.

The Gray Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Roulette, Pa.

Heinemann Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Crosby, Pa.

Thomas Keery Co., Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office located at Hancock, N. Y.

Kinzua Valley Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Williamsport, Pa., and which maintains a wood, charcoal, and chemical retort plant at Morrison, Pa.

Mayburg Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Endeavor, Pa., and which maintains a chemical retort plant at Mayburg, Pa.

Morris Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Smethport, Pa., and which maintains a charcoal retort plant at Morris, Pa.

Oswayo Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Genesee, Pa., and which maintains a retort plant at Coneville, Pa.

Otto Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Williamsport, Pa., and which maintains a retort plant at Sergeant, Pa.

Pennsylvania Charcoal & Chemical Co., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at East Smethport, Pa.

Union Charcoal Co. of Pennsylvania, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business, located at Westline, Pa.

Beatrice A. Treyz and Carol Treyz Southworth, as individuals, doing business under the trade name of G. H. Treyz & Co., with their principal place of business located at Cooks Falls, N. Y.

Victor and Laura Treyz, individuals, operating the estate of G. I. Treyz, with their principal office at Cooks Falls, N. Y.

PAR. 3. Respondent, Tennessee Eastman Corporation, hereinafter referred to as "Eastman," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its principal office located at Kingsport, Tenn. Among its other activities, it produces charcoal as a byproduct of hardwood distillation and sells and distributes same.

PAR. 4. Respondent, Cliffs-Dow Chemical Co., hereinafter referred to as "Cliffs-Dow," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at Marquette, Mich. Among its other activities, it produces charcoal as a byproduct of hardwood distillation and sells and distributes the same.

PAR. 5. Respondent, Hardwood Members and Manufacturer Members, together with respondents, Eastman and Cliffs-Dow, produce approximately 70 percent of all the hardwood charcoal in the United States.

Hardwood charcoal is produced by the hardwood distillation method, and all of it is of the same quality.

It is a general practice in the hardwood charcoal industry to sell hardwood charcoal at a delivered price at each destination point.

Respondents, Hardwood, Manufacturers, and their respective Members, through and by means of said Hardwood and Manufacturers, together with respondents, Eastman and Cliffs-Dow, sell and distribute to distributors and dealers of charcoal practically all of the charcoal produced by the wholesale and retail trade in the United States; the amount of charcoal, other than that purchased by the hardwood dis-

tillation method, which is sold and distributed to distributors and dealers and to the wholesale and retail trade in the United States by other corporations and by partnerships and individuals, is negligible.

PAR. 6. In the course and conduct of their respective businesses, respondents, Hardwood, Manufacturers, Eastman, and Cliffs-Dow, directly, and respondent Hardwood Members and Manufacturers Members, indirectly, through and by means of said Hardwood and Manufacturers acting as sales agents for their respective Members, sell and distribute hardwood charcoal to distributors and dealers thereof at various points throughout the United States, and, when said sales are made, and as a part thereof, regularly have shipped or caused to be shipped and do ship or cause to be shipped, said product to the purchasers thereof at their respective points of location in the several States of the United States other than in the States of origin of such shipments. All of the respondents, in the aforementioned manner, maintain, and still do maintain, a constant current of trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 7. Prior to 1932, respondent, Hardwood Members were in active and substantial price competition with each other, as well as with respondents, Manufacturers, Eastman, Cliffs-Dow, and other producers and sales agents for producers of charcoal, in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia; and, but for said Hardwood Members entering into and carrying out the understanding, agreement, combination and conspiracy hereinafter set out in paragraph 8, such active and substantial price competition would have continued to the present.

PAR. 8. In 1932, respondent, Hardwood Members, entered into, and thereafter carried out, an understanding, agreement, combination, and conspiracy, to discontinue, eliminate, and suppress all price competition between and among said respondent Hardwood Members themselves and also by and between Hardwood Members and respondents, Manufacturers Members, Eastman, Cliffs-Dow, and other producers and sales agents of producers of hardwood charcoal, in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia.

Pursuant to such understanding, agreement, combination, and conspiracy, and for the purpose of effectuating same, said respondent Hardwood Members did, in 1932, form and organize respondent

Hardwood for the purpose, and with the effect, of having said Hardwood sell the entire output of hardwood charcoal of said Members; and respondent Hardwood has since operated and functioned, and is still operating and functioning, for the same purpose and with the same effect.

PAR. 9. Prior to their entering into exclusive sales contracts with respondent Manufacturers, respondent Manufacturers Members were in active and substantial price competition with each other, as well as with respondents Hardwood, Hardwood Members, Eastman, Cliffs-Dow, and other producers and sales agents for producers of hardwood charcoal, in making, and seeking to make, sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia; and, but for said respondent Manufacturers Members entering into and carrying out the agreements, understandings, combinations and conspiracies, hereinafter set out in paragraph 10, said active and substantial price competition would have continued until the present.

PAR. 10. Subsequent to the incorporation of respondent Manufacturers in 1912, and particularly since 1932, respondent Manufacturers Members entered into and have since carried out, and still are carrying out, agreements, understandings, combinations, and conspiracies whereby said respondent Manufacturers Members made and executed, and are now making and executing, with respondent Manufacturers, the exclusive sales contracts hereinbefore described in paragraph 4, for the purpose and with the effect, of restricting, suppressing, and eliminating all price competition between and among, said respondent Manufacturers Members themselves and also by and between said Manufacturers Members and respondents, Hardwood, Hardwood Members, Eastman, Cliffs-Dow, and other producers and sales agents for producers of hardwood charcoal, in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 11. Beginning in 1932, after the organization of respondent Hardwood, and continuing until 1935, respondents, Hardwood, Manufacturers, and Eastman, together with Western Charcoal Co., acting as exclusive sales agent for several Midwestern hardwood charcoal producers, including the Chemical Department of Cleveland-Cliffs Iron Co., the predecessor of respondent, Cliffs-Dow, entered into understandings, agreements, combinations, and conspiracies to suppress and eliminate price competition in the sale and distribution of hardwood charcoal throughout the United States; then during 1935, when the Western Charcoal Co. ceased to function, respondents, Hardwood, Manufacturers, Eastman, and Cliffs-Dow entered into other under-

standings, agreements, combinations, and conspiracies to suppress and eliminate price competition in the sale of hardwood charcoal in the United States; all of said understandings, agreements, combinations, and conspiracies were entered into and thereafter carried out, and those entered into during 1935 and thereafter are still being carried out, for the purpose and with the effect, of restricting, restraining, and monopolizing, and suppressing and eliminating competition in the sale of hardwood charcoal in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 12. Pursuant to the understandings, agreements, combinations, and conspiracies entered into by, between, and among respondents, Hardwood, Hardwood Members, Manufacturers, Manufacturers Members, Eastman, and Cliffs-Dow, and in furtherance thereof, said respondents, among other acts and things, agreed:

1. To fix and maintain, and they have fixed and maintained, identical delivered prices at which hardwood charcoal is to be sold, and is sold, by them to distributors and dealers thereof at each destination point throughout the United States.

2. To fix and maintain, and they have fixed and maintained, uniform resale prices at which hardwood charcoal is to be sold, and is actually sold, at retail throughout the United States.

3. To allot, and they have allotted, territories in the United States to each of said respondents within which each is to sell, and beyond which it shall not sell, its charcoal.

4. To severally and reciprocally limit, and they have so limited, the respective amounts of hardwood charcoal which each respondent may, shall and does sell and deliver to customers in each territory respondents have allotted as the territory of each other, thereby in effect, adopting a quota system.

5. To purchase, and they have purchased, the entire Canadian hardwood charcoal output shipped into the United States for the purpose, and with the intent and effect of eliminating all possible competition arising from, or which might arise from, the sales of said Canadian charcoal in the United States.

6. To coerce, and they have coerced, and are still coercing, producers in the Eastern States of the United States who do not have exclusive sales agency contracts with respondent Manufacturers and who, prior to the acts and things herein averred, competed with the respondents, and except for said acts and things, still might and would compete with respondents in the sale of hardwood charcoal to distributors and dealers thereof in the various States of the United States, to the end that they may make and enter into such exclusive sales agency contracts with respondent Manufacturers.

7. Not to solicit, and they have not solicited, the customers of each other.

8. To penalize, and they have penalized, distributors and dealers who sold below the prices fixed by respondents at which said distributors and dealers were required to resell charcoal, by cutting down the shipments to said dealers and distributors or entirely refusing shipments to them.

9. To fill, and they have filled, each other's orders from distributors and dealers.

10. To refuse to sell, and they have refused to sell, certain designated distributors and dealers of hardwood charcoal, thus cutting off entirely the supply of hardwood charcoal of said distributors and dealers.

11. To limit, and they have limited, the number of distributors and dealers to whom charcoal is to be sold and is sold throughout the United States.

12. To exchange, and they have exchanged, information as to the delivered prices at which each sells its charcoal to distributors and dealers, as to sales policies, accounting methods, the charcoal situation in their respective territories, and other information, all for the purpose, and with the intent, of better effectuating their agreement to fix and maintain the identical delivered prices at which charcoal is to be sold and is sold at each destination throughout the United States.

13. To use, and they have used, and are now using, other means and methods designed to suppress and prevent competition, and to restrict and restrain the sale of hardwood charcoal in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 13. Each of the respondents, at the times mentioned herein, acted in concert with one or more of the other respondents in doing and performing the acts and things herein alleged in furtherance of the understandings, agreements, combinations, and conspiracies hereinbefore set out in paragraphs 8, 10, 11, and 12; said respondents have thus adopted, and maintain and operate a system which is wholly inconsistent with, and is intended to nullify, and does nullify, the play of the forces of full competition in the hardwood charcoal industry in the United States.

PAR. 14. The understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto and in furtherance thereof, as all have hereinbefore been alleged in paragraphs 8, 10, 11, 12, and 13, have had, and do have, the effect of unduly and unlawfully restricting and restraining the sale of hardwood

charcoal to the distributors and dealers thereof in the United States, and also to the wholesale and retail trade in same, 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 hardwood charcoal in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels, and otherwise depriving the public of benefits that would flow from normal competition among and between the respondents in said commerce; and of eliminating price competition, with the tendency and capacity of creating a monopoly in the respondents' sale and distribution of hardwood charcoal in said commerce. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder 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 the 17th day of February 1939, issued and served its amended complaint in this proceeding upon 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. Answers were filed by all of the respondents to this complaint. Thereafter, stipulations were entered into whereby it was stipulated and agreed that statements of fact, signed and executed by respondents Hardwood Charcoal Co., Tennessee Eastman Corporation, Cliffs Dow Chemical Co., referred to in the amended complaint as Cliffs-Dow Chemical Co., Manufacturers Charcoal Co., acting for and on behalf of itself and its members, the respondents Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., referred to in the amended complaint as Pennsylvania Charcoal & Chemical Co., Beatrice A. Treyz & Carol Treyz Southworth, doing business as G. H. Treyz & Co., Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, and by respondents Morris Chemical Co., Penn Charcoal & Chemical Co., Beatrice A. Treyz and Carol Treyz Southworth, copartners doing business under the name and style of G. H. Treyz & Co., and Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, 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 charges stated in the complaint, or in opposition thereto, except those charges contained in paragraphs 7 and 8 of the amended complaint and those contained in any other paragraphs of said amended complaint which pertain to the alleged understanding, agreement, combination, and conspiracy between and among respondents, Tennessee Products Corporation, Forest Products Chemical Co., and Crossett Chemical Co., to discontinue, eliminate, and suppress all competition which may have existed between and among them in the sale or distribution of hardwood charcoal in interstate commerce, through the formation of respondent Hardwood Charcoal Co. in 1932; 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; except as above indicated, said respondents having agreed in said stipulations to waive the presentation of arguments or the filing of briefs before the Commission. 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. Respondent Hardwood Charcoal Co., hereinafter referred to as respondent "Hardwood," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and having its principal office in the Sterick Building, Memphis, Tenn.

It was organized in 1932 for the purpose of acting, has since acted, and is now acting, as exclusive agent for respondents, Tennessee Products Corporation, Forest Products Chemical Co., and Crossett Chemical Co., hereinafter referred to as "Hardwood Members," in the sale and distribution of hardwood charcoal produced by said respondent Hardwood Members, in certain areas of the United States, particularly in the southern part of the United States, and including the States of Arkansas, Tennessee, Mississippi, Alabama, and some parts of Louisiana, Georgia, Texas, Oklahoma, Missouri, Kentucky, and Florida. Respondent Hardwood Members each own one-third of the capital stock of respondent Hardwood Charcoal Co. Within

the area hereinabove defined, respondent Hardwood Charcoal Co. handles the entire charcoal output of the respondent Hardwood Members, setting the prices at which said charcoal is sold by it throughout said area. Said respondent, Hardwood Charcoal Co., produces no charcoal itself but maintains distribution warehouses at Atlanta, Ga., Birmingham, Ala., and Chattanooga, Tenn.

PAR. 2. Respondent, Manufacturers Charcoal Co., hereinafter referred to as "Manufacturers," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located in Bradford, Pa.

It is a sales organization operated substantially on a nonprofit basis, and now sells, or did sell within a year prior to the filing of the original and amended complaints herein, the charcoal produced by a number of small producers of hardwood charcoal, produced by the distillation method, located in the States of Pennsylvania and New York, included among which producers are the respondents Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., Union Charcoal Co. of Pennsylvania, Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., and Victor Treyz and Laura Treyz, operating the Estate of G. I. Treyz, hereinafter referred to as "Manufacturers' Members."

The stock of respondent, Manufacturers, is owned and held by 4 of the aforementioned respondent Manufacturers' Members, 14 individuals who are, in turn, connected with some of the aforesaid respondents, Manufacturers' Members, and 28 individuals, most of whom were formerly, but are not now, engaged in the production of charcoal by the hardwood distillation method, for whom respondent Manufacturers did, at one time, act as a selling agent.

Respondent, Manufacturers, is not a producer of charcoal, and does not own or operate any plants producing charcoal in any form; it is strictly a sales agency. It solicits orders for charcoal on a basis of carload lots; when an order is received, it purchases the charcoal from a producer with whom it has an agency contract, and has said producer then ship said charcoal to the purchaser thereof, who pays respondent Manufacturers for the same at the prices agreed upon between said purchaser and respondent Manufacturers, as hereinafter more fully set forth.

PAR. 3. Respondent, Clawson Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws

of the State of Pennsylvania, with its principal office located at Ridgway, Pa., and with charcoal retort plants located at Hallton and Gilson, Pa.

Respondent, Custer City Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Custer City, Pa.

Respondent, Genesee Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Genesee, Pa.

Respondent, The Gray Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Roulette, Pa.

Respondent, Heinemann Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Crosby, Pa.

Respondent, Thomas Keery Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office located at Hancock, N. Y.

Respondent, Kinzua Valley Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Williamsport, Pa., and which maintains a wood, charcoal, and chemical retort plant at Morrison, Pa.,

Respondent, Mayburg Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Endeavor, Pa., and which maintains a chemical retort plant at Mayburg, Pa.

Respondent, Morris Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at Smethport, Pa., and which maintains a charcoal retort plant at Morris, Pa.

Respondent, Oswayo Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Genesee, Pa., and which maintains a retort plant at Coneville, Pa.

Respondent, Otto Chemical Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office located at Williamsport, Pa., and which maintains a retort plant at Sergeant, Pa.

Respondent, Penn Charcoal & Chemical Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office located at East Smethport, Pa.

Respondent, Union Charcoal Co. of Pennsylvania, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located at Westline, Pa.

Respondents, Beatrice A. Treyz and Carol Treyz Southworth, are individuals doing business as copartners under the trade name of G. H. Treyz & Co., with their principal place of business located at 61 Front Street, Binghamton, N. Y.

Respondents, Victor and Laura Treyz, are individuals, operating the Estate of G. I. Treyz, with their principal office at Cooks Falls, N. Y.

PAR. 4. Respondent, Tennessee Eastman Corporation, hereinafter referred to as "Eastman," is a corporation organized, existing and doing business under and by virtue of the laws of the State of Virginia, with its principal office located at Kingsport, Tenn. Among its other activities it produces charcoal as a byproduct of hardwood distillation, and sells and distributes same, as hereinafter more particularly described.

Respondent, Eastman, manufactures only hardwood charcoal, and that by the retort method; approximately 80 percent of said charcoal is sold by it for industrial purposes and 20 percent of same to the wholesale and retail trade in the United States. In most parts of the United States where respondent Eastman sells its charcoal, said charcoal is in substantial competition with pit or kiln produced hardwood charcoal, and pine charcoal, all of which are used for the same common purposes, both industrially and domestically.

PAR. 5. Respondent, Cliffs Dow Chemical Co., hereinafter referred to as "Cliffs Dow," is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business located at Marquette, Mich. It began its corporate existence on May 24, 1935. Among its other activities it produces charcoal as a byproduct of hardwood distillation and sells and distributes same throughout the various States of the United States, as hereinafter more particularly described.

PAR. 6. In the course and conduct of its business, respondent Hardwood Charcoal Co. sells and distributes hardwood charcoal to distributors, dealers and customers thereof at various points throughout the territory of the United States in which respondent Hardwood

Charcoal Co. acts as a sales agent for respondent Hardwood Members, which territory has hereinbefore been described; and when said sales are made, and as a part thereof, said respondents regularly have shipped or cause to be shipped, and do ship or cause to be shipped, said product to the purchasers thereof at their respective points of location in the several States of the United States other than the States of origin of said shipments. Said respondent in the aforementioned manner maintained and still does maintain a constant current of trade in commerce of hardwood charcoal between and among the several States of the United States and in the District of Columbia.

PAR. 7. In the course and conduct of their respective businesses, respondent Manufacturers directly, and respondents Manufacturers' Members indirectly, through and by means of respondent Manufacturers, acting as sales agent for said respondents Manufacturers' Members, sell and distribute hardwood charcoal to the distributors and dealers thereof at various points throughout the United States; and when said sales are made, and as a part thereof, regularly have shipped or caused to be shipped, and do ship or cause to be shipped, said product to the purchasers thereof at their respective points of location in the several States of the United States other than the States of origin of said shipments. All of said respondents in the aforementioned manner maintained and still do maintain a constant current of trade in commerce of hardwood charcoal between and among the several States of the United States and in the District of Columbia.

PAR. 8. In the course and conduct of its business, respondent Eastman sells and distributes hardwood charcoal to distributors and dealers thereof at various points throughout the United States and in the District of Columbia, and when said sales are made and as a part thereof, regularly has shipped or caused to be shipped, and does ship or cause to be shipped, said product to the purchasers thereof at their respective points of location in the several States of the United States and in the District of Columbia, said respective points of location being in States other than the States of origin of said shipments. In the aforementioned manner respondent Eastman maintained and still does maintain a constant current of trade in commerce in hardwood charcoal between and among the several States of the United States and in the District of Columbia.

PAR. 9. In the course and conduct of its business, respondent Cliffs Dow sells and distributes hardwood charcoal to distributors and dealers at various points throughout the United States, and when said sales are made, and as a part thereof, regularly has shipped or caused to be shipped, and does ship or cause to be shipped, said product to the

purchasers thereof at their respective points of location in the several States of the United States other than the State of origin of said shipments, the State of Michigan. Respondent Cliffs Dow in this manner has maintained and still does maintain a constant current of trade in commerce in hardwood charcoal between and among the several States of the United States and in the District of Columbia.

PAR. 10. The respondents, Hardwood Members, Manufacturers' Members, Cliffs Dow, and Eastman produce approximately 65 percent of all the hardwood charcoal produced in the United States. Hardwood charcoal is produced by the hardwood distillation method and all of it is of the same general quality. It is a general practice in the hardware charcoal industry to sell hardwood charcoal at delivered prices at the destination point.

PAR. 11. Active and substantial price competition did exist, and would have continued to exist, between and among respondent Manufacturers' Members and by and between said respondent Manufacturers' Members, respondents Hardwood, Hardwood Members, Eastman, Cliffs Dow, and other producers and sales agents for producers of hardwood charcoal, in making and seeking to make, sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia, were it not for said respondent Manufacturers' Members entering into and thereafter carrying out the understandings or agreements hereinafter set forth in paragraphs 12 and 13.

PAR. 12. All of respondent Manufacturers' Members except respondents Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., and Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, in 1935 entered into an understanding or agreement to eliminate competition between and among themselves in selling or seeking to sell the hardwood charcoal produced by them, in trade and commerce between and among the various States of the United States; pursuant to said understanding or agreement, the said respondent Manufacturers' Members, on December 27, 1935, did enter into and thereafter carry out, exclusive sales contracts with respondent Manufacturers, which contracts are similar to those entered into and carried out by these same respondents since 1935.

Under the aforementioned contracts, respondent Manufacturers' Members, all producers of hardwood charcoal by the distillation method, could sell charcoal which they produced, to no one except respondent Manufacturers, which charcoal was handled by respondent Manufacturers in the manner hereinabove found in paragraph 2; but said contracts did not require respondent Manufacturers' Members to produce charcoal nor to sell any of the charcoal which they might

produce unless they so desired, but if they did produce and sell any charcoal, it had to be sold under said contracts through respondent Manufacturers. When respondent Manufacturers' Members, under said contracts, sell the charcoal produced by them to respondent Manufacturers, said respondent Manufacturers' Members do not know the exact price which they will receive from respondent Manufacturers for said charcoal but at the end of each month, respondent Manufacturers pays to respondent Manufacturers' Members, from whom it purchased charcoal during said month, an amount equal to the purchase price paid it for such charcoal, less an amount fixed by respondent Manufacturers to cover its operations. Respondent Manufacturers makes such payments regardless of whether or not it has been paid by the purchasers of the charcoal from it, and assumes all credit risks.

PAR. 13. In 1936 the estate of G. I. Treyz, and also G. H. Treyz & Co., sold their charcoal directly to customers. Respondents Victor Treyz and Laura Treyz operate the estate of G. I. Treyz. In 1936 G. H. Treyz & Co. was owned and operated by Harry Treyz, but at the time of the filing of the amended complaint herein respondents Beatrice A. Treyz and Carol Treyz Southworth were, and still are, copartners doing business under the name and style of G. H. Treyz & Co.

In 1936 respondent Manufacturers expressed its desire to the parties operating the estate of G. I. Treyz, which controlled a 36-cord charcoal plant, and G. H. Treyz & Company, which operated an 18-cord charcoal plant, to act as a selling agent for said concerns, and not have them compete with respondent Manufacturers in seeking to sell and selling charcoal. In August 1936, a verbal agreement was entered into by and between respondent Manufacturers and respondents Victor and Laura Treyz, operating the estate of G. I. Treyz, whereby respondent Manufacturers was granted the right to purchase all of the charcoal produced by the said Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, except that said respondents were privileged to sell certain specified customers which they had prior to the agreement, directly and not through respondent Manufacturers. By the terms of this oral agreement, which was terminable at the will of either party, but which continued in full force until on or about January 1, 1939, respondent Manufacturers paid respondents Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, a price agreed upon by said parties at the time for the charcoal which respondent Manufacturers ordered from respondents Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, to be shipped by the latter respondents to the customers of the respondent Manufacturers. Respondents Victor Treyz and Laura Treyz, operating the estate of G. I.

Treyz, in 1936 interchanged information with respondent Manufacturers and respondent Hardwood as to the prices to be charged by each of them for hardwood charcoal sold by them to the dealers and distributors thereof. Approximately 30 percent of the charcoal produced by respondents Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, was sold by said respondents to respondent Manufacturers, under the agreement heretofore set forth. Respondent Manufacturers, therefore, during the period of the aforementioned agreement acted, in effect, as an exclusive agent for the sale or disposition of a substantial proportion of the charcoal produced by the respondents Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz. Respondents Victor Treyz and Laura Treyz have never owned any stock in respondent Manufacturers nor has either of them ever been a member of the board of directors or executive committee of said respondent, nor has either of them had anything to do with the actual management, operation, or conduct of the business of said respondent Manufacturers.

On or about July 1, 1936, respondent Manufacturers entered into a verbal agreement with Harry Treyz, then doing business as G. H. Treyz & Co., which was adopted, ratified, and continued by respondents Beatrice A. Treyz and Carol Treyz Southworth, copartners, when they succeeded to the business of G. H. Treyz & Co. upon the death of Harry Treyz, which occurred some time prior to January 1, 1939. Said agreement was terminable at the will of either party, but remained in full force and effect until on or about January 1, 1939. By its terms, Harry Treyz, doing business as G. H. Treyz & Co., agreed to sell the entire output of charcoal produced by him to respondent Manufacturers, and to shut down his retorts from June 1 to September 1 of each year. Said agreement further provided that when respondent Manufacturers received an order for charcoal, it purchased same from respondent Harry Treyz, doing business as G. H. Treyz & Co., and instructed him where to ship same; at the end of each month, respondent Manufacturers paid the said respondent Harry Treyz, doing business as G. H. Treyz & Co. (and the respondents Beatrice A. Treyz and Carol Treyz Southworth when they succeeded to said business) for the charcoal purchased from him during the month, an amount equal to the market price at the time of its purchases for him less an amount fixed by respondent Manufacturers to cover its costs of operation. Respondent, Manufacturers, during the period of said agreement, acted as the exclusive sales agent for Harry Treyz, doing business as G. H. Treyz & Co., and for respondents Beatrice Treyz and Carol Treyz Southworth when they succeeded to the business of G. H. Treyz & Co., for

the sale of all charcoal produced by them. Neither Harry Treyz, Beatrice Treyz, or Carol Treyz Southworth, at any time, held stock in respondent Manufacturers, nor has any of them been a member of its board of directors or executive committee or taken any part in its active management, control, or operation.

PAR. 14. The purpose, tendency and effect and result of the agreements or understandings by respondent Manufacturers' Members to enter into and thereafter carry out the exclusive sales contracts and the understandings and agreements heretofore described in paragraphs 12 and 13, are to suppress and eliminate all substantial price competition between respondent Manufacturers and respondents Manufacturers' Members, and between and among said respondent Manufacturers' Members themselves, and also by and between said respondent Manufacturers' Members and respondents, Hardwood, Hardwood Members, Eastman, Cliffs Dow, and other producers and sales agents for producers of hardwood charcoal, in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 15. Pursuant to, and as a result of, the agreements or understandings between and among respondent Manufacturers' Members as hereinbefore found in paragraphs 12 and 13, respondent Manufacturers, from November 1936, to January 23, 1937, purchased a total of 35 cars of charcoal from Yale Fuel Co., of Toronto, Canada, which represented the entire Canadian charcoal output entering the United States during that period. These purchases were made by respondent Manufacturers for the purpose of preventing the Canadian charcoal from competing with that charcoal produced by respondent Manufacturers' Members, and sold and distributed by respondent Manufacturers, on its own behalf and for the benefit of respondent Manufacturers' Members, in commerce between and among the several States of the United States.

PAR. 16. Prior to the agreements and understandings by and between respondents, Manufacturers, Hardwood, Cliffs Dow, and Eastman, as hereinafter found, all of said respondents were in active and substantial competition with each other in making and seeking to make sales of hardwood charcoal in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 17. Respondents, Hardwood, Manufacturers, Cliffs Dow, and Eastman, entered into, and thereafter carried out, various understandings and agreements, on the dates and in the manner and method hereinafter specifically set forth, to suppress, and eliminate

price competition between and among themselves, in the sale and distribution of hardwood charcoal, in commerce between and among the various States of the United States and in the District of Columbia; some of these understandings and agreements, and the acts and practices done pursuant thereto, and in furtherance thereof, were entered into and carried out by all of said respondents, acting on their own behalf and also on behalf, and for the benefit, of their respective members; others were only entered into and carried out by some of said respondents; still others were only entered into, and carried out, by two of said respondents, acting either on their own behalf or on behalf of their respective members.

PAR. 18. Respondents, Hardwood and Eastman, since the formation of respondent Hardwood in 1932, have had a continuous understanding and agreement, and have carried same out, whereby respondent Hardwood has filled orders received by respondent Eastman from respondent Eastman's customers. Pursuant to such agreements and understandings, the following acts and practices were performed by said respondents.

1. Respondent Eastman has purchased charcoal from respondent Hardwood for respondent Eastman's customers. During the months of January and February 1937, respondent Eastman placed $20,938.94 worth of business with respondent Hardwood. Respondent Hardwood keeps a supply of bags on which appears the trade name of charcoal sold by respondent Eastman, to wit, "Tec-Lump," at the plants of respondent Hardwood Members, and when respondent Eastman receives an order which is filled by a respondent Hardwood Member, said respondent Hardwood Member, in approximately 40 percent of the cases where the orders are for nonindustrial charcoal, places in the bag bearing the trade name of respondent Eastman, the charcoal produced by said respondent Hardwood Member, and then ships same to the customer of the respondent Eastman, said charcoal being shipped in the name of respondent Eastman, for which said respondent Hardwood receives from respondent Eastman the price agreed upon between said respondents at the time of purchase by respondent Eastman. In approximately 60 percent of the cases, when respondent Eastman's orders for nonindustrial charcoal are filled by any of respondent Hardwood Members, shipment is made in bulk by said respondent Hardwood Members. The contract for the purchase of said charcoal is made between respondent Eastman and the purchaser thereof, and the respondent Hardwood Member, which fills such an order for respondent Eastman, has nothing to do with the price at which said charcoal is sold by respondent Eastman to its customer.

2. On January 12, 1937, respondent Hardwood Member, Tennessee Products Corporation, had close to 300,000 "Tec-Lump" bags in its plant at Lyles, Tenn., to be used by said respondent Hardwood Member in filling the orders of respondent Eastman, from respondent Eastman's customers.

3. Respondent Hardwood, at various times and occasions, has requested respondent Eastman to give it business, and respondent Eastman has frequently complied with said requests.

4. At various times throughout the year, respondent Eastman has an insufficient supply of its own charcoal to fill its orders, most of which are based on prior contracts; and it is only at such times, respondent Eastman purchases charcoal from respondent Hardwood, in the manner heretofore described; respondent Eastman likewise, on said occasions, sometimes purchases charcoal from the respondent Manufacturers, the said respondent Manufacturers then shipping the charcoal of respondent Manufacturers' Members to respondent Eastman's customers in bulk and not sacked in respondent Eastman's bags.

5. On April 21, 1933, respondent Eastman wrote respondent Hardwood, that its contract customers were pushing it heavily, and it was compelled to give respondent Hardwood Member, Tennessee Products Corporation, an order for five cars instead of firing up one of respondent Eastman's additional retorts.

PAR. 19. Respondents, Hardwood and Manufacturers, since the organization of respondent Hardwood in 1932 and until on or about January 1, 1937, had, and carried out, an understanding or agreement to exchange, and they have exchanged, information as to the delivered prices at which each sells its charcoal to distributors and dealers, as to sales policies, accounting methods, the charcoal situation in their respective territories, and other information, all for the purpose, and with the intent, of better effectuating their agreement to fix and maintain identical delivered prices at which charcoal is to be sold at destination points in the United States.

PAR. 20. In 1933, respondents, Manufacturers acting for and on behalf of itself and its then members, and Hardwood, entered into, and thereafter carried out until on or about April 1938, an agreement or understanding to allot certain territories of the United States to each other, and pursuant to such agreement or understanding, and in furtherance thereof, said respondents severally and reciprocally limited, for the aforementioned period, the respective amounts of hardwood charcoal which each might, and did seek to, sell, and did sell and deliver to customers in the territory they allotted to each other, thereby adopting a quota system.

PAR. 21. The agreement or understanding between respondents, Hardwood and Manufacturers, heretofore found in paragraph 20, was a brokerage arrangement, and respondent Hardwood, at all times paid respondent Manufacturers a certain amount per ton for handling the charcoal of respondent Hardwood Members, with respondent Manufacturers assuming the credit responsibility, with the exception of one account which was indebted to respondent Hardwood; a definite part of the agreement or understanding was that respondent Hardwood's accounts in the eastern area would always be protected so far as their receiving sufficient tonnage was concerned; said agreement or understanding further provided that respondent Manufacturers was to act as respondent Hardwood's sole broker in the eastern market.

PAR. 22. In 1934, respondents, Manufacturers and Hardwood, entered into, and thereafter carried out, an agreement or understanding as to the distributors in the eastern market to whom neither would sell charcoal, because in their joint opinion, said distributors were neither substantial nor reliable; and they thereby limited the number of dealers to whom they would sell their respective charcoal.

PAR. 23. On June 4, 1935, respondents, Manufacturers, Hardwood, Eastman, and Cliffs Dow, entered into an understanding and agreement, and thereafter carried out same until about November 1, 1936, to fix and maintain identical delivered prices at which hardwood charcoal was to be sold, and was sold, by them to dealers and distributors thereof at destination points throughout the United States.

PAR. 24. During the years 1935 and 1936, respondents, Manufacturers and Hardwood, entered into, and thereafter carried out, an understanding and agreement to fix and maintain uniform resale prices at which hardwood charcoal was to be sold, and was actually sold, at retail at certain destination points in the United States.

PAR. 25. Respondents, Manufacturers and Hardwood, in 1935, entered into, and thereafter carried out until March 1938, an understanding or agreement not to solicit the customers of each other.

PAR. 26. It is a common practice throughout the United States for sellers of merchandise which they do not themselves manufacture, produce, or pack, to place upon such merchandise or upon the container or receptacle therefor, their own trade-mark, trade name or other trade identification accompanied by a statement that said merchandise is manufactured or packed for said sellers.

PAR. 27. The tendency and capacity of all of the aforementioned agreements, and the acts and practices performed pursuant thereto, and in furtherance thereof, as hereinbefore specifically have been

found, were, during the periods when same were performed, to unduly and unlawfully restrict and restrain the sale of hardwood charcoal to distributors and dealers thereof in the United States, and also to the wholesale and retail trade in same, in trade and commerce in hardwood charcoal, between and among the several States of the United States and in the District of Columbia, to hinder and prevent, and did actually hinder and prevent, price competition between and among all of said respondents, in the sale and distribution of hardwood charcoal in commerce, as "commerce" is defined in the Federal Trade Commission Act, to enhance substantially prices to the consuming public and maintain such prices at artificial levels, and to otherwise deprive the public of the benefits that would flow from normal competition between and among said respondents, and between and among respondents Hardwood Members and Manufacturers' Members.

CONCLUSION

The acts and practices of respondents, Hardwood Charcoal Co., Manufacturers Charcoal Co., Tennessee Eastman Corporation, Cliffs-Dow Chemical Co., Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., Union Charcoal Co. of Pennsylvania, Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, as hereinbefore found, are all to the prejudice of the public, and have a dangerous tendency to hinder and prevent competition in the sale and distribution of hardwood charcoal, in trade and commerce between and among the several States of the United States, to place in the respondents the power to control the sale and distribution of hardwood charcoal in 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 amended complaint of the Commission, the answers of the respondents and stipulations as to the facts entered into 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 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 respondents, Hardwood Charcoal Co., a corporation, Manufacturers Charcoal Co., a corporation, Cliffs Dow Chemical Co., a corporation, and Tennessee Eastman Corporation, a corporation, and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents, directly or indirectly, or while said respondent, Hardwood Charcoal Co. is acting in its own behalf or on behalf of respondents Tennessee Products Corporation, Forest Products Chemical Co. or Crossett Chemical Co., members of said Hardwood Charcoal Co., or while acting on behalf of any other producer of hardwood charcoal or while respondent Manufacturers Charcoal Co. is acting on its own behalf or on behalf of respondents Clawson Chemical Co., Custer City Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., Union Charcoal Co. of Pennsylvania, Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, as members of Manufacturers Charcoal Co., or while acting on behalf of any other producer of hardwood charcoal in connection with the offering for sale, sale or distribution of hardwood charcoal in commerce as "commerce" is defined by the Federal Trade Commission Act, forthwith cease and desist fixing or maintaining, pursuant to agreement, understanding or combination between or among themselves or between or among any two or more of them or between or among any one or more of said respondents and any other competing corporation or corporations or any competing person or persons, identical delivered prices at which hardwood charcoal is to be sold or is sold by them to distributors or dealers thereof at any destination point in the United States.

It is further ordered, That respondents, Manufacturers Charcoal Co. and Hardwood Charcoal Co., and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents, directly or indirectly, or while acting for or on behalf of themselves or for or on behalf of their respective members hereinbefore described, in connection with the offering for sale, sale or distribution of hardwood charcoal in commerce as "commerce" is defined by the Federal Trade Commission Act, forthwith cease and desist pursuant to agreement,

understanding or combination between themselves or between either or both of them and any other competing corporation or corporations, or between either or both of them and any competing person or persons, from doing the following acts and things:

1. Fixing or maintaining identical or uniform resale prices at which hardwood charcoal is offered for sale, or sold, at retail throughout the United States.

2. Allotting territories in the United States to each of said respondents within which each is to sell, and beyond which each shall not sell, the hardwood charcoal produced by its Members, as such Members have heretofore been defined and designated.

3. Limiting severally and reciprocally the respective quantities of hardwood charcoal which each may, shall or does sell to their respective customers.

4. Refusing to solicit, or refraining from soliciting, the customers of each other.

5. Limiting the number of distributors or dealers to whom each shall offer to sell or shall sell hardwood charcoal.

6. Exchanging information as to delivered prices at which each sells its hardwood charcoal to distributors or dealers, as to sales policies, accounting methods, the hardwood charcoal situation in their respective territories, or other information, where any of same is exchanged for the purpose, or with the intent, or with the effect of effectuating any agreement to fix or maintain identical or uniform delivered prices at which hardwood charcoal is to be offered for sale or sold at destination points throughout the United States.

It is further ordered, That respondent, Hardwood Charcoal Co., either while acting for or on behalf of itself or while acting for or on behalf of its members as hereinbefore described, and respondent Tennessee Eastman Corporation and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of either of said respondents, directly or indirectly, in connection with the offering for sale, sale or distribution of hardwood charcoal in commerce as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist, pursuant to agreement or understanding between themselves or between either or both of them and any other competing corporation or corporations, or between either or both of them and any competing person or persons, from filling orders for hardwood charcoal for each other from dealers or distributors throughout the United States in bags or receptacles upon which the trade-mark, trade name, or other trade identification of the seller appears without a statement on such bags or receptacles, that the contents thereof were packed for the seller.

It is further ordered, That respondents, Clawson Chemical Co., Custer City Chemical Co., Genesee Chemical Co., The Gray Chemical Co., Heinemann Chemical Co., Thomas Keery Co., Inc., Kinzua Valley Chemical Co., Mayburg Chemical Co., Morris Chemical Co., Oswayo Chemical Co., Otto Chemical Co., Penn Charcoal & Chemical Co., Union Charcoal Co. of Pennsylvania, Beatrice A. Treyz and Carol Treyz Southworth, doing business as G. H. Treyz & Co., Victor Treyz and Laura Treyz, operating the estate of G. I. Treyz, and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents, directly or indirectly, in connection with the offering for sale, sale or distribution of hardwood charcoal in commerce, as "commerce" is defined by the Federal Trade Commission Act, forthwith cease and desist, by means of contract, agreement, understanding or combination between or among themselves, or between or among any two or more of them, or between or among any one or more of them and any other competing corporation or corporations, or competing person or persons, from doing the following acts or things:

1. Making, designating, or constituting respondent Manufacturers Charcoal Co. or any other corporation or any person or persons, the sole or exclusive agent for the sale of all, or a substantial proportion of, the hardwood charcoal produced by any of said respondents during any 6 months', or other specific, period.

2. Purchasing the entire, or a substantial proportion of, the output of Canadian hardwood charcoal shipped into the United States, where the purpose, intent, or effect of said purchase is to eliminate competition which arises from, or might arise from the sale of said Canadian hardwood charcoal in the United States.

It is further ordered, That as to the allegations contained in the amended complaint pertaining to the alleged understanding, agreement, combination, and conspiracy between and among respondents Tennessee Products Corporation, Forest Products Chemical Co., and Crossett Chemical Co., to eliminate and suppress competition through the formation of respondent Hardwood Charcoal Co., said amended complaint be, and the same hereby is, dismissed against the said respondents Tennessee Products Corporation, Forest Products Chemical Co. and Crossett Chemical Co. without prejudice to the right of the Commission to issue a new complaint containing such allegations should future facts warrant such procedure in the public interest.

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

LAMBERT PHARMACAL COMPANY

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

Docket 3749. Complaint, Mar. 29, 1939—Decision, Aug. 12, 1940

Where a corporation engaged in manufacture, offer, sale, and distribution of its "Listerine Antiseptic" mouth wash and allied products, between and among the various States and in the District of Columbia, to purchasers in States other than that in which its place of business was located, in substantial competition with others engaged in manufacture of such products and offer, sale, and distribution thereof in commerce—

In offering and selling its said products, as aforesaid, under practice by which it allowed, from list price for each product, 5 percent trade discount to all customers and additional discount of 1 percent cash with freight prepaid on all shipments, and under which it further (1) granted and allowed to certain group of wholesalers, in consideration for carrying warehouse stocks and furnishing selling services and facilities, as compensation, sum equal to 10 percent of its net billing prices of products sold by group members referred to during previous month, (2) similarly granted to other group of wholesalers, in consideration for carrying warehouse stocks, sum equal to 5 percent of previous month's purchases, and (3) paid to retailer group, in consideration for certain advertising and selling services and facilities, sum equal to 10 percent of previous month's purchases, and (4) similarly paid to other retailer group, in consideration for services and facilities less extensive than those furnished by 10-percent group, sum equal to 5 percent of previous month's purchases, and (5) under which it required $50 minimum orders of all wholesale customers and $20 minimum orders of all retail customers, regardless of whether above-mentioned compensation was received or not, with smaller minimums applicable in case of 10-cent merchandise—

(*a*) Failed and refused to make compensation allowed, paid and granted to some of its customers, for services or facilities furnished by them in connection with handling, sale or offer for sale of commodities purchased by such customers from it, available to all of its competitor customers in distribution of such commodities on proportionally equal terms, through contracting for payment, and paying and allowing, to some of its wholesale and retail customers compensation for services and facilities furnished by them in connection with such handling, etc., of commodities purchased by them, while failing and refusing to make available or pay and allow compensation for similar and same services and facilities offered to be furnished by such other customers in connection with such handling, etc., of commodities in question, even though requested to do so by said customers last referred to; and

(*b*) Refused requested 10 percent compensation payment to certain of its various wholesale and retail customers to whom it had paid compensation in an amount equal to 5 percent of previous month's purchases for various services and facilities, and who claimed to be able and willing to furnish services and

facilities for which it paid amount equal to 10 percent to others of its customers competitively engaged with former:

Held, That under facts and circumstances as above set forth, said corporation granted and allowed compensation to certain of its customers for facilities and services without making available to all other competing customers such payments on proportionally equal terms, in violation of subsection (d) of Section 2 of Clayton Act, as amended.

Mr. John T. Haslett for the Commission.

Root, Clark, Buckner & Ballantine, of Washington, D. C., 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. Respondent, Lambert Pharmacal Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 2101 Locust Street, St. Louis, Mo. Respondent corporation is now, and has been since June 19, 1936, engaged in the business of manufacturing, offering for sale, selling and distributing "Listerine," an antiseptic mouthwash, and other allied products. Respondent sells and distributes said products in commerce between and among the various States of the United States and in the District of Columbia and as a result of said sales causes said products to be shipped and transported from the place of origin of the shipment to the purchasers thereof who are located in the various States of the United States and in the District of Columbia, other than the State of origin of the shipment. There is and has been, at all times mentioned, a continuous current of trade and commerce in the said products across State lines between respondent's factory and the purchasers of said products. Said products are sold and distributed for resale within the various States of the United States and the District of Columbia.

Par. 2. In the course and conduct of its business, as aforesaid, respondent is now, and during the time herein mentioned has been, in substantial competition with other corporations, and with individuals, partnerships, and firms engaged in the business of manufacturing, selling, and distributing antiseptic mouthwash and other allied products in commerce.

PAR. 3. In the course and conduct of its business, as described in paragraph 1 hereof, respondent since June 19, 1936, has been and now is allowing certain percentage rebates to certain of its customers who are selected by the respondent, hereinafter designated as favored customers, in addition to regular trade discounts generally allowed to all of the respondent's customers. Such favored customers, to whom the respondent allows such percentage rebates, furnish the respondent with certain advertising, selling or warehousing facilities and place with the respondent a certain minimum order for its said products. Such percentage rebates are paid to said favored customers on their previous month's purchases in consideration for such services. The respondent pays these percentage rebates to its favored customers without making such payments available on proportionately equal terms to all other customers competing with such favored customers in the distribution of respondent's said products.

Said percentage rebates are allowed by the respondent to its favored customers as follows:

(*a*) The respondent pays to a certain group of the aforesaid customers, wholesalers, handling the respondent's products, in consideration of certain warehousing and selling facilities furnished by such wholesaler, a 10 percent rebate on each month's purchases, such rebate being paid in the form of a check by the respondent during the month subsequent to that in which such purchases are made.

(*b*) The respondent pays to another group of such aforesaid customers, wholesalers, a 5 percent rebate on each month's purchases paid during the subsequent month, in consideration of such rebate said wholesaler is to furnish warehouse facilities for the respondent's products.

(*c*) The respondent pays to certain of such aforesaid customers, retailers, a 10 percent rebate on each month's purchases, payable during the subsequent month, in consideration of which the purchasers agree to furnish the respondent with certain advertising facilities and sales services for the respondent's products.

(*d*) The respondent pays to certain other of such aforesaid customers, retailers, a rebate of 5 percent of each month's purchases payable during the subsequent month, in consideration of certain advertising facilities to be furnished by such retailer for the respondent's products.

In order to be eligible for such rebates paid by the respondent, its said favored wholesale customers must place orders of a minimum of $50 for the respondent's products, to be made in one shipment.

In order to be eligible for such rebates, respondent's said favored retail customers must place orders of a minimum of $36 for the respondent's products, to be made in one shipment.

PAR. 4. The above-described acts and practices of respondent are in violation of subsection (d) 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).

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 the act, entitled "An act to amend section 2 of an act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, as amended (U. S. C. title 15, sec. 13), and for other purposes," approved June 19, 1936 (the Robinson-Patman Act), the Federal Trade Commission, on March 29, 1939, issued and served its complaint in this proceeding upon the party respondent named in the caption hereof, charging respondent with violating the provisions of subsection (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 the respondent, containing a statement of certain facts which it was agreed might be taken as the facts solely for the purpose of this proceeding and authorizing the Commission to proceed upon such statement 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, the above-mentioned stipulation of certain facts and the answer, briefs 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Lambert Pharmacal 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 2117 Franklin Avenue, St. Louis.

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 "Listerine Antiseptic," an antiseptic mouthwash, and allied products. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia and, as a result of such sales, causes said products to be shipped and transported from its place of business to purchasers thereof who are located in States of the United States other than the State in which respondent's place of business is located. There is and has been at all times mentioned a continuous course of trade and commerce in the said products across State lines between respondent's factory and the purchasers of said products. The respondent's said products are sold and distributed for use and resale within 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 time herein mentioned has been, in substantial competition with other corporations and with individuals, partnerships and firms engaged in the business of manufacturing antiseptic mouthwash and other allied products and the offering for sale, sale, and distribution of same in commerce.

PAR. 4. Respondent offers and sells its said products at one list price for each product, from which all customers, both wholesalers and retailers, are allowed by the respondent a 5 percent trade discount and an additional discount of 1 percent for cash, with freight prepaid on all shipments.

The respondent in the course and conduct of its business has granted and allowed compensation to a group of wholesalers in consideration for carrying warehouse stocks and furnishing selling services and facilities. To members of this group the respondent has paid a sum equal to 10 percent of the respondent's net billing prices of the products sold by such members during the previous month.

To another group of wholesalers in consideration for carrying warehouse stocks the respondent has paid a sum equal to 5 percent of the previous month's purchases.

To a group of retailers, in consideration for certain advertising and selling services and facilities, the respondent has paid a sum equal to 10 percent of the previous month's purchases.

To another group of retailers in consideration for services and facilities less extensive than those furnished by 10-percent retailers, the respondent has paid a sum equal to 5 percent of the previous month's purchasers.

All wholesale customers are required to place minimum orders of $50 and all retail customers minimum orders of $20 regardless of whether they receive the above-mentioned compensation; smaller minimums apply in the case of 10-cent merchandise.

In the course and conduct of its said business, the respondent, in may instances, has contracted for the payment, and has paid and allowed, to some of its wholesale and retail customers, compensation for services and facilities furnished by such customers in connection with the handling, sale, or offering for sale of the commodities purchased by such customers. To other of its wholesale and retail customers, comparatively engaged with the former, the respondent has failed and refused to make available or to pay and allow compensation for the similar and same services and facilities offered to be furnished by such customers in connection with the handling, sale, or offering for sale of such commodities, even though requested so to do by such customers. In so doing the respondent has failed and refused to make the compensation allowed, paid and granted to some of its customers for services or facilities furnished by them in connection with the handling, sale, or offering for sale of the commodities purchased by them from respondent, available to all of its customers competing in the distribution of such commodities on proportionally equal terms.

In the course and conduct of its said business, the respondent has sold its products to various wholesale and retail customers to whom it has paid compensation in an amount equal to 5 percent of the previous month's purchases for various services and facilities. Some of these customers claim that they were able and willing to furnish services and facilities for which the respondent paid an amount equal to 10 percent of the previous month's purchases to other of its customers competitively engaged with the former. Some such 5-percent compensation customers have requested the respondent to pay such compensation to them and even though requested, the respondent has refused to pay the 10-percent compensation to such customers.

PAR. 5. The aforesaid complaint and the foregoing findings relate to the respondent's compensation plan in effect at the date of said complaint. While denying in its answer dated May 16, 1939, that the plan complained of was in violation of law, the respondent has since adopted a revision of such plan deemed by the respondent to eliminate questions as to such violation.

CONCLUSION

Under the facts and circumstances as set forth in the foregoing findings as to the facts, the Commission concludes that the respondent, Lambert Pharmacal Co., has granted and allowed compensation to certain of its customers for facilities and services without making such payments available to all other 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 answer of the respondent and the stipulation as to the facts entered into between the respondent herein and William T. Kelley, chief counsel for the Commission, which provides, among other things, that without the presentation of argument 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 proceedings and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of subsection (d) of section 2 of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," the Clayton Act, as amended by the Robinson-Patman Act.

It is ordered, That the respondent, Lambert Pharmacal Co., its officers, representatives, agents, and employees cease and desist from:

1. Granting, or allowing compensation to any wholesale customer of the respondent, of an amount equal to 10 percent of the respondent's net billing prices of the products sold by such customer during the previous month, for services or facilities furnished by or through such customer in connection with the handling, sale, or offering for sale of respondent's products, unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customer.

2. Granting or allowing compensation, of an amount equal to 5 percent of the previous month's purchases, to any wholesale customer of the respondent, for services or facilities furnished by or through such customer in connection with the handling, sale, or offering for sale of respondent's products unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customer.

3. Granting or allowing compensation, of an amount equal to 10 percent of the previous month's purchases, to any retail customer of the respondent for services or facilities furnished by or through such customer in connection with the handling, sale, or offering for sale of respondent's products unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customer.

4. Granting or allowing compensation, of an amount equal to 5 percent of the previous month's purchases, to any retail customer of the respondent for services or facilities furnished by or through such customer in connection with the handling, sale, or offering for sale of respondent's products unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customer.

It is further ordered, That the respondent Lambert Pharmacal Co., a corporation, its officers, directors, representatives, agents, and employees, in connection with the sale and distribution of its "Listerine Antiseptic" and allied products, do forthwith cease and desist from granting or allowing to any customer of the respondent any compensation for services or facilities furnished by or through such customer in connection with the handling, sale or offering for sale of respondent's products, unless such payments are made available on proportionally equal terms to all buyers from the respondent who are competitors of such customer.

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

IN THE MATTER OF

IMOGENE SHEPHERD, LTD.

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

Docket 3625. Complaint, Oct. 7, 1938—Decision, Aug. 14, 1940

Where a corporation engaged in sale and distribution of its "Baby Skin Oil" and "Baby Skin Oil Soap," to purchasers at various points in the several other States and in the District of Columbia, in competition, in commerce as aforesaid, with others selling and distributing cosmetics, toileteries, and similar merchandise, and including many engaged in manufacture and sale or sale thereof who do not employ and maintain below enumerated and described practices, but truthfully represent and vend said products; in advertising its said preparations through newspapers, periodicals and other advertising literature—

(*a*) Represented that its said oil was "a skin normalizer, not a cosmetic," which made "any skin more healthy" and restored to adult "soft and silken texture of baby skin," and that it was "scientifically recognized that modern living and washing routine removes indispensable fatty acids generally known as lipids) from the skin, resulting in deficiency symptoms such as dryness, roughness of the skin, eczema and acne," and that such blemishes and skin irregularities were "becoming more commonly known as 'vitamin F deficiency' in the skin," and that said oil was "designed to restore to the skin by absorption the normal balance of lipids" and that person associated with corporate name had, by "brilliant experiments," "discovered that vitamin F could be reintroduced into the system by absorption by the skin," and that through use of its said products permanent benefits would result to skin on account of Vitamin E and "Vitamin F" content;

Facts being unsaturated fatty acids or "lipids" contained in human skin are supplied in food and distributed through the body in natural process of metabolism, administration of vitamins or fatty acids topically by massage is impracticable and will not affect condition of skin, any possible existing deficiency in any of the vitamins or fatty acids being corrected by giving needed elements by mouth, no "Vitamin F," used by it to describe "substances" not chemically identified, but associated with such lipids, is known as such in scientific world or recognized officially by American Medical Association or any other scientific organization, and vitamin E, obtained in abundance in the daily diet, does not, as revealed by any evidence, play any role in normal life and nutrition of human skin, removal of certain fatty substances, which cannot be replaced by topical inunction and are normally secreted by skin, by cloths or in washing will not adversely affect appearance thereof, and, while regular use of its said products may improve appearance of skin as superficial and largely psychological result, "baby skin" cannot be simulated or produced in older person through use thereof, and any beneficial effects therefrom by virtue of emollient and protective action and aid in correction of dryness, are independent of vitamin E and so-called "Vitamin F" content; and

(*b*) Represented, as aforesaid indicated, that its said preparation constituted an effective remedy for "deficiency symptoms such as dryness, roughness of the skin, eczema and acne," and that its said oil was "an amazing discovery" and "the outstanding development in beauty culture of the present day," and that "a healthy woman with a dried-looking skin can reclaim a skin with the freshness and texture of perpetual youth by constant use" of said oil;

Facts being it was not a discovery nor any such development, said products had no therapeutic effect and did not constitute cure or remedy for eczema or acne, result, as case may be, of diet or infection, nor for roughness of skin, result of congenital condition thereof, disease, exposure, faulty diet, and other causes, and, as aforesaid indicated, would not restore to skin of adult appearance and texture of baby skin, affect health and appearance of skin, replace or restore essential lipids and vitamin E, have any beneficial effect in treatment of deficiency symptoms, or contribute to correction and prevention of skin disfigurements, or restore to skin necessary vitamins or fatty acids, or benefit same permanently by reason of addition thereof;

With effect of misleading and deceiving members of purchasing public into belief that said representations were true, and of causing members of such public, as result thereof, to purchase substantial quantities of its products, and of diverting unfairly to it trade of competitors engaged in sale in commerce of products of same kind and nature, truthfully advertised and represented:

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

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

Mr. John R. Phillips, Jr., for the Commission.

Pam, Hurd & Reichmann, 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 Imogene Shepherd, Ltd., 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. Imogene Shepherd, Ltd., is a corporation created by, and existing under the laws of the State of Delaware, with its principal offices and place of business located at 155 East Ohio Street, Chicago, Ill.

Par. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of distributing and selling a line of cosmetics, designated by it as "Baby Skin Oil and Soap." Respondent

caused said products when sold to be transported from its place of business in the State of Illinois to its customers located in other States of the United States and in the District of Columbia.

Respondent maintains, and at all times mentioned herein, has maintained, a course of trade in said cosmetics sold and distributed by it in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business, respondent is in active and substantial competition with other corporations and with partnerships and individuals engaged in the sale and distribution of cosmetics in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of said business, and for the purpose of inducing the purchase of said cosmetics, respondent by means of advertising circulars and folders, and by means of advertisements inserted in magazines and newspapers circulated between and among the various States of the United States and in the District of Columbia, has made many representations concerning the character and nature of said cosmetics, and concerning the results obtained from their use. Among said representations made by respondent are the following:

BABY SKIN OIL AND SOAP—Increase Cosmetic Sales with this Marvelous Vitamin F Fair! They'll Normalize Your Customer's Skin and Give her Baby Loveliness! * * * BABY SKIN OIL SOAP is the perfect bland, gentle cleanser.

BABY SKIN OIL Restores Essential Lipids To The Skin. VITAMINS E and F.

OIL AS NATURE'S BABY COSMETIC * * * To the present day, it is important that all applications to the baby's body be oily in nature, AND THAT THEY BE FOUNDED ON A BASE OF VITAMIN F, A LIPID NATURALLY CONTAINED AND NEEDED BY THE SKIN. After every bath, this oil should be freely applied and gently rubbed into the baby skin. The oil is quickly absorbed and the skin responds with an improved appearance of freshness and glowing healthfulness envied in the infant skin.

DEFICIENCIES IN THE ADULT SKIN. It is scientifically recognized that modern living and washing routine removes indispensable fatty acids (generally known as lipids) from the skin, resulting in deficiency symptoms, such as dryness and roughness of the skin, eczema, and acne. These blemishes and skin "irregularities" are becoming more commonly known as "vitamin F, deficiency" in the skin * * * Just as the oil mixture is good for the skin of a baby, it is efficacious in restoring a distinguishable measure of baby skin "blush" and freshness to the adolescent and adult skin, by restoring the vital skin lipids.

I am totally unaware of the existence anywhere of a cosmetic chemist who has experimented so widely and so successfully as has Mary Imogene Shepherd in the work of restoring to the skin through cosmetic preparations the needed skin fats, specifically vitamins E and F.

The brilliant work of this research investigator is remaking the cosmetic world, as it should be, on a higher plane of service and efficacy. Through her work with such thoroughly trained scientific collaborators as Linn, McMath, Glennon, Alexander, Sorenson and others, she is contributing directly to the prevention and correction of skin disfigurements through cosmetic usage.

Miss Shepherd's remarks are based on her exhaustive experimentation with laboratory animals and 30,000 human trials extending over the past five years. (Signed) August J. Pacini, Ph. D.

The beneficial results from the use of Baby Skin Oil come from the absorption of the oil by the skin.

The proper amount will be absorbed automatically and will not clog the pores.

The Big Difference Between Cosmetics and Baby Skin Oil is that cosmetics for most part paint the beauty on the outside, while Baby Skin Oil makes sure your beauty is at least skin deep by making beautiful skin.

Baby Skin Oil Is An Amazing Discovery—It Makes Any Skin More Healthy, and a Healthy Skin is Indeed A Beautiful Skin.

It is the outstanding development in beauty culture of the present day. It is simple, safe (doctors recommend it for the tenderest of baby skins) and resultful.

All of said statements, together with similar statements appearing in respondent's advertising literature, purport to be descriptive of respondent's products, and of their 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 its "Baby Skin Oil and Soap" by topical application will be of benefit in restoring any component of the skin in which it may be deficient; that the use of respondent's products will result in permanent beneficial results to the skin because of "Vitamin E" and "Vitamin F" content; that respondent's products will prevent or correct disfigurements, blemishes, dryness and roughness of the skin; that there exists such a vitamin as "Vitamin F," which is generally identified and recognized by the majority of reliable scientific authorities and which contains lipids or unsaturated fatty acids contained and needed by the skin; that its products are of "Vitamin E" and "Vitamin F" content; that its products will "normalize the skin"; that its preparations restore essential or vital lipids or needed skin fats to the skin which restore baby skin loveliness of soft silken texture, and a healthy skin with improved appearance of freshness, glow, and blush; that all applications to a baby's body should be oily, or that they should be founded on a base of "Vitamin F"; that its products are a treatment for, or a remedy for acne, eczema, roughness and dryness, blemishes and other skin irregularities; that they will sink into the tissues, or that they can be rubbed into the skin; that they will penetrate or be absorbed by the skin; that they will not clog the pores; that by the absorption of its "Baby Skin Oil" beauty will be skin deep and make beautiful skin; that its products are not cosmetics; that it will be efficacious in all cases; that its products are the outstanding development of the present day in beauty culture; that they are amazing and are recommended by doctors.

PAR. 5. The representations made by respondent with respect to the nature and effect of its products when used are grossly exaggerated, false, misleading, and untrue. In truth and in fact, respondent's "Baby Skin Oil and Soap" are cosmetics, and by topical application will not be beneficial in restoring any deficient component to the skin. Use thereof will not have a beneficial result to the skin and it will not prevent nor correct disfigurements, blemishes, dryness, and roughness of the skin. There does not exist a so-called "Vitamin F" which is generally identified and recognized by the majority of reliable scientific authorities, containing lipids or unsaturated fatty acids which are contained in and needed by the skin. A beneficial effect to the skin will not be derived by using the products of respondent because of "Vitamin E" and "Vitamin F" content. The use of "Baby Skin Oil and Soap" will not "normalize the skin," and its preparations will not restore essential or vital lipids or needed fats to the skin, restoring baby skin loveliness of soft silken texture and a healthy skin with improved appearance of freshness, bloom, and blush. All applications to a baby's body need not be oily nor founded on a base of "Vitamin F." Its products are not a treatment for, or a remedy for, acne, eczema, roughness and dryness, blemishes, and other skin irregularities. "Baby Skin Oil and Soap" will not penetrate the tissues of the skin and be absorbed, and are likely to clog the pores. The use of "Baby Skin Oil and Soap" will not be efficacious in all cases, and is not the outstanding development in beauty culture of the present day, is not an amazing discovery, and doctors do not generally recommend the use thereof.

The true facts are that the ingredients of respondent's products are not absorbed by or through the skin. While scientific literature contains no reference to a skin vitamin, it is possible that some types of vitamins may be absorbed through the skin. Furthermore, in the ordinary diet of Americans, particularly cosmetic users, there is little likelihood of being any deficiency in either vitamin E or of so-called "Vitamin F." However, if vitamins are absorbed through the skin, they will not beneficially affect the local condition of the skin where applied. Any vitamin deficiency may be more scientifically treated by diet, and by the introduction of vitamins and vitamin concentrates by way of the mouth.

PAR. 6. There are, among respondent's competitors, many who manufacture, distribute, and sell cosmetics who do not in any way misrepresent the quality or character of their respective products, or their effectiveness when used.

PAR. 7. Each and all of the false and misleading statements and representations made by the respondent in designing or describing

its products, and their 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 all of 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 products, with the result that trade has been diverted unfairly to respondent from competitors likewise engaged in the business of distributing and selling cosmetics 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. 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 7th day of October 1938, issued, and subsequently served, its complaint in this proceeding charging Imogene Shepherd, Ltd., a corporation, with the use of unfair methods of competition in commerce, and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by John R. Phillips, attorney for the Commission, and in opposition to the allegations of the complaint by Myron D. Davis, attorney for the respondent, before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony, and other evidence, briefs in support of the complaint and in opposition thereto, and the Commission having duly considered the 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, Imogene Shepherd, Ltd., is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its principal office and place of business located in the city of Chicago, State of Illinois. It is now, and for more than 3 years last past has been, engaged in the sale and distribution of certain products, sold under the names, "Baby Skin Oil" and "Baby Skin Oil Soap," in commerce between and among the several States of the United States and in the District of Columbia. Respondent ships said products, when sold, from its said place of business in the State of Illinois to the purchasers thereof located at various points in the several States of the United States other than Illinois and in the District of Columbia.

PAR. 2. Respondent, Imogene Shepherd, Ltd., has been, and is, in competition in commerce between and among the various States of the United States and in the District of Columbia, with other corporations, and with firms, partnerships and individuals selling and distributing cosmetics, toiletries, and similar merchandise.

PAR. 3. In the course and conduct of its said business, in connection with the sale and distribution of said products, respondent, through advertisements in newspapers, magazines, and other advertising literature, makes use of the following typical advertising statements and representations:

Baby Skin Oil is a skin normalizer, not a cosmetic.

It makes any skin more healthy.

Doctors recommend it for the tenderest baby skins.

It is easy to have the radiant skin of a baby.

Restores to an adult the soft and silken texture of baby skin.

It is scientifically recognized that modern living and washing routine removes indispensable fatty acids (generally known as lipids) from the skin, resulting in deficiency symptoms, such as dryness, roughness of the skin, eczema and acne. These blemishes and skin irregularities are becoming more commonly known as "vitamin F. deficiency" in the skin. Just as the oil mixture is good for the skin of a baby it is efficacious in restoring a distinguishable measure of baby skin "blush" and freshness to the adolescent and adult skin by restoring the vital skin lipids.

It is designed to restore to the skin by absorption the normal balance of lipids.

Will be absorbed automatically and will not clog the pores.

By brilliant experiments Miss Shepherd discovered that vitamin F could be re-introduced into the system by absorption by the skin.

Baby Skin Oil is an amazing discovery.

It is the outstanding development in beauty culture of the present day.

Contributing directly to the prevention and correction of skin disfigurements through cosmetic usage.

A healthy woman with a dried-looking skin can reclaim a skin with the freshness and texture of perpetual youth by constant use of Baby Skin Oil.

Thousands of tests have proven that it restores to your skin vitamin F and other necessary oils.

The above-quoted representations refer to the product Baby Skin Oil.

Baby Skin Oil Soap * * * will keep your skin fresh, young and smooth, in spite of cold and windy weather. * * * It's the first time we've ever heard of a soap actually containing the essential lipids which make us envy the rose-leaf softness of a baby's skin * * * By the use of Baby Skin Oil and Soap permanent benefits will result to the skin on account of the vitamin E and vitamin F content.

The last-quoted statement refers to both of said products.

PAR. 4. All of said statements are representations appearing in respondent's advertising material and literature, purport to be descriptive of the efficacy of respondent's products when used in the care and treatment of the skin, including the treatment of certain diseases, infections, ailments, and conditions occurring in connection therewith, and of the therapeutic properties and effectiveness of said products when used therefor. Through such advertising statements, respondent represents, directly and by inference, that there exists a vitamin recognized and designated as "Vitamin F," which is a necessary element in, or requisite to, the possession of a fresh, healthy, and youthful skin; that said "Vitamin F" can be, and is, introduced into the system by being absorbed through the skin by local inunction or massage, and that respondent's oils and soaps contain this vital element which can be so administered; that the use of respondent's oils and soaps containing said so-called "Vitamin F" will restore the appearance and condition of youth to the skin; that respondent's products are a remedy or cure for, or will prevent, dryness and roughness of the skin, eczema and acne, and that they will restore to the skin those indispensable fatty acids, generally known as "lipids"; deficiency in which results in such symptoms as dryness, roughness of the skin, eczema and acne; that the use of respondent's Baby Skin Oil and Soap will result in permanent benefits to the skin on account of their Vitamin E and "Vitamin F" content; that respondent's Baby Skin Oil is recommended for the tenderest baby skins and will restore to an adult skin the soft and silken texture of baby skin; and that the products of respondent will prevent and correct skin disfigurements, will rejuvenate the texture of the skin, and that said products are amazing discoveries and the outstanding development in present-day beauty culture.

PAR. 5. Based upon the testimony of experts in the fields of medicine, dermatology, pharmacology, and physiology, the Commission finds that the tissues of the human body, among other elements, contain unsaturated fatty acids generally known as lipids. The human skin contains from 3 percent to 5 percent of such lipids. Such

fatty acids are supplied in the food and distributed throughout the body in the natural process of metabolism. Assuming that a deficiency in any one of the vitamins or fatty acids exists, the proper and accepted method of correcting such deficiency is by giving the needed elements by mouth, either in foods or concentrates. Administering vitamins or fatty acids topically by massage is impracticable and will not affect the condition of the skin for the reason that if any material is absorbed at all it will be absorbed into the blood stream and the action must therefore be systemic.

PAR. 6. The Commission further finds that "Vitamin F" as such is not known in the scientific world; that such an alleged vitamin is not recognized officially by the American Medical Association or by any other scientific association, including the American Society of Physiology, the American Society of Pharmacology and the Americal Chemical Society. The respondent uses this term to describe what it refers to as "substances" which have not been chemically identified but have been associated with the unsaturated fatty acids generally known as "lipids."

Vitamin E is a fat soluble vitamin found in wheat germ oil, cottonseed oil, cereals, and other foods. It is obtained in abundance in the daily diet and there is no evidence that vitamin E plays any role in the normal life and nutrition of the human skin.

PAR. 7. The Commission further finds that the skin undergoes gradual atrophy with age which is manifested in a gradual breakdown of tissues. This is an inevitable characteristic of advancing age. Other factors causing a dry, rough, or wrinkled skin are sunburn, faulty diet, or skin diseases.

A "baby skin" cannot be simulated or produced in an older person through the use of respondent's products. While the regular use of said products may improve the appearance of the skin, such result is superficial and largely psychological, as no physiological changes result from such use. The skin normally secretes certain fatty substances through the sebaceous glands, and a removal of these fatty substances by cloths or in washing will not adversely affect the appearance of the skin, nor can such fatty substances be replaced by topical inunction.

The Commission finds that, while the application of respondent's oil may act as an emollient and offer some protection to the skin and aid in the correction of dryness, any beneficial effects which may be derived from the use of said products are independent of, and not because of, the vitamin E and the so-called "Vitamin F" content of said product.

PAR. 8. The Commission finds that respondent's oil and soap applied by topical inunction, are not a cure or remedy for acne, eczema, roughness, dryness, blemishes, and other skin irregularities. Eczema may be the result either of faulty diet or of infection. Acne is caused by infection and roughness of the skin, may be due to the congenital condition thereof, or it may be caused by disease, exposure to the elements, faulty diet, and other causes. The application of respondent's oil would act as an emollient, serve as a protective coat, and make the appearance of the skin a little smoother, temporarily, but it has no therapeutic effect. The use of respondent's soap would cleanse the skin but any fatty acids or vitamins which may be contained in the soap will be of no material or appreciable benefit to the skin.

PAR. 9. The Commission finds that respondent's product Baby Skin Oil does not have any therapeutic effects or properties and will not affect the health and appearance of the skin; it will not restore to the skin of the adult the appearance and texture of baby skin, nor will it replace or restore the essential lipids and vitamin E. Said product is not a new scientific discovery and will have no beneficial effect in the treatment of deficiency symptoms. It will not contribute to the prevention and correction of skin disfigurements, and will not restore to the skin necessary vitamins such as vitamin E or fatty acids erroneously designated by respondent as vitamin F, and will not benefit the skin permanently by reason of the addition of such substances.

PAR. 10. There are among the competitors of respondent, many who are engaged in the manufacture and sale, or the sale of cosmetics, toiletries, and similar merchandise between and among the various States of the United States and in the District of Columbia, who do not employ and maintain the practices hereinbefore enumerated and described, but who truthfully represent and vend said products.

PAR. 11. The use by respondent of the hereinabove enumerated false and misleading representations in connection with the offering for sale and sale of its cosmetics, toiletries, and similar merchandise, has, and has had, the capacity and tendency to, and does, mislead and deceive members of the consuming public into the belief that said representations are true, and as a result of such belief has caused said members of the consuming public to purchase substantial quantities of respondent's products.

The aforesaid acts and practices of respondent have the capacity and tendency to, and do, divert unfairly to the respondent the trade of competitors engaged in selling in commerce among and between

the various States of the United States and in the District of Columbia, products of the same kind and nature as those of respondent, which products are truthfully advertised and represented.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed by counsel for the Commission and respondent, 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 respondent, Imogene Shepherd, Ltd., its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of its products now designated "Baby Skin Oil" and "Baby Skin Oil Soap," or any other preparations composed of substantially the same ingredients, or possessing substantially similar properties, whether sold under the same names or any other names, do forthwith cease and desist from directly or indirectly:

(*A*) Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent directly or by inference:

1. That said preparations are a remedy or an effective treatment for dryness, roughness of the skin, eczema, and acne; will prevent and correct skin disfigurements; will rejuvenate the texture of the skin or bring back the appearance of youth to the skin of adults, or restore to adults the soft and silken texture of baby skin.

2. That said products are skin normalizers or that they make the skin more healthy and restore a distinguishable measure of baby skin blush and freshness to the skin by restoring skin lipids.

3. That because of modern living habits or conditions including washing or bathing of the face, indispensable fatty acids are removed from the skin.

4. That its products contain "Vitamin F."

5. That substantial quantities of vitamin E and the so-called "Vitamin F" can be introduced into and absorbed by the system by means of local application on the skin.

6. That its products are amazing discoveries, or the outstanding development in beauty culture of the present day.

7. That its products will nourish, or cause permanent benefit to, the skin on account of their Vitamin E and so-called "Vitamin F" content; or that they will restore essential lipids to the skin.

(*B*) 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 any of said products, which advertisements contain any of the representations prohibited in paragraphs (A) (1) to (7), inclusive.

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

TRIPPE MANUFACTURING COMPANY AND TRIPPE 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 4037. Complaint, Feb. 20, 1940—Decision, Aug. 14, 1940

Where two corporations engaged in sale and distribution of an electric auxiliary light for use on motor vehicles, through automotive fleet owners, jobbers, and automobile dealers; in describing quality and effectiveness of their said product through circulars, letters, advertisements in newspapers, and other publications of general circulation among the prospective purchasers throughout the United States and in the District of Columbia, and through salesmen traveling through the various States and in said District—

(*a*) Represented that their said light would penetrate and conquer fog, regardless of density thereof, and that fog close to ground was thin and less dense in all cases, and that said light in all cases cut under and stayed under fog blanket, facts being light in question would not penetrate all fog, regardless of density, nor was all fog thin and less dense close to ground, and it did not cut through all fog so is to give visibility to driver of motor vehicle to which it was attached;

(*b*) Represented that said light gave adequate illumination in fog, rain, mist, or snow, regardless of density thereof, and afforded user 1,000 feet of visibility ahead under all conditions, facts being it would not give such illumination in fog, etc., regardless of density, nor provide operator with visibility as above represented under all conditions; and

(*c*) Represented that said light had been purchased and used by the United States Coast Guard, facts being it had not been purchased and used officially by said establishment, unit or organization;

With effect of misleading and deceiving purchasers and prospective purchasers of lights in question, and of causing them erroneously and mistakenly to believe that such statements and representations were true, and, as a result, to purchase substantial quantity of product in question:

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

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

Mr. Charles S. Cox for the Commission.

Mr. Lewis F. Mason, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Trippe Manufacturing Co., a corporation, and Trippe Sales Co., a corporation, hereinafter referred

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

PARAGRAPH 1. Respondent, Trippe Manufacturing Co., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois and has its offices and principal place of business at 564 West Adams Street, Chicago, Ill. The respondent, Trippe Sales Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its offices and principal place of business at 600 West Jackson Boulevard, Chicago, Ill. Both of said respondents have branch offices and places of business at Toronto, Canada, and Halifax, England. Respondents are now and have been for more than 3 years last past, engaged in the business of selling and distributing an electric auxiliary light designed for use on motor vehicles, under the trade name "Trippe Safety Light" and "Trippe Speed Light." The respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter alleged.

PAR. 2. Respondents sell said product through automotive fleet owners, jobbers, and automobile dealers. Respondents cause said product when sold to be shipped from their aforesaid place of business in the State of Illinois to purchasers located in various States of the United States other than the State of Illinois and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said product in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their said business, respondents are in active and substantial competition with other corporations and individuals, and with partnerships and firms engaged in the sale and distribution of electric auxiliary lights, designed for use on automobiles, in commerce between and among the various States of the United States and in the District of Columbia.

Among such competitors of respondents there are many who do not misrepresent or make false statements in connection with the sale and distribution of their respective products.

PAR. 4. In the course and conduct of their business as aforesaid, for the purpose of inducing the purchase of said product in said commerce, respondents have made many representations with respect to the quality and effectiveness of their said product by means of circulars, letters, and through advertisements inserted in newspapers and other

publications, all circulated generally among prospective purchasers throughout the United States and in the District of Columbia, and through salesmen who travel through the various States of the United States and in the District of Columbia. Among and typical of said representations so made by the respondents are the following:

TRIPPE SAFETY LIGHT CONQUERS FOG.

Fog is a blanket of minute water particles—each a tiny mirror. Ordinary lights in fog are unavailing But, close to the ground, fog is thin and the razor-sharp beam of Trippe Safety Light cuts under and stays under the fog blanket.

Adequate illumination in fog, rain, mist or snow.

1,000 feet of visibility ahead.

The Trippe beam CUTS UNDER fog to give visibility.

Using just your dim headlights and Trippe Safety Light you can drive 60 miles an hour at night with ample visibility of at least 1,000 feet ahead.

1,000 feet between you and danger.

Some well known commercial users of Trippe Safety Light—U. S. Coast Guard.

Many other statements of similar import and meaning but not herein set out are likewise used by said respondents.

All of said statements purport to be descriptive of respondents' product and its effectiveness when used. In the manner aforesaid, respondents directly and indirectly represent that the light rays from said Trippe Safety Light will penetrate and conquer fog regardless of its density; that fog is thin and less dense close to the ground and that the light rays from the Trippe Safety Light will cut under and stay under the fog blanket thereby giving greater visibility; that said Trippe Safety Light will provide adequate illumination in fog, rain, mist, or snow regardless of density, and to the extent of 1,000 feet ahead; that a person using said light will have 1,000 feet distance of visibility between the user and danger; that said Trippe Safety Light has been officially purchased or used by the United States Coast Guard.

PAR. 5. In truth and in fact, said statements and representation are false and misleading in that Trippe Safety Light will not penetrate fog, regardless of its density, nor is fog close to the ground thin and less dense; Trippe Safety Light does not cut under and stay under the fog blanket; Trippe Safety Light does not give adequate illumination in fog, rain, mist, or snow regardless of density, nor does it afford the user thereof, 1,000 feet of visibility ahead under all conditions; said Trippe Safety Light has not been officially purchased or used by the United States Coast Guard.

PAR. 6. The aforesaid acts and practices of the respondents in connection with the offering for sale, sale, and distribution of said product have had, and now have, the capacity and tendency to, and

do, mislead and deceive purchasers of said product into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and implications are true and tend to cause a substantial number of the purchasing public, because of said erroneous and mistaken belief, to purchase a substantial number of respondent's said product, and thus unfairly to divert trade to the respondents from their competitors in said commerce, as described in paragraph 3 hereof, who do not make any misrepresentations or false statements in the manufacture, sale, and distribution of their respective products. In consequence thereof, injury has been, and is now being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 7. 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 20th day of February 1940, issued, and subsequently served, its complaint in this proceeding charging respondents Trippe Manufacturing Co., a corporation, and Trippe Sales Co., a corporation, with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. On March 11, 1940, the respondents filed their answer in this proceeding. Thereafter, at a hearing in this matter in Chicago, Ill., on April 10, 1940, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts read into the record, 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 of the complaint, or in opposition thereto, and that said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and disposing of the proceeding. Thereafter, the Commission having approved said stipulation, this proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, and said stipulation as to the facts, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Trippe Manufacturing Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its office and principal place of business at 564 West Adams Street, Chicago, Ill.

The respondent, Trippe Sales Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois and has its office and principal place of business at 600 West Jackson Boulevard, Chicago, Ill.

Both of said respondents have branch offices and places of business in Toronto, Canada, and Halifax, England.

Respondents are now, and have been for more than 3 years last past, engaged in the business of selling and distributing an electric auxiliary light, designed for use on motor vehicles, under the trade names "Trippe Safety Light" and "Trippe Speed Light." The respondents have acted in conjunction and cooperation with each other in carrying out the acts and practices hereinafter set forth.

PAR. 2. Respondents sell said product through automotive fleet owners, jobbers, and automobile dealers. Respondents cause said product, when sold, to be shipped from their aforesaid places of business in the State of Illinois to purchasers located in various States of the United States other than the State of Illinois and in the District of Columbia.

PAR. 3. In the course and conduct of their business as aforesaid, for the purpose of inducing the purchase of said product in said commerce, respondents have made many representations with respect to the quality and effectiveness of their said product, by means of circulars, letters, and through advertisements inserted in newspapers and other publications, all circulated generally among prospective purchasers throughout the United States and in the District of Columbia, and through salesmen who travel through the various States of the United States and in the District of Columbia.

Among and typical of said representations so made by the respondents are the following:

TRIPPE SAFETY LIGHT CONQUERS FOG.

Fog is a blanket of minute water particles—each a tiny mirror. Ordinary lights in fog are unavailing BUT, close to the ground, fog is thin and the razor-sharp beam of Trippe Safety Light cuts under and stays under the fog blanket.

Adequate illumination in fog, rain, mist or snow.

1,000 feet of visibility ahead.

The Trippe beam CUTS UNDER fog to give visibility.

Using just your dim headlights and Trippe Safety Light you can drive 60 miles an hour at night with ample visibility of at least 1,000 feet ahead.

1,000 feet between you and danger.

Some well-known commercial users of Trippe Safety Light—U. S. Coast Guard.

PAR. 4. Through the aforesaid statements, and many others of similar import and meaning not set out herein, all of which purport to be descriptive of respondents' said light and its effectiveness in use, respondents represent that said light will penetrate all fog, regardless of its density; that all fog is thin and less dense close to the ground, and that said light cuts through all fog and gives visibility to the driver of the motor vehicle to which said light is attached; that said light gives adequate illumination for visibility in fog, rain, mist, or snow, regardless of density, and affords the operator of the motor vehicle to which said light is attached 1,000 feet of visibility ahead under all conditions; and that said light has been purchased and used by the United States Coast Guard.

In truth and in fact, respondents' said light will not penetrate all fog, regardless of density; all fog is not thin and less dense close to the ground, and said light does not cut through all fog so as to give visibility to the driver of the motor vehicle to which it is attached; said light will not give adequate illumination for visibility in fog, rain, mist, or snow, regardless of density; said light will not provide the operator of the motor vehicle to which it is attached with visibility for a thousand feet ahead under all conditions; and said light has not been purchased and used by the United States Coast Guard officially.

PAR. 5. The use by the respondents of the statements and representations hereinabove set out is false, misleading, and deceptive, and has the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers of said lights, and to cause them erroneously and mistakenly to believe that said statements and representations are true, and as a result thereof to purchase substantial quantities of said lights.

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, the answer of respondents,

and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things, that without further hearing or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Trippe Manufacturing Co., a corporation, and Trippe Sales 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 their electric auxiliary light designed for use on motor vehicles, now sold under the trade names "Trippe Safety Light" and "Trippe Speed Light," or any other light of similar construction and power, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That said light will penetrate and conquer fog, regardless of its density; or that fog close to the ground is thin and less dense in all cases; or that said light cuts under and stays under the fog blanket in all cases.

2. That said light gives adequate illumination in fog, rain, mist, or snow, regardless of the density thereof; or that it affords the user thereof 1,000 feet of visibility ahead under all conditions.

3. That said light has been purchased or used by the United States Coast Guard officially, or by any other agency of 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

HENRY O. STRIKER, TRADING AS STROMBERG IGNITION COMPANY

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

Docket 4064. Complaint, Mar. 13, 1940—Decision, Aug. 14, 1940

Where a corporation, and corporate successor to business thereof, had long engaged, under name "Stromberg," in manufacture of carburetors, coils, and various other automobile accessories sold under name aforesaid, to purchasers in the various States and in the District of Columbia, and valuable good will had been built up by said companies in such name as applied to their said products, and particularly those above set forth, and purchasers and prospective purchasers of automobiles and automobile accessories and members of respective trades dealing therein had, through long usage and over long period of time, identified automotive and other mechanical apparatus, devices, and accessories which bore name "Stromberg" as products of said well and favorably known companies; and, long thereafter, individual engaged in manufacture, sale and distribution of automotive device, or so-called "Condenser," sold and distributed as spark intensifier for use on all makes of automotive vehicles, in commerce among the various States and in the District of Columbia, to retailers and to agents or representatives of said individual in various States and in said District, for resale to consuming public, and direct to purchasers at various points of location throughout the United States through C. O. D. shipments—

(*a*) Began use, without authority or consent of said companies, and for purpose of creating demand on part of purchasing public for his said products, of word "Stromberg" as trade name and brand therefor, and continued to make use thereof, and marked and branded therewith his said automotive device, and through statements and representations made by his agents or representatives and through circulars, handbills, and other similar printed or writen matter, used and featured said word as such trade and brand name or designation, and in circulars and handbills, and in advertising matter displayed on sides of large trucks and trailers giving purported demonstrations at various places throughout the United States, featured word in question;

With capacity and tendency to confuse, mislead, and deceive purchasers and prospective purchasers into mistaken and erroneous belief that his said device was product of well and favorably known company above referred to, long manufacturer and seller, under said name, as aforesaid set forth, of automotive accessories and devices; and

(*b*) Represented, through statements and representations relative to said device in circulars and handbills and on boxes or cartons containing same, and on device itself, and in other printed or written matter distributed generally to purchasers and prospective purchasers in various States and in said District, and through matter which he caused to be distributed

and disseminated by his said retailers, agents, and representatives, that product in question was capable of increasing power of motor and eliminated spark plug trouble and saved oil or gasoline, and that users were able to drive an increased number of miles on a change of oil, and that it reduced carbon and made starting easier; and

(*c*) Represented, as aforesaid, that use of such device would raise voltage and reduce amperage of current used in automobiles, or gasoline motors, and would improve ignition system therein, in keeping with other improvements that had been made by the automotive industry, and that said condensers had, as indicated, beneficial effect;

Facts being it would not increase power of motor, eliminate spark plug trouble or save user oil or gasoline, nor reduce carbon or make starting easier, nor raise voltage and reduce amperage of current used, nor have any beneficial effect at all, and said various statements and representations, as above set out and indicated, were false and misleading; and

(*d*) Represented that said device had been approved and endorsed by a recognized automotive engineers' association equipped with laboratories for testing and approving, and which did test and approve, various automotive equipment, through setting forth on boxes or cartons containing his said product words "* * * endorsed and approved by the Automotive Engineers Association of America," together with purported "Seal of Approval" consisting of design made up of automobile tire and wheel, with name of association and initial letters thereof printed on design in question, facts being his said product had not been approved or endorsed by recognized automotive association or automotive engineers' association with necessary laboratory equipment to test automotive devices, and which did actually test, attest and approve automotive equipment; and

(*e*) Represented exaggerated fictitious price as that of said device in so-called "special offer" by him and his retailers, through statement "SPECIAL 30-DAY OFFER, Stromberg Ignition Co., Detroit, Mich. Please mail me one Stromberg Condenser at the special price, $1.50 * * *," facts being price of $1.50 at which said device was offered in so-called "special offer," was in excess of and more than the price at which his said device was generally and customarily sold to purchasing public by retailers, agents, and representatives, and was not in any sense, as indicated, a special price good only for 30 days, nor offer more advantageous than offers generally and customarily made by him to all other purchasers and prospective purchasers;

With result of placing thereby, through means and manner set forth, directly in hands of unscrupulous or uninformed retailers, agents, and representatives means and instrumentality whereby they had been and were enabled to mislead and deceive members of purchasing public in respects above set out, and with effect of misleading and deceiving many members of said public into erroneous and mistaken belief that such false and misleading statements and representations were true, and into purchase of substantial quantities of his said devices as result 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. Robert Mathis, Jr., for the Commission.

Mr. Hall Johnston, 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 Henry O. Striker, an individual, trading as Stromberg Ignition 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, Henry O. Striker, is an individual trading as Stromberg Ignition Co., and having his principal office and place of business at 7320 Tireman Avenue in the city of Detroit, State of Michigan.

PAR. 2. Respondent is now, and has been for more than 6 years last past, engaged in the manufacture, sale, and distribution of an automotive device or attachment designated "'Stromberg' Condenser" and sometimes designated as "'Stromberg' Master Condenser," which is sold and distributed as a spark intensifier to be used on all makes of automobiles, tractors, trucks, and gasoline motors. Respondent causes said devices, when sold by him, to be transported from his place of business in the State of Michigan to retail dealers and other purchasers 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 devices sold by him in commerce among and between the various States of the United States and in the District of Columbia. The bulk of respondent's sales are made to retail dealers, agents, or representatives of respondent located in the various States of the United States and in the District of Columbia, who in turn sell said devices to the purchasing public; a large number of respondent's sales are made by C. O. D. shipments mailed directly to purchasers thereof at their various points of location throughout the United States.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said automotive devices, respondent has caused various statements and representations relative to said products to be inserted in circulars, handbills, on the boxes or cartons containing said products, on the product itself, and in other printed or written matter, which are distributed generally to purchaser and prospective purchasers situated in various States of the United States and in the District of Columbia. In addition to the written or printed matter disseminated as aforesaid, respondent has caused various statements and representations to be made by his said

retail dealers, agents, and representatives for the purpose of inducing, and which are likely to induce, the purchase of said products as aforesaid.

Among and typical of the statements and representations used and disseminated by respondent as aforesaid are the following:

Just a few features of the "Stromberg" Master Condenser:

1. Increases Power—Burns more of the gasoline in the cylinder. Burnt gasoline is power. Unburnt gasoline is carbon.

2. Eliminates Sparkplug Trouble—Fires oily or "wet" plugs in oil-pumping cylinders. The blowing or disruptive discharge at the plug points keeps the plugs clean.

3. Saves Oil—Most car owners change oil every 500 miles, because gasoline (unburned) leakage thins the lubricant. The STROMBERG MASTER CONDENSER burns all the gasoline, stops the leakage completely, so that oil can often be used for 2,500 miles or more.

4. Saves Gasoline, both by burning more of the charge in the cylinder and running on a "leaner" mixture.

5. Reduces Carbon—Carbon is unburnt gasoline—by completely burning all the gasoline in the cylinder there is no waste or carbon left to form on the cylinder or piston heads, gum up the valve and cause other troubles.

6. Makes Easy Starting—Fires both a leaner or a richer mixture than the ordinary ignition system.

7. The STROMBERG CONDENSER accomplishes its purpose by raising the voltage of the current, and at the same time reducing the amperage. It consumes less electricity than is used without it. It creates an impulsive rush of high pressure current which overcomes any resistance offered by carbon or oil on the points of the plug.

Success of the Stromberg Master Condenser.

8. The manufacturers have experts on all parts of the automobile, and each factory must have its new feature each year, while the ignition system, however, has lagged during the same period of time and has been found wanting in many respects until our discovery of the STROMBERG MASTER CONDENSER which puts the ignition system in keeping with the balance of the automobile improvements for all makes of automobiles, tractors, trucks, and gasoline motors.

9. SPECIAL 30-DAY OFFER, Stromberg Ignition Co., Detroit, Mich. Please mail me one Stromberg Condenser at the special price, $1.50 * * *

10. This is a genuine "Stromberg" product, and gentlemen, when the name Stromberg is on it, whether it be a radio, carburetor, or this merchandise, you do not have to be afraid to buy it because it is good merchandise.

11. You all know what the name "Stromberg" stands for, etc. * * *

12. The Stromberg condenser is endorsed and approved by the Automotive Engineers Association of America.

This last statement, numbered 12, is made on the boxes or cartons containing said products, and immediately above said statement is a purported "Seal of Approval" consisting of a design made up of an automobile tire and wheel with the words "Automotive Engineers Association of America" printed on the tire, and the letters "A. E. A. A." printed between the spokes of said wheel.

Through the use of the aforesaid statements and representations and others of similar import or meaning, not herein set out, the respondent

has represented that its said automotive device is capable of increasing the power of the motor; that its use eliminates spark-plug trouble and saves the user various quantities of oil and gasoline; that its users are able to drive up to 2,500 miles or more on a change of oil; that the use of said device reduces carbon and makes easier starting for the motor; that manufacturers of automobiles and gasoline motors have neglected the advancement and development of the ignition systems in automobiles and gasoline motors and that respondent's product puts the ignition system in keeping with the other improvements made in said motors; that the offer made on said order blank as set forth in this paragraph to each purchaser and prospective purchaser is a special 30 day offer which will expire at the end of that time and is more advantageous than the offer generally made to each purchaser and prospective purchaser; that respondent's automotive device is approved and endorsed by a recognized automotive association which is equipped with laboratories for testing and approving, and which does test and approve, various automotive equipment.

PAR. 4. The Stromberg Carburetor Co. was a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its factory and principal place of business in the city of Detroit, State of Michigan. It was, and had been since May 1907, engaged in the manufacture of carburetors, coils, and various other automobile accessories which it sold under the name "Stromberg." In April 1930, the business operated under the name Stromberg Carburetor Co. was taken over by the Bendix Stromberg Carburetor Co., a corporation, which continued the operation of the business and continued to sell said products under the name "Stromberg." Said Bendix Stromberg Carburetor Co. is now engaged in the manufacture of said products and in offering for sale and selling the same to purchasers located in the various States of the United States and in the District of Columbia, and causes its said products, when sold, to be transported from its place of business located in the city of Detroit, State of Michigan, to the purchasers thereof at their respective points of location throughout the United States. These companies have built up and enjoyed a valuable good will in the name "Stromberg" as applied to said products, particularly with respect to carburetors, coils, and other automobile accessories and devices.

Purchasers and prospective purchasers of automobiles and automobile accessories, as well as members of the respective trades dealing therein, have, through long usage and over a long period of time, identified automotive and other mechanical apparatus, devices and accessories which bear the name "Stromberg" as being the products

of the well and favorably known Stromberg Carburetor Co. or the well and favorably known Bendix Stromberg Carburetor Co.

PAR. 5. In the course and conduct of his business as described herein, and for the purpose of creating a demand on the part of the purchasing public for his products, said respondent, without authority or consent of the Stromberg Carburetor Co. or the Bendix Stromberg Carburetor Co., began, at a date long subsequent to the adoption and use by said Bendix Stromberg Carburetor Co. of the word "Stromberg" as a trade name or designation of its products, to use the word "Stromberg" as a trade name or brand for his said product and has continued until the present time to use the same in the manufacture, sale, and distribution of his product. Respondent has caused and now causes said product to be marked and branded with the word "Stromberg," and through statements and representations made by respondent's agents or representatives and in circulars, handbills, and other similar printed or written matter used in soliciting the sale of, and selling, said product among purchasers and prospective purchasers, respondent has used and featured, and now uses and features, the word "Stromberg" as his trade name and as the brand name or designation for said product. In advertising matter which is displayed on the sides of large trucks and trailers which are giving a purported demonstration of respondent's product at various places throughout the United States, and in said circulars and handbills, respondent has caused the word "Stromberg" to be more prominently displayed than the other parts of said advertising.

PAR. 6. The statements and representations as set forth herein, and others of similar import and meaning not herein set out, are false and misleading, for in truth and in fact the automotive devices which the respondent sells and offers for sale as aforesaid will not increase the power of the motor, eliminate spark-plug trouble, or save the user oil or gasoline. Said devices will not reduce carbon or make starting of the motor easier, nor will they raise the voltage and at the same time reduce the amperage of the current. Said devices have no beneficial effect at all on the operation of a gasoline motor, nor do said devices improve the ignition system so that it is in keeping with the other improvements that have been made in the automotive industry.

The price of $1.50 at which said device is offered in said so-called special offer by the respondent and his retail dealers, agents, or representatives to prospective purchasers is not in any sense a special price which is good for only 30 days nor is the offer more advantageous than the offers generally and customarily made by the respondent to all other purchasers and prospective purchasers of said devices, for in truth and in fact the price of $1.50 at which said device is offered for

sale in said so-called special offer is in excess of and more than the price at which respondent's said device is generally and customarily sold to the purchasing public by retail dealers, agents and representatives. Respondent's said product has not been, and is not, approved or endorsed by a recognized automotive association or a recognized automotive engineers' association which has the necessary laboratory equipment for testing automotive devices and which does actually test, attest, and approve automotive equipment.

PAR. 7. The use by the respondent as hereinabove alleged of the word "Stromberg" as a trade name and brand for his product and in advertising matter relating thereto has had, and now has, the tendency and capacity to confuse, mislead, and deceive purchasers and prospective purchasers into the mistaken and erroneous belief that his product so designated and described is the product of the well and favorably known Bendix Stromberg Carburetor Co., manufacturer of automotive accessories and devices which are sold under the name "Stromberg."

PAR. 8. Respondent places directly in the hands of unscrupulous or uninformed retail dealers, agents, and representatives a means and instrumentality whereby said retail dealers, agents, and representatives have been, and are, enabled to mislead and deceive members of the purchasing public in the respects herein mentioned.

PAR. 9. The acts and practices of the respondent in using the aforesaid false and misleading statements and representations have had, and now have, the capacity and tendency to, and did and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said automotive devices as a result of such erroneous and mistaken belief.

PAR. 10. 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 13th day of March 1940, issued and served its complaint in this proceeding upon said respondent, Henry O. Striker, an individual, trading as Stromberg Ignition Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On April 2,

1940, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Hall Johnston, 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 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, Henry O. Striker, is an individual trading as Stromberg Ignition Co., and having his principal office and place of business at 14819 Charlevoix Avenue in the city of Detroit, State of Michigan.

PAR. 2. Respondent is now, and has been for more than 6 years last past, engaged in the manufacture, sale, and distribution of an automotive device designated as "'Stromberg' Condenser" and sometimes designated as "'Stromberg' Master Condenser," which is sold and distributed as a spark intensifier to be used on all makes of automobiles, tractors, trucks, and gasoline motors. Respondent causes said device, when sold by him, to be transported from his place of business in the State of Michigan to retail dealers and other purchasers in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device sold by him in commerce among and between the various States of the United States and in the District of Columbia. The bulk of respondent's sales are made to retail dealers, agents, or representatives of respondent located in the various States of the United States and in the District of Columbia, who in turn sell said device to the consuming public. A large number of respondent's sales are made by c. o. d. shipments mailed directly to purchasers at their various points of location throughout the United States.

PAR. 3. In the course and conduct of his aforesaid business and for the purpose of inducing the purchase of his said automotive device, respondent has caused various statements and representations relative to said device to be inserted in circulars, handbills, on the boxes or cartons containing said device, on the device itself, and in other printed or written matter, which are distributed generally to purchasers and prospective purchasers in various States of the United States and in the District of Columbia. In addition to the written or printed matter distributed and disseminated as aforesaid, respondent has caused various statements and representations to be made by his said retail dealers, agents, and representatives for the purpose of inducing, and which are likely to induce, the purchase of said products as aforesaid.

Among and typical of the statements and representations used and disseminated by respondent as aforesaid are the following:

Just a few features of the "Stromberg" Master Condenser:

1. Increases Power—Burns more of the gasoline in the cylinder. Burnt gasoline is power. Unburnt gasoline is carbon.

2. Eliminates Sparkplug Trouble—Fires oily or "wet" plugs in oil-pumping cylinders. The blowing or disruptive discharge at the plug points keeps the plugs clean.

3. Saves Oil—Most car owners change oil every 500 miles, because gasoline (unburned) leakage thins the lubricant.

The STROMBERG MASTER CONDENSER burns all the gasoline, stops the leakage completely, so that oil can often be used for 2,500 miles or more.

4. Saves Gasoline, both by burning more of the charge in the cylinder and running on a "leaner" mixture.

5. Reduces Carbon—Carbon is unburnt gasoline—by completely burning all the gasoline in the cylinder there is no waste or carbon left to form on the cylinder or piston heads, gum up the valve and cause other troubles.

6. Makes Easy Starting—Fires both a leaner or a richer mixture than the ordinary ignition system.

7. The STROMBERG CONDENSER accomplishes its purpose by raising the voltage of the current, and at the same time reducing the amperage. It consumes less electricity than is used without it. It creates an impulsive rush of high pressure current which overcomes any resistance offered by carbon or oil on the points of the plug.

Success of the Stromberg Master Condenser.

8. The manufacturers have experts on all parts of the automobile, and each factory must have its new feature each year, while the ignition system, however, has lagged during the same period of time and has been found wanting in many respects until our discovery of the STROMBERG MASTER CONDENSER which puts the ignition system in keeping with the balance of the automobile improvements for all makes of automobiles, tractors, trucks and gasoline motors.

9. SPECIAL 30-DAY OFFER. Stromberg Ignition Co., Detroit, Mich. Please mail me one Stromberg Condenser at the special price, $1.50 * * *

10. This is a genuine "Stromberg" product, and Gentlemen, when the name Stromberg is on it, whether it be a radio, carburetor, or this merchandise, you do not have to be afraid to buy it because it is good merchandise.

11. You all know what the name "Stromberg" stands for, etc. * * *

12. The Stromberg condenser is endorsed and approved by the Automotive Engineers Association of America.

This last statement, numbered 12, is made on the boxes or cartons containing said products, and immediately above said statement is a purported "Seal of Approval" consisting of a design made up of an automobile tire and wheel with the words "Automotive Engineers Association of America" printed on the tire, and the letters "A. E. A. A." printed between the spokes of said wheel.

Through the use of the aforesaid statements and representations and others of similar import or meaning, the respondent has represented that its said automotive device is capable of increasing the power of the motor; that its use eliminates spark-plug trouble and saves the user oil and gasoline; that its users are able to drive up to 2,500 miles or more on a change of oil; that the use of said device reduces carbon and makes easier starting for the motor; that manufacturers of automobiles and gasoline motors have neglected the advancement and development of the ignition systems in automobiles and gasoline motors and that respondent's product puts the ignition system in keeping with the other improvements made in said motors; that offers made to purchasers and prospective purchasers is a special 30-day offer which will expire at the end of that time and is more advantageous than the offer generally made to each purchaser and prospective purchaser; that respondent's automotive device is approved and endorsed by a recognized automotive association which is equipped with laboratories for testing and approving, and which does test and approve, various automotive equipment.

PAR. 4. The Stromberg Carburetor Co. was a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its factory and principal place of business in the city of Detroit, State of Michigan. It was, and had been since May 1907, engaged in the manufacture of carburetors, coils, and various other automobile accessories which it sold under the name "Stromberg." In April, 1930, the business operated under the name Stromberg Carburetor Co. was taken over by the Bendix Stromberg Carburetor Co., a corporation, which continued the operation of the business and continued to sell said products under the name "Stromberg." Said Bendix Stromberg Carburetor Co. is now engaged in the manufacture of said products and in offering for sale and selling the same to purchasers located in the various States of the United States and in the District of Columbia, and causes its said products, when sold, to be transported from its place of business located in the city of Detroit, State of Michigan, to the purchasers

thereof at their respective points of location throughout the United States. These companies have built up and enjoyed a valuable good will in the name "Stromberg" as applied to said products, particularly with respect to carburetors, coils, and other automobile accessories and devices.

Purchasers and prospective purchasers of automobiles and automobile accessories, as well as members of the respective trades dealing therein, have, through long usage and over a long period of time, identified automotive and other mechanical apparatus, devices, and accessories which bear the name "Stromberg" as being the products of the well and favorably known Stromberg Carburetor Co. or the well and favorably known Bendix Stromberg Carburetor Co.

PAR. 5. In the course and conduct of his business, and for the purpose of creating a demand on the part of the purchasing public for his products, said respondent, without authority or consent of the Stromberg Carburetor Co. or the Bendix Stromberg Carburetor Co. began, at a date long subsequent to the adoption and use by said Bendix Stromberg Carburetor Co. of the word "Stromberg" as a trade name or designation of its products, to use the word "Stromberg" as a trade name or brand for his said product and has continued until the present time to use the same in the manufacture, sale, and distribution of his product. Respondent has caused, and now causes, said product to be marked and branded with the word "Stromberg," and through statements and representations made by respondent's agents or representatives and in circulars, handbills, and other similar printed or written matter used in soliciting the sale of, and selling, said product among purchasers and prospective purchasers, respondent has used and featured, and now uses and features, the word "Stromberg" as his trade name and as the brand name or designation for said product. In advertising matter which is displayed on the sides of large trucks and trailers which are giving purported demonstrations of respondent's product at various places throughout the United States, and in said circulars and handbills respondent has caused the word "Stromberg" to be more prominently displayed than the other parts of said advertising.

PAR. 6. Said statements and representations, made and used by the respondent as above set forth, are false and misleading, for in truth and in fact the automotive devices which the respondent sells and offers for sale as aforesaid will not increase the power of the motor, eliminate spark-plug trouble, or save the user oil or gasoline; said devices will not reduce carbon or make starting of the motor easier, nor will they raise the voltage and at the same time reduce the amper-

age of the current; said devices have no beneficial effect at all on the operation of a gasoline motor, nor do said devices improve the ignition system so that it is in keeping with the other improvements that have been made in the automotive industry; the price of $1.50 at which said device is offered in said so-called special offer by the respondent and his retail dealers, agents, or representatives to prospective purchasers is not in any sense a special price which is good for only 30 days nor is the offer more advantageous than the offers generally and customarily made by the respondent to all other purchasers and prospective purchasers of said device; in truth and in fact the price of $1.50 at which said device is offered for sale in said so-called special offer is in excess of, and more than, the price at which respondent's said device is generally and customarily sold to the purchasing public by retail dealers, agents, and representatives; respondent's said product has not been, and is not, approved or endorsed by a recognized automotive association or a recognized automotive engineers' association which has the necessary laboratory equipment for testing automotive devices and which does actually test, attest, and approve automotive equipment.

PAR. 7. The use by the respondent of the word "Stromberg" as a trade name and brand for his product and in advertising matter relating thereto, as hereinabove set out, has had, and now has, the tendency and capacity to confuse, mislead, and deceive purchasers and prospective purchasers into the mistaken and erroneous belief that his device is the product of the well and favorably known Bendix Stromberg Carburetor Co., manufacturer of automotive accessories and devices which are sold under the name "Stromberg."

PAR. 8. By the means and in the manner set forth herein, respondent places directly in the hands of unscrupulous or uninformed retail dealers, agents, and representatives a means and instrumentality whereby said retail dealers, agents, and representatives have been, and are enabled to mislead and deceive members of the purchasing public in the respects herein mentioned.

PAR. 9. The acts and practices of the respondent in using the aforesaid false and misleading statements and representations have had, and now have, the capacity and tendency to, and did and do, mislead and deceive many members of the purchasing public into the erroneous and mistaken belief that such false and misleading statements and representations are true, and into the purchase of substantial quantities of respondent's said automotive devices as a result 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, the answer of the respondent, and a stipulation as to the facts entered into between the respondent herein by his attorney, Hall Johnston, 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, Henry O. Striker, an individual, trading as Stromberg Ignition 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 its automotive device designated " 'Stromberg' Condenser," and sometimes designated as " 'Stromberg' Master Condenser," which has been sold as a spark intensifier for various types of motors, or any other device which functions in a similar manner, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that said device is capable of increasing the power of the motor or that its use eliminates spark-plug trouble or saves oil or gasoline to the user thereof; that users of said device are able to drive an increased number of miles on a change of oil or that said device reduces carbon or makes starting of the motor easier.

2. Representing that the use of said device will raise the voltage or reduce the amperage of the current used in automobiles or gasoline motors.

3. Representing that said device will improve the ignition system in gasoline motors in keeping with the other improvements that have been made by the automotive industry.

4. Representing in any manner or by any means that said device will have any beneficial effect at all on the operation of a gasoline motor.

5. Representing as the customary or regular price or value of said device prices or values which are in fact fictitious and greatly in excess of the price at which said device is customarily and ordinarily offered for sale and sold in the normal course of business.

6. Representing that said device is approved or endorsed by a recognized automotive engineers' association or other similar organization which is equipped with laboratories for testing and approving and which does test and approve various automotive equipment.

7. Representing that the price at which said device is offered for sale is to be in effect for a limited period of time only, when the price at which said device is offered for sale is that for which the device is customarily and ordinarily sold in the normal course of business.

8. Using the name, "Stromberg," or any other name similar in spelling or phonetic sound, as a trade name for doing business or as a brand name in designating respondent's said product.

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

R. FRANK YANCEY, TRADING AS THE MONARCH CHINA COMPANY

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

Docket 3410. Complaint, May 7, 1938—Decision, Aug. 15, 1940

Where an individual engaged in offer, sale, and distribution of earthenware products, including dinnerware or, as by him designated, "chinaware," to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale in commerce as aforesaid of such products—

(*a*) Represented, through advertising literature made use of by him in soliciting sale of, and in selling, said products to prospective purchasers, and through sales promotion literature, and agents and traveling salesmen, that offer and sale of assortments of dinnerware sets by him was in nature of a "clearance sale" of accumulated assortments not disposed of in regular course of manufacture and sale, offered at purported special bargain prices by virtue of being accumulated stock not used by manufacturer because of certain defects, but in other respects of high grade;

Facts being so-called "chinaware" was supplied to him by manufacturer in regular course of business and made to his order, and not taken or selected from high-grade stock, and was not offered and sold as "clearance sale," but at prices which did not constitute any special bargain or price advantage, but were those at which he regularly and customarily sold such products in the regular and continuing course of business;

(*b*) Represented, as aforesaid, that he was the manufacturer of the products offered and sold by him, and that purchase thereof from him constituted direct purchase from manufacturer, eliminating competition and thereby saving purchaser against added cost of expense normally involved in making purchases through distributors and jobbers or any source other than manufacturer, through such statements, among others, as "* * * packed right at the factory and shipped direct to you," "BUY DIRECT, ELIMINATE COMPETITION," etc.;

Facts being he was not, as represented, manufacturer, for purchase of whose products direct, and for dealing with whom, there is preference on part of dealers and purchasing public as securing sellers, in their opinion, superior quality, better prices and other benefits not obtainable through distributor and jobber middlemen, but, on contrary, was distributor or jobber of such products, and purchases of such products from him did not constitute direct purchases from manufacturer and eliminate competition and save purchaser against any cost and expense normally involved in dealing with distributor or jobber; and

(*c*) Represented, directly and through his representatives, that products offered and sold were of same grade and quality as sample pieces supplied by him to his agents for display in solicitation and sale of his merchandise;

Facts being samples aforesaid were of materially higher grade and quality than sets or so-called "chinaware" sold and delivered to customers after receipt

of order from salesman, and products thus supplied were in no way comparable in grade and quality with samples exhibited and displayed to prospective purchasers, but were substantially inferior thereto;

With effect of misleading and deceiving retail dealers and members of purchasing public into mistaken and erroneous belief that such statements and representations were true and, by reason thereof, into purchase of his said products, and of thereby diverting unfairly trade to him from competitors engaged in sale of earthenware and china products in commerce as aforesaid, and who do not misrepresent their business status or character or quality of their said 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 competitors and the public, and constituted unfair methods of competition.

Before *Mr. Edward E. Reardon* and *Mr. John J. Keenan*, trial examiners.

Mr. Jay L. Jackson and *Mr. DeWitt T. Puckett* for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that R. Frank Yancey, trading as The Monarch China Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, R. Frank Yancey, is an individual trading under the name and style of The Monarch China Co., with his office and principal place of business located at 703 Chestnut Street, city of Greensboro, N. C. For approximately 4 years last past said respondent has been, and now is, engaged in the business of offering for sale, selling, and distributing earthenware products, including dinnerware sets, designated by respondent as chinaware, in commerce among and between the various States of the United States and in the District of Columbia. It has been, and now is, the practice of respondent to cause said products, when sold or ordered, to be shipped and transported from the factories where the same are made to respondent in the State of North Carolina and also direct to purchasers of said products located in various States of the United States other than the State of origin of said shipment, and in and to the District of Columbia.

In the course and conduct of the business aforesaid respondent has been, and now is, in competition with other individuals, firms, partnerships, and corporations engaged in the business of offering for

sale, selling, and distributing earthenware and chinaware, including dinnerware, 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 the business aforesaid, it has been, and now is, the practice of respondent to offer his said products and to solicit and sell prospective purchasers and purchasers, through and by means of advertising and sales promotion literature and through and by means of agents and traveling salesmen.

Through and by means of the said literature and oral statements and representations made by respondent, and by his said selling agents, it has been, and now is, the practice of respondent to state and represent, among other things, to prospective purchasers and purchasers, that the assortments of dinnerware sets, or chinaware, offered and sold by respondent, are "Damaged Job Thirds" and "Odds and Ends," and further, that the offer and sale thereof is in the nature of a "Clearance Sale" of accumulated assortments of chinaware sets not used in the regular course of manufacture and sale. Demonstrative of the statements and representations contained in the aforesaid advertising literature, which is distributed by respondent and his agents to purchasers and prospective purchasers, are the following:

You Wonder How We Do It!

SIMPLY THIS: In the Manufacture of High grade Chinaware a large part of the production comes thru damaged to the extent that the factories are not justified in making the careful selection that is made in selling the better grades in open stock. As this ware is entirely of accidental production and is never purposely made, its cost is added to the better grades and the damaged ware is lumped and sold in Job Lots to keep the stock rooms clear.

JOB THIRDS

1000 Pieces to the Cask and each cask is packed right at the factory and shipped direct to you.

YOU GET STRICTLY FACTORY SELECTED MERCHANDISE

GIVE YOUR CUSTOMERS WHAT THEY WANT

Increase Your Sales

BUY YOUR CHINAWARE FOR SHIPMENT DIRECT FROM THE FACTORY and you will be in position to offer your trade bigger and better values that will bring many new customers into your store. We especially recommend this assortment for Special Sales purposes. It is not only a BIG PROFIT maker for you but a valuable advertisement for your store. This is the lowest price ever offered on good clean Job Lot Chinaware.

BUY DIRECT, ELIMINATE COMPETITION

The aforesaid statements by respondent further imply and represent, and are understood by prospective purchasers to mean, that the offer and sale made by respondent constitutes a special bargain price offer

or advantage by virtue of the products being so-called "Odds and Ends" or accumulated stock not used by the manufacturer because of certain defects, but that the same are otherwise of high-grade stock. The said statements further imply and represent that the respondent, doing business under the name The Monarch China Co., is the manufacturer of the products which are offered for sale, and sold, and that the purchase through the said company constitutes a direct purchase, "eliminates competition," and thus saves the purchaser against the added cost or expense normally involved in making so-called indirect purchases through distributors and jobbers.

PAR. 3. It has been, and now is, the further practice of respondent to supply his said selling agents with certain sample pieces of earthenware or chinaware stock for display use in the process of soliciting the sale of, and in selling his products to purchasers and prospective purchasers. Said samples, however, are of materially higher grade and quality than the earthenware dinnerware sets or so-called chinaware which respondent in fact sells and delivers to his purchasers. Through use of such samples, respondent represents, both directly and through his representatives, that the products offered for sale, and sold by him, are of the same grade and quality as the samples exhibited. In fact, respondent's products are substantially inferior in grade and quality to the samples exhibited and displayed to prospective purchasers and are in no wise comparable to such samples.

PAR. 4. There is a preference on the part of the purchasing public for buying merchandise from, and dealing direct with, the manufacturer of the merchandise being purchased, said members of the purchasing public believing that in so doing they secure merchandise of superior quality and also secure more advantageous prices and other benefits not obtainable when purchasing the same products through middlemen such as distributors and jobbers.

PAR. 5. In truth and in fact the foregoing statements and representations are false and misleading in that the earthenware products or dinnerware sets, or so-called chinaware, offered and sold by respondent are not "Damaged Job Thirds," or "Odds and Ends," or sold in the process of a "Clearance Sale," and the offer and sale at the prices quoted by respondent do not constitute any special bargain or price advantage. The prices at which respondent offers said products for sale are in fact the regular, usual, and customary prices at which said products are regularly and customarily sold. The offer and sale thereof at the prices quoted constitute the respondent's regular and continuing course of business. The said products are supplied to respondent by a manufacturer in the regular course of business and are made to respondent's order, and the same are not taken or selected from high grade stock. Respondent, trading as The Monarch China

Co., is not a manufacturer of the products which he offers for sale and sells but on the contrary is a distributor or jobber thereof. Purchases of such products from respondent do not constitute a direct purchase from a manufacturer, eliminates no competition, and does not save the purchaser against any cost or expense normally involved in dealing with a distributor or jobber.

PAR. 6. The aforesaid statements and representations made by the respondent in connection with the offering for sale and sale of his earthenware or so-called chinaware products have had, and now have, the tendency and capacity to, and do, mislead and deceive retailer purchasers and prospective consumer purchasers of such products into the false and erroneous beliefs that said statements and representations, above set out, are true, and into the purchase of respondent's products in and on account of such beliefs induced by respondent's acts and practices, as herein set out. As a result thereof, trade has been diverted unfairly to the respondent from competitors likewise engaged in selling earthenware products or chinaware products in commerce among and between the various States of the United States and in the District of Columbia who do not misrepresent their business status or the character or quality of their respective products. 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. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 7th day of May A. D. 1938, issued and thereafter served its complaint in this proceeding upon the respondent, R. Frank Yancey, individually and trading as The Monarch China Co., charging him with the use of unfair methods of competition in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Jay L. Jackson, Esq., and DeWitt T. Puckett, Esq., attorneys for the Commission, and in opposition thereto by the respondent, who appeared in his own behalf, before Edward E. Reardon and John J. Keenan, trial examiners of the Commission theretofore duly designated by it. Said testimony and other evidence were duly recorded and filed in the office of the

Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, the testimony and other evidence, and brief in support of the complaint (the respondent not having filed any 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, R. Frank Yancey, is an individual who is now, and has been for a number of years last past, doing business at 703 Chestnut Street, in Greensboro, N. C., under the trade name and style, "The Monarch China Company." Respondent is now, and has been for some years, engaged in the business of offering for sale, selling, and distributing, in commerce, earthenware products including dinnerware sets designated by respondent as "chinaware."

PAR. 2. For more than 4 years last past respondent has caused the said earthenware products, including dinnerware sets designated by respondent as "chinaware," when sold by him, to be transported from his place of business in the State of North Carolina and from the State of Ohio to purchasers thereof located in States of the United States other than the States of North Carolina and Ohio and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade by respondent in said so-called "chinaware" in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and has been at all times mentioned herein, engaged in substantial competition with other persons, and with firms, partnerships, and corporations, also engaged in the sale and distribution of earthenware and chinaware, including dinnerware sets, in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 4. In the course and operation of his business, and for the purpose of inducing individuals, firms, and corporations to purchase his said earthenware products, including dinnerware sets designated by respondent as "chinaware," respondent has made it a practice to solicit the sale of and sell said products to prospective purchasers through and by means of advertising and sales promotion literature, and through and by means of agents and traveling salesmen. By means of said advertising literature and oral statements and representations made by respondent and his representatives, it has been and now is the practice of the respondent to state and represent to

prospective purchasers, among other things, that the offer and sale of assortments of dinnerware sets is in the nature of a "clearance sale" of accumulated assortments of chinaware sets not disposed of in the regular course of manufacture and sale.

PAR. 5. Among and typical of the statements and representations disseminated as aforesaid by respondent, and which have been distributed by respondent and his agents to purchasers and prospective purchasers, are the following:

YOU WONDER HOW WE DO IT!

SIMPLY THIS: In the Manufacture of High Grade Chinaware a large part of the production comes thru damaged to the extent that the factories are not justified in making the careful selection that is made in selling the better grades in open stock. As this ware is entirely of accidental production and is never purposely made, its cost is added to the better grades and the damaged ware is lumped and sold in job lots to keep the stock room clear.

JOB THIRDS

1,000 pieces to the Cask and each cask is packed right at the factory and shipped direct to you.

YOU GET STRICTLY FACTORY SELECTED MERCHANDISE

GIVE YOUR CUSTOMERS WHAT THEY WANT!

Increase Your Sales

BUY YOUR CHINA FOR SHIPMENT DIRECT FROM THE FACTORY and you will be in position to offer your trade bigger and better values that will bring many new customers into your store. We especially recommend this assortment for Special Sales Purposes. It is not only a BIG PROFIT maker for you but a valuable advertisement for your store. This is the lowest price ever offered on good clean Job Lot Chinaware.

BUY DIRECT, ELIMINATE COMPETITION

THE MONARCH CHINA COMPANY

Headquarters for Low Prices

We Don't Meet Prices—We Make Them

Sales Office and Sample Rooms

Greensboro, North Carolina

M
C. C.

Selling Agent Associated Potteries of Ohio.

THE MONARCH CHINA COMPANY

Headquarters for Low Prices

Greensboro, N. C.

All of the aforesaid statements and representations by respondent, together with similar statements appearing in respondent's other advertising matter, purport to be descriptive of the merchandise offered for sale by respondent at purported special bargain prices by virtue of the product's being accumulated stock not used by the manufacturer because of certain defects, but otherwise being of high grade stock. The said statements further imply and represent that respondent, doing business under the name "The Monarch China Company," is the manufacturer of the products which are offered for sale and sold by him, and that the purchase of such products from respondent constitutes a direct purchase from the manufacturer, eliminates competition, and thus saves the purchaser against the added cost or expense normally involved in making purchases through distributors and jobbers or through any source other than the manufacturer.

PAR. 6. In truth and in fact, all of the aforesaid statements and representations are false and misleading, in that the earthenware products, or so-called "chinaware," offered and sold by respondent are not sold in the process of a "clearance sale," and the offer and sale thereof at the prices quoted by the respondent do not constitute any special bargain or price advantage. The prices at which respondent offers said products for sale are, in fact, the regular, usual, and customary prices at which said products are regularly and customarily sold, and constitute the respondent's regular and continuing course of business. Said products are supplied to respondent by the manufacturer in the regular course of business and are made to respondent's order, and the same are not taken or selected from high grade stock. Respondent is not the manufacturer of the products which he offers for sale and sells, but, on the contrary, is a distributor or jobber thereof. Purchases of such products from the respondent do not constitute and have not constituted direct purchases from the manufacturer, do not eliminate competition and do not save the purchaser against any cost or expense normally involved in dealing with a distributor or jobber.

PAR. 7. The respondent, in the course and conduct of his business, supplies his selling agents with sample pieces of earthenware or chinaware stock, for display use in the process of soliciting the sale of and selling respondent's merchandise. Such samples are, in truth and in fact, of materially higher grade and quality than the earthenware dinner sets, or so-called "chinaware" which respondent in fact sells and delivers to his customers after receipt of order from his salesmen. Through the use of such samples, respondent represents, both directly and through his representatives, that the products offered for sale and sold by him are of the same grade and quality as the sam-

ples so exhibited. In truth and in fact, respondent's products are substantially inferior in grade and quality to the samples exhibited and displayed to prospective purchasers by his salesmen and representatives, and are in no way comparable with such samples.

PAR. 8. There is a preference on the part of dealers and the purchasing public for buying merchandise from, and for dealing directly with, the manufacturer of the merchandise being purchased, said dealers and members of the purchasing public believing that in so doing they secure merchandise of superior quality, and also secure more advantageous prices and other benefits not obtainable when purchasing such products through middlemen, such as distributors and jobbers.

PAR. 9. The aforesaid statements and representations made by respondent in connection with the offering for sale and the sale of his earthenware, or so-called "chinaware" products, has had and now has the tendency and capacity to, and did and does, mislead and deceive retail dealers and members of the purchasing public into the mistaken and erroneous belief that said statements and representations are true, and into the purchase of respondent's products because of such belief. As a result thereof, trade has been diverted unfairly to the respondent from his competitors engaged in selling earthenware products and chinaware products in commerce among and between the various States of the United States and in the District of Columbia, who do not misrepresent their business status or the character or quality of their respective products. In consequence thereof, injury has been done, and is now being done, by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony and other evidence taken before Edward E. Reardon and John J. Keenan, trial examiners 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 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, R. Frank Yancey, individually and trading as The Monarch China Co., 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 earthenware or chinaware, or any other products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent is a manufacturer, or that any of the products sold by respondent are manufactured by him.

2. Representing that the prices at which respondent's products are offered for sale constitute special or reduced or "clearance sale" prices, when such prices are in fact the usual and customary prices at which such products are offered for sale and sold by respondent in the normal and regular course of business.

3. Representing, by the use of purported samples or otherwise, that respondent's products are of a quality or value different from the actual quality or value of such products.

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

MARY ELOISE GAUSS, TRADING AS SPRAGUE-KITCHEN & COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 3821. Order, Aug. 16, 1940

Order of August 23, 1939, 29 F. T. C. 671, requiring respondent, her agents, etc., to cease and desist disseminating, as in said order set forth in detail, advertisements representing that her said "Graolene", or other similar cosmetic preparation, is not a dye or will restore original color to gray hair, or supply deficient materials thereto, etc., as modified August 16, 1940, as below set forth, so as to eliminate from said order prohibition respecting failure to disclose possible injurious effects when applied to skin where continuity of the integument is broken.

Mr. Robert Mathis, Jr., for the Commission.

MODIFIED ORDER TO CEASE AND DESIST [1]

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint, and states that she waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Mary Eloise Gauss, individually and trading as Sprague-Kitchen & Co., or trading under any other name or names, her agents, representatives, and employees, directly or through any corporate or other device, do forthwith cease and desist from:

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[1] Original order of Aug. 23, 1939, was modified to read as above set forth, by following order of Aug. 16, 1940:

ORDER STRIKING PORTION OF ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission upon the request of respondent that the order to cease and desist entered herein on Aug. 23, 1939, be modified by striking a certain portion thereof, and it appearing that the modification of said order in the respects requested is in the public interest, and the Commission having duly considered said request and the record herein, and being now fully advised in the premises;

It is ordered that the order to cease and desist entered herein on Aug. 23, 1939, be modified by striking therefrom the following language appearing in the last four lines thereof:

"or which advertisements fail to reveal that the use of said preparation may produce a harmful or injurious effect particularly in the event that such preparation is applied to skin on which there are lesions which have broken the continuity of the integument."

It is further ordered that except as herein modified said order to cease and desist remain in full force and effect.

Disseminating, or causing to be disseminated, any advertisement by means of the United States mails or in commerce, as commerce is defined in the Federal Trade Commission Act, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of a cosmetic preparation now designated "Graolene," or any other cosmetic preparation composed of substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold under that name or any other name or names, or disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as commerce is defined in the Federal Trade Commission Act, of said preparation, which advertisements represent, directly or by implication, that said preparation is not a dye or is other than a dye, or will cause gray hair to change color without dyeing the hair; or that the use of said preparation will restore the original or natural color to gray hair, or will supply to the hair shaft the materials in which gray hair is deficient, or will cause the scalp, the hair or the roots of the hair to be normal or healthy; or that said preparation is an effective remedy or cure for dandruff or itching scalp, or will stimulate the growth of hair; or that said preparation is harmless or that the use thereof will produce no injurious effect.

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

IN THE MATTER OF

AIR CONDITIONING TEXTILES, INC.

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

Docket 3974. Complaint, Dec. 16, 1939—Decision, Aug. 19, 1940

Where a corporation engaged in sale and distribution of its so-called "Air Conditioning the Human Body" soap to purchasers in various other States, in competition with others also engaged in sale and distribution of soaps designed and used for cleansing the skin, and including many who do not misrepresent properties or efficacy of their respective products—

Represented, through use of term aforesaid, that its said product possessed air-conditioning properties or qualities and reduced body temperature and humidity, and eliminated perspiration objections, and that body breathed through pores of skin, facts being, while menthol synthetic content of product served to impart to skin a slight cooling and soothing sensation, it had no effect on actual temperature of body, which does not breathe through pores as above alleged, and product in question did not air condition the body nor reduce its temperature, nor accomplish the other effects above claimed;

With capacity and tendency to mislead and deceive a portion of the purchasing public, aware of principle of air conditioning as new scientific development advancing and contributing to bodily comfort, but, in case of many, entirely unfamiliar with manner of operation thereof and principle's limitations, into erroneous and mistaken belief that said false representations were true, and that its soap possessed properties claimed and represented, and would accomplish results indicated, and into purchase thereof because of such belief, thus induced, and with result of thereby diverting trade unfairly to it from its competitors 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. John W. Addison*, trial examiner.

Mr. Randolph W. Branch and *Mr. B. G. Wilson* for the Commission.

Mr. Harry B. Kurzrok, 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 Air Conditioning Textiles, 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, Air Conditioning Textiles, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1441 Broadway, New York City, N. Y.

PAR. 2. The respondent has been for 3 years last past engaged in the business of selling and distributing certain toilet preparations including a toilet soap designated variously as "Air Conditioning the Human Body" soap and as "Air Conditioning" soap. Respondent causes the said product, when sold by it, to be transported from its aforesaid 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.

For 3 years last past respondent 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. In the course and conduct of its business, respondent has been engaged in competition with other corporations and with partnerships, firms, and individuals also selling and distributing soaps and other products designed and used for the cleansing of the skin, in commerce among and between the various States of the United States.

Among such competitors are many who do not in any manner misrepresent the properties or the efficacy of their respective soaps or other products.

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 caused advertisements containing false and misleading representations and claims with respect to its said product to be disseminated by means of circulars and other printed and written matter and by the use of labels attached to its said product. Among and typical of the false and misleading representations contained in said advertisements are the following:

Air Conditioning Soaps and Toilet Preparations.

They Definitely Reduce Body Temperature. Reduce Humidity by Evaporation. Eliminates Perspiration Objections.

The use of these preparations is the modern, practical way for "Air Conditioning the Human Body."

The human body breathes through the pores of the skin.

Respondent's soap is generally referred to in all of said advertisements and labels as "Air Conditioning Soap."

PAR. 5. Members of the purchasing public have been made conscious of the term "air conditioning" and of the fact that the principle of

"air conditioning" is a new scientific development advancing and contributing to bodily comfort but many of them are entirely unfamiliar with the manner of operation of the principle of air conditioning and the limitations thereon. The use of the term "air conditioning" as descriptive of respondent's soap product, has the tendency and capacity to mislead and deceive purchasers into the mistaken and erroneous beliefs that to some extent the principle of "air conditioning" has in some manner been incorporated into such soap and that, by reason thereof, such soap possesses properties contributing to human comfort which are not possessed by ordinary soaps. While respondent's soap possesses perfume and menthol in less than 3 percent, it has no properties different from ordinary soap.

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 product and its effectiveness in use, the respondent has represented among other things: That its said product "air conditions the human body"; that said product reduces body temperature, reduces humidity by evaporation and eliminates perspiration objections; and that the human body breathes through the pores of the skin.

PAR. 6. The foregoing representations are grossly exaggerated, misleading, and untrue. In truth and in fact respondent's product will not air condition the human body. It will not reduce body temperature, nor reduce humidity, nor will it eliminate perspiration objections. The human body does not breathe through the pores of the skin. In truth and in fact respondent's product does not differ in any material respect from other soaps used for ordinary cleansing purposes.

PAR. 7. The use by respondent of the foregoing false and misleading representations with respect to its said product has had the capacity and tendency to mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that such false representations are true, and that respondent's said product possesses the properties claimed and represented, and will accomplish the results indicated and into the purchase of quantities of respondent's product on account of such beliefs so induced. As a result, trade has been diverted unfairly to the respondent from its competitors, and 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. 8. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and injury of the public and of respondent's competitors, and constitute unfair methods of com-

petition 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 16, 1939, issued and thereafter served its complaint in this proceeding upon Air Conditioning Textiles, Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by Randolph W. Branch, attorney for the Commission, 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. No testimony or other evidence was offered by the respondent. 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 on oral argument by counsel for the Commission and by the respondent through its president; 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, Air Conditioning Textiles, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 1441 Broadway, New York City, N. Y.

Par. 2. Respondent, from June 1937, to the summer or fall of 1939, was engaged in the business of selling and distributing soap designated by it as "Air Conditioning the Human Body" soap. It caused the said soap, when sold by it, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States. Respondent maintained a course of trade in its said soap in commerce among and between the several States of the United States.

PAR. 3. Respondent, in the course and conduct of its business as aforesaid, was engaged in competition with other corporations and with partnerships and individuals also engaged in selling and distributing soaps designed and used for cleansing of the skin, in commerce among and between the several States of the United States. Among these competitors are many who do not misrepresent the properties or the efficacy of their respective products.

PAR. 4. Respondent, to promote the sale of its soap in commerce as described above, has represented in its advertising material that its said soap air conditions the human body, that said soap reduces body temperature, reduces humidity by evaporation, eliminates perspiration objections, and that the human body breathes through the pores of the skin.

PAR. 5. The Commission finds that there is no basis in fact for these representations. In truth and in fact, respondent's soap does not air condition the human body, nor does it reduce body temperature. It does not reduce humidity, nor does it eliminate perspiration objections. The human body does not breathe through the pores of the skin.

PAR. 6. Members of the purchasing public have been made conscious of the term "air condition", and of the fact that the principle of "air conditioning" is a new, scientific development advancing and contributing to bodily comfort; but many of them are entirely unfamiliar with the manner of operation of the principle of air conditioning and the limitations thereon. The use of the term "air conditioning" as descriptive of respondent's soap has the tendency and capacity to mislead and deceive purchasers into the mistaken and erroneous belief that to some extent the principle of air conditioning has in some manner been incorporated into such soap, and that by reason thereof, such soap possesses properties contributing to human comfort which are not possessed by ordinary soaps. Respondent's soap contains a perfume solution making up three per cent or less of its total content, and two-thirds of this solution is menthol synthetic. The presence of the menthol serves to impart to the skin a slight cooling and soothing sensation, but it has no effect on the actual temperature of the body.

PAR. 7. The use by respondent of the foregoing false and misleading representations with respect to its said product has the capacity and tendency to mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that said false representations are true, and that respondent's soap possesses the properties claimed and represented and will accomplish the results indicated, and into the purchase of respondent's product because of such belief so induced. As a result, trade has been diverted unfairly to respondent from its competitors in commerce among and between the several States of the United States.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, 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 the complaint, brief filed by counsel for the Commission, and oral argument by B. G. Wilson, counsel for the Commission, and by the president of the respondent corporation, 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, Air Conditioning Textiles, 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 soap designated as "Air Conditioning the Human Body" soap and as "Air Conditioning" soap, or any other soap composed of substantially similar ingredients or possessing substantially similar properties, 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:

1. Using the term "Air Conditioning" or "Air Conditioning the Human Body," or any other term of similar import, to designate or describe its said soap, or otherwise representing that said soap possesses air-conditioning properties or qualities.

2. Representing that said soap reduces body temperature or reduces humidity or eliminates perspiration objections.

3. Representing that the human body breathes through the pores of the skin.

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 HOFFMAN, TRADING AS L. HOFFMAN

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

Docket 4165. Complaint, June 19, 1940—Decision, Aug. 20, 1940

Where an individual engaged in manufacture, sale, and distribution of desk pads and other office accessories to retail purchasers in the various other States and in the District of Columbia for resale to retail trade and other members of purchasing public, in substantial competition with others engaged in sale and shipment, in commerce as aforesaid, of similar products; in statements and representations in numerous circulars and catalogs circulated generally among prospective purchasers throughout the United States and in said District, and through salesmen traveling through various States and in District aforesaid—

(*a*) Made representation and statement "Established 1888," notwithstanding fact business was not established in year in question;

(*b*) Made use of words and legends "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather," to describe certain desk pads offered and sold by him, and thereby represented and implied to purchasing public that material from which said products were made was the superior and more costly top grain leather, as understood by general public from word "leather" as meaning top or hairy side of hide, notwithstanding fact he made use of no genuine top grain leather for any of his products aforesaid, but employed therefor mostly splits or first and subsequent cuts under deep buff leather, and, for "Flexhide" pads, leather imitation; and

(*c*) Made use of legends "Grecian Gold Tooled Border" and "Genuine Gold Tooled Border," to describe his aforesaid products, and represented and implied thereby to purchasing public that the superior and more costly genuine gold leaf was used in process of finishing, embossing, or tooling borders of his said products, notwithstanding fact leaf aforesaid was not employed, but borders thus described were mostly of imitation gold;

With result that retailers were enabled to mislead and deceive purchasing public as to quality of material from which said pads were made and of material with which borders thereof were finished, embossed, or tooled; and

(*d*) Published and circulated depiction of various styles of pads offered by him which were identical with certain products of competitors, and indicated genuine and expensive gold leaf embossing or tooling in quality, notwithstanding fact he did not sell such products of design depicted, and pictorial representations in question in some instances were of competitor's higher priced and superior type of pad, both as to design and pattern;

With effect of misleading and deceiving purchasing public into mistaken and erroneous belief that aforesaid various representations were true, and of inducing said public, because of such belief, to purchase his said products and thereby divert trade to him from those of his competitors who do not in any manner misrepresent their products or business status:

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.

Mr. Charles S. Cox 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 Hoffman, an individual, trading as L. Hoffman, 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 Louis Hoffman is an individual, trading as L. Hoffman, with his principal office and place of business at 459 Broadway, New York, N. Y.

Par. 2. Respondent is now, and for more than 4 years last past has been, engaged in manufacturing, selling, and distributing desk pads and other office accessories. Respondent causes said desk pads and other office accessories, when sold by him, to be transported from his said place of business in New York, N. Y., 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. Respondent's said desk pads and other office accessories are sold to retailers who in turn resell the same to the retail trade and other members of the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said desk pads and other office accessories 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 as aforesaid, respondent is now, and for more than 4 years last past has been, in substantial competition with other individuals, and with partnerships, firms, and corporations engaged in the sale and shipment 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 his aforesaid business and for the purpose of inducing the purchase of his said products, respondent has caused numerous circulars and catalogs to be circulated, containing many statements and representations concerning his said products and as to his said business, generally among prospective purchasers throughout the United States and in the District of Columbia, and through salesmen traveling through various States of the United

States and in the District of Columbia, has made many statements and representations to the purchasing public concerning his said desk pads and other products, and as to respondent's business status. Among and typical of the representations made by the respondent are the following:

Established 1888.
Flexhide Calf Finish Leather.
Genuine Top Grain Leather.
Top Grain Furniture Leather.
Grecian Gold Tooled Border.
Genuine Gold Tooled Border.

Respondent also in the conduct of his said business publishes and circulates through the means aforesaid, a pictorial presentation of various styles of desk pads offered for sale by respondent to the purchasing public. Some of the said pictorial representations of various styles of desk pads sold and offered for sale by respondent are identical with certain of those of respondent's competitors, and indicate genuine and expensive, gold-leaf embossing or tooling in quality.

Respondent in the conduct of said business, in the manner aforesaid, makes various other statements and representations of similar import and meaning concerning the character and quality of the products sold by him.

PAR. 5. In the manner aforesaid, the respondent represents and has represented that his said business was established in the year 1888. The words "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Genuine Top Grain Furniture Leather" represent and imply to the purchasing public that the material from which said desk pads are made is top grain leather, or as otherwise described, the outside or surface layer of the hide. Top grain leather is superior in quality, durability, and price to split leather. The general public believes the word leather to mean the top or hairy side of the hide. Retailers are enabled by reason of said representations of respondent to mislead and deceive the purchasing public as to the quality of the material with which said desk pads are made. The words "Grecian Gold Tooled Border" and "Genuine Gold Tooled Border" as used in advertising and describing desk pads sold by respondent represent and imply to the purchasing public that genuine gold leaf is used and applied on the border of said product. Gold leaf finish "embossing" or "tooling" is superior in quality, durability, and price to imitation gold and the public generally believes the words "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border" mean that genuine gold leaf is used in the process of finishing, "embossing," or "tooling" the borders of respondent's said desk pads.

By reason of respondent's said representations, retailers are enabled to mislead and deceive the purchasing public as to the quality of gold material with which said desk pads' borders are finished, "embossed or tooled."

PAR. 6. In truth and in fact, respondent's business was not established in the year 1888 and respondent does not use genuine top grain leather in any of his said desk pads, and his said desk pads are composed of splits, which are the first and subsequent cuts under the deep buff leather, and artificial leather is used in said desk pads which are described as "Flexide." In most cases, respondent's "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border" are made of imitation gold, and gold leaf is not used in the process. In truth and in fact, respondent does not sell desk pads of the design presented in pictorial presentations for said desk pads, and said pictorial presentations, in some instances, are those of a competitor's higher-priced, superior type of desk pad both in design and pattern.

PAR. 7. The aforesaid representations have the capacity and tendency to mislead and deceive the purchasing public into the mistaken and erroneous belief that such representations are true; and have the capacity and tendency to, and do, induce the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's products, thereby diverting trade to the respondent from those of his competitors who do not in any manner misrepresent their products or the status of their business.

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 June 19, 1940, issued, and subsequently served, its complaint in this proceeding upon respondent Louis Hoffman, an individual, trading as L. Hoffman, charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On July 12, 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 Louis Hoffman is an individual, trading as L. Hoffman, with his principal office and place of business at 459 Broadway, New York, N. Y.

PAR. 2. Respondent is now, and for more than 4 years last past has been, engaged in manufacturing, selling, and distributing desk pads and other office accessories. Respondent causes said desk pads and other office accessories, when sold by him, to be transported from his said place of business in New York, N. Y., 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. Respondent's said desk pads and other office accessories are sold to retailers who in turn resell the same to the retail trade and other members of the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said desk pads and other office accessories 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 as aforesaid, respondent is now, and for more than 4 years last past has been, in substantial competition with other individuals, and with partnerships, firms, and corporations engaged in the sale and shipment 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 his aforesaid business and for the purpose of inducing the purchase of his said products, respondent has caused numerous circulars and catalogs to be circulated, containing many statements and representations concerning his said products and as to his said business, generally among prospective purchasers throughout the United States and in the District of Columbia, and through salesmen traveling through various States of the United States and in the District of Columbia, has made many statements and representations to the purchasing public concerning his said desk pads and other products, and as to respondent's business status. Among and typical of the representations made by the respondent in said circulars and catalogs are the following:

Established 1888.
Flexhide Calf Finish Leather.

Genuine Top Grain Leather.
Top Grain Furniture Leather.
Grecian Gold Tooled Border.
Genuine Gold Tooled Border.

Respondent, in the conduct of his said business, also publishes and circulates, through the means aforesaid, a pictorial presentation of various styles of desk pads offered for sale by respondent to the purchasing public. Some of the said pictorial representations of various styles of desk pads sold and offered for sale by respondent are identical with certain of those of respondent's competitors, and indicate genuine and expensive gold-leaf embossing or tooling in quality.

Respondent, in the conduct of his said business, through his salesmen, makes various other statements and representations of similar import and meaning concerning the character and quality of the products sold by him.

PAR. 5. In the manner aforesaid, the respondent represents and has represented that his said business was established in the year 1888. The words "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather" represent and imply to the purchasing public that the material from which said desk pads are made is top grain leather, or as otherwise described, the outside or surface layer of the hide. Top grain leather is superior in quality and durability to, and higher in price than, split leather. The general public believes the word "leather" to mean the top or hairy side of the hide. Retailers are enabled by reason of said representations of respondent to mislead and deceive the purchasing public as to the quality of the material from which said desk pads are made.

The words "Grecian Gold Tooled Border" and "Genuine Gold Tooled Border," used in advertising and describing desk pads sold by respondent, represent and imply to the purchasing public that genuine gold leaf is used and applied on the border of said product. Gold leaf finish "embossing" or "tooling" is superior in quality and durability to, and higher in price than, imitation gold, and the public generally believes the words "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border" to mean that genuine gold leaf is used in the process of finishing, "embossing," or "tooling" the borders of respondent's said desk pads. By reason of respondent's said representations, retailers are enabled to mislead and deceive the purchasing public as to the quality of material with which the borders of said desk pads are finished, "embossed" or "tooled."

PAR. 6. In truth and in fact, respondent's business was not established in the year 1888. Respondent does not use genuine top grain

leather in any of his said desk pads. Most of his said desk pads are composed of splits, which are the first and subsequent cuts under the deep buff leather. Imitation leather is used in the desk pads which are described as "Flexhide." In most cases, the borders described as "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border" are made of imitation gold, and gold leaf is not used in the process. In truth and in fact, respondent does not sell desk pads of the design presented in pictorial presentations for said desk pads, and said pictorial presentations, in some instances, are those of a competitor's higher priced, superior type of desk pad both in design and pattern.

PAR. 7. The aforesaid representations of respondent have the capacity and tendency to, and do, mislead and deceive the purchasing public into the mistaken and erroneous belief that such representations are true; and have the capacity and tendency to, and do, induce the purchasing public, because of such mistaken and erroneous belief, to purchase respondent's products, thereby diverting trade to the respondent from those of his competitors who do not in any manner misrepresent their products or the status of their business.

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 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 Hoffman, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of desk pads and other office accessories in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's business was established in the year 1888, or at any other date prior to the time that such business was in fact established.

2. Using the terms "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather," or any other terms of similar import and meaning to designate, describe, or refer to desk pads made from the inner split of leather.

3. Using the terms "Flexhide Calf Finish Leather," "Genuine Top Grain Leather," and "Top Grain Furniture Leather," or any other terms of similar import and meaning to designate, describe, or refer to desk pads made in whole or in part from the outer split of leather without revealing that split leather has been used in the manufacture of such desk pads.

4. Representing, through the use of the words "Flexhide," "Top Grain," "Leather," or any other word or words of similar import and meaning, alone or in conjunction with other words, or in any other manner, that desk pads manufactured in whole or in part from the under layer or flesh side of hides, known as split leather, are made from the outside or surface layer of the hide.

5. Using the phrase "Grecian Gold Tooled Border" or "Genuine Gold Tooled Border," or any other phrase containing the word "gold," or the word "gold" alone, to designate, describe, or refer to borders of desk pads, which borders are not in fact manufactured from gold leaf.

6. Using pictorial representations of desk pads not offered for sale and sold by respondent as representative of the desk pads offered for sale and sold by respondent.

7. Representing, through the use of statements, pictures, or otherwise, that respondent's desk pads or other office accessories are of a grade, quality, and value greater than that which actually exists.

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

IN THE MATTER OF

NATIONAL CONVERTERS 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 3897. Complaint, Sept. 19, 1939—Decision, Aug. 28, 1940

Where nine corporations which were engaged in converting for sale transparent cellulose sheets and rolls, such as cellophane, sylphrap, kodapak, protectoid, and other similar transparent materials, and in sale thereof to customers and users throughout the several States of the United States, and which represented, in the aggregate, 90 percent of the output and sale of said products, and were members of a voluntary unincorporated trade association or institute—

(*a*) Filed with their said Institute, for cellulose sheets and rolls, base price lists and discounts and deviations thereupon not available to the public, and agreed that they would sell said products in the course and conduct of their business at approximately prices stated on price lists, and would maintain such prices and discounts to best of their ability, and exchanged information as to conduct of their businesses by reporting orders received from and invoices issued to customers in sale of products in question through medium of said Institute, as clearing house, and secretary thereof, by whom current price lists submitted by members were checked against price information contained in such orders and invoices, and by whom said information and reports were summarized and weekly bulletin issued to each member showing dollar volume of sales to all participating members and total number of orders taken by all such members, and by whom, in addition to aforesaid summarizing and distribution of such reports, data, and information not available to public, there were issued monthly summary reports showing total volume of sales of all participating members and, to each member, his own proportion in comparison therewith; and

(*b*) Furnished information, upon request of member, as to instances where other members had sold products at prices and discounts other than those set forth in their respective price lists, in order to maintain net prices and discounts which such member corporations had theretofore agreed to maintain, through setting forth, in instances involved, (1) percentage of filed price over or under price at which sale was made, (2) date of sale, and (3) size of sale; and through supplying further, upon request, and on forms supplied by Institute, detailed information as to sales of products in question;

With the result that such acts and practices hindered and prevented price competition between and among corporations aforesaid in sale of their said products made and converted from cellulose sheets as aforesaid, and had dangerous tendency so to hinder and prevent, and placed in said corporations power and control to enhance prices in question, and tended dangerously to create in them and said Institute and individual, monopoly of said products in commerce involved, and unreasonably restrained interstate commerce therein:

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

Mr. George W. Williams for the Commission.

Mr. John Walsh, of Washington, D. C., for National Converters Institute, Richard M. McClure, Caton Printing Co., and Pioneer Wrapper & Printing Co., and, along with—

Mr. Franklin M. Warden, of Chicago, Ill., for Shellmar Products Co.; *Mr. Edward J. Dempsey*, of Oshkosh, Wisc., for Milprint Products Corp.; *Marshall & Marshall*, of Chicago, Ill., for Traver Paper & Manufacturing Co.; *Mr. Clark T. McConnell*, of Cleveland, Ohio, for Dobeckmun Co.; and *Wise, Corlett & Canfield*, of New York City, for Dennison Manufacturing Co.

Ballard, Spahr, Andrew & Ingersoll, of Philadelphia, Pa., for Thomas M. Royal & Co.

Nutter, McClennen & Fish, of Boston, Mass., for Nashua Gummed & Coated Paper 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 each and all of the parties named in the caption hereof and more particularly described herein in paragraphs 1 and 2, and 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 National Converters Institute, hereinafter referred to as "Institute," is a voluntary unincorporated trade association originally organized in September 1930, and reorganized in September 1935, principally by representatives of the respondents Shellmar Products Co., Milprint Products Corporation, and the Traver Paper & Manufacturing Co., the principal members of the Transparent Materials Converters Industry. Said Institute has its principal office and place of business located at 111 West Washington Street in the city of Chicago, State of Illinois.

The membership of said respondent Institute since September 1935 has consisted of the several corporations hereinafter named and described in paragraph 2 herein and hereinafter referred to as member respondents. All of said member respondents were during the times mentioned herein, and still are, corporations engaged in the business of converting for sale transparent cellulose sheeting (such as cello-

phane, sylphrap, kodapak, protectoid, and other similar transparent materials) into bags, envelopes, tubes, pouches, sheets, rolls, ribbons, and other similar miscellaneous transparent products, hereinafter referred to as "products," and in the printing, stamping, or otherwise imprinting or placing various advertising description or other matter upon said products, and in the sale thereof to the consumers and users of such products located throughout the several States of the United States, causing said products when sold to be shipped or otherwise transported from the States wherein said member respondents maintain their respective factories and places of business to the purchaser thereof located in States other than the said States, and there has been, and now is, a constant current and course of trade and commerce in said products between and among the several States and territories of the United States and in the District of Columbia.

PAR. 2. The following-described corporations, member respondents, have been since September 1935, and now are, except as hereinafter indicated, members of respondent Institute and engaged generally in the said business hereinbefore described in paragraph 1.

(*a*) Respondent Shellmar Products Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its factory, principal office, and place of business located at 224 South Michigan Avenue in the city of Chicago, State of Illinois. Said member respondent is the largest converter of cellulose sheeting into the products hereinbefore described in paragraph 1 in the United States, and is the owner of a patent on a machine for, and a process of, printing and finishing cellophane, and has issued licenses to some of the other member respondents to use its said process and machine.

(*b*) Respondent Milprint Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its factory, principal office, and place of business located at 431 West Florida Street in the city of Milwaukee, State of Wisconsin. It has branch factories in the cities of Philadelphia, Pa., and Los Angeles, Calif. This member respondent uses a rubber type with analine ink to print its said products and is not a licensee of member-respondent Shellmar Products Co.

(*c*) Respondent Traver Paper & Manufacturing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its factory, principal office and place of business, located at 358 West Ontario Street in the city of Chicago. in said State.

(*d*) Respondent Dobeckmun Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State

of Ohio, with its factory, principal office and place of business located at 3301 Monroe Avenue, city of Cleveland, in said State. Said member respondent is a licensee of the member-respondent Shellmar Products Co. in the production by the gravure method of printing upon transparent materials such as cellophane.

(*e*) Respondent Dennison Manufacturing Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its factory, principal office and place of business located in the city of Framingham, in said State. Said member respondent is a licensee of member-respondent Shellmar Products Co. in the production by the gravure method of printing upon transparent materials such as cellophane.

(*f*) Respondent Caton Printing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its factory, principal office, and place of business located at 422 West Eighth Street, in the city of Kansas City, in said State.

(*g*) Respondent Thomas M. Royal & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its factory, principal office and place of business located at 5800 North Seventh Street, in the city of Philadelphia, in said State. Said member respondent prints cellophane by the use of rubber plates, which is a cheaper process than the gravure process patented by said member-respondent Shellmar Products Co.

(*h*) Respondent Nashua Gummed & Coated Paper Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its factory, principal office, and place of business located in the city of Nashua, in the State of New Hampshire. Said member respondent is a licensee of the member-respondent Shellmar Products Co. in the production by the gravure method of printing upon transparent materials such as cellophane. Said member respondent resigned its membership in said respondent Institute effective January 1, 1939, and since that date has not actively cooperated with the said Institute in its activities as hereinafter set forth.

(*i*) Respondent Pioneer Wrapper & Printing Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its factory, principal office, and place of business located at 837 East Fourth Place in the city of Los Angeles, in the said State. Said member respondent resigned its membership in the respondent Institute in January 1938, but con-

tinued to cooperate with the said Institute and its members as hereinafter set forth.

PAR. 3. Respondent Richard M. McClure, since September 1935, has been and now is secretary-treasurer and manager of respondent Institute, with office at 111 West Washington Street, Chicago, Ill., and as such has directed its activities, including the conduct of meetings of said member respondents, the general correspondence of the said Institute, the collection, compilation, and dissemination of such statistical and other information as required by the member respondents in the carrying out of its "sales reporting and statistical service," the issuance of a manual of instructions under said plan, and the performance of all necessary acts in carrying out the agreement between and among the said member respondents as hereinafter set forth.

PAR. 4. Said member respondents in the course and conduct of their several businesses, as hereinbefore described, but for the matters and things hereinafter set forth would be naturally and normally in competition with each other and/or in competition with other individuals, copartners, and corporations also engaged in the business of converting cellulose sheeting and in the manufacturing of said products described in paragraph 1 herein, and in the sale thereof to customers located throughout the several States of the United States. The said member respondents have been at all times herein mentioned, and now are, the dominant factors in the Transparent Materials Converters Industry, controlling more than 90 percent of the output and sale of said products manufactured or converted from cellulose sheeting, as more particularly described in paragraph 1 herein.

PAR. 5. The said member respondents hereinbefore named and described, during the period of time, to wit, from September 1930, and particularly from September 1935, to the date of this complaint, have entered into and carried out an agreement, combination, and conspiracy with each other and with other persons, including respondent Richard M. McClure, now acting as manager of respondent Institute, to hinder and suppress competition in the interstate sale and distribution of said products hereinbefore mentioned and described in paragraph 1, and also to hinder and suppress competition between and among manufacturers of said products in the interstate sale and distribution of said products to the consumers and users thereof and to create a monopoly in the manufacture and sale of said products in the United States in said member respondents. Pursuant to said agreement, combination, and conspiracy said respondents have respectively and cooperatively performed and are now performing the following acts and practices, to wit:

1. Member respondent corporations through the medium of said respondent Institute and respondent Richard M. McClure, manager thereof, fix uniform prices at which their said products are to be sold, including the discounts therefrom to be allowed to the purchasers thereof.

2. Member respondent corporations publish and issue price lists of said products to the trade and through the medium of said respondent Institute and respondent Richard M. McClure, manager thereof, exchange current price lists of said products in order to establish and maintain uniform net prices at which the respective members will sell said products in various quantities to the purchasers thereof located in various States of the United States and in the District of Columbia.

3. Member respondent corporations, through the medium of respondent Institute and respondent Richard M. McClure, its manager, acting as a clearing house, exchange confidential detailed information daily as to conduct of their said businesses as to orders received from, and invoices issued to, customers in the sale of said products.

4. Said respondent Richard M. McClure, acting as manager of respondent Institute, checks the current price lists of said products submitted by said member respondents to him against the price information contained in orders and invoices received from said member respondents as set forth in subparagraphs (2) and (3) herein; summarizes the reports and issues a weekly bulletin to each member respondent showing—

(*a*) the dollar volume of sales to all participating member respondents;

(*b*) the total number of orders taken by all participating member respondents;

(*c*) the individual member respondent's proportion to the foregoing total;

and also summarizes said reports and issues a monthly report thereon showing—

(1) the total dollar volume of sales of all participating member respondents by geographical location, and to the individual member respondent his proportion in comparison therewith; and

(2) a report showing the total sales broken down by commodities of all members for each commodity carried, and to the individual member respondent his relation thereto.

5. Said member respondent corporations adhere to the uniform prices and discounts as set forth in their said price lists issued and exchanged by them as set forth in subparagraph (2) herein and file

with the said respondent Institute reports of deviations from the said price lists and prices and discounts fixed and agreed upon as hereinbefore set forth, at which their said products are to be sold.

6. Said respondent Richard M. McClure as manager of respondent Institute, upon request of any member respondent, furnishes information as to instances of where other member respondents have sold their said products at prices and discounts other than those set forth in their said respective price lists in the following manner, to wit:

(1) The percentage of the filed price over or under the price at which the sale was made;
(2) the date of the sale; and
(3) the size of the sale.

PAR. 6. Said member respondents, as a result of the activities described in paragraph 5 herein, have sold their said products at uniform prices and discounts to their respective customers located in the same geographical area and buying in comparable quantities since September 1930, or so long as they were a member of respondent Institute, except in a few instances where they sold at lower net prices to meet the competition of manufacturers of said products who were not members of said respondent Institute. Approximately 70 percent of the total volume of sales of said products by said member respondents throughout the United States were during the past 3 years and now are sold at prices and discounts and on terms fixed and maintained by said member respondent and set forth and described in paragraph 5 herein.

PAR. 7. As a result of said agreement, combination, and conspiracy and the acts and practices performed thereunder and pursuant thereto by said respondents as hereinbefore set forth, the consumers and users of said products, more particularly described in paragraph 1 herein, since September 1930, have been and now are forced and compelled to pay to said member respondents prices for said products which are arbitrarily fixed and maintained at artificial levels and have been and now are deprived, to their detriment, of normal and free competition between and among said member-respondent corporations in the purchase of said products; and due to the dominant position in the industry of the said member respondents, the consumers and users of said products have been unable to purchase their requirements from manufacturers and converters of said products who were not members of said respondent Institute and the said member respondents have been and now are the only adequate sources of supply of said products.

PAR. 8. The acts and practices of the said respondents as herein alleged are all to the prejudice of the public; have a dangerous

tendency to hinder and prevent, and have actually hindered and prevented, price competition between and among said member-respondent corporations in the sale of said products manufactured and converted from cellulose sheeting (such as cellophane, sylphrap, kodapak, protectoid and other similar transparent materials) in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in said member respondents the power to control and enhance prices of said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in products manufactured and converted from cellulose sheeting, 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 September 1939, issued and served its complaint in this proceeding upon said respondents, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents duly 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, 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, National Converters Institute, hereinafter referred to as "Institute" is a voluntary unincorporated trade association originally organized in September 1930, and reorganized in

August 1933, and that its principal office and place of business is located at 111 West Washington Street, in the city of Chicago, State of Illinois.

PAR. 2. The following corporate respondents have been since September 1933, and now are, except as hereinafter indicated, members of respondent Institute, and are engaged generally in the manufacture of cellulose sheets and rolls which are sold by said respondent in interstate commerce.

(*a*) Shellmar Products Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its factory, principal office, and place of business at Mount Vernon, Ohio.

(*b*) Milprint Products Corporation (now Milprint, Inc.) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its factory, principal office, and place of business located at 431 West Florida Street in the city of Milwaukee, State of Wisconsin, and it has branch factories in the cities of Philadelphia, Pa., and Los Angeles, Calif.

(*c*) Traver Paper Corporation (formerly known as Traver Paper & Manufacturing Co.) is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its factory, principal office and place of business located at 358 West Ontario Street, in the city of Chicago, in said State.

(*d*) Dobeckmun Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio, with its factory, principal office and place of business located at 3301 Monroe Avenue, city of Cleveland, in said State.

(*e*) Dennison Manufacturing Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its factory, principal office and place of business located in the city of Framingham, in said State.

(*f*) Caton Printing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its factory, principal office, and place of business located at 422 West Eighth Street, in the city of Kansas City, in said State.

(*g*) Thomas M. Royal & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its factory, principal office, and place of business located at 5800 North Seventh Street, in the city of Philadelphia, in said State.

(*h*) Nashua Gummed & Coated Paper Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its factory, principal office, and

place of business located in the city of Nashua, in the State of New Hampshire.

(*i*) Pioneer Wrapper & Printing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its factory, principal office, and place of business located at 837 East Fourth Place in the city of Los Angeles, in said State.

PAR. 3. That the following named corporate respondents resigned their respective memberships in said Institute shortly prior to the service of the complaint herein, to wit: Pioneer Wrapper & Printing Co., Nashua Gummed & Coated Paper Co., and Thomas M. Royal & Co.

PAR. 4. The respondent Institute was first organized in 1931, with the following members:

Caton Printing Co., Kansas City, Mo.
Edward E. Cox Printer, Inc., Hartford City, Ind.
Milprint Products Corporation, Milwaukee, Wis.
Package Paper Company, Holyoke, Mass.
Shellmar Products Co., Chicago, Ill.
Traver Paper & Manufacturing Co., Chicago, Ill.
Transparent Package & Printing Corporation, New York City.
Dennison Manufacturing Co., Framingham, Mass.
Gabriel-Meyerfeld Co., Ltd., San Francisco, Calif.
Western Paper Converting Co., Salem, Oreg.
Pioneer Wrapper & Printing Co., Los Angeles, Calif.

with Wainwright Davis, the Secretary and active officer thereof.

PAR. 5. Corporate respondents are engaged in the business of converting for sale transparent cellulose sheets and rolls such as cellophane, sylphrap, kodapak, protectoid, and other similar transparent materials, hereinafter referred to as "products," and in the sale thereof to customers and users of said products located throughout the several States of the United States, causing said products when sold to be shipped or otherwise transported from States wherein said members respondents maintain their respective factories and places of business to the purchasers thereof located in the States other than the said States of origin, and there is, and has been, a constant current and course of trade in commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 6. Respondent, Richard M. McClure, since August 1935, has been, and now is, secretary-treasurer and manager of the Institute, and has directed its activities, including the conduct of meetings of representatives of members of the Institute, and has collected, com-

piled, and disseminated statistical information, and has conducted its sales reporting and statistical service.

PAR. 7. The membership of respondent Institute has at all times represented approximately 90 percent of the output and sale of said products. The respondents Shellmar Products Co., Millprint Products Corporation, and Traver Paper Corporation do, and since the organization of said Institute have done, approximately 80 percent of the business done by members of said Institute in sheets and rolls.

PAR. 8. Corporate respondents, Shellmar Products Co., Milprint Products Corporation, Traver Paper & Manufacturing Co., Dobeckmun Co., Dennison Manufacturing Co., Caton Printing Co., Pioneer Wrapper & Printing Co., file, and the corporate respondents, Thomas M. Royal & Co. and Nashua Gummed & Coated Paper Co., during their membership in said Institute, namely, from March 1933 to August 28, 1939, and December 1937, to February 28, 1939, respectively, filed, uniform base price lists and discounts and deviations therefrom of cellulose sheets and rolls with the Institute which are not available to the public, and agree or agreed, as the case may be, among themselves that each respondent will sell said products in the course and conduct of its business, as above defined, at approximately the prices stated on its price list and that they will all maintain said prices and discounts to the best of their ability.

The corporate respondents, Thomas M. Royal & Co. and Nashua Gummed & Coated Paper Co. did not stipulate in the aforesaid stipulation of facts that they, or either of them, agreed between themselves or with the other corporate respondents that each respondent would sell said products in the course of its business at approximately the prices stated on its price list and that all corporate respondents would maintain said prices and discounts to the best of their ability. All of the corporate respondents, except the corporate respondents, Thomas M. Royal & Co. and Nashua Gummed & Coated Paper Co., stipulated in the aforesaid stipulation of facts that all corporate respondents, including the corporate respondents, Thomas M. Royal & Co. and Nashua Gummed & Coated Paper Co., did enter into such agreement. The corporate respondents, Thomas M. Royal & Co. and Nashua Gummed & Coated Paper Co., stipulated in the aforesaid stipulation of facts that they were members of the respondent Institute during the times above-mentioned and participated and cooperated in the activities of said Institute in the manner herein found, and that they sold said products at approximately the prices stated on said price lists. The Commission therefore finds, as hereinabove stated, that the corporate respondents, Thomas M. Royal & Co. and Nashua Gummed & Coated Paper Co., did agree with all

other corporate respondents that each respondent would sell said products in the course and conduct of its business at approximately the prices stated on its price list and that they would all maintain said prices and discounts to the best of their ability.

PAR. 9. That, through the medium of said Institute and said McClure, as secretary thereof, acting as a clearing house, the said corporate respondents exchange information as to the conduct of their businesses as above described, by reporting orders received from, and invoices issued to, customers in the sale of said products, in commerce, as commerce is above defined, and the said McClure, acting as Manager of respondent Institute checks the current price lists of said products submitted by said member respondents to him against the price information contained in said orders and invoices received. He also summarizes said information and reports in reference to sales, and issues a weekly bulletin to each member of respondent Institute showing—

(*a*) the dollar volume of sale to all participating member respondents,

and

(*b*) the total number of orders taken by all participating member respondents.

That said reports, data, and information are not available to the public.

PAR. 10. The said McClure also summarizes said reports and issues a monthly report thereon showing the total volume of sales of said rolls and sheets of all participating member respondents, and to the individual member respondents, his proportion in comparison therewith.

PAR. 11. Said respondent McClure, as manager of said Institute, upon the request of any member respondent, furnishes information as to instances where other members have sold said products at prices and discounts other than those set forth in their respective price lists, in the following manner, to wit:

(*a*) the percentage of the filed price over or under the price at which the sale was made;

(*b*) the date of the sale; and

(*c*) the size of the sale.

Provision is also made for the supplying to members detailed information as to sales of said products upon the request of any member, such information to be made upon forms supplied by the Institute.

CONCLUSION

The aforesaid acts and practices of said respondents 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 said member respondents corporations in the sale of said products manufactured and converted from cellulose sheets, such as cellophane, sylphrap, kodapak, protectoid, and other similar transparent materials, in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in said member respondents the power and control to enhance prices of said products and have a dangerous tendency to create in respondents a monopoly in such products in such commerce; have unreasonably restrained interstate commerce in such products and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of the respondents, and a stipulation as to the facts entered into between counsel for the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, their 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 among and between the several States of the United States and in the District of Columbia, of cellulose sheets and rolls or other similar products do forthwith cease and desist from:

1. Filing uniform prices and discounts at which their said products are to be sold either directly or through the medium of respondent Institute and respondent Richard M. McClure, or any other agency.

2. Exchanging through the medium of respondent Institute and respondent Richard M. McClure, manager thereof, or any other agency, price lists, containing proposed or future prices and discounts of said products in order to establish net prices at which said respondent corporations will sell said products.

3. Filing with said respondent Institute and respondent Richard M. McClure, or any other agency, deviations in current price lists of

said product in order to establish and maintain uniform net prices at which they will sell said products.

4. Agreeing among themselves that they will maintain said proposed future prices and discounts published by them and filed with respondent Institute and respondent Richard M. McClure, or any other agency.

5. Collecting or disseminating information as to instances where respondent corporations have sold their products at prices and discounts other than those set forth in their respective price lists, in order to maintain the net prices and discounts which respondent corporations theretofore agreed to maintain.

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

POPPER & KLEIN, INC., ALSO TRADING AS PERFEKTUM 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 3288. Complaint, Dec. 28, 1937—Decision, Sept. 5, 1940

Where a corporation engaged in offer, sale, and distribution of microscope cover glasses and other laboratory supplies, to purchasers in various other States and in the District of Columbia, in competition with others engaged in sale and distribution of such products in commerce as aforesaid; in selling certain microscope cover glasses of foreign origin purchased by it, in some instances in same cardboard boxes in which originally packed and imported, but generally in wooden boxes or containers which it substituted for original as received by it, and which, as originally containered and received, bore, by virtue of long established practice of imprinting and otherwise marking products of foreign origin or their containers, and in accordance with requirements of law, name of such country or origin, conspicuously and in legible English words—

(*a*) Attached to such wooden boxes in which it repacked such cover glasses as received by it in cardboard containers clearly and conspicuously marked with words "Made in Japan," its labels, conspicuously bearing words identifying and describing said glasses as its product and positively noncorrosive, and ink-stamped on bottom of boxes aforesaid, dimly and lightly and disassociated and far removed from aforesaid labeling or imprinting bearing its New York address, and so as not to be noticed, word "Japan";

With capacity and tendency to mislead and deceive purchasers and prospective purchasers and users of such cover glasses into mistaken and erroneous belief that they were made in the United States and were of domestic origin, as substantially preferred by purchasers and users thereof over those of foreign manufacture or origin, and into purchase of glasses in question in reliance upon such erroneous and mistaken belief, and thereby unfairly to divert trade in commerce as aforesaid to it from its competitors; and

Where such corporation engaged, as above described, in offering, selling, and distributing certain microscope cover glasses produced, in common with all of said product, in strips or sheets, and by it purchased from a source in the United States by which said cover glasses were merely cut from said sheets or strips as marked therefor, upon importation—

(*b*) Offered, sold, and distributed said cover glasses, procured as aforesaid, in boxes or containers labeled or imprinted, among other things, with words or letters "Made in U. S. A.," notwithstanding fact glass in question was not changed in any way, except as to size, by operation of cutting as aforesaid, which did not constitute manufacture and only effect of which was to make available such glasses in various sizes convenient for use in microscopical examinations, and accordingly packaged;

With tendency and capacity to mislead and deceive purchasers, prospective purchasers, and users, substantial number of whom substantially prefer micro-

scope cover glasses of foreign origin wholly over those cut in United States, and of whom others substantially prefer domestic product over foreign, into erroneous and false belief that such glasses were wholly made in the United States and were wholly of domestic origin, and into purchase thereof in reliance upon such belief, and with effect of thereby unfairly diverting trade in commerce among the various States in such products to it from its competitors:

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

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

Mr. Jay L. Jackson for the Commission.

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

Paragraph 1. Respondent, Popper & Klein, is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York. It trades both under its own corporate name and under the name and style of Perfektum Products Co., with its office and principal place of business located at 300 Fourth Avenue, in the city of New York, State of New York. Since the date of its incorporation, respondent has been, and now is, engaged in the business of selling and distributing, among other things, laboratory supplies of both foreign and domestic manufacture and origin, inclusive of so-called microscope cover glasses, or glass covers, in commerce among and between the various States of the United States and in the District of Columbia. It has caused, and now causes, said products, when sold or ordered, to be shipped and transported from its place of business in the State of New York to the purchasers thereof located in various States of the United States, other than the State of New York and in the District of Columbia. It maintains a course of trade in commerce in said products sold by it between and among the various States of the United States. In the course and conduct of its business, respondent has been, and now is, in competition with other corporations, firms, partnerships, and individuals engaged in the sale and

distribution of like products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, respondent purchases certain so-called microscope glass covers of foreign manufacture which respondent receives packed in small cardboard boxes. It is the practice of the respondent to resell said products to its customers, in some instances, in the same box in which originally packed, but generally the products are packed in a wooden box or container which respondent substitutes for the said cardboard box in which the glasses are originally packed and received by the respondent.

In the foregoing connection, respondent purchases certain microscope glass covers of Japanese manufacture and origin which are imported into the United States from the country of Japan, and which, when received by respondent, are packed in cardboard containers clearly and conspicuously marked with the words "Made in Japan." Thereafter, respondent causes certain of the said glasses to be repacked in wooden boxes to which respondent attaches its labels conspicuously bearing the following:

PERFEKTUM	POSITIVELY	PERFEKTUM
MICROSCOPE	NON-CORROSIVE	MICROSCOPE
COVER GLASSES		COVER GLASSES

PerfeKtum Products Co.
New York, N. Y.

In the process of marking the containers to which respondent transfers the glasses of Japanese origin, respondent also causes the word "Japan" to be dimly and lightly ink-stamped in small letters on the bottom of said wooden boxes in such a manner as to make the said word practically illegible and unnoticeable. The ink-stamping of the word "Japan" on the bottom of said containers in the manner herein described, is done in such a manner as to enable unscrupulous dealers and venders to obliterate or remove said stamp. Said glasses have been, and are, sold and shipped by respondent in commerce as herein described to its customers in the wooden boxes stamped and labeled as aforesaid.

PAR. 3. At all times material to this complaint there has been, and now is, among purchasers and users of microscope cover glasses in and throughout the United States, and in the District of Columbia, a substantial and subsisting preference for products of domestic manufacture or origin, as distinguished from products of foreign manufacture or origin.

By virtue of the practice, heretofore and now established, of imprinting and otherwise marking products of foreign origin, and their

containers, with the name of the country of their origin, in legible English words, in a conspicuous place, and as required by law, a substantial portion of the buying public has come to rely, and now relies, upon such imprinting or marking, and is influenced thereby, to distinguish and discriminate between competing products of foreign and domestic origin, inclusive of microscope cover glasses, such that said products now offered for sale and sold in the channels of trade and commerce throughout the United States are purchased and accepted as and for, and taken to be, products of domestic manufacture and origin unless the same are imprinted or marked in a manner which informs purchasers that the same are not of domestic origin.

PAR. 4. In the course and conduct of repacking and selling, in its own containers, its microscope cover glasses of Japanese origin, the respondent did not, and does not, mark, stamp, brand, or label the containers for said articles in such a manner as to make conspicuous or patent to the eye and attention of purchasers the fact that the said glasses are of foreign origin. On the contrary, the respondent's method of repacking and selling its glasses of Japanese origin in its own containers has had, and has, the tendency and capacity to create among many purchasers thereof the false and erroneous impression that the said glasses are of domestic origin and not of foreign origin, and into the purchase thereof in reliance upon said beliefs.

PAR. 5. Respondent's method of repacking and labeling the said glasses of Japanese origin, by removing the words "Made in Japan" as originally, clearly, and conspicuously imprinted upon the containers in which the said glasses are imported and received, by labeling the substituted containers conspicuously with the respondent's trade name and trade-mark, as above set out, and by dimly, lightly, and inconspicuously printing the word "Japan" on the bottom of said containers in such a way as to make said word practically unnoticeable to purchasers, operates to remove and destroy the mark of origin originally imprinted on the containers for said glasses, and to evade, suppress, and otherwise conceal and withhold from purchasers the fact and information that said glasses are of foreign origin and not of domestic manufacture or origin.

The conduct of respondent, as aforesaid, in conspicuously labeling the containers, in which it repacks and sells its glasses of Japanese origin, with its trade name and trade-mark, and New York address, without indicating in an equally conspicuous manner, or without clearly and conspicuously indicating or marking thereon, the country of origin, has had, and has, the tendency and capacity to mislead and deceive purchasers and prospective purchasers of microscope cover glasses into the false and erroneous beliefs that the said glasses

so encased and labeled are of domestic origin and not of foreign origin, and to cause many purchasers of miscoscope cover glasses to buy, deal in, and accept respondent's microscope cover glasses of Japanese origin in lieu and in place of glasses of domestic origin made or sold by competitors of respondent. In consequence thereof, trade is unfairly diverted to respondent from its said competitors who do not in any way misrepresent their respective products.

PAR. 6. Respondent's method of repacking, labeling, and imprinting containers for its glasses of Japanese origin, all as aforesaid, places in the hands of jobbers and retail sellers who deal in the said products of respondent, a means wherewith they mislead and deceive purchasers of microscope cover glasses into the false and erroneous belief that the said glasses are of domestic origin and not of foreign origin and thus into the purchase thereof.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on December 28, 1937, issued and subsequently served its complaint in this proceeding upon respondent, Popper & Klein, Inc., charging respondent, trading under its corporate name, and also trading as Perfektum Products Co., with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act. On January 17, 1938, respondent filed its answer to the complaint. After the service of the complaint and the filing of respondent's answer thereto, testimony and other evidence in support of allegations of said complaint were introduced by Jay L. Jackson, attorney for the Commission, and in opposition to the allegations of the complaint by Mr. I. A. Popper, President of the respondent corporation, before Edward E. Reardon, Esq., theretofore designated an examiner 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 complaint, the answer thereto, testimony and other evidence, and brief in support of the complaint, respondent having filed no brief and

not having requested oral argument, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Popper & Klein, 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 now located at 300 Fourth Avenue (formerly located at 110 East 23d Street) in the City of New York, State of New York. Said corporation was incorporated in December of 1936 as successor of the business theretofore conducted by the president of the respondent corporation under the trade names "Popper & Klein" and "Perfektum Products Company."

Since the date of its incorporation, respondent has traded, and is now trading under its corporate name and under the name Perfektum Products Co., and under said names has been, and now is, engaged in the business of offering for sale, selling, and distributing microscope cover glasses and other laboratory supplies in commerce among and between the various States of the United States and in the District of Columbia, and has caused, and causes, said products, when sold or ordered, to be shipped and transported from its place of business in the State of New York to purchasers thereof located in various States of the United States other than the State of New York, and in the District of Columbia.

In the course and conduct of its said business respondent has been and now is in competition with other corporations, firms, partnerships and individuals engaged in the sale and distribution of microsope cover glasses and laboratory supplies 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 it has been and is the practice of respondent to purchase certain microscope cover glasses of foreign origin and to resell the same to respondent's customers, in some instances in the same cardboard boxes in which originally packed and imported, but generally in wooden boxes or containers hereinafter described which respondent substitutes for the cardboad boxes in which said glasses are originally packed and imported into the United States and received by the respondent. In this connection, respondent has purchased microscope cover glasses of Japanese manufacture which were imported into the United States from the country of Japan, and which, when received by respondent, were packed in cardboard containers clearly and conspicuously marked

with the words "Made in Japan." Thereafter, respondent caused certain of said glasses to be repacked in wooden boxes, to which respondent attached its labels conspicuously bearing the following:

PERFEKTUM	POSITIVELY	PERFEKTUM
MICROSCOPE	NON-CORROSIVE	MICROSCOPE
COVER GLASSES		COVER GLASSES

Perfektum Products Co.,
New York, N. Y.

In the process of marking the containers to which respondent transferred and repacked the aforesaid cover glasses of Japanese origin, respondent also caused the word "Japan" to be dimly and lightly ink-stamped in small letters on the bottom of the said wooden boxes or containers but said word was and is disassociated and far removed from the aforesaid labeling or imprinting bearing respondent's New York address so as to be not noticed.

Since the complaint in this proceeding was issued and served upon the respondent, the respondent, under the trade name, Perfektum Products Co., has sold microscope cover glasses imported from Japan, in wooden boxes on the bottom of which are the words stamped in ink in legible type:

CONTENTS MADE IN JAPAN

PAR. 3. In the further course and conduct of its aforesaid business it has been the practice of respondent to offer for sale, sell, and distribute microscope cover glasses in boxes or containers labeled or imprinted, among other things, with the words and letters "Made in U. S. A." The said cover glasses were purchased by respondent from a source in the United States which merely cut the same from sheets or strips of glass imported from a foreign country, the said glass being ready for cutting upon importation.

PAR. 4. All of the glass used in the making of microscope cover glasses is produced in strips or sheets. The only effect produced by the cutting of microscope cover glasses from the strips or sheets is to obtain cover glasses in the various sizes convenient to use in microscopical examinations. The glass cut from sheets or strips of imported glass is not changed in any way except as to size by the operation of cutting the glass. Such operation does not constitute a manufacturing process. The glass cut from the strips or sheets is packaged in boxes containing one-half ounce quantities, one size to a package, the sizes, in disk, square or rectangular form, ranging from about the size of a dime to larger sizes.

PAR. 5. At all times material to this proceeding there have been, and now are, throughout the United States and in the District of Columbia, purchasers and users of laboratory supplies, including

microscope cover glasses, who have a substantial preference for products having a domestic origin as distinguished from foreign manufacture or origin. At all times material to this proceeding there have been and now are, throughout the United States and the District of Columbia, a further substantial number of purchasers and users of microscope cover glasses who have a substantial preference for microscope cover glasses which are wholly of foreign origin, as distinguished from glasses cut by producers in the United States.

By virtue of the long-established practice of imprinting and otherwise marking products of foreign origin, or their containers, with the name of the country of their origin, including the containers for microscope cover glasses of foreign origin, in legible English words, in a conspicuous place and as required by law, a substantial number of purchasers and users of such products in and throughout the United States have come to rely upon such imprinting or marking, and are influenced thereby, to distinguish and discriminate between competing products, inclusive of microscope cover glasses of foreign and domestic origin. Said products are purchased and accepted as and for, and taken to be, products of domestic manufacture or origin, unless the same are imprinted or marked in a manner which informs purchasers that the same are not of domestic origin.

PAR. 6. The offering for sale, and selling, by respondent of microscope cover glasses of Japanese origin, repacked in wooden boxes or containers bearing the trade name and New York address of respondent, and labeled and marked as described in paragraph 2 above, has had, and has, the capacity and tendency to mislead and deceive purchasers and prospective purchasers and users of microscope cover glasses into the mistaken and erroneous belief that the said microscope cover glasses are made in the United States and are of domestic origin and not of foreign origin, and into the purchase of said glasses in reliance upon such erroneous and mistaken belief. The same thereby has had, and has, the capacity and tendency to unfairly divert trade in commerce among and between the various States of the United States in microscope cover glasses to respondent from its competitors.

PAR. 7. The offering for sale, and selling, by respondent of microscope cover glasses packed in boxes or containers bearing the words "Made in U. S. A.," which glasses have been cut from microscope cover glass produced in and imported from a foreign country, has had, and has, the capacity and tendency to mislead and deceive purchasers and prospective purchasers and users of microscope cover glasses into the erroneous and false belief that the said microscope cover glasses were wholly made in the United States and are wholly of domestic origin, and into the purchase of said glasses in reliance upon such erroneous

and mistaken belief. The same thereby has had, and has, the capacity and tendency to, and does, unfairly divert trade in commerce among and between the various States of the United States in microscope cover glasses to respondent from its competitors.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are each and 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 Edward E. Reardon, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief in support of the allegations of the complaint (respondent not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Popper & Klein, Inc., trading under its own name and as Perfektum Products Co., or 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 microscope cover glasses in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Made in U. S. A.," or any other term or terms indicative of American manufacture, to describe or refer to microscope cover glasses of foreign origin.

2. Causing imported microscope cover glasses to be removed from the containers in which said merchandise was imported into the United States, and on which are brands or marks indicating the foreign origin or manufacture of such merchandise, and to be placed in containers which do not bear legible brands or marks fully informing prospective purchasers of said merchandise of the foreign origin 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.

Syllabus

IN THE MATTER OF

J. C. WINTER & 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 3563. Complaint, Aug. 30, 1938—Decision, Sept. 5, 1940

Where a corporation engaged in manufacture of various brands of cigars, including 5 cent cigars and 2 for 5 cent cigars, and in sale and distribution thereof to jobbers and retailers throughout the United States, in direct and substantial competition with various others likewise engaged in sale and distribution in commerce of such products—

(*a*) Retained, displayed, and used, in brands, descriptions, and labels of machine-made cigars, depictions theretofore made use of for discontinued hand-made product, which displayed workman at table cutting tobacco leaves, with leaves at right and finished product at left, and words "R. J. Allen's" and "Hand Made," notwithstanding fact its said products were no longer, as understood from said words by purchasing public and as preferred by substantial part thereof, made entirely by hand, but were machine-made products; and

(*b*) Set forth and made use of such words and legends in brands, labels, and descriptions of cigars made and sold by it, as "R. J. Allen's," "5¢ cigar now 2 for 5¢," and "5¢ 2 for 5¢—R. J. Allen's," and displayed on containers of its 2 for 5 cent cigars, trade-mark depictions of workman, as above described, and such matter included therein as "Sumatra Wrapper" and "Havana Filler," notwithstanding fact products in question were not of same composition and quality as the original "R. J. Allen's" 5 cent cigar, as long known and understood as hand-made product with Havana filler and Sumatra wrapper, but were no longer made as aforesaid set forth, but of Pennsylvania filler and Connecticut binder of damaged and "flood" tobacco, with wrapper of Ohio, Connecticut, Florida, or Philippine tobacco, and it did not make use of same quality of tobacco in its 2 for 5 cent cigars as in its 5-cent product, and said 2 for 5 cent "R. J. Allen's" cigars, packaged and branded as aforesaid, were not of the quality and grade of the 5-cent "R. J. Allen's" cigar, as well known to purchasing and consuming public and sold by it for number of years prior to acts and practices above set forth, but were composed of inferior and less desirable tobacco, both as to filler, binder and wrapper;

With effect of misleading and deceiving consuming public, and causing it to purchase cigars, labeled, described, and designated as aforesaid, as hand-made, and manufactured with intent of being sold at retail for 5 cents each, or at price in excess of that actually asked, and as sold recently for such price, and as of same grade and quality as the "R. J. Allen's" cigars which formerly retailed for 5 cents, and with result, on account of such mistaken and erroneous beliefs, thus induced, that substantial portion of purchasing public was induced to buy such "R. J. Allen's" cigars from it, and trade thereby was diverted unfairly to it from competitors who truthfully represent quality and character of their products; to the injury of competition in commerce:

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

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

Mr. Marshall Morgan for the Commission.

Mr. John Walsh and *Mr. Louis A. Spiess*, 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 J. C. Winter & 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, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, J. C. Winter & Co., Inc., whose principal office and place of business is located on South Pine Street, in Red Lion, Pa., was incorporated under the laws of the State of Pennsylvania in 1929. Respondent company is now, and for some years last past has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to jobbers and retailers throughout the United States. The said cigars are manufactured by respondent at Red Lion, Pa., as aforesaid, where they are packed, branded, and labeled by respondent for sale and distribution to the purchasing public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold to be transported and delivered from its place of business in Red Lion, in the State of Pennsylvania, 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 its said business, the respondent has been, and is now engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. The outer leaf or wrapper of a cigar comprises about 5 percent of the entire cigar, while the filler and binder, constituting 95 percent of a cigar, are the controlling factors in its size, strength, and flavor. The filler controls primarily the designed length, thickness, and shape of the cigar as rolled into a binder or binder wrapper of

desired size. The filler of the cheapest grades of cigars such as "2 for 5's," is composed principally of what is known as "scrap," the same being clippings from cigars in the process of manufacture.

PAR. 3. The words "Hand Made" when applied to cigars, now mean, and over a long period of years have meant, to dealers and to the purchasing public alike, that such cigars are made entirely by hand. There is a preference on the part of a large portion of the purchasing public, and of the tobacco trade, for cigars which are hand-made.

PAR. 4. In the course and conduct of its said business, as described in paragraph 1 hereof, respondent obtains orders for cigars through salesmen and solicitors and by mail.

The said cigars manufactured, sold, and distributed by respondent in interstate commerce, as set forth in paragraph 1 herein, are, and for several years last past have been, sold and distributed by respondent in large and substantial quantities under the brand name, among others, of "R. J. Allen's." The containers for such cigars are the usual and customary cigar boxes or cigar containers of 50 and 100 cigars each. A label, consisting of a paper band is attached to each cigar.

On the outside lid of a container formerly, and until recently, used by respondent appeared a pictorial representation of an operator sitting at a table cutting tobacco leaf with a knife, cigar leaf at his right, finished cigars piled at his left. Above this representation was the word "R. J. Allen's," and immediately below the words "Hand Made." This label in more detail appeared on the inside of the lid in attractive colors, the pictorial representation of the workman making cigars being accompanied in two places by the words in conspicuous type "Hand Made." Included in the design on the inside of the lid were representations also of packages labeled respectively "Sumatra Wrapper" and "Havana Filler." There also appeared on the inside lid of this container the expression "Now 2 for 5¢," printed in large conspicuous type.

Subsequently, in branding, describing, and labeling machine made cigars, respondent adopted and used, and still uses, the same pictorial representation which had theretofore been employed by it to designate or indicate, and which had been associated by the trade and consuming public with advertising employed by respondent to indicate, a hand-made cigar, that is, the pictorial representation of an operator sitting at a table cutting tobacco and making cigars by hand. While retaining and using the aforesaid pictorial representation, respondent superimposed over the former wording beneath the picture a long red sticker or strip bearing among others the wording:

"New Shape"
"Perfecto"

and such further legends as

"2 for 5¢—R. J. Allen's—2 for 5¢"

In the upper left hand corner of the inside lid in conspicuous type, easily legible, appears the following:

"~~5~~
2 for 5¢—R. J. Allen's,"

the first expression "5¢" having lines drawn through it and appearing immediately above and in juxtaposition to the expression "2 for 5¢."

Prior to the year 1932, respondent company did manufacture the "R. J. Allen's" brand of cigar in various shapes and sizes and of a grade to retail at 5 cents each. Said cigars were made both by hand and by machine. In the early part of the year 1932, however, such changes were made in the wrapper and filler of said cigar as to permit of its retailing at 2 for 5 cents, the wrapper and filler being made entirely of domestic tobacco and of grades that would permit said respondent to manufacture said cigars so that they could be sold to retailers at 1¾ cents each and the retailer could in turn retail them at 2½ cents each or 2 for 5 cents.

For some 2 years after said reduction in price was made, and as recently as October 1935, respondent employed labels on containers in connection with the interstate sale and shipment of said cigars on which, among others the following language appeared:

"Now 2 for 5¢"

Said labeling indicated that said cigars had recently been reduced in price, when such was not the fact, the cigars having been manufactured for the purpose and with the expectation of retailing at 2 for 5 cents.

Respondent, about October 1935, began, and continued to employ, labeling on the containers of its "R. J. Allen's" brand of cigars, manufactured as stated, for the purpose and expectation of being sold at 2 for 5 cents, reading as follows:

"~~5~~ 2 for 5¢"

PAR. 5. In truth and in fact many of respondent's said cigars, sold and distributed by it in commerce as aforesaid, and packed and shipped in containers bearing as a part of their label the pictorial representation of a workman making cigars by hand, were not made by hand, but by machinery, and respondent's said cigars labeled respectively, and successively, on containers as "5¢ Cigar now 2 for 5¢"; and "Now 2 for 5¢"; or "~~5~~¢ 2 for 5¢", have not been sold currently or at any time for 5¢ but on the contrary were, and are, manufactured for the purpose and with the expectation of being

sold at the price actually specified, namely, 2 for 5 cents, and are, and have been, made of material which would permit of the sale of such cigars at this price.

PAR. 6. The use by respondent on containers of the pictorial representation of a workman or operator making cigars by hand, which said pictorial representation had theretofore been employed by respondent to indicate hand-made cigars, and the use by respondent of the words, expressions, or legends, "Now 2 for 5¢"; "5¢ Now 2 for 5¢"; and "5¢ 2 for 5¢", has misled and deceived, and still misleads and deceives, said wholesale and retail dealers and the consuming public, and has caused them to purchase the cigars of respondent in the belief that said cigars, so labeled, described, and designated were manufactured for the purpose and with the intent of being sold at 5 cents each, or at a price in excess of that actually asked for them, and had been sold currently for such price. As a result of such false and misleading representations on the part of the respondent, the consuming public is being, and has been, injured, and trade is being diverted to respondent from said hereinbefore mentioned competitors. Thereby injury is done, and has been done, by respondent to competition in commerce among and between the various States of the United States and within the District of Columbia, and there is, and has been, placed in the hands of respondent's dealers and distributors an instrument by means of which they mislead and deceive, and have misled and deceived, the purchasing public.

PAR. 7. The acts and things above alleged to have been done, and the false representations alleged to have been made by respondent, are to the prejudice of the public and 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 30, 1938, issued and served its complaint in this proceeding upon the respondent, J. C. Winter & 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 Marshall Morgan, attorney for the Commission, and in opposition to the allegations of said complaint by Louis A. Spiess, attorney for respondent, before John L. Hornor, trial examiner of the Commission theretofore duly designated

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

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, J. C. Winter & Co., Inc., whose principal office and place of business is located on South Pine Street in Red Lion, Pa., was incorporated under the laws of the State of Pennsylvania in 1929. Respondent is now, and for some years last past has been, engaged in the business of manufacturing various brands of cigars and selling and distributing the same to jobbers and retailers throughout the United States. The said cigars are manufactured by respondent at Red Lion, Pa., where they are packed, branded, and labeled by the respondent for sale and distribution to the purchasing public of the United States. In consummating such sales and in distributing such products, respondent causes the cigars so sold to be transported and delivered from its place of business in Red Lion, Pa., through and into the various other States of the United States to prospective purchasers thereof at their respective points of location. In the course and conduct of its said business, the respondent has been, and is now, engaged in direct and substantial competition with various corporations, partnerships, and individuals likewise engaged in the sale and distribution of cigars, and offering such products for sale in commerce between and among the various States of the United States and within the District of Columbia.

PAR. 2. Respondent, in the regular course of business, prior to the year 1932, was selling and distributing large and substantial quantities of its cigars under the brand name "R. J. Allen's," packed in the usual and customary cigar boxes or containers of 50 or 100 cigars each. Said cigars were manufactured of a size and grade to retail at 5 cents each. On or about February 1, 1932, respondent changed the retail selling price of the "R. J. Allen's" brand of cigar from 5 cents to 2 for 5 cents.

On the outside lid of the containers, formerly used by respondent in the sale of 2 for 5 cents "R. J. Allen's" cigars, appeared a pictorial representation of a workman sitting at a table cutting tobacco

leaves with a knife, cigar leaves at his right, finished cigars piled at his left. Above this representation was the following: "R. J. Allen's," and immediately below were the words "Hand Made." This representation in more detail appeared on the inside of the lid in attractive colors pictorially, of a workman making cigars, and was accompanied in two places by the words, in conspicuous type, "Hand Made." Included in the design on the inside of the lid were the representations also of packages labeled respectively "Sumatra Wrapper" and "Havana Filler." There also appeared on the inside lid of this container the expression "Now 2 for 5¢," printed in large conspicuous type, and on the outside end of the box the representation "R. J. Allen's," "5¢ cigar now 2 for 5¢." Subsequently, in branding, describing, and labeling machine-made cigars, respondent adopted and used, and still uses, the same pictorial representations of an operator sitting at a table cutting tobacco and making cigars by hand. While retaining and using this aforesaid pictorial representation, respondent superimposed over the former wording, beneath the picture, a long red sticker or strip bearing among others the wording "New Shape Perfecto," and such other statements as "2 for 5¢—R. J. Allen's—2 for 5¢," and in the upper left hand corner on the inside lid in conspicuous type appears the following:

"~~5¢~~
2 for 5¢—R. J. Allen's"

the first expression 5 cents having a line drawn through it and appearing immediately above in juxtaposition to the expression "2 for 5¢."

PAR. 3. Originally the "R. J. Allen's" cigar was composed of Havana filler and Sumatra wrapper and was sold at retail for 5 cents each. It was known in the trade and to the public as a "Hand Made" cigar. Later the respondent used only domestic tobacco in the manufacture of the "R. J. Allen's" cigar, the filler then being composed of tobacco originating in Pennsylvania, the binder being of tobacco originating in Connecticut, and the wrapper being composed of tobacco from Ohio, Connecticut, Florida, or the Philippine Islands.

Respondent, as stated, on or about February 1, 1932, reduced the price of his cigar branded "R. J. Allen's," and also made changes in the types of tobacco used in the filler and wrapper of the cigar, and manufactured this cigar to be resold thereafter by the cigar dealer at the retail price of 2 for 5 cents. The tobacco used by the respondent in the 2 for 5 cent "R. J. Allen's" cigar is not of the same quality and grade as that used in the 5-cent "R. J. Allen's" cigar but is

inferior thereto. After respondent began to manufacture the "R. J. Allen's" cigar to retail at 2 for 5 cents, the tobacco used in the manufacture of this cigar included tobacco damaged in harvesting and for this reason rejected by the manufacturers of cigars obtaining a higher price than 2 for 5 cents. This damaged tobacco was inferior in quality to the tobacco used by the respondent in the manufacture of the "R. J. Allen's" cigar which had sold for resale to the purchasing public at 5 cents. Other of the tobacco used in the "R. J. Allen's" cigar manufactured to retail at 2 for 5 cents was what is known in the trade as "flood" tobacco. In this instance, the tobacco had been badly damaged by water in the Connecticut floods of 1936.

The expression "flood tobacco" was quite common in Red Lion after the flood which occurred in March 1936 in New England States and more particularly in Connecticut, at which time substantial quantities of tobacco located in Connecticut were badly damaged by said flood. There were many tobacco warehouses located along the river front at Hartford, Conn., during the 1936 flood and the water at that point backed up many feet into these warehouses, in some instances as far up as the second and third story. This "flood tobacco" was brought to Red Lion in truckloads by the manufacturers of cigars. The respondent had tobacco stored in Hartford, Conn., since 1930, for use in the manufacture of its cigars manufactured to retail at 5 cents. After the flood of 1936, during which tobacco stored at Hartford, Conn., by the respondent was damaged by the flood, some of this "flood tobacco" was used by the respondent in the manufacture of its 2 for 5 cent cigar. Some of this "flood tobacco" brought into respondent's factory for use in the 2 for 5 cent cigars was offensive in appearance and had a bad odor. Only the best of this tobacco was used in the manufacture of cigars. That, according to the testimony, which did not seem fit for production was thrown into the garbage. All workmen were instructed to throw out that which "wasn't fit," and these instructions were observed.

PAR. 4. The trade-mark for the "R. J. Allen's" cigar was applied for at the United States Patent Office on December 30, 1932, and was formally registered at the Patent Office on May 9, 1933. This application set forth a drawing of the trade-mark consisting of a design containing a representation of a workman seated at a bench engaged in making cigars, boxes of cigars appearing to the right and the left. Above the head of the workman, in heavy black type, appears the legend "R. J. Allen's." Immediately below the hands of the workman, in prominent type, appear the words "Hand Made." Below and to the right of the workman appears the representation of a package

marked "Sumatra Wrapper," and below and to the left of the workman the representation of another package marked "Havana Filler." In the statement made in applying for this trade-mark appears the following:

* * * This trade-mark has been continuously used and applied to said goods in applicant's business since November 1, 1922. * * *

The Commission finds that the words "Hand Made" when applied to cigars now mean, and over a long period of years have meant, to the purchasing public that cigars so designated and described are made entirely by hand, and there exists a preference on the part of a substantial portion of the purchasing public for cigars which are hand made.

This trade-mark has been used by the respondent in labeling cigars that did not contain Havana tobacco nor Sumatra wrapper and which were not hand-made. The Commission finds that prior to May, 1935, the "R. J. Allen's" cigar was manufactured by hand and subsequent to that date it has been manufactured by machine, and this machine-made cigar has been sold and distributed by the respondent under the label "Hand Made."

PAR. 5. For a number of years the respondent has manufactured both a 5 cent and a 2 for 5 cent cigar. The Commission finds that there is now, and always has been, a difference in the quality and type of tobacco used in its 5 cent and its 2 for 5 cent cigars. The tobacco used in the 5 cent cigar is greatly superior to that used in the 2 for 5 cent cigars.

The Commission further finds that the 2 for 5 cent "R. J. Allen's" cigar packaged in the boxes marked and branded as aforesaid is not, and was not, of the quality and grade of the 5-cent "R. J. Allen's" cigar that was well known to the purchasing and consuming public and which had been sold by the respondent as hereinabove set out for a number of years, but was composed of tobacco, both as to filler and binder and wrapper, that was inferior to and less desirable than the tobaccos used in the manufacture of the "R. J. Allen's" 5-cent cigar. Respondent has not made and sold a 5-cent "R. J. Allen's" cigar since about February 1, 1932.

PAR. 6. The Commission finds that respondent's price labeling "5¢ cigar now 2 for 5¢" and "3¢ 2 for 5¢" has conveyed, and does convey, the definite meaning to the consumer of cigars that "R. J. Allen's" 2 for 5 cent cigar is composed of the same quality, grade, and the same type of tobacco as that in the cigar branded "R. J. Allen's" manufactured and sold by respondent for resale to the consuming public at 5 cents each.

PAR. 7. The use by respondent on the containers of the pictorial representation of a workman or operator making cigars by hand, which said pictorial representation had theretofore been used by respondent to indicate "Hand Made" cigars, and the use by the respondent of the words, expressions or labels:

"Now 2 for 5¢," and
"5¢ Cigar Now 2 for 5¢,"

and of the words, expression or label:

"3¢ 2 for 5¢,"

have misled and deceived, and still mislead and deceive, the consuming public and have caused it to purchase the cigars of respondent in the belief that said cigars so labeled, described, and designated were "Hand Made"; were manufactured for the purpose and with the intent of being sold at retail at 5 cents each, or at a price in excess of that actually asked for them; had been sold recently for such price; and were of the same grade and quality as the "R. J. Allen's" cigars formerly retailing at 5 cents each. On account of such mistaken and erroneous beliefs, hereinabove set forth, a substantial portion of the purchasing public has been induced to purchase "R. J. Allen's" cigars from respondent, and thereby trade has been unfairly diverted to respondent from competitors who truthfully represent the quality and character of their products. 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.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, testimony, and other evidence taken before 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, briefs filed herein, and oral arguments by Marshall Morgan, counsel for the Commission, and by Louis A. Spiess, 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, J. C. Winter and 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 cigars in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "hand-made" alone or in conjunction with any other words or expression of similar import and meaning to describe or to designate, or in any way to refer to, cigars which are not made by hand.

2. Using the legends or expressions, "5¢ cigar Now 2 for 5¢," or "5¢ 2 for 5¢," or "Now 2 for 5¢," or any other terms of similar import and meaning to designate, describe, or refer to the brand of cigars now sold under the brand name "R. J. Allen's."

3. Using the legends or expressions, "5¢ cigar Now 2 for 5¢," or "5¢ 2 for 5¢," or any other term indicating a reduction in price, to designate, describe, or refer to any brand of cigars, unless the brand of cigars so designated, described, or referred to has recently sold for the price stated and the cigars sold under the brand name are of the identical grade, type, and quality of those sold under the brand name when the indicated higher price was in effect.

4. Using the legend or expression, "Now 2 for 5¢," or any other term indicating a reduction in price, to designate, describe, or refer to any brand of cigars, unless the brand of cigars so designated, described, or referred to has recently sold at a price greater than the price indicated and the cigars sold under the brand name are of the identical grade, type, and quality of those sold under the brand name when the higher price was in effect.

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

IN THE MATTER OF

BENJAMIN JAFFE, INDIVIDUALLY AND TRADING AS NATIONAL PREMIUM COMPANY AND KING 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 3662. Complaint, Dec. 10, 1938—Decision, Sept. 5, 1940

Where an individual engaged in sale of pen and pencil sets, billfolds, silverware, candid cameras, and various other articles, to purchasers in various other States and in the District of Columbia; in soliciting and in selling and distributing various articles dealt in by him—

Made use of game of chance, gift enterprise, or lottery scheme, under or pursuant to which he distributed or caused to be distributed to representatives and prospective representatives, advertising letters, order blanks, and push cards, for use in sale and distribution of his said products by operators of such cards, in accordance with scheme by which person selecting from various feminine names beneath said card's disks name corresponding to that concealed under card's master seal received candid camera or article of merchandise being thus disposed of, and person securing certain number received combination pen and pencil, and under which amount, if any, paid for chance was dependent upon number secured by chance in accordance with disk selected, and operator was compensated also by receipt of article of merchandise in question being thus disposed of; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale of his merchandise in accordance with aforesaid sales plan or method, or one similar thereto and varying therefrom in detail only, involving distribution to purchasing public, wholly by lot or chance, of articles in question, and game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and who refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his merchandise and by element of chance involved therein, and were thereby induced to buy and sell his products 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 to him from his competitors aforesaid who do not use such or equivalent method; to the substantial injury of competition in commerce:

Held, That such acts and practices, 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. Henry Junge and *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 Benjamin Jaffe, individually and trading as National Premium Co. and King Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent, Benjamin Jaffe, is an individual trading as National Premium Co. and King Sales Co. with his principal office and place of business located at 411 South Wells Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of pen and pencil sets, billfolds, silverware, blankets, candid cameras, clocks, bedspreads, luggage, bathroom scales, toaster tray sets, coffee makers, aluminum sets, shirts, princess slips, binoculars, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused, said products when sold to be transported from his aforesaid place of business in Illinois to purchasers thereof in the various other States of the United States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is, and has been, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Par. 2. In the course and conduct of his business as described in paragraph 1 hereof, respondent in soliciting the sale of and in selling and distributing his merchandise in commerce, as herein described, 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 through the United States mails and otherwise certain literature and instructions including, among other things, push cards, order blanks, illustrations of his said products, and circulars explaining respondent's plan of selling said merchandise and of allotting it as premiums or prizes to the operators of said push cards. One of respondent's push cards bears 48 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 48 small, partially perforated disks on the face of which is printed the word "push." Concealed within each disk is a number which is disclosed when the disk is pushed or separated from the card. The push card also has a large master seal, and concealed within the master seal is one of the feminine names appearing on the reverse side of said card. The push card bears legends or instructions as follows:

Person Selecting Name Under Seal Receives This

Cinex
CANDID
CAMERA
Value $10.00.
NUMBER 33 RECEIVES COMBINATION PEN AND PENCIL
Numbers 1 to 29 Pay What You Draw.
Numbers Over 29 Pay Only 29¢. No Higher.
Numbers 6–8–10–12–30 ARE FREE
Write Your Name On Reverse Side Opposite Name You Select.

Do not remove seal until entire card is sold

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

SUGGESTIONS FOR USING SALES CARD

This card consists of 48 girls' names; over each girl's name is a concealed number. This number represents the amount each person pushing out the numbers, is to pay.

The concealed numbers under the small seals range from Number 1 upward, but the customer pays only 1¢ to 29¢ per drawing, according to the number drawn, NO HIGHER. Any number over 29 pays only 29¢

Be sure and write names of persons pushing out numbers on the line opposite the number they have selected on back of the card.

After all the numbers have been pushed and collections made, the large RED SEAL is pushed out, and the person holding the name corresponding to the one shown on the LARGE RED SEAL, is awarded FREE, ONE CANDID CAMERA.

Persons selecting number 33 receives a Combination Pen and Pencil.

The person selling the card receives ABSOLUTELY FREE, ONE CANDID CAMERA for their efforts put forth in selling the card. You will have lots of fun getting folks

to push out the names on the card. Show it to your fellow employees, friends, relatives and acquaintances. Whenever there is a party or gathering at your home or your friends' homes bring out your card.

Upon receipt of the order accompanied by Cashier's Check or Postal Money Order for $10.95, we will then ship TWO CANDID CAMERAS and ONE COMBINATION PEN AND PENCIL. If you wish we will ship C. O. D. and pay all charges, except C. O. D. Fees.

Sales of respondent's products 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 said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent furnishes and has furnished various push cards accompanied by said order blanks, instructions, and other printed matter for use in the sale and distribution of his merchandise by means of a game of chance, gift enterprise, or lottery scheme. The sales plan or method involved in connection with the sale of all of said merchandise by means of said push card is the same as those 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 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 com-

petitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or an equivalent method, and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. By prices set out in his circular letters and other printed matter which are published, issued, and circulated through the United States mails to his customers and prospective customers in the various States of the United States and in the District of Columbia, respondent represents and has represented to customers and prospective customers that said products have values greatly in excess of the normal retail selling prices and in excess of the actual values thereof.

Representative of such representations made by the respondent in the circular letters and printed matter aforesaid, regarding the value of the commodities thus offered by him for sale are the following:

	Value
Pen and pencil set	$2.50
Billfolds	1.50
Silverware	5.00
Blankets	5.00
Bedspreads	7.50
Candid cameras	10.00
Clocks	7.50
Luggage	5.00
Bathroom scales	5.00
Toaster tray sets	5.00
Coffee makers	5.00
Aluminum sets	5.00
Shirts	2.50
Binoculars	5.00

In truth and in fact the products set out above do not have the values represented by respondent, but the pen and pencil set cost him only 25 cents each; the billfolds cost him only 25 cents each; the silverware is purchased by him for $1.77; the blankets for $1.65; the bedspreads for $2.85; the cameras for $2.30; the clocks for $1.65; the luggage for $1.55; bathroom scales for $1.30; the toaster tray sets for $1.94; coffee makers for $1.25; the aluminum sets for $2.29; the shirts from $8.50 to $10.75 per dozen; the binoculars for 88 cents.

The prices set out in said circular letters and other printed matter as aforesaid are greatly in excess of the normal retail selling price of said products and are in excess of the true and actual values thereof and in no sense represent either the true value or normal selling price

of the products so advertised, but are greatly in excess of the price at which the same are sold or intended to be sold in the usual course of trade.

As a result of respondent's representations, members of the purchasing public are, and have been, led to erroneously and mistakenly believe that the actual value and selling price of respondent's products are the prices set out in the aforesaid circular letters and the printed matter, when in fact, the prices so set out are fictitious and in no sense represent the normal selling price or actual value of the products referred to.

PAR. 6. The use by respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of the respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not misrepresent the price at which their products are sold. By the representations aforesaid, trade is unfairly diverted to respondent from such competitors, and, as a result thereof, substantial injury is being done, and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition and unfair 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 10, 1938, issued and thereafter served its complaint in this proceeding upon respondent Benjamin Jaffe, individually and trading as National Premium Co. and King 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. Respondent filed no answer to said complaint. Thereafter testimony and other evidence in support of said complaint were introduced by L. P. Allen, Jr., attorney for the Commission (no testimony or other evidence having been offered by the firm of Nash and Donnelly, counsel for the respondent) before Miles J. Furnas, an examiner of the Commis-

sion theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony, and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel for the Commission and counsel for the respondent, and the Commission having duly considered the 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 Commission finds that respondent, Benjamin Jaffe, is an individual trading under the names "National Premium Company" and "King Sales Company," with his principal office and place of business located at 418 South Wells Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale of pen and pencil sets, billfolds, silverware, blankets, candid cameras, clocks, bed spreads, luggage, bathroom scales, tray sets, coffee-makers, aluminum sets, shirts, princess slips, binoculars, and other articles of merchandise, in commerce between and among various States of the United States and in the District of Columbia. In the course and conduct of his said business, respondent causes and has caused said products, when sold, to be shipped or transported from his aforesaid 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, at their respective points of location. 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 similar articles of merchandise in commerce between and among various States of the United States.

PAR. 2. The Commission further finds that, in the course and conduct of his business as described in paragraph 1 hereof, respondent sells and distributes said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Said respondent distributes, or causes to be distributed, to representatives and prospective representatives, a certain advertising letter, an order blank, and a device commonly known as a push card. Said respondent's merchandise is and has been distributed to the purchasing public in the following manner:

Said respondent furnishes to members of the general public an advertising letter, and order blank, together with a device commonly

known as a "push card." Said push card contains on its face a number of detachable discs which may be pushed or otherwise separated from the card, thus disclosing a number which is concealed within or under the disk. Immediately beneath each of said disks there appears a feminine name. The push card also bears a large, removable "master seal" which covers and conceals one of the feminine names shown under the detachable disks, the name under the master seal not being revealed until all the pushes have been sold. The feminine names appearing under the disks are listed on the reverse side of the card, with a space opposite each for recording the name of the purchaser. The letter and order blank accompanying the push card bear instructions and statements which inform the recipient, or distributor, of the method by which the articles of merchandise listed and described are to be distributed to the purchasing public. The said push cards bear legends, inscriptions and instructions as follows:

Persons Selecting Name Under Seal Receives This
Cinex
Candid Camera
Value $10.00
No. 33 Receives Combination Pen and Pencil
Nos. 1 to 29 pay what you draw
Numbers over 29 pay only 29¢, no higher
Nos. 6—8—10—12—30 are free
Write your name on reverse side opposite name selected

The Commission finds said respondent furnishes and has furnished his representatives with additional printed instructions or suggestions for using said push cards, which are as follows:

SUGGESTIONS FOR USING CARD

This card consists of 48 girls' names; over each girl's name is a concealed number. This number represents the amount each person pushing out the numbers is to pay.

The concealed numbers under the small seals range from No. 1 upward, but the customer pays only 1¢ to 29¢ per drawing according to the number drawn, NO HIGHER. Any number over 29 pays only 29¢.

Be sure and write names of persons pushing out numbers on the line opposite the number they have selected on back of the card.

After all the numbers have been pushed and collections made, the large RED SEAL is pushed out, and the person holding the name corresponding to the one shown on the LARGE RED SEAL is awarded FREE, ONE CANDID CAMERA.

Persons selecting number 33 receive a Combination Pen and Pencil.

The person selling the card receives ABSOLUTELY FREE, ONE CANDID CAMERA for their efforts put forth in selling the card. You will have lots of fun getting folks to push out the names on the card. Show it to your fellow employees, friends, relatives and acquaintances. Whenever there is a party or gathering at your home or your friends' homes bring out your card.

Upon receipt of the order accompanied by Cashier's Check or Postal Money

Order for $10.95, we will then ship TWO CANDID CAMERAS and ONE COMBINATION PEN AND PENCIL. If you wish, we will ship C. O. D. and pay all charges except C. O. D. Fees.

Sales of respondent's products by means of said push cards are made in accordance with the above-described legends and instructions. Said prizes or premiums are allotted to customers or purchasers in accordance with the above legends and instructions. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance. Respondent furnishes and has furnished various push cards, accompanied by order blanks and instructions for their 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 respondent's merchandise by means of said push card, or similar method, is the same as that hereinabove described, varying only in detail.

PAR. 3. The Commission finds that 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 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 policy of the Government of the United States and in violation of the criminal law.

PAR. 4. The Commission finds that the sale of merchandise to the purchasing public in the manner above found involves a game of chance, or the sale of a chance, to procure an article of merchandise at a price 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 competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent, because of said game of chance, has a tendency and capacity to, and does, unfairly divert trade to respondent from his said com-

petitors who do not use the same or any equivalent method, and as a result thereof, substantial injury has been and is being done by respondent to competition in commerce between and among 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 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 (respondent having filed no answer), testimony and other evidence taken before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no testimony in opposition thereto), briefs filed herein and oral argument by counsel for the Commission and counsel for respondent, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Benjamin Jaffe, individually and trading as National Premium Co. and King 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 pen and pencil sets, billfolds, silverware, blankets, candid cameras, clocks, bedspreads, luggage, bathroom scales, tray sets, coffee makers, aluminum sets, shirts, princess slips, binoculars, 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 devices, which said push or pull cards, punchboards, or other devices, are to be used or may be used in selling or distributing said articles of merchandise or any other merchandise, to the general public by means of a game of chance, gift enterprise, or lottery scheme.

2. Mailing, shipping, or transporting to agents or distributors, or to members of the public, push or pull cards, punchboards, or other devices, so prepared and printed that sales of said merchandise, or

any other merchandise, are to be made, or may be made, to the general public by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by the use 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

BENJAMIN GOULD, TRADING AS PICCADILLY HOSIERY MILLS AND PICCADILLY HOSIERY COMPANY

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

Docket 3774. Complaint, Apr. 26, 1939—Decision, Sept. 5, 1940

Where an individual engaged in sale and distribution of hosiery, in commerce among the various States and in the District of Columbia—

Set forth and made use of trade name including words "Hosiery Mills," in certain letterheads, invoices, and other printed matter distributed to customers and prospective customers, and represented, through use of word "Mills" as aforesaid, that he was manufacturer of hosiery sold by him, and owned or operated mill where said product was made, notwithstanding fact he was not such a manufacturer, for dealing with whom directly there is preference on part of substantial portion of purchasing and consuming public and dealers as securing, among other things, lower prices, elimination of middleman's profits, superior products, and other advantages, and at no time owned, operated, or controlled a mill wherein his said product, which he obtained from others, was made;

With tendency and capacity to mislead and deceive substantial portion of purchasing public into mistaken and erroneous belief that he was manufacturer of such hosiery and, by reason thereof, into purchase of substantial quantity 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.

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

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

Mr. Charles P. Bloome, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Benjamin Gould, trading as Piccadilly Hosiery Mills and Piccadilly Hosiery 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, Benjamin Gould, is an individual doing business under the trade names of Piccadilly Hosiery Mills and Piccadilly Hosiery Co., with his principal office and place of business located at 1019–1021 Arch Street, in the city of Philadelphia, State of

Pennsylvania. Respondent is now, and for some time last past has been engaged in the business of selling and distributing hosiery in commerce between and among various States of the United States and in the District of Columbia. Respondent causes, and has caused, said hosiery, when sold, to be shipped from his aforesaid place of business in the State of Pennsylvania, to purchasers thereof at their respective points of location in various States of the United States, other than the State of Pennsylvania, and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as aforesaid, respondent, in soliciting the sale of and in selling his hosiery as above described, has caused letterheads, invoices, and other printed matter relative to said hosiery to be distributed in commerce, as commerce is defined in the Federal Trade Commission Act, to customers and prospective customers located in States other than Pennsylvania. Certain of said printed matter includes the following statement:

Piccadilly Hosiery Mills
1019–1021 Arch Street
Philadelphia, Pennsylvania

The use by respondent of the word "Mills" in his trade name and in the manner above described serves as a representation by respondent that he is the manufacturer of the hosiery which he sells and distributes.

PAR. 3. In truth and in fact, respondent does not own and operate or control the plant or factory wherein the hosiery which he sells and distributes is manufactured but respondent has filled and now fills orders for such articles of merchandise with hosiery which is made or manufactured in a plant or factory which he does not own, operate, or control.

PAR. 4. There is now, and has been during all the times mentioned herein, a preference on the part of a substantial portion of the purchasing and consuming public and dealers for dealing directly with a manufacturer of hosiery in the belief that more reliance can be placed on a manufacturer with reference to carrying out contracts, and that lower prices, elimination of middlemen's profits, superior products, or other advantages can thereby be obtained.

PAR. 5. The use by the respondent of the word "Mills," as hereinabove alleged, has had, and now has, the tendency and capacity to, and does, mislead and deceive purchasers and prospective purchasers into the mistaken and erroneous belief that the respondent is the manufacturer of said hosiery and into the purchase of substantial quantities of respondent's hosiery because of such mistaken and erroneous belief.

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 April 26, 1939, issued and subsequently served its complaint in this proceeding upon respondent Benjamin Gould, an individual trading as Piccadilly Hosiery Mills and as Piccadilly Hosiery Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer 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 to the allegations of the complaint by Charles P. Bloome, attorney in fact for respondent, before John W. Addison, trial examiner of the Commission by it theretofore duly designated, 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 on oral argument by counsel; 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, Benjamin Gould, is an individual doing business under the trade name of Piccadilly Hosiery Co., with his principal office and place of business located at 1019–1021 Arch Street in the city of Philadelphia, Pa. From January 12, 1938 until April 5, 1938, respondent operated his business under the trade name of Piccadilly Hosiery Mills. On that date he abandoned the use of the trade name Piccadilly Hosiery Mills and substituted therefor the name Piccadilly Hosiery Co.

PAR. 2. Respondent at all times since he began business in January 1938 has been engaged in the business of selling and distributing hosiery in commerce between and among various States of the United States and in the District of Columbia. Respondent causes and has caused such hosiery, when sold, to be shipped from his place of busi-

ness in the State of Pennsylvania to purchasers thereof located at their respective points of location in various States of the United States other than the State of Pennsylvania and in the District of Columbia.

PAR. 3. In the course and conduct of his business as aforesaid, respondent in soliciting the sale of and selling hosiery as above described has caused letterheads, invoices, and other printed matter relative to such hosiery to be distributed to customers and prospective customers. Certain of such printed matter used from January 12, 1938 until April 5, 1938, included the following statement:

Piccadilly Hosiery Mills, 1019–1021 Arch Street, Philadelphia, Pennsylvania

PAR. 4. The Commission finds that the use by the respondent of the word "Mills" in his trade name as aforesaid constituted a representation that respondent was the manufacturer of the hosiery sold by him; that respondent owned or operated a mill where said hosiery was made.

Such representation by the respondent was false and misleading. The respondent has not at any time manufactured any of the hosiery sold by him. He has not at any time owned, operated, or controlled a mill wherein his said hosiery was made. Respondent obtains, and at all times mentioned herein has obtained his hosiery from other parties.

PAR. 5. The Commission further finds that there is now and has been during all the times mentioned herein a preference on the part of a substantial portion of the purchasing and consuming public and dealers for dealing directly with the manufacturer of hosiery, such preference being due in part to a belief that thereby lower prices, elimination of middleman's profits, superior products, and other advantages can be obtained.

PAR. 6. The use by respondent of said false and misleading representation had the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the mistaken and erroneous belief that respondent was the manufacturer of said hosiery and into the purchase of substantial quantities of respondent's hosiery because of such mistaken and erroneous belief.

CONCLUSION

The 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 on 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 herein by counsel for the Commission and oral arguments by L. E. Creel, Jr., counsel for the Commission, and by Charles P. Bloome, 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, Benjamin Gould, individually and trading as Piccadilly Hosiery Mills and as Piccadilly Hosiery 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 hosiery in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the word "mill" or "mills" as a part of his trade name, or otherwise representing that he is a manufacturer.

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

IN THE MATTER OF

ROBERT A. JOHNSTON COMPANY

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

Docket 4104. Complaint, Apr. 23, 1940—Decision, Sept. 5, 1940

Where a corporation engaged in manufacture of candy, and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and one of which included number of boxes or packages of candy and additional article of merchandise, together with punchboard for use in distribution of such packages to consumers under a plan, and in accordance with board's explanatory legend, by which 5-cent purchaser of chance received, in accordance with particular number secured by chance, as case might be, basket of candy, specified box thereof, 2-pound box or 1-pound box, or 25-cent package, and in accordance with which, further, last five punches in each section into which board was divided were free, person selecting last number on board received additional article of merchandise, and persons who did not punch numbers designated as above indicated, received nothing for their money—

Sold such assortments, along with said punchboards, to dealer and retailer purchasers, by latter of whom, as direct or indirect buyers thereof, assortments in question were exposed and sold to purchasing public in accordance with such sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale and distribution of its candy in accordance with plans or methods above set forth, involving game of chance or sale of a chance to procure package or box of candy 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 plans or methods involving game of chance or sale of a chance to win something by chance, or any other plans or methods contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate purchasers of said or like or similar candy were attracted by sales plans or methods employed by it in sale and distribution of its said products and element of chance involved therein, and were thereby induced to buy its merchandise in preference to that offered and sold by competitors aforesaid, who did not and do not use same or equivalent sales plans or methods, and with effect, through use of said plans or methods and because of said games of chance, of unfairly diverting trade from its said competitors who did not use such or equivalent 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.

Mr. D. C. Daniel for the Commission.

Mr. Ira Milton Jones, of Milwaukee, Wis., 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 Robert A. Johnston 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, Robert A. Johnston 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 4023 West National Avenue, Milwaukee, Wis. Respondent maintains a branch office at 437 Eleventh Avenue, New York, N. Y. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused said candy, when sold, to be shipped or transported from its aforesaid places of business in the States of Wisconsin and New York 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 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among 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 has sold certain assortments of said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of boxes or packages of candy, and an additional article of merchandise, together with a device commonly called a punchboard. Said packages of candy are distributed to the consumers thereof by means of said punchboard in substantially the following manner: Sales are 5 cents each. Said punchboard is divided into sections and each section contains a number of small sealed tubes in each of which is concealed a slip of paper with a number printed thereon. The board bears statements or legends inform-

ing purchasers and prospective purchasers that the person selecting a certain designated number, receives a basket of candy; that persons selecting certain other designated numbers, each receive a specified box of candy; that persons selecting other designated numbers each receive a 2-pound box of candy; that persons selecting certain other designated numbers each receive a 1-pound box of candy; that persons selecting certain other designated numbers each receive a 25-cent package of candy; that the last five punches in every section of said board are free; that the person selecting the last number on the said board receives said additional article of merchandise. Persons who do not punch said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The facts as to which of said packages or boxes of candy a purchaser is to receive, if any, and whether such package is without cost are thus determined wholly by lot or chance.

The respondent sells and distributes and has sold and distributed various assortments of said candy, together with punchboards and push cards, but all of said assortments of candy are sold and distributed to the consuming public by means of sales plans or methods similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of candy, either directly or indirectly, expose and sell the same to the purchasing public 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 and distribution 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 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 sales 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 package or box of candy 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 sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy and such com-

petitors refrain therefrom. Many dealers in and ultimate purchasers of said candy or like or similar candy, 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 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 sales plans or methods. The use of said sales plans or 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 sales plans or methods, and as a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on April 23, 1940, issued and subsequently served its complaint in this proceeding upon respondent, Robert A. Johnston 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. Respondent filed no answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of the facts filed and executed by Ira Milton Jones, counsel for respondent, 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, and that respondent waived all hearings and other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint and stipulation, said stipulation having been approved, accepted and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Robert A. Johnston 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 4023 West National Avenue, Milwaukee, Wis. Respondent maintains a branch office at 437 Eleventh Avenue, New York, N. Y. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused said candy, when sold, to be shipped or transported from its aforesaid places of business in the States of Wisconsin and New York 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 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 its business, respondent is and has been in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among 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 certain assortments of said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy is sold and distributed to the consumers thereof. One of said assortments consisted of a number of boxes or packages of candy, and an additional article of merchandise, together with a device commonly called a punchboard. Said packages of candy were distributed to the consumers thereof by means of said punchboard in substantially the following manner: Sales were 5 cents each. Said punchboard was divided into sections and each section contained a number of small sealed tubes in each of which was concealed a slip of paper with a number printed thereon. The board contained statements or legends informing purchasers and prospective purchasers that the person selecting a certain designated number, received a basket of candy; that persons selecting certain other designated numbers, each received a specified box of candy; that persons selecting other designated numbers each received a 2-pound box of candy; that persons selecting certain other designated numbers each received a 1-pound box of candy; that persons selecting certain other designated numbers each received a 25-cent package of candy; that the last five punches in every section of said board were free; that the person selecting the last number on the said board received said addi-

tional article of merchandise. Persons who did not punch said designated numbers received nothing for their money. The said numbers were effectively concealed from purchasers and prospective purchasers until said slips of paper had been punched or removed from said board. The facts as to which of said packages or boxes of candy a purchaser was to receive, if any, and whether such package was without cost were thus determined wholly by lot or chance.

PAR. 3. Retail dealers who purchased respondent's said assortments of candy, either directly or indirectly, exposed and sold the same to the purchasing public 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 and distribution 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 was and is a practice of a 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 sales of candy to the purchasing public in the manner above found involved a game of chance or the sale of a chance to procure a package or box of candy at a price much less than the normal retail price thereof. Many persons, firms, and corporations who have sold or distributed merchandise in competition with respondent, as above found, were and are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy and such competitors refrain therefrom. Many dealers in and ultimate purchasers of said candy or like or similar candy, were 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 were thereby induced to buy respondent's merchandise in preference to merchandise offered for sale and sold by said competitors of respondent who did not and do not use the same or equivalent sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance, had a tendency and capacity to, and did, unfairly divert trade to respondent from its said competitors who did not use the same or equivalent sales plans or methods, and 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.

PAR. 5. Respondent discontinued the sale of lottery assortments of candy as hereinabove found on or about December 1, 1939, upon receipt of inquiry from the Federal Trade Commission as to the acts and practices being engaged in by respondent.

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 (respondent having filed no answer) 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 respondent waives all hearings and other intervening procedure, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Robert A. Johnston Company, 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 any merchandise so packed and assembled that sales of said 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 devices, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said 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 push or pull cards, punchboards or other devices either with assortments of merchandise or separately, which said push or pull cards, punchboards or other devices are to be used or may be used in selling or distributing said 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.

IN THE MATTER OF

CANADIAN FUR TRAPPERS CORPORATION, AND DANIEL DORNFELD, JACOB DORNFELD, AND MORRIS DORNFELD

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

Docket 3424. Complaint, May 13, 1938—Decision, Sept. 16, 1940

Where a corporation and two individuals, who were, and had been since its incorporation, officers thereof, and who participated in controlling and directing its policies and practices, engaged in sale and distribution of furs and fur products to purchasers in other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of such products in commerce as aforesaid, including those selling and distributing their products in commerce who do not in any manner misrepresent their status or nature, or character of their business, or geographical origin of their products, and who do not represent that they are trappers or manufacturing furriers when such is not the case, and do not misrepresent in any manner the nature, character or quality of products sold or offered by them—

(*a*) Adopted and used as corporate and trade name, name including words "Canadian Fur Trappers," and carried on their business thereunder continuously in soliciting sale of and selling their said products in commerce as aforesaid, and displayed said name on letterheads, billheads, cards, invoices, and labels, and in newspaper and radio advertising, and featured in certain of their said advertisements word "Canadian" and also words "Fur Trappers," with abbreviation "Corp." in small and inconspicuous type, and displayed in certain advertising matter large seal or emblem simulating Royal Coat of Arms of Great Britain, together with word "Canadian" in conspicuous letters and words "Fur Trappers" less conspicuously and, in very fine print, word "Corp."; notwithstanding fact concern in question was not a Canadian corporation, but a domestic one, and had no connection or association with any organization, group, or interest composed or representing Canadian fur trappers or trappers of fur-bearing animals, and was not engaged in business of fur trapping or otherwise taking or capturing such animals, and furs of Canadian origin dealt in by them did not exceed from 25 percent to 35 percent of such products in which, as a whole, they dealt;

With effect of deceiving and misleading prospective purchasers and purchasers of their said products into the belief that corporation in question was a Canadian one, owned, controlled, and operated by Canadian fur trappers, and that products offered and sold by them were furs and fur products which they had made or manufactured from peltries of animals actually shot, trapped, or killed, or otherwise caught and taken by them in Canada, and were offered and sold to public by them without any intervention of middleman, as preferred by substantial portion of purchasing public, and of deceiving and misleading purchasers into erroneous belief, through such simulation

of Royal Coat of Arms, that it was organization or association of trappers of fur-bearing animals in Canada, fur of which, and of animals in other northern countries, is widely believed among purchasers and prospective purchasers to be superior to that of animals living in milder, more temperate climate, and that they were engaged in business of dealing primarily in furs and fur products produced in said country and were trappers of fur-bearing animals and actually shot, killed, trapped, or otherwise caught or took such animals in Canada, and that furs and fur products offered and sold by them were such products, made by them from peltries of animals so shot, etc., by them; and

(*b*) Described or represented certain of said corporation's products in newspaper advertisements as "Hudson Seal," "Mendoza Beaver," "Beaverette," and "American Broadtail," and represented thereby that garments in question were made from peltries of seal, beaver or baby lambs of Karakul breed of sheep, respectively, facts being product offered and sold by them as "Hudson Seal" was made from peltries of muskrats, "Mendoza Beaver," and "Beaverette" products were made from peltries of rabbits, so dressed and dyed as to resemble fur products made from peltries of seal and beaver, respectively, and "American Broadtail" products were made from peltries of lambs other than baby lambs of Karakul breed of sheep, so dressed and dyed as to resemble such peltries, and products in question were not, as represented as aforesaid, made from the superior peltries, as recognized by public, of seal, muskrat, or baby lambs of Karakul breed;

With effect of misleading and deceiving purchasers and prospective purchasers of their aforesaid furs and fur products into erroneous belief that they were actually made from peltries of seal, in case of so-called "Hudson Seal," beaver in case of "Mendoza Beaver" and "Beaverette," and baby lamb of Karakul breed of sheep in case of "American Broadtail," and with result, by reason of such mistaken and erroneous beliefs, engendered as above set forth, that substantial portion of purchasing public was induced to buy furs and fur products from them, and trade was thereby unfairly diverted to them from competitors who truthfully represent quality and character of their products, source thereof and nature of their business; to the injury of competition in commerce:

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

Before *Mr. Edward E. Reardon*, *Mr. Miles J. Furnas*, and *Mr. John L. Hornor*, trial examiners.

Mr. Joseph C. Fehr for the Commission.

Mr. Harry S. Hall and *Goldstein & Goldstein*, 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 Canadian Fur Trappers Corporation, a corporation, and Daniel Dornfeld, Jacob Dornfeld, and Morris Dornfeld, as individuals, and as officers of said

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 Canadian Fur Trappers Corporation is a corporation organized, existing, and doing business under the laws of the State of New York, with its principal place of business located at 156 West Thirty-fourth Street, in the city of New York, in the State of New York. Respondents Daniel Dornfeld, Jacob Dornfeld, and Morris Dornfeld, are officers of said corporation, and individually and as such officers participated and participate in the control and direction of the policies and activities of said corporation and in the acts and practices hereinafter alleged. Respondents also maintain and operate retail establishments in the city of Buffalo, in the State of New York, and in the city of Newark, in the State of New Jersey. They are now, and have been for several years heretofore, engaged in the business of selling and distributing to members of the purchasing public, among other items of merchandise, fur products.

Respondents cause said fur products to be transported from their respective places of business in New York and in New Jersey to purchasers thereof located at points in States of the United States other than the State from which such fur products are shipped and in the District of Columbia. They maintain, and for a period of more than one year last past have maintained, a course of trade and commerce in said fur products, between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondents have been and are engaged in substantial competition in the sale and distribution of said fur products with other corporations and with firms, partnerships, and individuals likewise engaged in the business of selling and distributing fur 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 as hereinbefore described, said respondents adopted as and for their corporate and trade name the words "Canadian Fur Trappers Corporation," under which to carry on their business, which corporate and trade name they have used continuously for several years last past, and are now using, in soliciting the sale of and selling their fur products in commerce among and between the various States of the United States and in the District of Columbia. Respondents have caused and cause their

said corporate and trade name, "Canadian Fur Trappers Corporation," to appear on their letterheads, billheads, cards, invoices, labels, newspaper advertising matter, and in radio advertising, having interstate distribution.

In certain newspaper advertisements in which said corporate name is used, respondents display the word "Canadian" in very large and conspicuous type. The words "Fur Trappers" also appear in large and conspicuous type, but somewhat smaller than the size type used in printing the word "Canadian," and directly thereunder. In relatively small and inconspicuous type under the word "Canadian" and following the words "Fur Trappers" appears the abbreviation "Corp."

In certain of said advertising matter respondents have caused to be displayed a large seal or emblem simulating the Royal Coat of Arms of Great Britain, on which is printed in large and conspicuous letters the word "Canadian," under which the words "Fur Trappers" appear in smaller but conspicuous letters.

In certain other newspaper advertising matter, radio broadcasts, and in various other ways, respondents have made misleading representations and statements concerning their business status of which the following is representative:

CANADIAN

FUR TRAPPERS

In said newspaper advertisements in which said statements and representations are used respondents display the word "Canadian" in very large and conspicuous type. The words "Fur Trappers" appear also in large and conspicuous type, but somewhat smaller than the size type used in printing the word "Canadian," and directly thereunder.

PAR. 4. The corporate name "Canadian Fur Trappers Corporation," alone or together with the statements appearing in respondents' advertising matter as hereinabove set forth, purports to be descriptive of the business status and character, manner of acquisition, manufacture, and sale of the products offered for sale and sold by respondents. By the use of said corporate name "Canadian Fur Trappers Corporation" or by the use of the words "Canadian Fur Trappers" independently or on or in connection with an emblem, seal or coat of arms simulating the Royal Coat of Arms of Great Britain in their advertising matter, as hereinabove set forth, or otherwise, respondents represent and imply, and the public has been and is led to believe:

1. That respondent Canadian Fur Trappers Corporation is a Canadian corporation.

2. That said corporation is owned, operated, or controlled by Canadians.

3. That respondents are engaged in the business of offering for sale and selling primarily Canadian fur products.

4. That respondents are an organization, association, or business house composed of Canadian fur trappers.

5. That respondents are trappers of fur-bearing animals.

6. That respondents actually shoot, kill, trap, or otherwise catch or take such fur-bearing animals in Canada.

7. That the fur products offered for sale and sold by respondents are the fur products made or manufactured by them from the animals so shot, killed, trapped, or otherwise caught or taken by them.

8. That said fur products are offered for sale and sold to the public by respondents as trappers without the intervention of any middleman.

PAR. 5. There has been and is a preference on the part of a substantial portion of the purchasing public for dealing direct with the manufacturer or producer of the merchandise 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 manufacturer or producer 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.

There has been and is a widespread belief among purchasers and prospective purchasers of fur products that the fur of animals in Canada and in other northern countries and parts of the world is superior to that of animals living in milder or more temperate climates, and such persons have had and have a preference for the fur products of animals from such northern countries and parts of the world because of such belief in the superiority of the fur products from such animals over the fur products from animals obtained from more temperate climates.

PAR. 6. Fur products made from the peltries of the seal are properly and commonly designated as Seal or Alaska Sealskin. Fur products made from the peltries of the beaver are properly and commonly designated as Beaver, and fur products made from the peltries of baby lambs of the Karakul breed of sheep are properly and commonly designated as Broadtail.

Fur products made from the peltries of seal and beaver are superior to fur products made from the peltries of muskrat and rabbits. Fur products made from the peltries of baby lambs of the Karakul breed of sheep are superior to fur products made from the peltries of baby lambs of other breeds of sheep. There is a preference on the part of a substantial portion of the purchasing public for fur products made from genuine peltries of the particular fur-bearing animals herein-

above referred to, because of their superior quality, and said genuine fur products demand and bring substantially greater prices than fur products made from the peltries of muskrat, rabbits, or other breeds of lambs used to stimulate the genuine fur products.

PAR. 7. In the course and conduct of its business, and for the purpose of inducing the purchase of its fur products by members of the purchasing public, respondents have, from time to time, inserted advertisements in newspapers having an interstate circulation and have made use of other advertising media, including radio broadcasts, designed and intended to influence purchasers of said fur products.

In said advertisements, respondents have caused certain of their fur products to be represented as Seal, Hudson Seal, Mendoza Beaver, or Beaverette. Said designations purport to be descriptive of respondents' fur products and serve as representations that said garments are made from the peltries of seal or of beaver.

In said advertisements, respondents have caused certain of their fur products to be represented as "American Broadtail." Said designation purports to be descriptive of respondents' fur products and serves as a representation that said fur products are made from the peltries of baby lambs of the Karakul breed of sheep.

PAR. 8. (*a*) In truth and in fact, the representations and implications made by respondents as hereinabove set forth in paragraphs 3 and 4 are and were and each of them was and is false and misleading, for the following reasons:

1. Respondent Canadian Fur Trappers Corporation is not a Canadian corporation.

2. Said corporation is not owned, operated, or controlled by Canadians.

3. Respondents are not engaged in the business of offering for sale and selling primarily Canadian fur products.

4. Respondents are not an organization, association or business house composed of Canadian fur trappers.

5. Respondents are not trappers of fur-bearing animals.

6. Respondents do not actually shoot, kill, trap or otherwise catch or take fur-bearing animals in Canada.

7. The fur products offered for sale and sold by respondents are not made or manufactured by them from peltries of animals shot, killed, trapped, or otherwise caught or taken by them in Canada or elsewhere.

8. Respondents do not make or manufacture the fur products which they offer for sale and sell to the public.

9. Respondents are retail merchants offering for sale and selling to the public fur products made or manufactured by others.

(*b*) In truth and in fact, fur products offered for sale and sold by respondents bearing the designations Seal and Hudson Seal are made from the peltries of rabbit and muskrat, respectively, and fur products offered for sale and sold by respondents bearing the designations Mendoza Beaver, Beaver, and Beaverette are made from the peltries of rabbits, so dressed and dyed as to resemble fur products made from the peltries of beaver. Said muskrat and rabbit peltries are inferior to the peltries of the beaver and the seal in pliability and durability and in the lustre of the fur.

In truth and in fact, the fur products offered for sale and sold by respondents bearing the designation "American Broadtail" are made from the peltries of lambs other than baby lambs of the Karakul breed of sheep. Said fur products are so dressed and dyed as to resemble the peltries of baby lambs of the Karakul breed of sheep. Said peltries are inferior and less acceptable to the buying public than the peltries of baby lambs of the Karakul breed of sheep.

In truth and in fact, the fur products offered for sale and sold by respondents bearing designations descriptive of other fur-bearing animals are made from peltries other than the peltries of the animals so designated. Said fur products are so dressed and dyed as to resemble peltries from superior fur-bearing animals but are inferior in pliability and durability of the leather and in wearing quality and luster of the fur.

PAR. 9. There are now and have been competitors of respondents selling and distributing fur products 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 or the nature or character of their business or the geographical origin of their products and who do not represent that they are trappers or manufacturing furriers when such is not the fact and who do not misrepresent in any manner the nature, character or quality of the products sold or offered for sale by them.

PAR. 10. The use by respondents in their corporate and trade name, or otherwise, of the words "Canadian Fur Trappers Corporation" had and has a capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of their fur products into the belief that Canadian Fur Trappers Corporation is a Canadian corporation, owned, controlled, and operated by Canadian fur trappers, and that the products offered for sale and sold by respondents are the fur products which they have manufactured from animals actually shot, killed, trapped, or otherwise caught or taken by them in Canada.

The use by respondents of the words "Canadian Fur Trappers" in their trade name or in their advertising matter as aforesaid, or the use by respondents of an emblem, seal, or coat of arms simulating the Royal Coat of Arms of Great Britain, on which the words "Canadian Fur Trappers" appear, had and has the capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of their fur products into the erroneous belief that respondents are an organization or association of trappers of fur-bearing animals in Canada; that it is owned, controlled, and operated by Canadians; that it is engaged in the business of dealing primarily in fur products produced in Canada; that its members are trappers of fur-bearing animals; that its members actually shoot, kill, trap, or otherwise catch or take such fur-bearing animals in Canada; and that the fur products offered for sale and sold by respondents are the fur products made or manufactured by them from the animals so shot, killed, trapped, or otherwise caught or taken by them and are offered for sale and sold to the public by them without the intervention of any middleman; and that said fur products are actually made from the peltries of seal, beaver, or baby lamb of the Karakul breed of sheep.

On account of such mistaken and erroneous beliefs hereinabove set forth, a substantial portion of the purchasing public has been induced to purchase fur products from respondents and thereby trade has been unfairly diverted to respondents from competitors named in paragraphs 2 and 9 hereof. As a result thereof, substantial injury has been and now is being done by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 11. The aforesaid acts and practices of respondents as herein alleged are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 13, 1938, issued and served its complaint in this proceeding upon the respondents, Canadian Fur Trappers Corporation, a corporation, and Daniel Dornfeld, Jacob Dornfeld, and Morris Dornfeld, as individuals and as officers of said corporation, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the filing of answer and amended answer to said complaint by the re-

spondents, testimony, and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of said complaint by Goldstein & Goldstein, attorneys for respondents, before trial examiners of the Commission theretofore duly designated by it. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Subsequently a stipulation of facts was entered into between counsel for the respondents and W. T. Kelley, the Commission's chief counsel, subject to the Commission's approval. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint and said amended answer thereto, testimony and other evidence, including said stipulation as to the facts, briefs in support of the complaint, and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Canadian Fur Trappers Corporation, is a corporation, organized in 1922, existing and doing business under the laws of the State of New York, with its office and principal place of business located at 156 West Thirty-fourth Street, in the city of New York, State of New York. The office of president of said corporate respondent has been vacant for several years but one Samuel Dornfeld and one Harry Dornfeld are vice presidents and respondent Morris Dornfeld and respondent Jacob Dornfeld are secretary and treasurer, respectively, of said corporate respondent. Respondent Daniel Dornfeld is not an official of said corporate respondent, but has from time to time been employed by it. The aforementioned officers have held their respective offices since the incorporation of respondent corporation in 1922. During this time the corporate respondent, Canadian Fur Trappers Corporation and its aforesaid officers have also maintained and operated retail establishments in Buffalo, N. Y., and in Newark, and Paterson, N. J.

PAR. 2. In the course and conduct of their business said respondents are now, and have been for more than 5 years last past, engaged in the business of selling and distributing to members of the purchasing public, along other items of merchandise, furs and fur products, and cause said furs and fur products, when sold, to be transported from their respective places of business in New York and New Jersey to purchasers thereof located at points in States of the United States other than said States of New York and New Jersey and in the District of

Columbia. Said respondents maintain, and for many years have maintained, a course of trade and commerce in said furs and fur products, between and among the various States of the United States and in the District of Columbia. The aforesaid individual respondent officers, together with Samuel Dornfeld and Harry Dornfeld, control and direct the policies and practices of Canadian Fur Trappers Corporation, the corporate respondent herein.

PAR. 3. Respondents have been, and are, engaged in substantial competition in the sale and distribution of said furs and fur products with other corporations, and with firms, partnerships, and individuals likewise engaged in the business of selling and distributing furs and fur products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business, said respondents adopted as and for their corporate and trade name the words "Canadian Fur Trappers Corporation," under which they carry on their business, which said corporate and trade name they have used, continuously in soliciting the sale of and selling their furs and fur products in commerce among and between the various States of the United States and in the District of Columbia. Respondents have caused and cause their said corporate and trade name "Canadian Fur Trappers Corporation," to appear on letterheads, bill heads, cards and invoices, labels, and in newspaper and radio advertising. In certain newspaper advertisements in which said corporate and trade name is used, respondents display the word "Canadian" in very large and conspicuous type. The words "Fur Trappers" also appear in large and conspicuous type, but somewhat smaller than the size type used in printing the word "Canadian," and directly thereunder. In relatively small and inconspicuous type under the word "Canadian" and following the words "Fur Trappers" appears the abbreviation "Corp." In certain of said advertising matter respondents have caused to be displayed a large seal or emblem simulating the Royal Coat of Arms of Great Britain, on which is printed in large and conspicuous letters the word "Canadian" under which the words "Fur Trappers" appear in smaller but conspicuous letters and below the words "Fur Trappers," in very fine print, is the word "Corp." In its newspaper advertisements respondents have caused certain of their fur products to be represented as "Hudson Seal," "Mendoza Beaver," "Beaverette," and "American Broadtail." "Hudson Seal" is the trade name for dyed muskrat, and "Mendoza Beaver" and "Beaverette" are trade names for dyed coney or rabbit. "American Broadtail" is a trade name for processed lamb. Said trade names purport to be descriptive of respondents fur products and, unless modified by the use

of the true name of the fur, such as "Hudson Seal—Dyed Muskrat," "Mendoza Beaver—Dyed Coney," "Beaverette—Dyed Coney," or "American Broadtail—Processed Lamb," serve as representations that said garments are made from the peltries of seal, beaver or of the peltries of baby lambs of the Karakul breed of sheep, respectively.

PAR. 5. The respondent, Canadian Fur Trappers Corporation, is not a Canadian corporation, nor does it have any connection or association with any organization, group, or interest composed of or representing Canadian fur trappers or trappers of fur-bearing animals. Said respondent company is in fact an American corporation, wholly American owned, controlled, and operated. Respondent does not trap and is not engaged in the business of trapping or otherwise taking or capturing fur-bearing animals. While many of the fur products offered for sale and sold by respondents are not made or manufactured from peltries of fur-bearing animals shot, killed, trapped, or otherwise caught or taken in Canada, a substantial percentage of the furs and fur garments sold by respondents, that is to say, from 25 to 35 percent thereof, are made from peltries of fur-bearing animals shot, killed, trapped, or otherwise caught or taken in Canada. Respondents are, in fact, retail merchants offering for sale and selling to the public furs and fur products made or manufactured for them by others.

PAR. 6. The fur products offered for sale and sold by respondents, bearing the designations "Hudson Seal" is made from the peltries of muskrats, and "Mendoza Beaver" and "Beaverette" are made from the peltries of rabbits, so dressed and dyed as to resemble the fur products made from the peltries of seal and beaver respectively. The fur products offered for sale and sold by respondents bearing the designation "American Broadtail" are made from the peltries of lambs other than baby lambs of the Karakul breed of sheep and are so dressed and dyed as to resemble the peltries of baby lambs of the Karakul breed of sheep.

PAR. 7. Fur products made from the peltries of seal are properly and commonly designated as "Seal" or "Alaska Sealskin." Fur products made from the peltries of beaver are properly and commonly designated as "Beaver," and fur products made from the peltries of baby lambs of the Karakul breed of sheep are properly and commonly designated as "Broadtail." Fur products made from the peltries of seal are superior to fur products made from the peltries of muskrat and are so recognized by the purchasing public. Fur products made from the peltries of beaver are superior to fur products made from the peltries of rabbits and are so recognized by the public. Fur products made from the peltries of baby lambs of the Karakul breed of

sheep are superior to fur products made from the peltries of baby lambs of other breeds of sheep, and this fact is recognized by the purchasing public.

PAR. 8. There has been and is a preference on the part of a substantial portion of the purchasing public for dealing direct with the manufacturer or producers of the merchandise which it buys and there has been and is a widespread belief among purchasers and prospective purchasers of fur products that the fur of animals in Canada and in other northern countries and parts of the world is superior to that of animals living in milder or more temperate climates.

PAR. 9. There are now and have been competitors of respondents selling and distributing fur products 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 or the nature or character of their business or the geographic origin of their products and who do not represent that they are trappers or manufacturing furriers when such is not the fact, and who do not misrepresent in any manner the nature, character or quality of the products sold or offered for sale by them.

PAR. 10. The use by the respondents in their corporate and trade name of the words "Canadian Fur Trappers Corporation" had, and has, the capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of their furs and fur products into the belief that the Canadian Fur Trappers Corporation is a Canadian corporation, owned, controlled, and operated by Canadian fur trappers, and that the products offered for sale and sold by respondents are furs and fur products which they have made or manufactured from the peltries of animals actually shot, killed, trapped, or otherwise caught or taken by them in Canada and are offered for sale and sold to the public by them without the intervention of any middleman.

The use by respondents of the emblem, seal or coat of arms simulating the Royal Coat of Arms of Great Britain, on which the words "Canadian Fur Trappers Corporation" appear, had, and has, the capacity and tendency to, and did and does, deceive and mislead prospective purchasers and purchasers of their fur products into the erroneous belief that respondents are an organization or association of trappers of fur-bearing animals in Canada; that they are engaged in the business of dealing primarily in furs and fur products produced in Canada; that they are trappers of fur-bearing animals; that they actually shoot, kill, trap, or otherwise catch or take such fur-bearing animals in Canada; that the furs and fur products offered for sale and sold by them are furs and fur products made or manufactured

by them from the peltries of animals so shot, killed, trapped, or otherwise caught or taken by them.

Respondents' acts and practices in representing and describing their furs and fur products manufactured of muskrat as "Hudson Seal," rabbit peltries as "Mendoza Beaver" and "Beaverette," and peltries of ordinary lambs or sheep as "American Broadtail," have had, and now have the capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of such furs and fur products into the erroneous and mistaken belief that said furs and fur products are actually made from the peltries of seal in the case of "Hudson Seal," beaver in the case of "Mendoza Beaver" and "Beaverette," and baby lamb of the Karakul breed of sheep in the case of "American Broadtail."

PAR. 11. On account of such mistaken and erroneous beliefs engendered as hereinabove set forth, a substantial portion of the purchasing public has been induced to purchase furs and fur products from the respondents, and thereby trade has been unfairly diverted to respondents from competitors who truthfully represent the quality and character of their products, the source of their products, and the nature of their business. In consequence thereof, injury has been done, and now is being done, by respondents to competition in commerce among and between the various States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of respondents, as herein found, are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony and other evidence in support of the allegations of said complaint and in opposition thereto, taken before duly designated examiners of the Commission briefs filed herein, and oral argument by Joseph C. Fehr, counsel for the Commission, and by Harry S. Hall, counsel for 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, Canadian Fur Trappers Corporation, a corporation, its officers, representatives, agents, and employees.

directly or through any corporate or other device, and Jacob Dornfeld and Morris Dornfeld, individually and as officers of said corporation, and their respective agents, representatives or employees, individual or corporate, in connection with the offering for sale, sale, and distribution of furs and fur garments, in commerce as commerce is defined in in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "trappers" or the words "fur trappers," either independently or in connection or conjunction with any other word or words, as descriptive of their said business.

2. Using a pictorial design simulating the Royal Coat of Arms of Great Britian, or any emblem or seal suggesting or implying that the business of respondents is conducted by an organization or association formed in Canada or composed of inhabitants of Canada or any other part of the British Empire.

3. Describing furs in any other way than by the use of the correct name of the fur as the last word of the description thereof; and when any dye or blend is used in simulating another fur, the true name of the fur appearing as the last line of the description shall be immediately preceded by the word "dyed" or "blended," compounded with the name of the simulated fur, as: Seal—Dyed Coney; Hudson Seal—Dyed Muskrat; Mendoza Beaver—Dyed Coney; Beaverette—Dyed Coney; and American Broadtail—Processed Lamb.

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; and

It is further ordered, That complaint hereby be and the same hereby is, dismissed as to the respondent Daniel Dornfeld.

IN THE MATTER OF

EMPIRE STYLE DESIGNERS LEAGUE, 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 4136. Complaint, May 21, 1940—Decision, Sept. 17, 1940

Where a corporation, members of which were engaged in the creation of styles and the designing and making of patterns for women's fur coats and in the grading and copying of such patterns, and in the sale and distribution thereof in commerce, and which was formed with intent and effect of serving as clearing house for such members who acted in cooperation with it in matters as below indicated, and said members, who constituted dominant factors in business in question, and represented 75 percent of the output and sale of the products involved, and who, but for matters and things below set forth, would be naturally and normally in competition with each other, and with others in the business of producing patterns and gradings, and copies thereof, and in the sale thereof to customers throughout the several States and in the District of Columbia—

Entered into and carried out, as case might be, agreement, combination, and conspiracy with each other and with others including said corporation first referred to, to hinder and suppress competition in interstate sale and distribution of products in question and to create monopoly in themselves in the manufacture and sale thereof; and in pursuance of such agreement, combination and conspiracy,

(1) Collectively and cooperatively arranged for and fixed uniform prices at which their said products were to be sold;

(2) Collectively and cooperatively published, or caused to be published, said price lists in newspapers, periodicals, and circulars of general circulation, in various States and in the District of Columbia; and

(3) Collectively and cooperatively adhered to such uniform prices at which their said products were to be sold as set forth in their price lists issued, exchanged and published as above described;

With the result that they sold at fixed and uniform prices to their respective customers, in the various States and in the District of Columbia, their said products and thus delivered same, and their customers and users thereof were forced and compelled to pay them prices in accordance with such arbitrarily fixed and maintained artificial price levels for products in question and were deprived, to their detriment, of normal and free competition between and among said members in the purchase of products in question, price competition between and among themselves in the sale of such articles was hindered and prevented, and power was placed in them to control and enhance prices thereof, and with tendency unduly to create in themselves monopoly in sale of patterns and in gradings and copies thereof, and with effect of unreasonably restraining 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 in commerce, and unfair and deceptive acts and practices therein.

Mr. George W. Williams for the Commission.
Mr. Sydney U. Cohn, 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 Empire Style Designers League, Inc., a corporation, Sol Vogel, an individual doing business as Sol Vogel Fashion Imports, Alexander Greenstein and Abraham Fessler, individually and as copartners doing business as Greenstein Fur Modes, Samuel Handelman, an individual, Lazare T. Sherman, an individual, Mendel Levine, an individual, Octave Golos, an individual, Evangelista Petrocelli, an individual doing business as Van-Celli Fur Fashion Co., Anthony T. Sozio, an individual, Benedict Savio, an individual, doing business as Savio Fur Modes, Bern Publishers, Inc., a corporation doing business under the trade name of American-Mitchell Fashion Publishers, 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, Empire Style Designers League, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 276 Fifth Avenue in the city of New York, State of New York.

Its membership consists of the corporations, partnership, firms, and individuals herein named in paragraph 2, all of whom were and are engaged in the creation of styles and the designing and making of patterns for women's fur coats and the grading and copying of said patterns, and in the sale and distribution of the same in constant course of trade in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to such sales, and as a part thereof, said respondents regularly have shipped, and do ship or cause to be delivered such products to their customers, at their respective places of business, located at various points in the several States of the United States, other than the State of New York.

Said League was formed with the purpose and effect of serving as a clearing house for, and with the joint cooperation of, its members, who, through respondent League engage in attempts to, and do, fix uniform prices for their said products, and do otherwise advance their mutual interests in connection with their said business.

PAR. 2. The following named respondents constitute the membership of said League:

1. Respondent Sol Vogel is an individual doing business as Sol Vogel Fashion Imports, with his office and principal place of business at 330 Seventh Avenue, New York, N. Y.

2. Respondents Alexander Greenstein and Abraham Fessler, individually, and as copartners doing business as Greenstein Fur Modes, with their office and principal place of business at 345 Seventh Avenue, New York, N. Y.

3. Respondent Samuel Handelman is an individual with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

4. Respondent Lazare T. Sherman is an individual with his office and principal place of business at 370 Seventh Avenue, New York, N. Y.

5. Respondent Mendel Levine is an individual, with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

6. Respondent Octave Golos is an individual with his office and princiupal place of business at 330 Seventh Avenue, New York, N. Y.

7. Respondent Evangelista Petrocelli is an individual doing business as Van-Celli Fur Fashion Co., with his office and principal place of business at 127 West Thirtieth Street, New York, N. Y.

8. Respondent Anthony T. Sozio is an individual, with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

9. Respondent Benedict Savio is an individual doing business as Savio Fur Modes with his office and principal place of business at 352 Seventh Avenue, New York, N. Y.

10. Respondent Bern Publishers, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, doing business under the trade name of American-Mitchell Fashion Publishers, with its office and principal place of business at 360 Seventh Avenue, New York, N. Y.

PAR. 3. Said member respondents, in the course and conduct of their respective businesses, as hereinbefore described, but for the matters and things hereinafter set forth, would be naturally and normally in competition with each other and/or in competition with other individuals, copartners, and corporations also engaged in the business of producing patterns and gradings and copies thereof, and in the sale thereof to customers located throughout the several States of the United States and in the District of Columbia. The said member respondents have at all times herein mentioned, and are now, the dom-

inant factors in said business, representing approximately 75 percent of the output and sale of said products.

PAR. 4. The said member respondents hereinbefore named and described, during the last 3 years, and to the date of this complaint, have entered into and carried out an agreement, combination, and conspiracy with each other and with other persons, firms, and corporations, including respondent Empire Style Designers League, Inc., to hinder and suppress competition in the interstate sale and distribution of said products, hereinbefore mentioned and described in paragraph 1, and to create a monopoly in the manufacture and sale of said products in the United States in said member respondents. Pursuant to said agreement, combination, and conspiracy, said respondents have collectively and cooperatively performed within the time hereinbefore mentioned, the following acts and practices, to wit:

1. Arranged for and fixed uniform prices at which their said products were and are to be sold.

2. Published, or caused said prices to be published in lists, newspapers, magazines, and other periodicals and circulars with general circulation in the State of New York and in other States of the United States, and in the District of Columbia; and

3. Adhered to the said uniform prices at which their said products are to be sold as set forth in their price lists issued, exchanged, and published as aforesaid.

PAR. 5. Said member respondents, as a result of the activities described in paragraph 4 herein, have sold their said products at fixed and uniform prices to their respective customers located in the various States of the United States and in the District of Columbia, and delivered the same as aforesaid.

PAR. 6. As a result of such agreement, combination, and conspiracy, and the acts and practices performed thereunder, and pursuant thereto, by said respondents, as hereinbefore set forth, the customers and users of said products have been, and now are, forced and compelled to pay said member respondents prices at which their products are arbitrarily fixed and maintained at artificial levels, and have been and are now deprived, to their detriment, of normal and free competition between and among said member respondents in the purchase of said products.

PAR. 7. The acts and practices of the said respondents, as herein alleged, are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented price competition between and among said member respondents in the sale of their said products in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in said

member respondents power to control and enhance prices of their said products; have a dangerous tendency to create in respondents a monopoly in said products in such commerce; have unreasonably restrained such commerce in their said products, 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 May 21, 1940, issued, and on May 23, 1940, served its complaint in this proceeding upon respondents, Empire Style Designers League, Inc., a corporation, Sol Vogel, doing business as Sol Vogel Fashion Imports, Alexander Greenstein and Abraham Fessler, individually, and as copartners doing business as Greenstein Fur Modes, Samuel Handelman, Lazare T. Sherman, Mendel Levine, Octave Golos, individually, Evangelista Petrocelli, doing business as Van-Celli Fur Fashion Co., Anthony T. Sozio, individually, Benedict Savio, doing business as Savio Fur Modes, and Bern Publishers, Inc., a corporation, and also as trading under the name of American-Mitchell Fashion Publishers, charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. 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. Respondent, Empire Style Designers League, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 276 Fifth Avenue in the city of New York, State of New York.

Its membership consists of the corporations, partnerships, firms, and individuals herein named in paragraph 2, all of whom were and are engaged in the creation of styles and the designing and making of patterns for women's fur coats and the grading and copying of said patterns, and in the sale and distribution of the same in constant course of trade in commerce between and among the various States of the United States and in the District of Columbia. Pursuant to such sales, and as a part thereof, said respondents regularly have shipped and do ship or cause to be delivered such products to their customers, at their respective places of business, located at various points in the several States of the United States, other than the State of New York.

Said League was formed with the purpose and effect of serving as a clearing house for, and with the joint cooperation of, its members, who, through respondent League engage in attempts to, and do, fix uniform prices for their said products, and do otherwise advance their mutual interests in connection with their said business.

PAR. 2. The following named respondents constitute the membership of said League:

1. Respondent Sol Vogel is an individual doing business as Sol Vogel Fashion Imports, with his office and principal place of business at 330 Seventh Avenue, New York, N. Y.

2. Respondents, Alexander Greenstein and Abraham Fessler, individually, and as copartners doing business as Greenstein Fur Modes, with their office and principal place of business at 345 Seventh Avenue, New York, N. Y.

3. Respondent Samuel Handelman is an individual with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

4. Respondent Lazare T. Sherman is an individual with his office and principal place of business at 370 Seventh Avenue, New York, N. Y.

5. Respondent Mendel Levine is an individual, with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

6. Respondent Octave Golos is an individual with his office and principal place of business at 330 Seventh Avenue, New York, N. Y.

7. Respondent Evangelista Petrocelli is an individual doing business as Van-Celli Fur Fashion Co., with his office and principal place of business at 127 West Thirtieth Street, New York, N. Y.

8. Respondent Anthony T. Sozio is an individual, with his office and principal place of business at 333 Seventh Avenue, New York, N. Y.

9. Respondent Benedict Savio is an individual doing business as Savio Fur Modes with his office and principal place of business at 352 Seventh Avenue, New York, N. Y.

10. Respondent Bern Publishers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the

State of New York, doing business under the trade name of American-Mitchell Fashion Publishers, with its office and principal place of business at 360 Seventh Avenue, New York, N. Y.

PAR. 3. Said member respondents, in the course and conduct of their respective businesses, as hereinbefore described, but for the matters and things hereinafter set forth, would be naturally and normally in competition with each other and/or in competition with other individuals, copartners, and corporations also engaged in the business of producing patterns and gradings and copies thereof, and in the sale thereof to customers located throughout the several States of the United States and in the District of Columbia. The said member respondents have at all times herein mentioned, and are now, the dominant factors in said business, representing approximately 75 percent of the output and sale of said products.

PAR. 4. The said member respondents hereinbefore named and described, during the last 3 years, and to the date of the complaint, have entered into and carried out an agreement, combination, and conspiracy with each other and with other persons, firms, and corporations, including respondent Empire Style Designers League, Inc., to hinder and suppress competition in the interstate sale and distribution of said products, hereinbefore mentioned and described in paragraph 1, and to create a monopoly in the manufacture and sale of said products in the United States in said member respondents. Pursuant to said agreement, combination, and conspiracy, said respondents have collectively and cooperatively performed, within the time hereinbefore mentioned, the following acts and practices, to wit:

1. Arranged for and fixed uniform prices at which their said products were and are to be sold.

2. Published, or caused said prices to be published, in lists, newspapers, magazines, and other periodicals and circulars with general circulation in the State of New York and in other States of the United States, and in the District of Columbia; and

3. Adhered to the said uniform prices at which their said products were and are to be sold as set forth in their price lists issued, exchanged, and published as aforesaid.

PAR. 5. Said member respondents, as a result of the activities described in paragraph 4 herein, have sold their said products at fixed and uniform prices to their respective customers located in the various States of the United States and in the District of Columbia, and delivered the same as aforesaid.

PAR. 6. As a result of such agreement, combination, and conspiracy and the acts and practices performed thereunder, and pursuant thereto, by said respondents, as hereinbefore set forth, the customers and users

of said products have been, and now are, forced and compelled to pay said member respondents prices at which their products are arbitrarily fixed and maintained at artificial levels, and have been and are now deprived, to their detriment, of normal and free competition between and among said member respondents in the purchase of said products.

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 patterns for women's fur coats and in the sale of gradings and copies of same in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices in said products; have tended unduly to create in respondents a monopoly in the sale of patterns and in the gradings and copies thereof in such commerce; have unreasonably restrained such commerce in said patterns and in the gradings and copies thereof and constitute unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substitute answer of respondents, which substitute answer 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 conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Empire Style Designers League, Inc., a corporation, Sol Vogel, doing business as Sol Vogel Fashion Imports, Alexander Greenstein, and Abraham Fessler, individually, and as copartners doing business as Greenstein Fur Modes, Samuel Handelman, Lazare T. Sherman, Mendel Levine, Octave Golos, Evangelista Petrocelli, doing business as Van-Celli Fur Fashion Co., Anthony T. Sozio, Benedict Savio, doing business as Savio Fur Modes, and Bern Publishers, Inc., a corporation, and also as trading under the name of American-Mitchell Fashion Publishers, their officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the

offering for sale and distribution of patterns for women's fur coats, gradings or copies thereof, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from performing, pursuant to agreement or understanding, or collectively or cooperatively, the following acts or practices:

1. Arranging for and fixing uniform prices at which their said products are to be sold.

2. Publishing or causing said fixed prices to be published in lists, newspapers, magazines, or other periodicals and circulars; and

3. Adhering to fixed prices at which their said products are to be sold.

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

BENTON ANNOUNCEMENTS, INC.

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

Docket 3425. Complaint, May 13, 1938—Decision, Sept. 18, 1940

Where a corporation engaged in printing stationery for social and business purposes, including invitations, calling cards, letterheads, envelopes, and similar products, and in sale and distribution thereof to purchasers in other States and in the District of Columbia, in competition with others engaged in similar sale and distribution of stationery products for social and business purposes, and including those who produce and sell genuine engraved stationery products and truthfully advertise themselves as engravers and their products as engraving, and others who sell non-engraved stationery products and do not thus represent themselves; in circulars and other advertising matter such as letters of solicitation, price lists, sample books of wedding announcements, cards, and other social forms circulated throughout the United States to customers and prospective customers, including prospective brides and bridegrooms—

Represented itself as an engraver and its products as engraved and genuine plate engraving, through use of such words and statements as "You may have the finest plate engraved wedding stationery at half the usual cost," "Genuine plate engraving," "Compare this price with other fine engravers," "It is a pleasure indeed to send you these truly fine samples of engraving art, etc.," "The most economical method devised for producing genuine plate engraving";

Facts being its stationery was produced by printing on printing press with printing thereafter "bumped up" or embossed by use of plate, engraved by pantograph method, and it did not print from plate through inking same and printing therefrom as done by genuine engravers, but used same only for embossing or raising printed letters above plane of paper, plate was used dry and not inked for each impression as essential to true engraving process, involving taking of impression on blank paper from inked plate in one operation, and its said products could not properly be represented or described as engraving or engraved stationery, cost of which greatly exceeds that of producing stationery otherwise comparable, by process employed by it or any printing process, and was not such engraving as long understood from words "engraving" or "engraved," used in connection with business or social stationery, by trade and consuming public as meaning such products containing letters, etc., raised from general plane of the stationery surface through use under pressure of specially engraved, cut or carved metal plates, used as above indicated, and for which genuine engraved stationery substantial portion of purchasing public has decided preference over stationery produced by it or any similar process;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous belief that it owned or operated an engraving company and was in the business of producing and selling engraved or plate engraved stationery, with letters, words, and designs contained thereon engraved or

plate engraved, as result of process described above, and with result, as direct consequence of such mistaken and erroneous belief, induced by such acts, advertisements, and representations, that substantial number of consuming public purchased substantial volume of its said stationery products, and trade was unfairly diverted to it from its competitors aforesaid who do not misrepresent their business status, character, and nature of their products or process by which produced, to the injury of its competitors and that of public:

Held, That such acts and practices under the circumstances set forth are all to the prejudice and injury of the public and competitors and constitute unfair methods of competition.

Before *Mr. John J. Keenan*, trial examiner.

Mr. Merle P. Lyon for the Commission.

Bresnahan, Hoage & Eberly, of Washington, D. C., and *Mr. Carlton A. Fisher*, 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 Benton Announcements, 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, Benton Announcements, Inc., is a corporation organized and doing business under and by virtue of the laws of the State of New York, and having its principal office and place of business at 16 East Tupper Street, in the city of Buffalo and State of New York. Respondent is now, and has been for more than a year last past, engaged in the business of printing, by a special process, stationery for social and business purposes, including invitations, announcements, calling cards, letterheads, envelopes, and similar products, 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 its principal office and place of business in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade and commerce in said stationery so printed or produced and sold by respondent, between and among the various States of the United States and the District of Columbia.

Par. 3. In the course and conduct of its said business, respondent is now, and has been in substantial competition with other corpora-

tions, and with firms, partnerships, and individuals 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 a circular containing, among others, the following statements:

You May Have the Finest Plate Engraved Wedding Stationery at Half the Usual Cost.

Genuine plate engraving * * * for as little as $7.95 for one hundred * * * Complete Including Engraving of the Plate.

Compare this price with that of other fine engravers.

The enclosed card which is to be signed and returned by the prospective customer contains the following: "Please send the Benton Specimen Portfolio of Plate Engraved Wedding Invitations and Announcements by return mail."

After the respondent receives a request for the Benton Specimen Portfolio, it mails to the prospective customer a sample book of its products together with prices, and an order blank for use by the prospective customer. All orders thus received are filled by respondent and the stationery delivered by mail to the customer prepaid or on a C. O. D. basis. The order blank used by respondent contains the heading, "Benton Announcements, Inc., Engravers and Embossers."

All of said statements, together with similar statements, purport to be descriptive of respondent's business and the products manufactured and sold by it. In all of its circulars, pamphlets, order forms, and advertising literature, respondent refers to the product manufactured by it as being "genuine plate engraving" and holds itself out to the public as being an "engraver."

PAR. 5. Respondent, in the course of its business, as described in paragraphs 1 to 4, inclusive, prints invitations, announcements, calling cards, letterheads, envelopes, and social and business stationery by a process which is designated by it as "plate engraving," although such process 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 result 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 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 cost of genuine engraved stationery exceeds the cost of stationery of like stock, grade, or character produced by the process employed by the respondent, as set out herein, or produced by any printing process, and a substantial portion of the purchasing public has indicated, and has, a decided preference for engraved stationery over stationery produced by respondent's process or any similar process.

PAR. 9. The use by respondent of the words "engraving," "plate engraved," "plate engraving," or "engravers," as set out in paragraph 4 hereof, either in describing its product or designating its business, in offering for sale, or selling, its 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" or "plate engraved" sta-

tionery; and that the letters, words, or designs contained upon the said stationery offered for sale, and sold, by respondent were, and are, "engraved" or "plate engraved," and are the result of the engraving process described in paragraph 6.

PAR. 10. 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 represents 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. 11. 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 its 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. 12. 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 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 13th day of May 1938, issued and thereafter served its complaint in this proceeding upon the respondent Benton Announcements, Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of the said complaint were offered by Merle P. Lyon, Esq., attorney for the Commission, and in opposition to the allegations of the complaint by John A. Bresnahan, Esq.,

and Carlton A. Fisher, Esq., attorneys for the respondent, before John J. Keenan, an examiner of the Commission therefore 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 said complaint, the answer thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel aforesaid. 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 Benton Announcements, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of New York, with its office and principal place of business located at 16 East Tupper Street, Buffalo, N. Y. Said respondent is now engaged, and for more than 3 years has been engaged, in the business of printing stationery for social and business purposes, including invitations, calling cards, letterheads, envelopes, and similar 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. Respondent causes said stationery so printed, when sold, to be transported from its principal office and place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia.

PAR. 2. In the course and conduct of its said business, respondent has regularly advertised, solicited the sale of, and has sold its products through the use of circulars and other advertising matter which respondent has printed and circulated throughout the United States to customers and prospective customers. In contacting the public and its prospective customers, the respondent gathered from various newspapers and other publications the names of prospective brides and bridegrooms to whom it forwarded its literature through the United States mails. This literature consisted of letters of solicitation, price lists, sample books of wedding announcements, cards, other social forms. Among business people its efforts were confined to business forms, letterheads, envelopes, etc. Among and typical of the statements and representations made by the respondent in said letters, circulars, and literature, are the following:

You May Have the Finest Plate Engraved Wedding Stationery at Half the Usual Cost.

Genuine plate engraving * * * for as little as $7.95. For One Hundred * * * complete including engraving of the plate.

Compare this price with that of other fine engravers.

The above statements are contained in the original letter forwarded to prospective customers, which letter, while containing the name and address of the respondent, is signed, Mavis Dee, indicating that a Miss Dee is an authority on social forms and requirements. There is no such person as Mavis Dee in the employ of the respondent. The name is fictitious. With said letter is enclosed a card and self-addressed envelope for reply requesting sample of respondent's products.

In other letters and literature forwarded to prospective customers the following statements are made:

* * * It is a pleasure indeed to send you these truly fine examples of engraving art,—invitations and announcements by Benton.

* * * First and foremost, make certain that those offered are genuine plate engraved.

And you will find everything that wedding stationery should be,—genuine plate engraving, of course,—but more than that, *superb* engraving by Benton's exclusive craftsmanship method.

Then when you look at Benton prices, you will receive your most pleasant surprise. For Benton engraving, despite its obvious quality, is by far the most reasonably priced genuine plate work obtainable anywhere.

Benton craftsmen have evolved the most economic method devised for producing genuine plate engraving.

All of the said statements, together with similar statements appearing in respondent's other advertising matter, purport to be descriptive of respondent's business and the sales methods used in disposing of the products manufactured and sold by it. In the various catalogs, letters, and other literature distributed by respondent, there appear numerous statements wherein the respondent refers to the process by which it prints letters, words, and designs on stationery as a process of engraving and refers to the products manufactured by it as being genuine plate engraving and to the respondent as an engraver.

PAR. 3. 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 engraving, 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. 4. 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, under pressure, of 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 in the foregoing paragraph.

PAR. 5. The cost of producing genuine engraved stationery greatly exceeds the cost of producing stationery of like stock, grade, or character produced by the process employed by respondent, as set out herein, or produced by any printing process, and a substantial portion of the purchasing public has indicated, and has, a decided preference for engraved stationery over stationery produced by respondent's process or any similar process.

PAR. 6. The use by the respondent of the words "engraving," "plate engraved," "plate engraving," or "engravers," either in describing its products or designating its business, in offering for sale and selling its stationery products, had, and now has, the tendency and capacity to, and did, and 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" or "plate 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" or "plate engraved," and are the result of the engraving process described in paragraph 3 hereof.

PAR. 7. In truth and in fact, all of the statements and representations made by respondent are false and misleading. The respondent is not an engraver and the stationery offered for sale and sold by it is not engraved stationery, but is, in truth and in fact, a printed product. Respondent's stationery is produced by printing on a printing press, and after it is printed it is allowed to dry for a day, and then the printing is "bumped up" or embossed by the use of a plate. The plate is engraved by the pantograph method, principally an acid etch, and an engraving tool is used only for touching up imperfections. The respondent does not print from the plate, by inking the plate and

printing therefrom in the manner employed by genuine engravers, but the plate is used only for embossing or raising the printed letters above the plane of the paper. The plate is used dry, and is not inked for each impression as is the practice of engravers. It is absolutely essential to the true engraving process that the plate be inked and the impression taken on a blank paper from the inked plate in one operation. Respondent's products are not produced in this manner, and cannot properly be represented or described as "engraving," but rather as "raised printing."

PAR. 8. In the conduct of its business as hereinbefore set out, respondent is in competition with various persons, partnerships, and corporations who are engaged in the sale and distribution of stationery products for social and business purposes. Said competitors cause said products, when sold, to be transported from their respective places of business to the purchasers thereof located in the various States of the United States other than the State of the origin of such shipments and located in the District of Columbia. Among such competitors in commerce between and among the several States and in the District of Columbia are those who produce and sell genuine engraved stationery products and truthfully describe themselves as engravers and their products as engraving. There are others who sell non-engraved stationery products who do not represent that they are engravers or that their products are engraving.

PAR. 9. The acts and practices of the respondent as above set out, in designating, describing, and referring to itself as an "engraver" and to its stationery products as "engraving," "engraved," or "genuine plate engraving" have the capacity and tendency to, and do, mislead and deceive a substantial number of the purchasing public into the mistaken belief that respondent is an engraver and that its stationery products are produced by the genuine engraving process known to the trade and public generally.

As a direct consequence of the aforesaid mistaken and erroneous beliefs induced by the acts, advertisements, and representations of respondent as hereinbefore set out, a substantial number of the consuming public has purchased a substantial volume of respondent's stationery products, with the result that trade has been unfairly diverted to respondent from its aforesaid competitors who do not misrepresent their business status, the character and nature of their respective products, or the process by which they are produced. As a result thereof, trade in said commerce has been, and is, unfairly diverted to the respondent from its competitors in said commerce to their injury, and to the injury of the public.

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 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 Merle P. Lyon, counsel for the Commission, and by Carlton A. Fisher, 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, Benton Announcements, 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 stationery products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "engraved," "engraving," or "engravers," either alone or in conjunction with any other word or words, to designate, describe, or refer to stationery products on which the lettering, inscriptions, or designs have been printed from inked type faces, electrotypes, or similar devices, and which lettering, inscriptions, or designs have been given a raised letter effect by an embossing process wherein the plates used have not been previously inked so as to make an inked impression on the paper stock at the time the embossing impression is made.

2. Using the words "engraved," "engraving," or "engravers," either alone or in conjunction with any other word or words, to designate, describe, or refer to stationery products, or the nature or character of respondent's business, unless and until the respondent produces the stationery products so designated, described, or referred to 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 on the plate, so that the ink in such plate adheres to the sta-

tionery 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 of this order, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

SAMUEL BENENSOHN AND L. BENENSOHN, TRADING AS KANT-SLIP MANUFACTURING COMPANY

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

Docket 3963. Complaint, Dec. 7, 1939—Decision, Sept. 18, 1940

Where two individuals engaged in the manufacture, sale, and distribution of their Kant-Slip Belt Dressing to purchasers in various other states and in the District of Columbia—

Represented, through circulars, pamphlets, folders, and other written or printed matter, distributed, or caused to be distributed to prospective purchasers, that their said product was a positive preservative for leather, canvas, and fiber belts, and that use thereof would prolong life of such belts and make and keep them soft and pliable, facts being product in question, which consisted principally of resin and denatured alcohol, would not accomplish such results by use thereof on leather belts, had solvent action on oils and greases of leather, and tended to remove same, and cause leather to become dry and brittle;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and claims were true and causing substantial portion of such public, because of such belief, to purchase their 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 acts and practices in commerce.

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

Mr. Jesse D. Kash for the Commission.

Siegal, Charlens & Seyfarth, of Chicago, Ill., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Samuel Benelsohn and L. Benensohn, individuals, trading as Kant-Slip Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Samuel Benensohn and L. Benensohn are individuals trading and doing business under the name of Kant-Slip Manufacturing Co., with their principal place of business located at 451 East Sixty-third Street, Chicago, Ill.

PAR. 2. In the course and conduct of their aforesaid business, respondents Samuel Benensohn and L. Benensohn are now, and for more than 1 year last past have been engaged in the manufacture, sale, and distribution of a belt dressing known as "Kant-Slip Belt Dressing." Respondents cause their product, when sold by them, to be transported from their 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.

Respondents maintain and at all times mentioned herein have maintained a course of trade in said belt dressing 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 and for the purpose of inducing the purchase of their said belt dressing, said respondents have made and now make, by means of circulars, pamphlets, folders, and other written or printed matter distributed and caused to be distributed to prospective purchasers, many representations and statements concerning the nature and quality of their said belt dressing and the results that may be expected from the use thereof. Among and typical of such representations and statements made by respondents are the following:

Kant-Slip Dressing is a positive preservative! Prolongs the life of leather, canvas and fiber belts making and keeping the belt soft and pliable. Water and oil proof.

PAR. 4. Through the use of the representations herein above set forth and others similar thereto not specifically herein set out, all of which purport to be descriptive of the preservative and beneficial effects of the use of respondents' product, the respondents have represented and do now represent that their said product is a positive preservative for leather, canvas, and fiber belts and that its use will prolong the life of leather, canvas, and fiber belts and that it will make and keep belts made of said materials soft and pliable.

The aforesaid representations are grossly exaggerated, misleading, and untrue. In truth and in fact, respondents' belt dressing is not a preservative for leather, canvas, or fiber belts. The use of said product will not prolong the life of leather, canvas, or fiber belts, and its use will not make said belts soft or pliable. Said product consists principally of rosin and denatured alcohol, neither of which is a preservative, and in fact the use of said product on leather belts has a solvent action on the oils and greases in the leather and tends to remove them and causes the leather to become dry and brittle.

PAR. 5. The use by the respondents of the foregoing false, deceptive, and misleading statements, representations, and claims with respect to

their said product, 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 respondents' product.

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 December 7, 1939, issued and on December 8, 1939, served its complaint in this proceeding upon respondents Samuel Benensohn and L. Benensohn, individuals, trading and doing business under the name of Kant-Slip Manufacturing Co., charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. The respondent, Samuel Benensohn, on December 26, 1939, filed his answer in this proceeding. No answer was filed on behalf of L. Benensohn. Thereafter it was stipulated and agreed between Irvin J. Siegel, counsel for the respondents, and S. Brogdyne Teu, II, trial attorney for the Commission, that a statement of facts read into the record at a hearing held in Chicago, Ill., June 7, 1940, might be taken as the facts in this proceeding in lieu of testimony in support of the charges of the complaint or in opposition thereto. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Samuel Benensohn and L. Benensohn are individuals trading and doing business under the name of Kant-Slip Manufacturing Co., with their principal place of business located at 451 East Sixty-third Street, Chicago, Ill.

PAR. 2. In the course and conduct of their aforesaid business respondents are now and for more than 1 year last past have been engaged in the manufacture, sale, and distribution of a belt dressing

known as "Kant-Slip Belt Dressing." Respondents cause their product when sold by them to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof located in various States of the United States other than the State of Illinois, and in the District of Columbia. Respondents maintain and at all times mentioned herein have maintained a course of trade in said belt dressing 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 and for the purpose of inducing the purchase of their said belt dressing, said respondents have made and now make, by means of circulars, pamphlets, folders, and other written or printed matter, distributed and caused to be distributed to prospective purchasers, many representations and statements concerning the nature and quality of their said belt dressing and the results that may be expected from the use thereof. Among and typical of such representations and statements so made by respondents are the following:

Kant-Slip Dressing is a positive preservative! Prolongs the life of leather, canvas and fiber belts making and keeping the belt soft and pliable. Water and oil proof.

PAR. 4. Through the use of the representations hereinabove set forth and others similar thereto not specifically herein set out, all of which purport to be descriptive of the preservative and beneficial effects of the use of respondents' product, the respondents have represented, and do now represent, that their said product is a positive preservative for leather, canvas, and fiber belts and that its use will prolong the life of leather, canvas, and fiber belts and that it will make and keep belts made of said materials soft and pliable.

The aforesaid representations are not true. Respondents' belt dressing is not a preservative for leather, canvas, or fiber belts. The use of said product will not prolong the life of leather, canvas, or fiber belts, and its use will not make said belts soft or pliable. Said product consists principally of resin and denatured alcohol, neither of which is a preservative, and in fact the use of said product on leather belts has a solvent action on the oils and greases in the leather and tends to remove them and cause the leather to become dry and brittle.

PAR. 5. The use by the respondents of the foregoing statements, representations, and claims with respect to their said product, 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 respondents' product.

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, answer of respondent Samuel Benensohn, and a stipulation as to the facts entered into between counsel for the Commission and counsel for the respondents, said stipulation having been approved by the Commission, 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, Samuel Benensohn and L. Benensohn, individuals trading as Kant-Slip Manufacturing 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 their product designated "Kant-Slip Belt Dressing," or any other product composed of substantially similar ingredients, 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:

Representing that said belt dressing will preserve, or prolong the life of, leather, canvas, or fiber belts, or that said belt dressing will make such belts soft or pliable.

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

SEKOV CORPORATION, EDWIN H. VOKES, AND HAZEL RUTH VOKES

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

Docket 4061. Complaint, Mar. 12, 1940—Decision, Sept. 18, 1940

Where two individuals and a corporation, of which they were the sole stockholders and which they actively managed and business of which they controlled, engaged in sale and distribution of drug preparation advertised and known as "Sekov Reducer" and as "Sekov," and offered and sold as treatment for obesity; in advertisements which, prior to issuance of temporary restraining order by United States District Court, they disseminated and caused to be disseminated concerning their said preparation through newspapers and periodicals having general circulation, through the mails and otherwise, and which were intended and likely to induce purchase thereof—

(*a*) Represented that their said product constituted a scientific treatment for obesity which guarded the health of the user and acted entirely on a corrective principle, facts being, it was not such a treatment when administered without thorough medical examination and scientific care and observation, constituted treatment for obesity only when used by persons suffering from hypothyroidism, would be improper and ineffective in cases in which condition was due to dysfunctioning of the pituitary gland and to excess intake of food, and did not guard health of user or act on corrective principle due to effect of intake of thyroid on rate of metabolism and, on the contrary, might be dangerous and injurious to health and life of user unless extent of process was carefully coordinated to exact needs of persons suffering from hypothyroidism;

(*b*) Represented that, unlike harsh methods of reducing, it did not contain cathartics or dangerous drugs and did not reduce by merely tearing down fatty cells, facts being use thereof was harsh or strenuous method of reducing for reasons set forth, it did contain cathartics and dangerous drugs in presence therein of rhubarb, cascara sagrada, aloin, and bile salts, tendency of which is to dehydrate body tissues, and contained furthermore, dangerous drug, extract of thyroid; and

(*c*) Represented that said preparation was made for reaching the glands, whose faulty function is cause of most overweight, and that it regulated action of glands gently and gradually and took off fat without weakening the body, and was especially prepared to be effective in reducing practically all cases of overweight, and reduced by normalizing body, facts being, it was not made for reaching or nourishing glands whose faulty function is cause of most overweight, only gland substances therein were whole ovarian and pituitary substances and thyroid substance, effect of which latter is to supply thyroxin to system but not to rejuvenate thyroid gland, and it did not regulate action of glands gently and gradually, or at all, and, while use thereof might result in taking off fat by accelerating rate of metabolism, it might seriously weaken body and organs thereof, including heart, and it was not effective in reducing practically all cases of

overweight for reason of limitations, as above described, or drug, extract of thyroid and fact that most overweight is caused by excessive intake of food, and it would not accomplish reduction of weight or fat by normalizing body; and

(*d*) Failed to reveal in their advertisements that preparation contained, as aforesaid, dangerous drug extract of thyroid, and to reveal facts material in light of such representations or material with respect to consequences which might result from use of commodity under conditions prescribed in advertisements or under such conditions as are customary or usual;

With effect of misleading and deceiving portion of purchasing public into erroneous and mistaken belief that such false statements, claims and representations and advertisements were true, and that said preparation was a safe, scientific, and effective treatment for obesity, and of inducing or being likely to induce, directly or indirectly, purchase thereof by public:

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. Gerard A. Rault for the Commission.

Mr. Harold E. Prudhon, of Los Angeles, Calif., for respondents.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Edwin H. Vokes, and Hazel Ruth Vokes, individuals, trading as Sekov Reducing Studios, and Sekov Corporation, 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 to the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondents, Edwin H. Vokes and Hazel Ruth Vokes, are individuals trading as Sekov Reducing Studios with their office and principal place of business located at 6404 Hollywood Boulevard, Hollywood, Calif. Respondent, Sekov Corporation, is a corporation organized, existing, and doing business under the laws of the State of California with its office and principal place of business located at 6404 Hollywood Boulevard, Hollywood, Calif. Respondents are now, and for several years past have been, engaged in the sale and distribution of a drug preparation advertised and known as "Sekov Reducer" and as "Sekov," which preparation has been offered for sale and sold as a treatment for obesity.

Par. 2. 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 inser-

tion 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 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 preparation, and have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their preparation, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their preparation in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false statements, claims and representations contained in said newspaper advertisements, disseminated and caused to be disseminated as aforesaid, are the following:

From FAT 48 to SLIM 34

(Figure of Woman) Weight 212 Weight 128 (Figure of Woman)

SeKov

A PHYSICIAN'S PRESCRIPTION

Registered in Washington, D. C. Reduce by normalizing the body. SEKOV is a scientific preparation of extracts, herbs and tonics. Therefore it assists to control and regulate those factors which have caused the overweight. REDUCE with ease, no rigid diet, no strenuous exercise, no loss of time from your daily tasks. No Dinitrophenol, no cathartics.

Testimonials on file at office.

FREE BOOKLET tells how SEKOV helps reduce quickly—pleasantly—inexpensively. Write or phone for it today. E4.

Name_____

Street_____

City and State_____

SeKov Reducing Studios

San Francisco—209 Post St., Rm. 1005E.
Oakland—1440 Broadway.
Sacramento—614 Forum Bldg.
San Jose—Bank of America Bldg.

REDUCE

(Figure of Woman) For Charm Health Beauty with SEKOV

If you are troubled with overweight, feel below par, tried nearly everything to reduce, take heart. Read what one of our many satisfied users has to say about SEKOV.

"I have taken SEKOV for four months and my weight is almost normal again. I am recommending SEKOV to my overweight friends. My weight was reduced from 145 to 123 pounds, and my bust from 39 to 34 inches." Mrs. D. P.—Huntington Park.

FREE BOOKLET!

If you are really sincere in your desire to reduce, send for your booklet today!

SEKOV REDUCING STUDIOS

Dept. 302, 6404 Hollywood Blvd., Hollywood, California, or Telephone GLadstone 2154.

In addition to the foregoing advertisements and others of similar character, respondents have disseminated and are now disseminating through the United States mails false advertisements by means of a book or pamphlet bearing on its outer cover the following words:

SEKOV

The Path to SLENDERNESS

(Picture of slender woman)

A Scientific Reducer.

* * *

No Rigid Diet.

* * *

No Strenuous Exercises.

Among the various statements, claims and representations contained in said publication are the following:

SEKOV AIMS TO GUARD YOUR HEALTH!

Grateful users of Sekov say that as their weight lessens, their pep and energy returns, they feel better than ever before. This is because Sekov acts entirely on a *corrective* principle. Unlike harsh methods of reducing—cathartics, starvation diets, strenuous exercise, dangerous drugs, etc.—it does not reduce by merely tearing down fatty cells and leaving the dead cells as a poison to the system. Sekov is made for reaching the *glands* whose faulty function is the cause of most overweight; for regulating their action gently and gradually, for taking off the fat without weakening the body.

By the dissemination of the aforesaid statements, claims, and representations, respondents have represented and are now representing, directly and indirectly, that their said preparation advertised and sold as "Sekov Reducer" and as "Sekov" is a scientific treatment for obesity; that said preparation guards the health of the user; that it acts entirely on a corrective principle; that unlike harsh methods of reducing it does not contain cathartics or dangerous drugs; that it does not reduce by merely tearing down fatty cells; that it is made for reaching the glands whose faulty function is the cause of most overweight; that it regulates the action of the glands gently and grad-

ually; that it takes off the fat without weakening the body; that it is especially prepared to be effective in reducing practically all cases of overweight; and that it reduces by normalizing the body.

PAR. 3. The aforesaid statements, claims, and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading, and untrue.

In truth and in fact said preparation advertised and known as "Sekov's Reducer" and as "Sekov" is not a scientific treatment for obesity when administered without a thorough medical examination and without scientific care and observation, and constitutes a treatment for obesity only when used by persons suffering from hypothyroidism. Obesity may be due to several causes, including the dysfunctioning of the pituitary gland and to excess intake of food, in which cases the use of said preparation will be improper and ineffective. Said preparation does not guard the health of the user and does not act on a corrective principle for the reason that the effect of the intake of thyroid accelerates the rate of metabolism whereby the tissues, especially fatty tissues, are burned more rapidly than is normal, and such a process is dangerous and may be injurious to the health and life of the user unless the extent of such process is carefully coordinated to the exact needs of the person suffering from hypothyroidism. The use of said preparation is a harsh or strenuous method of reducing for the reasons herein set forth. Said preparation does contain cathartics and dangerous drugs in that Capsule No. 1 of said preparation contains rhubarb, cascara sagrada, aloin and bile salts, all of which are cathartics, and all of which tend to dehydrate the body tissues. In addition said preparation contains the dangerous drug, extract of thyroid. Said preparation is not made for reaching the glands or nourishing the glands whose faulty function is the cause of most overweight. The only gland substances in said preparation are whole ovarian substance, whole pituitary substance and thyroid substance, all of which are inert when taken by mouth except thyroid substance, and the effect of thyroid gland substance is to supply thyroxin to the system but not to rejuvenate the thyroid gland. Said preparation does not regulate the action of the glands gently and gradually or at all. The use of said preparation, although it may result in taking off fat by accelerating the rate of metabolism, may seriously weaken the body and the organs of the body, including the heart. Said preparation is not effective in reducing practically all cases of overweight for the reason that the drug extract of thyroid is effective only in the treatment of obesity in cases in which the patient is suffering from hypothyroidism. Most overweight is caused by excessive intake of food. Said preparation does not accomplish reduction of weight or fat by normalizing the body.

Furthermore, said statements, claims, and representations constitute false advertisements in that they fail to reveal that said preparation contains a dangerous drug, extract of thyroid, and fail to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions which are customary or usual.

PAR. 4. The use by the respondents of the foregoing false, deceptive, and misleading statements, claims, representations, and advertisements, disseminated as aforesaid, with respect to respondents' 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, claims, representations, and advertisements are true and that said preparation is a safe, scientific, and effective treatment for obesity, and induces or is likely to induce, directly or indirectly, the purchase by the public of respondents' said preparation.

PAR. 5. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts 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 12th day of March A. D. 1940, issued and subsequently served its complaint in this proceeding upon the respondents, 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, charging them with unfair and deceptive acts or practices in commerce in violation of the provisions of said act. On May 1, 1940, 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 Harold E. Prudhon, counsel for said respondents, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that 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 regu-

larly 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 respondents Edwin H. Vokes and Hazel Ruth Vokes are individuals who until November 24, 1939, traded as Sekov Reducing Studios, with their office and principal place of business located at 6404 Hollywood Boulevard, Hollywood, Calif. Respondent Sekov Corporation is a corporation incorporated under the laws of the State of California on November 24, 1939, and since that date has been existing and doing business under the laws of the State of California, with its principal office and place of business located at 6404 Hollywood Boulevard, Hollywood, Calif. Respondents Edwin H. Vokes and Hazel Ruth Vokes since the date of the incorporation of respondent corporation have been its sole stockholders and have actively managed said corporation and controlled its business policies. Respondents Edwin H. Vokes and Hazel Ruth Vokes, trading as Sekov Reducing Studios, until the creation of Sekov Corporation in 1939 were, and respondent corporation since the date of its incorporation has been, engaged in the sale and distribution of a drug preparation advertised and known as "SEKOV REDUCER" and as "SEKOV", which preparation has been offered for sale and sold for a treatment of obesity.

PAR. 2. In the course and conduct of their aforesaid business and until February 15, 1940, the date of the issuance by the United States District Court of the temporary restraining order in this matter the respondents disseminated and caused the dissemination of various advertisements concerning their said preparation by United States mails, by insertion in newspapers and periodicals having a general circulation, and also in circulars or other printed and written matter, all of which are distributed in commerce among and between the various states of the United States, and by other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce directly or indirectly, the purchase of said preparation, and have disseminated and have caused the dissemination of 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 preparation in commerce, as commerce is defined in the Federal Trade

Commission Act. Among and typical of the statements, claims, and representations contained in said newspaper advertisements disseminated and caused to be disseminated as aforesaid, are the following:

From FAT 48 to SLIM 34

(Figure of Woman) Weight 212 Weight 128 (Figure of Woman)

SeKov

A PHYSICIAN'S PRESCRIPTION

Registered in Washington, D. C.

Reduce by normalizing the body.

SEKOV is a scientific preparation of extracts, herbs and tonics, therefore it assists to control and regulate those factors which have caused the overweight. REDUCE with ease, no rigid diet, no strenuous exercise, no loss of time from your daily tasks. No Dinitrophenol, no cathartics.

Testimonials on file at office.

FREE BOOKLET tells how Sekov helps reduce quickly—pleasantly—inexpensively, Write or phone for it today. E4.

Name_____

Street_____

City and State_____

SEKOV REDUCING STUDIOS

San Francisco—209 Post St., Rm. 1005E.

Oakland—1440 Broadway.

Sacramento—614 Forum Bldg.

San Jose—Bank of America Bldg.

REDUCE

For Charm Health Beauty with SEKOV

(Figure of Woman)

If you are troubled with overweight, feel below par, tried nearly everything to reduce, take heart. Read what one of our many satisfied users has to say about SEKOV.

"I have taken SEKOV for four months and my weight is almost normal again. I am recommending SEKOV to my overweight friends. My weight was reduced from 145 to 123 pounds, and my bust from 39 to 34 inches." Mrs. D. P. — Huntington Park.

FREE BOOKLET!

If you are really sincere in your desire to reduce, send for your booklet today!

SEKOV REDUCING STUDIOS

Dept. 302, 6404 Hollywood Boulevard, Hollywood, California, or Telephone GLadstone 2154.

In addition to the foregoing advertisements and others of similar character, respondents disseminated and caused the dissemination, through the United States mails, advertisements by means of a book or pamphlet bearing on its outer cover the following words:

SEKOV

The Path to SLENDERNESS

(Picture of slender woman)

A Scientific Reducer.

* * *

No rigid Diet.

* * *

No Strenuous Exercises.

Among the various statements, claims, and representations contained in said publication are the following:

SEKOV AIMS TO GUARD YOUR HEALTH!

Grateful users of Sekov say that as their weight lessens, their pep and energy returns, they feel better than ever before. This is because Sekov acts entirely on a *corrective* principle. Unlike harsh methods of reducing—cathartics, starvation diets, strenuous exercise, dangerous drugs, etc.—it does not reduce by merely tearing down fatty cells and leaving the dead cells as a poison to the system. Sekov is made for reaching the *glands* whose faulty function is the cause of most overweight; for regulating their action gently and gradually, for taking off the fat without weakening the body.

By the dissemination of the aforesaid statements, claims and representations, respondents represented, directly and indirectly, that their said preparation advertised and sold as "SEKOV REDUCER" and as "SEKOV" is a scientific treatment for obesity; that said preparation guards the health of the user; that it acts entirely on a corrective principle; that unlike harsh methods of reducing it does not contain cathartics or dangerous drugs; that it does not reduce by merely tearing down fatty cells; that it is made for reaching the glands whose faulty function is the cause of most overweight; that it regulates the action of the glands gently and gradually; that it takes off the fat without weakening the body; that it is especially prepared to be effective in reducing practically all cases of overweight; and that it reduces by normalizing the body.

PAR. 3. The aforesaid statements, claims, and representations used and disseminated by the respondents in the manner above described are grossly exaggerated, misleading and untrue. In truth and in fact, said preparation advertised and known as "SEKOV REDUCER" and as "SEKOV" is not a scientific treatment for obesity when administered

without a thorough medical examination and without scientific care and observation, and constitutes a treatment for obesity only when used by persons suffering from hypothyroidism. Obesity may be due to several causes, including the dysfunctioning of the pituitary gland and to excess intake of food, in which cases the use of said preparation will be improper and ineffective. Said preparation does not guard the health of the user and does not act on a corrective principle for the reason that the effect of the intake of thyroid accelerates the rate of metabolism whereby the tissues, especially fatty tissues, are burned more rapidly than is normal, and such a process may be dangerous and may be injurious to the health and life of the user unless the extent of such process is carefully coordinated to the exact needs of the person suffering from hypothyroidism. The use of said preparation is a harsh or strenuous method of reducing for the reasons herein set forth. Said preparation does contain cathartics and dangerous drugs in that Capsule No. 1 of said preparation contains rhubarb, cascara sagrada, aloin and bile salts, all of which are cathartics, and all of which tend to dehydrate the body tissues. In addition said preparation contains the dangerous drug, extract of thyroid. Said preparation is not made for reaching the glands or nourishing the glands whose faulty function is the cause of most overweight. The only gland substances in said preparation are whole ovarian substance, whole pituitary substance and thyroid substance, and the effect of thyroid gland substance is to supply thyroxin to the system but not to rejuvenate the thyroid gland. Said preparation does not regulate the action of the glands gently and gradually or at all. The use of said preparation, although it may result in taking off fat by accelerating the rate of metabolism, may seriously weaken the body and the organs of the body, including the heart. Said preparation is not effective in reducing practically all cases of overweight for the reason that the drug extract of thyroid is effective only in the treatment of obesity in cases in which the patient is suffering from hypothyroidism. Most overweight is caused by excessive intake of food. Said preparation does not accomplish reduction of weight or fat by normalizing the body.

Furthermore, said statements, claims, and representations constitute false advertisements in that they fail to reveal that said preparation contains a dangerous drug, extract of thyroid, and fail to reveal facts material in the light of such representations of material with respect to consequences which may result from the use of said commodity under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use by the respondents of the foregoing false, deceptive and misleading statements, claims, representations and advertisements, disseminated as aforesaid, with respect to respondents' preparation, has had the capacity and tendency to and did mislead and deceive a portion of the purchasing public into the erroneous and mistaken belief that such false statements, claims, representations and advertisements are true and that said preparation is a safe, scientific and effective treatment for obesity, and induces or is likely to induce, directly or indirectly, the purchase by the public of respondents' said preparation.

CONCLUSION

The aforesaid acts and practices of the respondents, 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, 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 Harold E. Prudhon, counsel for 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 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, 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 officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of a medicinal preparation for treatment of obesity advertised as Sekov Reducer and as Sekov, or any other preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same or any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in

commerce as commerce is defined in the Federal Trade Commission Act, which advertisement represents, directly, or through inference, 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 advertisement fails to reveal all facts material in the light of the representations made with respect to such product and fails to reveal that the use of said preparation under the conditions prescribed in said advertisement or under such conditions as are customary or usual may result in serious or irreparable injury to the health of the user.

2. 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 advertisement contains any of the representations prohibited in paragraph 1, hereof, or which advertisement fails to reveal all facts material in the light of the representations made with respect to and fails to reveal that the use of said preparation under the conditions prescribed in said advertisement or under such conditions as are customary or usual may result in serious or irreparable injury to the health of the user.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order file with the Commission an interim report in writing stating whether they intend to comply with this order and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, said respondents shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

W. C. ALLEN CANDY COMPANY, INC.

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

Docket 4156. Complaint, June 4, 1940—Decision, Sept. 18, 1940

Where a corporation engaged in sale and distribution of candy and confectionery products, including certain assortments which were sold, packed, and assembled so as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof and which included (1) various containers, candy, a suitcase, and a punchboard for use in sale and distribution of such containers, candy, and other merchandise to the consuming public under a plan and in accordance with said board's explanatory legend by which amount, if any, paid for chances and ranging from 1 to 5 cents was determined by kind of number punched, and by which certain specified numbers from the 400 concealed on board entitled purchasers to receive bars of candy, purchaser of last punch on board received suitcase, and purchasers failing to secure such specified numbers or make last punch received nothing for money paid other than privilege of making punch; and (2) various other similar assortments of merchandise along with punchboards involving lot or chance feature and varying in detail only from that above described—

Sold such assortments along with punchboards, as above set forth, to jobbers, wholesalers, and retailers by whom as direct or indirect purchasers such assortments were exposed and sold to purchasing public in accordance with aforesaid sales plans, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its merchandise in accordance with plan above set forth, involving game of chance or sale of chance to procure candy or other 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 method contrary to public policy and refrain therefrom;

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

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

Mr. L. P. Allen, Jr., for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. C. Allen Candy Co., Inc., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent W. C. Allen Candy Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 1028 East Burnside Street, Portland, Oreg. Respondent is now, and for more than 10 years last past has been, engaged in the sale and distribution of candy and confectionery in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy and confectionery, when sold, to be transported from its place of business as aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Oregon, and in the District of Columbia. There is now, and has been for more than 10 years 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, the respondent is and has been in competition with other corporations and individuals 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 its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesalers, jobbers, and retail dealers assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of various containers, candy, and a suitcase, together with the device commonly called and known as a punchboard. Said containers, candy, and other merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: There are 400 numbers concealed in said board, which bears the statement that players punching numbers ending in 0 pay

nothing; those punching numbers ending 1 pay 1 cent per punch; those punching numbers ending in 2 pay 2 cents, and so on. Those punching numbers ending in from 5 to 9 pay only 5 cents each. The board also bears a statement informing purchasers or prospective purchasers that certain specified numbers entitle the purchasers thereof to receive boats of candy, and the purchaser of the last punch on the board receives a suitcase. A purchaser who does not punch one of the specified numbers receives nothing for his money other than the privilege of punching a number from the board. All of the numbers are effectively concealed from purchasers or prospective purchasers until the punch is selected and made, and the number punched or separated from the board. The said candy and merchandise 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 merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said 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 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 candy or other 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 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. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 4, 1940, issued and subsequently served its complaint in this proceeding upon respondent, W. C. Allen Candy Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent W. C. Allen Candy Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business located at 1028 East Burnside Street, Portland, Oreg. Respondent is now, and for more than 10 years last past has been, engaged in the sale and distribution of candy and confectionery products in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said candy and

confectionery products, when sold, to be transported from its place of business as aforesaid to purchasers thereof, at their respective points of location, in the various States of the United States other than the State of Oregon, and in the District of Columbia. There is now, and has been for more than 10 years 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, the 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 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 sells and has sold to wholesalers, jobbers, and retail dealers assortments of merchandise so packed or assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of various containers, candy, and a suitcase, together with the device commonly called and known as a punchboard. Said containers, candy, and other merchandise are sold and distributed to the consuming public by means of said punchboard in the following manner: There are 400 numbers concealed in said board, which bears the statement that players punching numbers ending in 0 pay nothing; those punching numbers ending in 1 pay 1 cent per punch; those punching numbers ending in 2 pay 2 cents, and so on. Those punching numbers ending in from 5 to 9 pay only 5 cents each. The board also bears a statement informing purchasers or prospective purchasers that certain specified numbers entitle the purchasers thereof to receive boats of candy, and the purchaser of the last punch on the board receives a suitcase. A purchaser who does not punch one of the specified numbers receives nothing for his money other than the privilege of punching a number from the board. All of the numbers are effectively concealed from purchasers or prospective purchasers until the punch is selected and made, and the number punched or separated from the board. The said candy and merchandise 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 merchandise along with punchboards involving a lot or chance feature, but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said merchandise, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said 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 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 candy or other 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 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 allega-

tions 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, W. C. Allen Candy 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 candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others candy or 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 candy or 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 or distributing any 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 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 COHEN, SOL COHEN AND MARVYN COHEN, INDIVIDUALLY, AND TRADING AS COHEN'S CUT RATE DRUG STORE, AND AS COHEN DRUG CO., AND AS COHEN'S

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

Docket 4202. Complaint, July 30, 1940—Decision, Sept. 18, 1940

Where three individuals who owned and operated a chain of drug stores in West Virginia and were engaged in sale and distribution of various medicinal preparations, including product designated as Soluble Gelatin Capsules No. 5, Apiol, and Ergotin Compound, and advertised and sold as Lady Lydia Capsules; in advertisements which they disseminated or caused to be disseminated concerning their said product through the mails and through various other means in commerce and through various means, and which were intended and likely to induce purchase thereof—

(a) Represented that their said product designated and advertised and sold as above set forth constituted a competent and effective treatment for delayed menstruation and was safe and harmless, facts being it was not such a treatment, was not safe or harmless, but contained drugs apiol green, ergotin, oil of savin, and aloin, in quantities sufficient to cause serious and irreparable injury to health if used under conditions prescribed in advertisements in question, or such conditions as are customary or usual, and use thereof might result in a toxic condition and other serious consequences, including blood poisoning or septicemia; and

(b) Failed to reveal in advertisements in question that use of said preparation under conditions prescribed therein, or such conditions as are customary or usual, might result in serious and irreparable injury to health;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such statements, representations, and advertisements were true, and that such preparation was safe, competent, and effective treatment for aforesaid condition, and to induce, directly or indirectly, purchase thereof by public:

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

Mr. R. P. Bellinger for the Commission.

Mr. Philip Angel and *Mr. Harry R. Angel*, of Charleston, W. Va., 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 Louis Cohen, Sol Cohen, and Marvyn Cohen, individually, and trading as Cohen's Cut

Rate Drug Store, and as Cohen Drug Co., and as Cohen's, 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 Louis Cohen, Sol Cohen, and Marvyn Cohen, are individuals trading and doing business under the names of Cohen's Cut Rate Drug Store, Cohen Drug Co., and Cohen's. The respondents own and operate a chain of drug stores in the State of West Virginia, with their warehouse and general offices located at 905 Virginia Street, East, in Charleston, W. Va., and their main store located at 160 Summers Street, Charleston, W. Va.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of various medicinal preparations. Among the various products sold and distributed by respondents is a drug preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound," and advertised and sold as "Lady Lydia Capsules."

PAR. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product, by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and respondents have also disseminated and are now disseminating, and have caused and are now causing the dissemination of false advertisements concerning their said product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by other advertising literature, are the following:

FOR DELAYED PERIODS

MODERN WOMEN USE

LADY LYDIA CAPS.

$5 BOX * * * $2.69

FOR DELAYED PERIODS

LADY LYDIA CAPSULES

$5 BOX * * * $2.69

FOR DELAYED PERIODS—SMART WOMEN PREFER

LADY LYDIA CAPSULES—5.00 BOX * * * $2.69

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not set out herein, the respondents have represented, directly and by implication, that their preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound" and advertised and sold as "Lady Lydia Capsules," is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondents as hereinabove set forth, are grossly exaggerated, false, and misleading. In truth and in fact, respondents' said preparation is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless, as it contains the drugs apiol green, ergotin, oil of savin, and aloin, 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 preparation may result in a toxic condition and excessive purgation, and may give rise to abortion, resulting in uterine infection with extension to other pelvic and abdominal structures, and even the blood stream, causing the condition known as blood poisoning or septicemia.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 6. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and that such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of respondents' said preparation.

PAR. 7. 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 July 30, 1940, issued and on July 31, 1940, served its complaint in this proceeding upon respondents, Louis Cohen, Sol (Saul) Cohen, and Marvyn Cohen, individually, and trading as Cohen's Cut Rate Drug Store, and as Cohen Drug Co., and as Cohen's, 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, 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. In said answer, however, the respondents alleged that they had, since February 1940, ceased advertising the medicinal preparation involved herein. 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 Louis Cohen, Sol (Saul) Cohen, and Marvyn Cohen are individuals trading and doing business under the names of Cohen's Cut Rate Drug Store, Cohen Drug Co., and Cohen's. The respondents own and operate a chain of drug stores in the State of West Virginia, with their warehouse and general offices located at 905 Virginia Street, East, in Charleston, W. Va., and their main store located at 160 Summers Street, Charleston, W. Va.

Par 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of various medicinal preparations. Among the various products sold and distributed by respondents is a drug preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound," and advertised and sold as "Lady Lydia Capsules."

Par. 3. In the course and conduct of their aforesaid business, the respondents have disseminated and have caused the dissemination of false advertisements concerning their said product, by the United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product; and respondents have also disseminated

and have caused the dissemination of false advertisements concerning their said product by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by other advertising literature, are the following:

FOR DELAYED PERIODS

MODERN WOMEN USE

LADY LYDIA CAPS.

$5 BOX * * * $2.69

FOR DELAYED PERIODS

LADY LYDIA CAPSULES

$5 BOX * * * $2.69

FOR DELAYED PERIODS—SMART WOMEN PREFER

LADY LYDIA CAPSULES—5.00 BOX * * * $2.69.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not set out herein, the respondents have represented, directly and by implication, that their preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound" and advertised and sold as "Lady Lydia Capsules," is a competent and effective treatment for delayed menstruation, and that said preparation is safe and harmless.

PAR. 5. The foregoing statements and representations used and disseminated by the respondents as hereinabove set forth, are grossly exaggerated, false, and misleading. In truth and in fact, respondents' said preparation is not a competent or effective treatment for delayed menstruation. Said preparation is not safe or harmless, as it contains the drugs apiol green, ergotin, oil of savin, and aloin, 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 preparation may result in a toxic condition and excessive purgation, and may give rise to abortion, resulting in uterine infection with extension to other pelvic and abdominal structures, and

even the blood stream, causing the condition known as blood poisoning or septicemia.

Said advertisements are also false in that they fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations, and advertisements are true, and that such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of respondents' said preparation.

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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Louis Cohen, Sol (Saul) Cohen, and Marvyn Cohen, individually, and trading as Cohen's Cut Rate Drug Store, and as Cohen Drug Co., and as Cohen's, 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 their medicinal preparation designated as "Soluble Gelatine Capsules No. 5, Apiol and Ergotin Compound," and as "Lady Lydia Capsules," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same name or under any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails, or (b) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act which advertisements represent, directly or through inference, that said preparation is a competent or effective treatment for delayed menstruation; that said preparation is safe or harmless; or which advertisements fail to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 contain any of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of said preparation may result in serious and irreparable injury to the health of the user.

It is further ordered, That the respondents shall, within 10 days after service upon them of this order, file with the Commission an interim report in writing, stating whether they intend to comply with this order and, if so, the manner and form in which they intend to comply; and that within 60 days after service upon them of this order, said respondents shall file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

QUEEN CITY CANDY COMPANY, INC.

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

Docket 4220. Complaint, Aug. 6, 1940—Decision, Sept. 18, 1940

Where a corporation engaged in manufacture of candy and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and which included (1) number of candy bars, together with push card for use in sale and distribution thereof to purchasers under a plan by which persons pushing by chance certain numbers received bar without cost, and others paid 1, 2, or 3 cents in accordance with number thus secured; and (2) various other similar assortments involving lottery or chance feature and varying only in detail from that described above—

Sold such assortments to dealer and retail purchasers by whom, as direct or indirect buyers, they were exposed and sold to purchasing public in accordance with aforesaid plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale and distribution of candy in accordance with sales plans or methods above set forth, involving game of chance or sale of a chance to procure bar of candy without cost or 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 sales plans or methods involving game of chance or sale of a chance to win something by chance, or any other sales plans or methods contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate consumers of said candy were attracted by such plans or methods employed by it in sale and distribution of its candy and element of chance involved therein, and were thereby induced to buy its said products in preference to candy offered and sold by said competitors who do not use such or equivalent sales plans or methods, and with result, through use of such sales plans or methods and because of said game of chance, of unfairly diverting trade to it from its said competitors who do not use such 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.

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 Queen City Candy

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

PARAGRAPH 1. Respondent, Queen City Candy Co., Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal office and place of business located at 531 Bruns Avenue, Charlotte, N. C. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes, and has caused, said candy, when sold, to be shipped or transported from its aforesaid place of business in the State of North Carolina to purchasers thereof in various other States of the United States 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 candy, in commerce, between and among various States of the United States. In the course and conduct of its business, respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold certain assortments of candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy together with a device commonly called a push card. Said bars of candy are distributed to the consumers thereof by means of said push card in substantially the following manner.

The push card contains a number of partially perforated disks, and on the face of each of said disks is printed the word "push." Within each of said disks is printed either the letter "o" or number 1, 2, or 3, and the persons pushing the disk containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the disks containing either number 1, 2, or 3 pay in cents the amount appearing on the disks pushed. The said numbers printed within the said disks are effectively concealed from purchasers and prospective purchasers until selections have been made and the disks separated or removed from said card. Whether a customer receives a bar of candy without cost or is required to pay

1 cent, 2 cents, or 3 cents therefor is thus determined wholly by lot or chance.

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

PAR. 3. Retail dealers who purchase respondent's said assortments of candy either directly or indirectly expose and sell the same to the purchasing public 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 and distribution 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.

PAR. 4. The sale of candy to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a bar of candy without cost or 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 sales plans or methods of any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said candy 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 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 sales plans or methods. The use of said sales plan or 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 sales plans or methods and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among various States of the United States.

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 6, 1940, issued and on August 7, 1940, served its complaint in this proceeding upon respondent, Queen City Candy Co., Inc., charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer, the Commission by order entered herein granted respondent's 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, Queen City Candy Co., Inc., is a corporation organized and doing business under the laws of the State of North Carolina, with its principal office and place of business located at 531 Bruns Avenue, Charlotte, N. C. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes, and has caused, said candy, when sold, to be shipped or transported from its aforesaid place of business in the State of North Carolina to purchasers thereof in various other States of the United States 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 candy, in commerce, between and among various States of the United States. In the course and conduct of its business, respondent is, and has been, in competition with other corporations and with individuals and partnerships engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold certain assortments of candy so packed and assembled as to involve the use of a game of chance, gift enterprise or lottery scheme, when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy together with a device commonly called a push card. Said bars of candy are distributed to the consumers thereof by means of said push card in substantially the following manner:

The push card contains a number of partially perforated disks, and on the face of each of said disks is printed the word "push." Within each of said disks is printed either the letter "o", or number 1, 2, or 3, and the persons pushing the disks containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the disks containing either number 1, 2, or 3 pay in cents the amount appearing on the disk pushed. The said numbers printed within the said disks are effectively concealed from purchasers and prospective purchasers until selections have been made and the disks separated or removed from said card. Whether a customer receives a bar of candy without cost or is required to pay 1 cent, 2 cents, or 3 cents therefor is thus determined wholly by lot or chance.

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

PAR. 3. Retail dealers who purchase respondent's said assortments of candy, either directly or indirectly, expose and sell the same to the purchasing public 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 and distribution 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.

PAR. 4. The sale of candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure a bar of candy without cost or 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 described, are unwilling to adopt and use said sales

plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said candy 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 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 sales plans or methods. The use of said sales plans or 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 sales plans or methods and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among 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 and the substitute answer of respondent, in which substitute answer respondent admits all the material allegations of fact set forth in said complaint and states that it waives all intervening procedure and further 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, Queen City Candy 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 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 are to be

made, or may be made, by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others assortments of candy or other merchandise together with push or pull cards, punchboards or other lottery devices, which said push or pull cards, punchboards or other lottery devices are to be used or may be used in selling or distributing said candy or any other 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 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 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

HILLS BROTHERS COMPANY, ET AL.

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

Docket 4105. Complaint, Apr. 25, 1940—Decision, Sept. 19, 1940

Where a domestic corporation engaged in importing into the United States dates grown in the Kingdom of Iraq, and in sale and distribution thereof in the various States of the United States and in the District of Columbia; an individual, doing business as English private company, with principal office and place of business in London, engaged in purchasing dates in said Kingdom or country and in importing them into United States and reselling and distributing them in the various States and in said District as aforesaid; and a domestic concern engaged in selling and distributing said products to purchasers thereof in the several States and in District in question; and as thus variously engaged in competition, prior to 1939, with others in England and the United States who purchased dates from growers in said Kingdom, source for 4 or 5 years past of some 83 percent of said product sold and consumed in the United States, and caused to be shipped to the United States and sold and distributed therein such dates in competition, as aforesaid, with said corporation, individual and concern, and their agents—

Reached, in year aforesaid, and carried out understanding with English owners of exclusive right to purchase, and to grant permission to purchase, all dates grown in said Kingdom of Iraq packed in boxes, whereby they were granted exclusive permission to purchase and pack for importation into the United States and Canada dates of 1939 crop grown in Iraq and packed in boxes, and whereby it was further understood that said English owners of such exclusive rights would not permit greater quantities of dates in question to be exported from Iraq to United States and Canada than the average quantity that had been thus exported in previous 5-year period;

With result that during year in question others, some of whom had formerly obtained dates grown in said kingdom for importation into United States, and sale and distribution therein, met with refusal of said English owners, on attempts to obtain such dates, to grant necessary permission and rights, and were unable to obtain said product there grown and packed in boxes for importation into the United States, and competition in interstate trade in commerce in products in question was substantially lessened, and competition between and among said companies or concerns and individual, and between and among them and their competitors, in sale of dates in commerce, was lessened and restrained, power to control prices was placed in them, and monopoly in sale of dates in commerce created in them, and such commerce was unreasonably restrained:

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

Mr. Lynn C. Paulson for the Commission.

Breed, Abbott & Morgan, of New York City, for Hills Bros. Co.

Tanzer & Mullaney, of New York City, for T. A. Suren and Joseph Essaye.

Mr. Henry C. Heppen, of New York City, for Steinhardter & Nordlinger.

Hill, Rivkins & Middleton, of New York City, for Balfour, Guthrie & Co., Ltd. and Persian Gulf Products Co.

Haight, Griffin, Deming & Gardner, of New York City, for Andrew Weir.

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 in the caption hereof 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 Hills Bros. Co. is a corporation organized and existing under and by virtue of the corporate laws of the State of New York, with its principal office and place of business at 110 Washington Street, New York City in said State.

Respondent T. A. Suren, an individual, is proprietor of E. Suren, an English private company engaged, in part, in selling and distributing dates, and having his principal office and place of business in Billiter Square Buildings, Billiter Square, London, E. C. 3, England.

Respondent Joseph Essaye is an individual serving as a traveling representative and agent for respondent T. A. Suren, proprietor of E. Suren, in the United States, and has his principal office and place of business with respondents, Steinhardter & Nordlinger, at 99 Hudson Street, New York, when in the United States.

Respondents Lester Nordlinger and Hund Steinhardter are copartners doing business and trading under the name of Steinhardter & Nordlinger, with their principal office and place of business at 99 Hudson Street, New York City, New York State. They are agents and factory representatives in the United States for respondent T. A. Suren, proprietor of E. Suren.

Respondent United Africa Co., Ltd., is an English private company engaged, in part, in trade and commerce in dates, with its principal office and place of business at Unilever House, London, England.

Respondent W. A. West is an individual, traveling agent and factory representative in the United States for respondent United Africa Co., Ltd., and makes his United States headquarters with respondent Balfour, Guthrie & Co., Ltd., at 67 Wall Street, New York, New York State.

Respondent Balfour, Guthrie & Co., Ltd., is a corporation organized and existing under the laws of the State of Delaware. It has its principal office and place of business at 67 Wall Street, New York City, New York, and acts as representative and sales agent of the said respondent United Africa Company, Ltd., and its subsidiary, African & Eastern Near East, Ltd., of Basrah, Iraq, and sells dates to respondent Persian Gulf Products Co., which is wholly owned and controlled by the said United Africa Co., Ltd., as hereinafter described.

Respondent Persian Gulf Products Co. is a Delaware corporation having its principal office and place of business at 67 Wall Street, New York City. It occupies the same office as respondent Balfour, Guthrie & Co., Ltd., and its officers are also officers of respondent Balfour, Guthrie & Co., Ltd. It is a wholly owned subsidiary of the Lebanon Trading Co., Ltd., Freetown, West Africa, which is in turn owned and controlled by respondent United Africa Co., Ltd.

Respondent Andrew Weir, an individual, is proprietor of Andrew Weir & Co., an English private company with his principal office and place of business at 21 Bury Street, St. Mary Axe, London E. C. 3, England.

PAR. 2. For more than 3 years last past a part of the commerce of the United States has consisted in the sale and transportation of dates grown in the Kingdom of Iraq and imported into the United States and in the sale and shipment of such dates through and into the several States of the United States and the District of Columbia, and there is now and has been for more than 3 years last past a constant current of trade and commerce in such dates between and among the several States of the United States and in the District of Columbia.

Respondents, during all the time referred to in this complaint, have been and now are engaged in said trade and commerce in dates and but for the matters and things hereinafter set out, would be naturally and normally in competition with each other and with other firms, partnerships, and corporations, in the business of importing dates into the United States and in the sale and distribution thereof in said trade and commerce in the United States.

For the past 4 or 5 years approximately 83 percent of the dates sold and consumed in the United States were grown in the Kingdom of Iraq, which produces about 80 percent of the world's supply of dates,

most of the remainder being produced in the Kingdom of Iran (Persia) and in the State of California in the United States. The quantity of dates annually imported and sold in the United States each year for the past few years has varied from, to wit, 700,000 to 900,000 cases, averaging in weight about 70 pounds per case. Of this quantity, respondent Hills Bros. Co. has imported and sold annually approximately 200,000 cases, or 14,000,000 pounds, and respondents T. A. Suren, proprietor of E. Suren, and United Africa Co., Ltd., have imported and sold most of the remainder.

Growers of dates in the Kingdom of Iraq until the year 1939 customarily sold their dates to respondents and to competitors of respondents, who resold and shipped such dates to wholesalers, brokers, and packers located in various parts of the world, including the United States.

In the early part of the year 1939 the Kingdom of Iraq entered into an agreement with the respondent Andrew Weir, proprietor of Andrew Weir & Co. of London, England, which provided, among other things, that said respondent should have the exclusive right to purchase all dates grown in the Kingdom of Iraq for export therefrom, and that said respondent in turn should buy and export a specific quantity of dates at specified prices from the growers thereof in the Kingdom of Iraq and that this agreement should run for a period of 5 years.

PAR. 3. Respondent T. A. Suren, proprietor of E. Suren, in the course and conduct of his said business, imports into the United States dates grown in the Kingdom of Iraq and sells and distributes or causes to be sold and distributed, substantial quantities of such dates each year to purchasers thereof located in the several States of the United States and in the District of Columbia through respondents Steinhardter & Nordlinger and through the assistance of its agent, respondent Joseph Essaye, who spends a portion of his time in the United States each year in connection with the date business of his said principal.

Respondent United Africa Co., Ltd., in the course and conduct of its said business, imports into the United States dates grown in the Kingdom of Iraq, and sells and distributes, or causes to be sold and distributed, substantial quantities of said dates each year to purchasers thereof located in the several States of the United States and in the District of Columbia, through its representatives and sales agents, respondents Balfour, Guthrie & Co., Ltd., Persian Gulf Products Co., and W. A. West.

Respondent Hills Brothers Co., in the course and conduct of its said business, imports into the United States dates grown in the

Kingdom of Iraq, and sells and distributes, or causes to be sold and distributed, substantial quantities of said dates, under the trade name of "Dromedary," each year to various packers, wholesalers, distributors, and retailers located in the various States of the United States and in the District of Columbia.

PAR. 4. On or about May 15, 1939, said respondents, in the course and conduct of their said businesses as hereinbefore set forth, entered into and thereafter carried out an understanding, agreement and conspiracy for the purpose of restricting, restraining and monopolizing, and suppressing competition in the sale of dates in trade and commerce between and among the several States of the United States and in the District of Columbia. Pursuant to said understanding, agreement, and conspiracy, and in furtherance thereof, the said respondents have done, performed, and still do and perform, the following acts and things:

1. Respondent Andrew Weir, proprietor of Andrew Weir & Co., sells dates grown in the Kingdom of Iraq, exclusively, to T. A. Suren, proprietor of E. Suren, United Africa Co., Ltd., and Hills Brothers Co., for import into the United States and resale and distribution therein, and refrains from selling such dates to other persons, firms, and corporations for import into the United States; and respondents T. A. Suren, proprietor of E. Suren, United Africa Co., Ltd., and Hills Bros. Co., purchase from respondent Andrew Weir, proprietor of Andrew Weir & Co., a specified quantity of dates at specified prices for import into the United States and for sale and distribution therein as aforesaid.

2. Respondents have established, fixed, and maintained, and are continuing to establish, fix, and maintain, prices at which they will sell dates grown in the Kingdom of Iraq to the wholesale and retail trade and the consuming public in the several States of the United States and in the District of Columbia.

3. Respondents refuse to import dates grown in the Kingdom of Iran (Persia) into the United States and refuse to sell said dates to the wholesale and retail trade and the consuming public in the several States of the United States and in the District of Columbia.

PAR. 5. Since, to wit, May 15, 1939, respondents Hills Bros. Co., United Africa Co., Ltd., and T. A. Suren, proprietor of E. Suren, have concertedly, through mutual understanding or agreement, refused and now refuse to purchase dates grown in the Kingdom of Iraq from respondent Andrew Weir, proprietor of Andrew Weir & Co., for import and resale in the United States except upon condition that Andrew Weir, proprietor of Andrew Weir & Co., will not sell dates to any other persons, firms, or corporations for import, resale, and distribution in the United States.

PAR. 6. The said understandings, agreements, combinations, and conspiracies and the doing and performing of the acts and things in the manner set forth in the preceding paragraphs hereof, tend to have, have had, and now have the effect of unduly and unlawfully restricting and restraining the sale of dates grown in the Kingdoms of Iraq and Iran in trade and commerce between, among, and in the several States of the United States and in the District of Columbia; of preventing, hindering, and restraining other persons, firms, corporations, and partnerships than the respondents engaged in trade and commerce in dates in the United States, in the conduct of their respective businesses; of substantially enhancing prices of dates grown in the Kingdom of Iraq to the consuming public of the United States; of eliminating, lessening, suppressing and restraining competition in trade and commerce in the United States in dates between and amongst the respondents; and of creating a monopoly in the marketing of said dates in the United States in the hands of respondents.

The respondents by their own acts, and the acts of their agents and representatives here and elsewhere, have brought about within the United States results forbidden by the laws of the United States. There is no longer any competition in trade and commerce in dates grown in the Kingdom of Iraq in the United States, and prices are fixed at arbitrary levels.

PAR. 7. The acts and practices and methods of competition 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 competition in the sale of dates 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 dates in such commerce; have unreasonably restrained such commerce in dates, 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 25th day of April 1940, 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 violation of the provisions of said act. On August 2, 1940, respondents Hund Steinhardter and Lester Nordlinger, copartners trading as Steinhardter & Nordlinger, through their attorney, Henry C. Heppen, filed their answer. A stipulation was en-

tered into, signed and executed by all of the respondents except Andrew Weir and Hund Steinhardter and Lester Nordlinger, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, whereby it was stipulated and agreed that the statement of facts contained therein may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of further testimony, argument, filing of briefs, or other intervening procedure. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, said answer of respondents Hund Steinhardter and Lester Nordlinger, and the said 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, The Hills Bros. Co., is erroneously named in the complaint in this proceeding as Hills Bros. Co. It is a corporation organized and existing under and by virtue of the corporate laws of the State of New York with its principal office and place of business at 110 Washington Street, New York City, N. Y. Said respondent, The Hills Bros. Co., in the course and conduct of its business, imports into the United States dates grown in the Kingdom of Iraq, and sells and distributes the same in the various States of the United States and in the District of Columbia, and has been for several years and is now engaged in interstate commerce in the United States in dates.

(*b*) Respondent, T. A. Suren, is named in the complaint and described as being an individual, proprietor of E. Suren, an English private company. T. A. Suren is unknown to the parties to this stipulation. E. Suren is an individual doing business as E. Suren, an English private company, with his principal office and place of business in Billiter Square Buildings, Billiter Square, London, E. C. 3, England. Said E. Suren has stipulated and agreed that he may be taken as having been duly named in the complaint in this proceeding and as having received due and proper notice thereof as though he had been named and served in the regular manner. In

the course and conduct of his business, the said E. Suren is engaged in purchasing dates in the country of Iraq, importing them into the United States and reselling and distributing them in the various States of the United States and the District of Columbia, and is now and for several years has been engaged in interstate commerce in the United States.

(*c*) Respondent Joseph Essaye is an individual. He is, and for several years last past has been, engaged as an agent and representative for E. Suren, referred to in subparagraph (*b*) of this paragraph, assisting the said E. Suren in the conduct of his business aforesaid of importing dates into the United States and reselling them in the various States of the United States and the District of Columbia.

(*d*) Respondents Hund Steinhardter and Lester Nordlinger are copartners trading as Steinhardter & Nordlinger, with their principal office and place of business at 99 Hudson Street, New York, N. Y. They effect sales of dates on behalf of E. Suren for a selling commission. They were not parties to the understanding described hereinafter in paragraph 3.

(*e*) Respondent, The United Africa Co., Ltd., referred to in said complaint as United Africa Co., Ltd., is an English corporation with its principal office and place of business at Unilever House, London, England. It does not buy or sell dates in the United States nor does it do or transact business in the United States. African & Eastern (Near East), Ltd., is an English corporation with its principal office and place of business at London, England, and it has stipulated and agreed that it may be taken as having been named in the complaint in this proceeding and as having received notice of the complaint and of these proceedings as though it had been named and served. In the course and conduct of its business, it purchases dates in the country of Iraq and causes them to be exported to the United States.

(*f*) Respondent, Balfour Guthrie & Co., Ltd., is a corporation organized and existing under the laws of the State of Delaware. It has an office and place of business at 67 Wall Street, New York City, N. Y. In the course and conduct of its business, it effects sales of dates on behalf of respondent African & Eastern (Near East), Ltd., to respondent Persian Gulf Products, Inc., for a selling commission. It was not a party to, nor privy with, the understanding hereinafter described in paragraph 3.

(*g*) Respondent Persian Gulf Products, Inc., is named in the complaint in this proceeding as Persian Gulf Products Co. It is a corporation organized and existing under the laws of the State of Delaware and having an office and place of business at 67 Wall Street, New York, N. Y. Said respondent, Persian Gulf Products, Inc., is

regularly engaged in selling and distributing dates to purchasers thereof located in the several States of the United States and the District of Columbia.

(*h*) Alexander Weir, described in the complaint in this proceeding as Andrew Weir, an individual, proprietor of Andrew Weir & Co., an English private company, is a partner in the partnership of Andrew Weir & Co., an English copartnership with its principal office and place of business at 21 Bury Street, St. Mary Axe, London, E. C. 3, England.

(*i*) Respondent, W. A. West, is an individual. He is engaged as an employee of African & Eastern (Near East), Ltd., referred to in subparagraph (*e*) of this paragraph, assisting the said African & Eastern (Near East), Ltd., in the conduct of the latter's business aforesaid, and he is now agent and United States representative of the United Africa Co., Ltd.

PAR. 2. (*a*) For the past 4 or 5 years, approximately 83 percent of the dates sold and consumed in the United States were grown in the Kingdom of Iraq. Most of the remainder were grown in the Kingdom of Iran, Persia, or in the State of California. The quantity of dates from all countries annually imported into and sold in the United States for the past few years has varied from 700,000 to 900,000 cases, averaging in weight about 700 pounds per case.

(*b*) For several years prior to the year 1939, other firms, corporations, partnerships, and/or individuals than the respondents, some located in England and some in the United States, regularly engaged in trade and commerce in the United States in dates grown in the Kingdom of Iraq and in the course and conduct of their respective business, purchased dates from growers thereof in the Kingdom of Iraq and caused them to be shipped to the United States and sold and distributed therein in commerce in the United States in competition with the respondents and the dates imported and resold in commerce in the United States by respondents and their agents.

(*c*) In the early part of the year 1939, the Kingdom of Iraq entered into an agreement with the respondent Andrew Weir & Co., referred to in paragraph 1, subsection (*h*) hereof, which provided, among other things, that said respondent, Andrew Weir & Co., should have the exclusive right to purchase and to grant permits to purchase, all dates grown in the Kingdom of Iraq, packed in boxes, and that said respondent, in turn, should buy specified quantities of such dates at specified prices from the growers thereof in the Kingdom of Iraq, and that the agreement should run for a period of 5 years. The exclusive rights of Andrew Weir & Co. to purchase dates grown in Iraq for exportation, packed in boxes, were rights lawfully obtained by it under the laws of the Kingdom of Iraq.

PAR. 3. (*a*) On or about May 15, 1939, an understanding was reached among respondents Andrew Weir & Co., E. Suren, African & Eastern (Near East), Ltd., and The Hills Bros. Co., whereby it was understood that Andrew Weir & Co. would grant permission to said E. Suren, African and Eastern (Near East), Ltd., and The Hills Bros. Co., their agents and representatives, to purchase and pack for importation into the United States and Canada dates of the 1939 crop grown in Iraq and packed in boxes, and refrain from granting permission to any other individual, firm, corporation, and/or partnership to purchase and pack for importation into the United States and Canada dates of the 1939 date crop grown in the country of Iraq and packed in boxes, and whereby it was further understood that Andrew Weir & Co. would not permit a greater quantity of such dates to be exported from Iraq to the United States and Canada than, to wit, the average annual quantity that had been exported to the United States and Canada from Iraq in the previous 5 year period.

(*b*) The said understanding was carried out: Respondents E. Suren, African & Eastern (Near East), Ltd., and The Hills Bros. Co., thereafter, pursuant to the said understanding, severally contracted to and did purchase from growers for importation into the United States and Canada specified quantities of dates of the 1939 crop grown in Iraq and packed in boxes; during 1939 other firms, corporations, partnerships, and/or individuals than the said parties respondent, some of whom had formerly obtained dates grown in Iraq for importation into the United States and sale and distribution therein, attempted to obtain dates grown in Iraq and packed in boxes, for export to the United States, but met with the refusal of Andrew Weir & Co. to grant them the necessary permission and rights, and were unable to obtain dates grown in Iraq and packed in boxes, for importation into the United States.

PAR. 4. The understanding and the doing and performing of the acts and use of the methods set forth in the preceding paragraphs 2 and 3 hereof, had and have the capacity and tendency to and did substantially lessen competition in interstate trade and commerce in dates in the United States.

CONCLUSION

The acts, practices, and methods of respondents as herein found are all to the prejudice of the public; have a dangerous tendency to and have actually lessened and restrained competition between and among respondents and between and among respondents and their competitors in the sale of dates in commerce within the intent and

meaning of the Federal Trade Commission Act; have placed in respondents the power to control prices; have created in the respondents a monopoly in the sale of dates in such commerce; have unreasonably restrained such commerce in dates, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents Hund Steinhardter and Lester Nordlinger, copartners trading as Steinhardter and Nordlinger, and a stipulation as to the facts entered into between certain of the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the said respondents, 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 the respondents named therein have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents The Hills Bros. Co., E. Suren and Persian Gulf Products, 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 dates, do forthwith cease and desist from entering into, participating in, carrying out, or being party to any plan, arrangement, understanding, or agreement to:

1. Limit, restrain, lessen, or hinder competition in trade and commerce in dates between and among the States of the United States and/or between and among the United States and foreign countries, or to monopolize the sale and distribution of dates in such trade and commerce; or

2. Curtail or limit the number of persons, partnerships, corporations, and/or individuals engaging in the inportation of dates into the United States; or

3. Hinder the persons, partnerships, corporations, and/or individuals engaged in the importation of dates into the United States in the conduct of their respective businesses either by cutting off sources of supply or by any other similar means; or

4. Limit or restrict date importations into the United States or fix or determine the quantity or quantities of dates that may be im-

ported into the United States annually from Iraq or any foreign country.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents Joseph Essaye, Hund Steinhardter and Lester Nordlinger, copartners, trading as Steinhardter & Nordlinger, The United Africa Co., Ltd., African & Eastern (Near East), Ltd., W. A. West, Balfour, Guthrie & Co., Ltd., and Alexander Weir.

It is further ordered, That the respondents The Hills Bros. Co., E. Suren, and Persian Gulf Products, Inc., shall within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

AMERICAN DRUG AND CHEMICAL COMPANY

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

Docket 4200. Complaint, July 26, 1940—Decision, Sept. 19, 1940

Where a corporation engaged in sale and distribution of various drug products, including certain preparations designated and advertised by it as Ardanol, Chloro-Zol and Germ-I-Tabs, to purchasers in various other States and in the District of Columbia; in advertisements which it disseminated and caused to be disseminated concerning its said products in periodicals and trade journals and circulars, leaflets, folders, pamphlets, booklets, and other advertising literature, through the mails and through various other means in commerce and otherwise, and which were intended and likely to induce purchase thereof;

(*a*) Represented directly and by implication that its said Ardanol was a cure or remedy for sterility in both sexes and would restore fertility of the generative organs, and was a reliable preventive of abortion, facts being, said product was not such a cure or remedy and possessed no value as such a preventive, and would not restore or beneficially effect fertility of organs;

(*b*) Represented that its said products Chloro-Zol and Germ-I-Tabs constituted competent and effective antiseptics and germicides, and could be used as a basis to compound a reliable and effective douche for all needs and purposes in personal feminine hygiene, facts being, while products in question possessed antiseptic properties of a low toxicity, they were not competent or effective antiseptics or germicides and, whether used separately or together, did not constitute reliable or effective means of feminine hygiene; and

(*c*) Represented that its said Chloro-Zol constituted a competent and effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, and body odors, facts being said Chloro-Zol did not constitute competent or effective treatment for aforesaid ailments and conditions;

With effect of misleading and deceiving a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representations were true and, because of such belief, into purchase 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.

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

PARAGRAPH 1. Respondent, American Drug & Chemical Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located at 420 South Sixth Street, Minneapolis, Minn.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing various drug products. Among the drug products sold and distributed by respondent are certain preparations designated and advertised as Ardanol, Chloro-Zol and Germ-I-Tabs.

Respondent causes said products, when sold, to be transported from its place of business in the State of Minnesota 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 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 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 and by various 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 product; and respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in magazines and trade journals, and by circulars, leaflets, folders, pamphlets, booklets, and other advertising literature, are the following:

1. As to Ardanol:

For Vitamin E Deficiency

ARDANOL

Wheat Germ Oil

Medicinal

During recent years, it has been repeatedly demonstrated that a deficiency of Vitamin E in the diet is the cause of degenerative changes in the reproductive organs of both sexes. In the males, they undergo irreparable damage to the germinal epithelium of the testes. While the sex glands of the female may be apparently unaffected, the vitamin deficiency is the cause of the death of the foetus with subsequent abortion or reabsorption.

According to present knowledge, the principal function of Vitamin E is the prevention of certain types of sterility and infertility. Leading authorities have stated that in the male the gradual loss of reproductive power due to Vitamin E deficiency leads to complete and incurable sterility, but that fertility can be maintained if treatment with Vitamin E is started while a few normal tubules remain in the testes. Also, that female sterility due to Vitamin E deficiency is not incurable, since only temporary tissues are damaged.

2. As to Chloro-Zol:

CHLORO-ZOL is a synthetic chlorine carrying chemical. It is a most powerful antiseptic and germicide, having approximately 50 times the germicidal power of pure phenol (carbolic acid) yet being virtually non-poisonous and non-irritating.

Some suggested uses for CHLORO-ZOL:

Sterilization work
Prevention and treatment of infection
Open wounds and sores
Bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet
Irritation of the skin. Acne, Boils, Sore Throat, Halitosis. Treatment of abscesses after extraction of teeth.
Feminine Personal hygiene
Body deodorant.

FEMININE HYGIENE

When the douche is desired, use a solution made by emptying the contents of one

CHLORO-ZOL Capsule in one or two quarts of warm water. Stronger solutions may be used if desirable. The above strength, however, is the one usually prescribed by physicians and is very effective in destroying many objectionable germs.

CHLORO-ZOL SUPERIOR TO MANY COMPOUNDS

CHLORO-ZOL has many advantages over carbolic acid, cresol, bichloride of mercury, and similar poisonous compounds used in feminine hygiene. CHLORO-ZOL does not burn, harden or dry the tissues and membranes. In fact, it provides an efficient germicide that is harmless, and its action is especially beneficial upon the delicate membranes and tissues of the vaginal tract. It is also a very effective deodorant.

3. As to Germ-I-Tabs:

Always recommend Germ-I-Tabs * * * for the treatment and prevention of wound infection, feminine hygiene, personal deodorant or wherever an effective germicide and antiseptic may be required.

The enlightened and fastidious woman of today knows the importance of the douche as part of the feminine toilet. The convenience and economy of Germ-I-Tabs in personal feminine hygiene appeal to the modern woman. Most women know HOW to take care of themselves in this respect but they so frequently employ the wrong compounds, using poisonous caustic solutions.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, the respondent represents and has represented, directly and by implication, that its product designated as Ardanol is a cure or remedy for sterility in both sexes and will restore fertility of the generative organs, and is a reliable preventive of abortion; that its product designated as Chloro-Zol and Germ-I-Tabs constitute competent and effective antiseptics and germicides; that said product Chloro-Zol constitutes a competent and effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, and body odors; that the products Chloro-Zol and Germ-I-Tabs can be used as the basis to compound a reliable and effective douche for all needs and purposes in personal feminine hygiene.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as herein set forth are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, respondent's product Ardanol is not a cure or remedy for sterility in either of the sexes, nor does it possess any value as a preventive of abortion. The use of such product will not restore or beneficially affect the fertility of the generative organs. While said products Chloro-Zol and Germ-I-Tabs possess antiseptic properties of a low toxicity, they are not competent or effective antiseptics or germicides. Said product Chloro-Zol does not constitute a competent or effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, or body odors. The products Chloro-Zol and Germ-I-Tabs, whether used separately or together, do not constitute a reliable or effective means of feminine hygiene.

PAR. 6. The use by the respondent of the aforesaid false, exaggerated, misleading, and deceptive statements and representations with respect to respondent's said 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 said statements and representations are true, and into the purchase of respondent's said products because of such erroneous and mistaken belief.

PAR. 7. The aforesaid acts and practices of respondent, as herein alleged, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 26, 1940, issued and on July 29, 1940, served its complaint in this proceeding upon respondent, American Drug and Chemical 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 August 27, 1940, the respondent filed its answer, in which answer it 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, American Drug & Chemical Co. is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Minnesota, with its principal place of business located at 420 South Sixth Street, Minneapolis, Minn.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing various drug products. Among the drug products sold and distributed by respondent are certain preparations designated and advertised as Ardanol, Chloro-Zol, and Germ-I-Tabs.

Respondent causes said products, when sold, to be transported from its place of business in the State of Minnesota 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 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 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 and by various 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 respondent has also 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, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in magazines and trade journals, and by circulars, leaflets, folders, pamphlets, booklets, and other advertising literature, are the following:

1. As to Ardanol:

For Vitamin E Deficiency

ARDANOL

Wheat Germ Oil

Medicinal

During recent years, it has been repeatedly demonstrated that a deficiency of Vitamin E in the diet is the cause of degenerative changes in the reproductive organs of both sexes. In the males, they undergo irreparable damage to the germinal epithelium of the testes. While the sex glands of the female may be apparently unaffected, the vitamin deficiency is the cause of the death of the foetus with subsequent abortion or reabsorption.

According to present knowledge, the principal function of Vitamin E is the prevention of certain types of sterility and infertility. Leading authorities have stated that in the male the gradual loss of reproductive power due to Vitamin E deficiency leads to complete and incurable sterility, but that fertility can be maintained if treatment with Vitamin E is started while a few normal tubules remain in the testes. Also, that female sterility due to Vitamin E deficiency is not incurable since only temporary tissues are damaged.

2. As to Chloro-Zol:

CHLORO-ZOL is a synthetic chlorine carrying chemical. It is a most powerful antiseptic and germicide, having approximately 50 times the germicidal power of pure phenol (carbolic acid) yet being virtually non-poisonous and non-irritating.

Some suggested uses for CHLORO-ZOL:

Sterilization work

Prevention and treatment of infection

Open wounds and sores

Bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet

Irritation of the skin. Acne, Boils, Sore Throat, Halitosis. Treatment of abscesses after extraction of teeth.

Feminine Personal hygiene.

Body deodorant.

FEMININE HYGIENE

When the douche is desired, use a solution made by emptying the contents of one CHLORO-ZOL Capsule in one or two quarts of warm water. Stronger solutions may be used if desirable. The above strength, however, is the one usually prescribed by physicians and is very effective in destroying many objectionable germs.

CHLORO-ZOL SUPERIOR TO MANY COMPOUNDS

CHLORO-ZOL has many advantages over carbolic acid, cresol, bichloride of mercury, and similar poisonous compounds used in feminine hygiene. CHLORO-ZOL does not burn, harden or dry the tissues and membranes. In fact, it provides an efficient germicide that is harmless, and its action is especially beneficial upon the delicate membranes and tissues of the vaginal tract. It is also a very effective deodorant.

3. As to Germ-I-Tabs:

Always recommend Germ-I-Tabs * * * for the treatment and prevention of wound infection, feminine hygiene, personal deodorant or wherever an effective germicide and antiseptic may be required.

The enlightened and fastidious woman of today knows the importance of the douche as part of the feminine toilet. The convenience and economy of Germ-I-Tabs in personal feminine hygiene appeal to the modern woman. Most women know HOW to take care of themselves in this respect but they so frequently employ the wrong compounds, using poisonous caustic solutions.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto, not specifically set out herein, the respondent represents and has represented, directly and by implication, that its product designated as Ardanol is a cure or remedy for sterility in both sexes and will restore fertility of the generative organs, and is a reliable preventive of abortion; that its products designated as Chloro-Zol and Germ-I-Tabs constitute competent and effective antiseptics and germicides; that said product Chloro-Zol constitutes a competent and effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, and body odors; that the products Chloro-Zol and Germ-I-Tabs can be used as the basis to compound a reliable and effective douche for all needs and purposes in personal feminine hygiene.

PAR. 5. The foregoing statements and representations used and disseminated by the respondent as herein set forth are grossly exaggerated, false, misleading, and deceptive. In truth and in fact, re-

spondent's product Ardanol is not a cure or remedy for sterility in either of the sexes, nor does it possess any value as a preventive of abortion. The use of such product will not restore or beneficially affect the fertility of the generative organs. While said products Chloro-Zol and Germ-I-Tabs possess antiseptic properties of a low toxicity, they are not competent or effective antiseptics or germicides. Said product Chloro-Zol does not constitute a competent or effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, or body odors. The products Chloro-Zol and Germ-I-Tabs, whether used separately or together, do not constitute a reliable or effective means of feminine hygiene.

PAR. 6. The use by the respondent of the aforesaid false, exaggerated, misleading, and deceptive statements and representations with respect to respondent's said 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 said statements and representations are true, and into the purchase of respondent's said products because of such erroneous and mistaken belief.

CONCLUSION

The aforesaid acts and practices of respondent, as herein found, are all to the prejudice and injury of the public, and constitute unfair and deceptive acts and practices in commerce within the 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, American Drug & Chemical Co., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of its medicinal preparations designated as Ardanol, Chloro-Zol, and Germ-I-Tabs, or of any other medicinal preparations composed of substantially similar

ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation designated Ardanol is a cure or remedy for sterility in either of the sexes or will restore or beneficially affect the fertility of the generative organs or possess any value as a preventive of abortion; that said preparations designated Chloro-Zol and Germ-I-Tabs constitute competent or effective antiseptics or germicides, or that they constitute a reliable or effective means of feminine hygiene; that said preparation designated Chloro-Zol constitutes a competent or effective treatment for bromidrosis, tetter, Cuban itch, itching between the toes, blisters on the feet, irritations of the skin, acne, boils, halitosis, or body odors.

2. 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 any of said preparations, which advertisements contain any of the representations prohibited in paragraph 1 hereof.

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

FRESH GROWN PRESERVE CORPORATION, SUN DISTRIBUTING COMPANY, INC., RITE PACKING CORPORATION, MURRAY GREENBERG, AND LEO GREENBERG

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

Docket 3682. Complaint, Dec. 30, 1938—Decision, Sept. 20, 1940

Where corporation engaged in manufacture, sale, and distribution of various kinds of preserved products, two companies engaged in sale and distribution of such products made by said corporation, and two individuals who, as officers, directors and principal stockholders, controlled and directed the business activities, sales policies and practices of the three companies aforesaid, and in active and substantial competition in sale of their said products in commerce among the various States and in the District of Columbia with others engaged in the sale and distribution of fruit preserves in commerce, as above set forth—

(*a*) Represented their said products as preserves or pure fruit preserves through labels and in price lists and invoices, and in salesmen's representations also thus designated and described their said products;

Facts being products in question were not preserves or pure preserves within the meaning and popular acceptation of such words as understood by trade and purchasing public as product prepared from a mixture of clean, sound fruit with sugar in proportion of at least 45 pounds of fruit to 55 pounds of sugar cooked to appropriate consistency, but contained, as analyzed over extended periods, substantially small proportions of fruit, and were imitation or substandard products so made that in appearance they simulated unadulterated preserves made as above set forth to the extent that difference in fruit content between imitation and genuine products could not be discerned by visual inspection;

(*b*) Represented in their said labels that certain fruits had been used in the manufacture of the contents of the jars and containers;

Facts being sample of product labeled "Pure Grape Preserves" disclosed approximately 25 percent apple tissue as component part of fruit content thereof, blackberry and raspberry preserves were disclosed, as sampled, to consist of fruit content of fruit pumice, and fruit portions of their said products were not composed entirely of specified fruit represented, but contained instead, in part, mixture of fruits or products other than that specified by them as being in or comprising their products in question;

With result that they obtained, through use of lesser amount of fruit resulting in saving in cost thereof and greater percentage of yield, advantage over competitors who did not resort to such practice sufficient to force those using standard formula to sell below actual cost in order to meet aforesaid saving, and with effect of misleading and deceiving trade and wholesale and retail dealers and consuming public into mistaken and erroneous belief that said products had fruit content of at least 45 pounds of fruit to each 55 pounds of sugar, and that fruit portion of completed product was

composed entirely of specific fruit represented, and with result, as direct consequence of such belief, that number of such dealers and members of the purchasing public bought their products and trade was diverted unfairly to them, and their competitors, engaged in selling fruit preserves in commerce as aforesaid, and who truthfully advertised their respective products, and means and instrumentality were placed, directly through such acts and practices, in hands of unscrupulous or uninformed dealers at wholesale and retail whereby they had been and were enabled to deceive and mislead members of purchasing public:

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

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

Mr. Earl J. Kolb for the Commission.

Mr. Louis Halle, 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 Fresh Grown Preserve Corporation, a corporation, Sun Distributing Co., Inc., a corporation, Rite Packing Corporation, a corporation, and the following-named persons: Murray Greenberg and Leo Greenberg, individually and as officers and directors of said Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing 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, Fresh Grown Preserve Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 32 Thirty-third Street, Brooklyn, N. Y., and is engaged in the manufacture, sale, and distribution of various kinds of fruit preserves.

Respondent, Sun Distributing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 32 Thirty-third Street, Brooklyn, N. Y., and is engaged in the sale and distribution of various kinds of fruit preserves which are manufactured by Fresh Grown Preserve Corporation.

Respondent, Rite Packing Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located

at 32 Thirty-third Street, Brooklyn, N. Y., and is engaged in the sale and distribution of various kinds of fruit preserves which are manufactured by Fresh Grown Preserve Corporation.

Respondent, Murray Greenberg, an individual residing at 4901–14th Avenue, Brooklyn, N. Y., is, and during all the times hereinafter mentioned has been, president of Fresh Grown Preserve Corporation and an officer, director, and part owner of the Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing Corporation, and, together with the respondent, Leo Greenberg, controls and directs the business activities, sales policies and practices of said respondent corporations.

Respondent, Leo Greenberg, an individual residing at 1947 Ocean Avenue, Brooklyn, N. Y., is, and during all the times hereinafter mentioned has been, vice president of Fresh Grown Preserve Corporation and an officer, director, and part owner of Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing Corporation, and, together with the respondent, Murray Greenberg, controls and directs the business activities, sales policies, and practices of said respondent corporations.

Said respondents have all acted in concert and in cooperation with each other in performing the acts and practices hereinafter alleged.

PAR. 2. Said respondents are now and have been, for more than 4 years last past, engaged in the business of selling and distributing various kinds of fruit preserves to wholesale grocers, retail grocers, and bakeries located in various States of the United States and cause their said products, when sold by them, to be transported from their factory in the State of New York to the purchasers thereof located in other States of the United States and in the District of Columbia. Respondents maintain, and at all times 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 active and substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of fruit preserves in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of their business the respondents have represented and are now representing their products as being "pure" fruit preserves by means of labels, tags, and markers attached to the jars and containers in which their products are packed and distributed, which designate and describe said products as "pure preserves." Such labels also name the fruits which the

respondents represent have been used in the manufacture of the contents of such jars and containers.

PAR. 5. In the course and conduct of their business and for the purpose of inducing the purchase of their products the respondents have, and do now, distribute to wholesale and retail grocers located in various States of the United States advertising material and sales literature by means of which the respondents represent that their products are composed of certain specified fruits and are "Pure Preserves."

PAR. 6. In truth and in fact the products of respondents so denominated, described, and represented have not been, and are not, "Preserves" or "Pure Preserves" within the meaning and popular acceptation of such words.

The expressions "Preserves" and "Fruit Preserves" signify, mean, and are known and understood by the trade and purchasing public, to be a product prepared from the mixture of clean sound fruit with sugar, in the proportion of at least 45 pounds of fruit to each 55 pounds of sugar and cooked to an appropriate consistency.

The products of the respondents do not in fact contain a fruit content in proportion of at least 45 pounds of fruit to each 55 pounds of sugar, but instead said products have an average fruit content deficiency of 48 percent, in that the fruit content in respondents' products averages approximately 22 pounds of fruit to each 55 pounds of sugar.

In addition, the fruit portion of respondents' completed products are not composed entirely of the specific fruit represented, but instead said products contain in part a mixture of other fruits or products less expensive than that specified by respondents as being in and comprising their products, and which the respondents do not disclose in designating and advertising their products.

PAR. 7. The use by respondents of the false and misleading representations to the effect that their aforesaid products are "Pure Preserves" had, and has, a tendency and capacity to, and does, mislead and deceive the trade, including wholesale and retail dealers, and the consuming public into the mistaken and erroneous belief that said products have been made from at least 45 pounds of fruit to each 55 pounds of sugar and that the fruit portion of the completed product is composed entirely of the specific fruit represented. As a direct result of this belief, a number of wholesale and retail dealers and members of the consuming public have purchased respondents' products with the effect that trade has been diverted unfairly to respondents from their competitors, likewise engaged in the business of distributing and selling fruit preserves in commerce between and among the

various States of the United States and in the District of Columbia, who truthfully advertise their respective products.

By such acts and practices, respondents have placed directly into the hands of unscrupulous or uninformed dealers, wholesale and retail, a means and instrumentality whereby said dealers have been and are enabled to deceive and mislead members of the purchasing public.

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 and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of respondents as herein alleged all 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 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 30, 1938, issued and served its complaint in this proceeding upon the respondents, Fresh Grown Preserve Corporation, a corporation; Sun Distributing Co., Inc., a corporation; Rite Packing Corporation, a corporation; and Murray Greenberg and Leo Greenberg, 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 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 Earl J. Kolb, attorney for the Commission, and in opposition to the allegations of the complaint by Louis Halle, 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, briefs in support of the complaint and in opposition thereto, and the oral arguments of counsel aforesaid; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Fresh Grown Preserve Corporation, is a New York corporation engaged in the manufacture and in the sale and distribution of various kinds of preserve products.

The Sun Distributing Co., Inc., and Rite Packing Corporation are New York corporations engaged in the sale and distribution of preserve products manufactured by the respondent Fresh Grown Preserve Corporation.

The respondent Murray Greenberg is president of the Fresh Grown Preserve Corporation and is an officer and director of Sun Distributing Co., Inc., and Rite Packing Corporation.

The respondent Leo Greenberg is vice president of Fresh Grown Preserve Corporation and is an officer, director and stockholder of Sun Distributing Co., Inc., and Rite Packing Corporation.

The individual respondents, Murray Greenberg and Leo Greenberg, as officers, directors, and principal stockholders, control and direct the business activities, sales policies and practices of the Fresh Grown Preserve Corporation, Sun Distributing Co., Inc., and Rite Packing Corporation.

PAR. 2. The respondents, for more than 4 years last past, have been engaged in the sale and distribution of various kinds of preserve products in commerce among and between the various States of the United States. 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. In the course and conduct of their business, respondents are in active and substantial competition with other corporations and with individuals and partnerships engaged in the sale and distribution of fruit preserves in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The respondent Fresh Grown Preserve Corporation uses the brand "Nature's Own." The Sun Distributing Co., Inc., uses the brand "Top Notch"; and the Rite Packing Corporation the brand "Mardi Gras" in designating their respective products.

PAR. 5. In the course and conduct of their business the respondents represent their products as being fruit preserves or "pure" fruit preserves by means of labels, tags, and markers attached to the jars and containers in which their products are packed and distributed, which designate and describe said products as "Pure Preserves." Such labels also name the fruits which the respondents represent have

been used in the manufacture of the contents of such jars and containers. Typical examples of such labels, are the following:

NATURE'S OWN
Brand
PURE STRAWBERRY PRESERVES
Contents 24 oz. Net
Fresh Grown Preserve Corporation
Brooklyn, N. Y.

TOP NOTCH
Brand
PURE STRAWBERRY PRESERVES
Contents 4 lbs. Net
Sun Distributing Co., Inc.,
Distributors,
Brooklyn, N. Y.

MARDI GRAS
Brand
PURE STRAWBERRY PRESERVES
Contents 2 lbs. Net
Rite Packing Corporation
Distributors,
Brooklyn, N. Y.

PAR. 6. For the purpose of inducing the purchase of their various products, the respondents have from time to time issued price lists, which are distributed to their various customers, by means of which the respondents represented their products as being preserves or pure preserves, by describing and designating such products as "Pure Preserves," on such price lists. In addition to such price lists, the respondents also described and designated their products as pure preserves and as preserves on invoices to customers and in representations made by salesmen.

PAR. 7. The Commission finds that the products of the respondents so designated, described, and represented as preserves or as pure preserves, are not preserves or pure preserves within the meaning and popular acceptation of such words.

A preserve as understood by the trade and purchasing public is a product prepared from a mixture of clean sound fruit with sugar in the proportion of at least 45 pounds of fruit to 55 pounds of sugar, cooked to an appropriate consistency. This formula is the commercial adaptation of the ordinary cook book formula of a "cup of fruit to a cup of sugar." There is no difference in the fruit and sugar content of preserves labeled or designated "Pure Preserves" and "Preserves."

The minimum formula used by manufacturers as the standard for "Preserves" and "Pure Preserves" is a fruit content of 45 pounds of fruit to 55 pounds of sugar, cooked to a consistency of approximately 68 percent water soluble solids. A preserve product made from a fruit content of less than 45 pounds of fruit to 55 pounds of sugar is known and designated as "Imitation Preserves."

PAR. 8. The Federal Trade Commission purchased in the open market 7 samples of respondents' products, consisting of 40 2-pound jars which were analyzed by the Food and Drug Administration at Washington, D. C., and, in addition, 35 samples of respondents' products were purchased in the open market and analyzed by an independent firm of chemists. These purchases were made over a period of approximately 18 months. The Commission finds that all the samples so purchased and analyzed, with the exception of one sample labeled "grape preserves," had a fruit content of less than the minimum formula of 45 pounds of fruit to 55 pounds of sugar. The average fruit content of the respective products analyzed was as follows:

Fifteen samples, Strawberry Preserves, average 27 pounds of fruit to 55 pounds of sugar.

Thirteen samples, Raspberry Preserves, average 22 pounds of fruit to 55 pounds of sugar.

Three samples, Peach Preserves, average 24 pounds of fruit to 55 pounds of sugar.

Two samples, Apricot Preserves, average 20 pounds of fruit to 55 pounds of sugar.

Three samples, Pineapple Preserves, average 30 pounds of fruit to 55 pounds of sugar.

One sample, Loganberry Preserves, average 23 pounds of fruit to 55 pounds of sugar.

Four samples, Blackberry Preserves, average 19 pounds of fruit to 55 pounds of sugar.

The Commission further finds that the fruit portions of respondents' products are not composed entirely of the specified fruit represented, but instead said products contain in part a mixture of fruits or products other than that specified by respondents as being in or comprising their products.

In designating or advertising their products, the respondents do not disclose the substitution of fruits or materials other than those specified as being in or comprising their products. A microanalysis of a sample of grape preserves purchased in the open market by the Federal Trade Commission discloses that this product contained approximately 25 percent apple tissue as a component part of the

fruit content, the product itself being labeled "Pure Grape Preserves."

The Commission further finds in the case of the samples of blackberry and raspberry preserves that the fruit content of these products consisted of fruit pomace which is composed of pulp and seeds after the juice had been extracted or pressed out.

The Commission further finds that the products sold and distributed by the respondents were imitation or substandard preserves and that such products were so made that in appearance they simulated an unadulterated preserve made from the formula of 45 pounds fruit to 55 pounds sugar to the extent that the difference in fruit content between the imitation and the genuine products could not be discerned by visual inspection.

PAR. 9. The Commission finds that in the process of manufacturing or cooking 45 pounds fruit and 55 pounds sugar to a consistency of approximately 68 percent water soluble solids, the evaporation caused by this cooking process reduces the actual yield of a finished preserve to approximately 87½ pounds. When a smaller proportion of fruit is used to 55 pounds of sugar, the percentage of soluble solids would be greater, so that in order to reduce the mixture to a consistency of approximately 68 percent water soluble solids, it would be necessary to add water.

Based upon the standard formula of 45 pounds fruit to 55 pounds sugar, or a total of 100 pounds, the approximate percentage of yield for various formulas of fruit content to 55 pounds sugar would be as follows:

	Percent yield	*Pound yield*
45 pounds fruit to 55 pounds sugar	87½	87½
40 pounds fruit to 55 pounds sugar	91	86.8
35 pounds fruit to 55 pounds sugar	95	86
30 pounds fruit to 55 pounds sugar	100	85
25 pounds fruit to 55 pounds sugar	105	84.5
20 pounds fruit to 55 pounds sugar	112	83.1

The Commission further finds that the use of a fruit content in the manufacture of preserves of less than the minimum formula of 45 pounds fruit to 55 pounds sugar resulted in a substantial saving in costs to the respondents. As an example, the use by the respondents of a fruit content of 27 pounds strawberry, 19 pounds blackberry, and 22 pounds raspberry to 55 pounds sugar as shown by the average analyses of respondents' products would result in a saving in costs of approximately 50 cents on a case of strawberry preserves consisting of 1 dozen 2-pound jars, 37 cents on a case of blackberry preserves consisting of 1 dozen 2-pound jars, and 50 cents on a case of raspberry preserves consisting of 1 dozen 2-pound jars.

Based upon the testimony of manufacturers and chemists, the Commission finds that the respondents by reason of the use of a lesser amount of fruit resulting in both a saving in cost of fruit and a greater percentage of yield, obtained an advantage in competition over competitors who did not resort to such practice. The Commission further finds that this saving is sufficient to force competitors using the standard formula of 45 pounds fruit to 55 pounds sugar to sell below his actual cost in order to meet this saving in cost.

PAR. 10. The use by respondents of the foregoing false and misleading representations to the effect that their products are pure preserves or preserves has a tendency and capacity to, and does, mislead and deceive the trade, including wholesale and retail dealers, and the consuming public into the mistaken and erroneous belief that said products have a fruit content of at least 45 pounds of fruit to each 55 pounds of sugar and that the fruit portion of the completed product is composed entirely of the specific fruit represented. As a direct result of this belief, a number of wholesale and retail dealers and members of the consuming public have purchased respondents' products with the effect that trade has been diverted unfairly to respondents from their competitors, also engaged in the business of distributing and selling fruit preserves in commerce between and among the various States of the United States and in the District of Columbia, who truthfully advertise their respective products. By such acts and practices, respondents have placed directly into the hands of unscrupulous or uninformed dealers, wholesale and retail, a means and instrumentality whereby said dealers have been and are enabled to deceive and mislead members of the purchasing public.

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 respondents, testimony, and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by Earl J. Kolb, counsel for the Commission, and by Louis Halle, counsel for the respondents, and

the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Fresh Grown Preserve Corporation, a corporation; Sun Distributing Co., Inc., a corporation; Rite Packing Corporation, a corporation, and their respective officers, agents, and representatives; and Murray Greenberg and Leo Greenberg, individuals, 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 preserve products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the terms "preserves" or "pure preserves" on labels, tags, markers, or in advertising material, or in any other manner, to in any way designate, describe, or refer to preserve products which are not prepared from a mixture of clean, sound fruit with sugar in the proportion of at least 45 pounds of fruit to 55 pounds of sugar cooked to an appropriate consistency.

2. Representing, in any manner, whatsoever, that a product which contains a fruit content in a proportion of less than 45 pounds of clean, sound fruit to 55 pounds of sugar is a pure preserve or a preserve, or is anything other than an imitation or substandard preserve.

3. Representing, in any manner whatsoever, that respondent's products are composed of certain specified fruits when in fact, such products contain a mixture of fruits other than those represented.

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

LAWRENCE L. KELLER, TRADING UNDER THE NAME UNITED SOAP COMPANY

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

Docket 4184. Complaint, July 12, 1940—Decision, Sept. 20, 1940

Where an individual engaged under trade name in manufacture of soap and in sale thereof from city concerned to purchasers in other States and in District of Columbia; in purportedly describing said product and makers and source of origin thereof on boxes or containers in which same was sold and distributed to the purchasing public throughout various States—

(*a*) Represented that said soap was made by different concerns with offices in different cities including, as the case might be, Los Angeles, New York, San Francisco, Seattle, Cincinnati, and London and Paris, and was imported and consisted of different varieties and qualities, through such statements as "HAWAIIAN ROSE * * * Hawaiian Rose Products, Los Angeles, Calif.," "HOT SPRINGS MINERAL SOAP * * * Union Soap Company, Importers, New York—Los Angeles—San Francisco," "MARVOLA CREME SOAP Made for Union Soap Co., Cincinnati, Seattle, San Francisco," and "CREME BOUQUET * * * Made for Sani Soap Co., Inc., New York, London, Paris," and use of such words and designations as "Vitamized" and "Medicinal," facts being his said product was all made from same formula and sold under different names as above indicated, he had no other place of business than that in aforesaid city, and none of his said soap was vitamized or medicated, with result that ultimate consumer was led to believe that business conducted by him was a large substantial one and that soaps concerned were made at various points as above indicated, and many of consuming public were led to believe that said product had been vitamized or medicated in some manner so as to render same more beneficial than ordinary soaps;

(*b*) Represented that said soaps were of high quality and had actual retail value and selling price of 75¢ each, through words and figures "Combination Price 75¢," "Price 75¢," and "75¢," on box tops of product in question, with result consumer was led to believe that soap and washing powder, which was sold by peddlers or canvassers who paid approximately 5 cents therefor, for price, usually, of 25 cents to ultimate consumer in house-to-house canvass, was led to believe that he was securing soap and washing powder at a price much less than usual, regular and customary price therefor, which was not 75 cents but much smaller sum;

With effect of deceiving and misleading substantial portion of purchasing public into erroneous and mistaken belief that all of said false and mistaken representations were true and with tendency and capacity so to do and to induce substantial portion of such public to buy said products because of such belief as above set forth:

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. John M. Russell 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 Lawrence L. Keller, an individual, trading under the name United Soap 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. The respondent, Lawrence L. Keller, is an individual trading under the name United Soap Co., having his office and principal place of business located at 4726 Ballard Avenue, Seattle, Wash.

He is now, and for several years last past has been, engaged in the business of manufacturing and selling soap under the brand names "Hot Springs Mineral Soap," "Hawaiian Rose," "Velvette," and other similar names. He changes each of the names under which he sells said soap after the demand for the soap under a given name has declined. All of said soap, regardless of the name under which it is sold, is made from the same formula.

Respondent causes said product, when sold, to be transported from his said place of business in the State of Washington to purchasers thereof at their respective points of location in various States of the United States other than in the State of Washington and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in commerce in said soap among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, in connection with the promotion of the sale and sale of his said soap in said commerce and as an inducement for the purchase thereof, by members of the purchasing public, respondent has caused, and is now causing, advertisements to be printed on the tops of the boxes in which his said product is sold and distributed to the purchasing public throughout the various States of the United States, containing many false and misleading statements and representations respecting the nature and location of his business, and the retail price at which his said product is customarily sold. Among and typical of the statements and repre-

sentations contained in said false advertisements, used and disseminated as aforesaid, are the following:

HAWAIIAN ROSE
75 cents
Hawaiian Rose Products
Los Angeles, Calif.

HOT SPRINGS MINERAL SOAP
Combination
Price
75 cents

Vitamized
Union Soap Company
Importers
New York—Los Angeles—San Francisco

Combination Price 75¢
VELVETTE
The Modern Soap
Velvette Products
Seattle, U. S. A.

Combination Price
75¢
MARVOLA
Creme Soap
Made for
United Soap Co.
Cincinnati
Seattle San Francisco

CREME BOQUET
Price 75¢
Made for
Sani Soap Co., Inc.
New York London Paris

MEDICINAL
CREME
SAVON
Wilson Soap Co.
San Francisco California.

MENTHA
Mentholated
SKIN SOAP
United Soap Co.
Seattle U. S. A.

PAR. 3. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents, directly and indirectly, to customers

and prospective customers that said Hawaiian Rose soap is manufactured and sold by a company named Hawaiian Rose Products of Los Angeles, Calif.; that said Hot Springs Mineral soap is "vitamized" and imported by the Union Soap Co., importers having offices in New York, N. Y., and Los Angeles and San Francisco, Calif.; that said Velvette soap is manufactured and sold by Velvette Products, a company in Seattle, Wash.; that said Marvola Creme soap is made for and sold by the United Soap Co. which has offices in Seattle, Wash.; Cincinnati, Ohio; and San Francisco, Calif.; that said Creme Boquet soap is made for Sani Soap Co., Inc., which has offices in New York, N. Y.; London, England; and Paris, France; that said Creme Savon soap is a medicated soap manufactured and sold by the Wilson Soap Co. of San Francisco, Calif.; and that said Mentha soap is manufactured and sold by the United Soap Co. of Seattle, Wash. By the words and figures "Combination Price 75¢," "Price 75¢" and "75¢" on said box tops, the respondent represents that the said boxes of soap have an actual retail value or retail selling price of 75 cents each, that such price is the usual and customary retail selling price thereof and that said soaps are of high quality.

PAR. 4. The statements and representations so made and used by the respondent in connection with the sale of his product are false and misleading. In truth and in fact, all the names of said companies are fictitious and are used by the respondent to mislead and deceive the purchasing public as to the origin and value of his said product. None of respondent's said soap is imported, or manufactured anywhere except in respondent's said place of business in Seattle, Wash., and he has no factory or office in any other place, and none of respondent's soap is "vitamized" or medicated.

The price of said soap of 75 cents printed by respondent on said boxes of soap in no sense represents the actual value or retail selling price per box thereof, but is wholly fictitious and greatly in excess of the actual value and selling price thereof. Said price is far in excess of the price for which said soap is customarily sold in the normal and regular course of business. Said boxes of soap are never sold or offered for sale at said price nor are they intended to be sold at such price. Said soap is not high quality toilet soap but is inferior in grade and quality and is regularly sold by the respondent to peddlers and canvassers for 20 cents per basket of four boxes of soap and four boxes of washing powder or at the rate of 6¼ cents per box. These peddlers or canvassers in turn sell and distribute the soap and washing powder to ultimate consumers by house-to-house canvass, usually for 25 cents for a box of soap and a package of washing powder. The soap and the washing powder are not ordinarily and customarily sold

to the ultimate customer for 75 cents but for a sum much less than 75 cents, and the ultimate consumer is thereby led to believe that he is securing the soap and the washing powder at a price much less than the usual, regular, and customary price for the soap.

The use by the respondent of the various fictitious names and addresses as hereinabove alleged leads the ultimate consumer to believe that the business conducted by the respondent is a large, substantial one and that the soaps are made or manufactured at the various points indicated, including London, England, and Paris, France. Many members of the consuming public are led to believe that the soap so marked has been "vitamized" or medicated in some manner so as to render it more beneficial than ordinary soaps.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had, and now has, a tendency and capacity to, and does, deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such false statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondent's said products because of such erroneous and mistaken belief engendered as above set forth.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission issued, and thereafter, on the 30th day of July 1940, served its complaint in this proceeding upon respondent, Lawrence L. Keller, an individual, trading under the name, United Soap Co., charging him with the use of unfair and deceptive acts and practices, in commerce, in violation of the provisions of said act. On the 12th day of August 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 hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, and the answer thereto, and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Lawrence L. Keller, is an individual trading under the name United Soap Co., having his office and principal place of business located at 4726 Ballard Avenue, Seattle, Wash.

He is now, and for several years last past has been, engaged in the business of manufacturing and selling soap under the brand names "Hot Springs Mineral Soap," "Hawaiian Rose," "Velvette," and other similar names. He changes each of the names under which he sells said soap after the demand for the soap under a given name has declined. All of said soap, regardless of the name under which it is sold, is made from the same formula.

Respondent causes said product, when sold, to be transported from his said place of business in the State of Washington to purchasers thereof at their respective points of location in various States of the United States other than the State of Washington and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said soap in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his said business, in connection with the promotion of the sale of his said soap in said commerce and as an inducement for the purchase thereof by members of the purchasing public, respondent has caused, and is now causing, advertisements to be printed on the tops of the boxes in which his said product is sold and distributed to the purchasing public throughout the various States of the United States, which contain many false and misleading statements and representations respecting the nature and location of his business, the retail price at which his said product is customarily sold and the grade and quality of said product. Among and typical of the statements and representations so made and used are the following:

HAWAIIAN ROSE
75 cents
Hawaiian Rose Products,
Los Angeles, Calif.

HOT SPRINGS MINERAL SOAP
Combination
Price
75 cents

Vitamized
Union Soap Company
Importers
New York—Los Angeles—San Francisco.

Combination Price 75¢
VELVETTE
The Modern Soap
Velvette Products
Seattle U. S. A.

Combination Price
75¢
MARVOLA
Creme Soap
Made for
United Soap Co.
Cincinnati
Seattle San Francisco.

CREME BOQUET
Price 75¢
Made for
Sani Soap Co., Inc.
New York London Paris

MEDICINAL
CREME
SAVON
Wilson Soap Co.
San Francisco California

MENTHA
Mentholated
SKIN SOAP
United Soap Co.
Seattle U. S. A.

PAR. 3. By the use of the statements and representations hereinabove set forth and others similar thereto not specifically set out herein, respondent represents, directly and indirectly, to customers and prospective customers that said Hawaiian Rose soap is manufactured and sold by a company named Hawaiian Rose Products of Los Angeles, Calif.; that said Hot Springs Mineral Soap is "vitamized" and imported by the Union Soap Co., importers having offices in New York, N. Y., and Los Angeles and San Francisco, Calif.; that said Velvette soap is manufactured and sold by Velvette Products, a company in Seattle, Wash.; that said Marvola Creme soap is made for and sold by the United Soap Co. which has offices in Seattle, Wash.; Cincinnati, Ohio; and San Francisco, Calif.; that said Creme Boquet soap is made for Sani Soap Co., Inc., which has offices in New York, N. Y.; London, England; and Paris, France; that said Creme Savon soap is a medicated soap manufactured and sold by the Wilson Soap Co. of San Francisco, Calif.; and that said

Mentha soap is manufactured and sold by the United Soap Co. of Seattle, Wash. By the words and figures "Combination Price 75¢," "Price 75¢," and "75¢" on said box tops, the respondent represents that the said boxes of soap have an actual retail value or retail selling price of 75 cents each, that such price is the usual and customary retail selling price thereof and that said soaps are of high quality.

PAR. 4. The statements and representations so made and used by the respondent in connection with the sale of his product are false and misleading. In truth and in fact, all the names of said companies are fictitious and are used by the respondent to mislead and deceive the purchasing public as to the origin and value of his said product. None of respondent's said soap is imported, or manufactured anywhere except in respondent's said place of business in Seattle, Wash., and he has no factory or office in any other place, and none of respondent's soap is "vitamized" or medicated.

The price of said soap of 75 cents printed by respondent on said boxes of soap in no sense represents the actual value or retail selling price per box thereof, but is wholly fictitious and greatly in excess of the actual value and selling price thereof. Said price is far in excess of the price for which said soap is customarily sold in the normal and regular course of business. Said boxes of soap are never sold or offered for sale at said price nor are they intended to be sold at such price. Said soap is not high quality toilet soap but is inferior in grade and quality and is regularly sold by the respondent to peddlers and canvassers for approximately 5 cents per box of soap and a box of washing powder. These peddlers or canvassers in turn sell and distribute the soap and washing powder to ultimate consumers by house-to-house canvass, usually for 25 cents for a box of soap and a package of washing powder. The soap and the washing powder are not ordinarily and customarily sold to the ultimate consumer for 75 cents but for a sum much less than 75 cents, and the ultimate consumer is thereby led to believe that he is securing the soap and the washing powder at a price much less than the usual, regular, and customary price for the soap.

The use by the respondent of the various fictitious names and addresses, as hereinabove set forth, leads the ultimate consumer to believe that the business conducted by the respondent is a large, substantial one, and that the soaps are made or manufactured at the various points indicated, including London, England, and Paris, France. Many members of the consuming public are led to believe that the soap so marked has been "vitamized" or medicated in some manner so as to render it more beneficial than ordinary soaps.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, disseminated as aforesaid, has had, and now has, a tendency and capacity to, and does, deceive and mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such false statements and representations are true, and to induce a substantial portion of the purchasing public to purchase said products because of such erroneous and mistaken belief engendered as above set forth.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of 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, Lawrence L. Keller, an individual, trading under the name United Soap 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 toilet soap in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, through the use of fictitious names and addresses, or through the use of different brand or trade names, or in any manner, that respondent sells more than one grade or quality of soap, or that said soap is imported or that it is manufactured at any place other than at respondent's place of business in the city of Seattle, State of Washington.

2. Representing that respondent operates a place of business or that he has an office at any place other than in the city of Seattle, State of Washington.

3. Representing that said soap is "vitamized" or medicated in any way, or that said soap has any medicinal or curative value, or that it is in any manner more beneficial than any ordinary toilet soap.

4. Representing that said soap retails for, or has a retail value of, any price in excess of the usual and customary price at which said soap is sold to ultimate users.

5. Representing that the usual and customary retail price of said soap is in excess of 25 cents per box.

6. Representing that said soap is a high quality toilet soap, or that it is anything other than ordinary toilet soap.

7. Representing, through the use of fictitious names and addresses, or in any other manner, that respondent produces large and substantial quantities of soap.

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

AUTOMATIC RADIO MANUFACTURING COMPANY, INC., GALVIN MANUFACTURING CORPORATION, FERGUSON RADIO AND TELEVISION COMPANY, INC., AND PEP BOYS—MANNY, MOE, AND JACK, INC.

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

Docket 3762. Complaint, Apr. 14, 1939—Decision, Sept. 24, 1940

Where name "Remington" was the name or part of the name of a number of corporations transacting and doing business in the United States, which were and had been well and favorably known to the purchasing public and were and had been long established in various industries, and was used by some of them as a trade name, mark, or brand for their products, and there was a preference among the purchasing public for products made and sold by the well and favorably known and long established concerns whose identity was connected with said name "Remington" and whose products were well and favorably known for quality, workmanship, and performance, and products bearing the names, marks, and brands adopted and used by said concerns had long been recognized by the purchasing public as being of superior quality, workmanship, and performance; and thereafter (1) corporation engaged in manufacture and sale of radio sets and radio parts bearing said name and sold exclusively by it to dealer operator engaged in sale through its fifty-two stores in seven states of radios, radio tubes and other radio parts, and (2) second manufacturers, engaged in manufacture and sale of such products, including automobile radios, on which it placed, at request of said dealer operator, name "Remington" and which, as thus named, it sold exclusively to said dealer operator, in furtherance of a scheme engaged in by them in cooperation with each other and with said dealer operator to deceive the public and compete unfairly with other distributors engaged in sale in commerce of radios, radio tubes and other radio parts—

(*a*) Adopted and used in cooperation with each other and with said dealer operator, name "Remington" to identify and designate radios sold by them to such operator for resale to purchasing public, without authority or consent of any of aforesaid corporations which had used word "Remington" in their corporate names or as trade or brand names, and with intent and effect of deceiving purchasing public into belief that their said radios were made or sold by one of said long established concerns using said name as trade name, mark or brand; and

Where said dealer operator, to carry into effect aforesaid scheme and with intent of inducing purchase of its said radios, radio tubes and other radio parts—

(b) Featured name "Remington" as brand name or mark of its said radios, radio tubes, and other radio parts in advertisements in catalogs and newspapers published and circulated among prospective customers throughout the United States and the District of Columbia and distributed by mail and otherwise; and

(*c*) Caused name "Remington," as identification thereof, to be placed upon the dials and name plates fixed and attached to said radios;

With effect of deceiving and misleading members of purchasing public into the belief that their said radios, radio tubes, and other radio parts, marked and branded as aforesaid, were products of well known and long established concerns which rightfully used name "Remington," and of placing in the hands of dealers and others instrumentality and means whereby innocent as well as unscrupulous dealers or others reselling or otherwise disposing of such radios might also deceive and mislead purchasers into the belief that their radios, radio tubes, and other radio parts were products of one of well known concerns above referred to, and, as a result of erroneous belief aforesaid, of inducing public to purchase their said product in preference to radios of competitors and of thereby diverting trade to themselves from competitors, including those engaged, as aforesaid, in sale and distribution of such products in commerce and who do not misbrand or misrepresent their said products; to the substantial injury of competitors and the public:

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

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. Carrel F. Rhodes for the Commission.

Mr. Charles E. Green, of Chicago, Ill., for Galvin Manufacturing Corporation.

Mr. Daniel R. Forbes and *Mr. James O. Wrightson, Jr.*, of Washington, D. C., and *Mr. Edward A. Kelly*, of Philadelphia, Pa., for Pep Boys—Manny, Moe, and Jack, 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 Automatic Radio Manufacturing Co., Inc., Galvin Manufacturing Corporation, Ferguson Radio and Television Co., Inc., and Pep Boys—Manny, Moe and Jack, 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 Automatic Radio Manufacturing Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts, with its offices and principal place of business located at 159 Brookline Avenue, Boston, Mass. Respondent Automatic Radio Manufacturing Co., Inc., is engaged in the manufacture of radio sets, radio parts, and

like products at its said place of business in Boston, Mass., and in the sale and distribution thereof to dealers and members of the purchasing public located in the United States and in foreign countries.

Respondent Galvin Manufacturing Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Massachusetts with its offices and principal place of business located at 4545 Augusta Street, Chicago, Ill. Respondent Galvin Manufacturing Corporation is engaged in the manufacture of radio sets, radio parts, and like products at its said place of business in Chicago, Ill., and in the sale and distribution thereof to dealers and members of the purchasing public located in the United States and in foreign countries.

Respondent Ferguson Radio and Television Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 745 Broadway, New York, N. Y. Respondent Ferguson Radio and Television Co., Inc. is engaged in the manufacture of radio sets, radio parts, and like products at its said place of business in the city of New York, N. Y., and in the sale and distribution thereof to dealers and members of the purchasing public located in the United States and in foreign countries.

The respondents named and described in this paragraph are hereinafter referred to as respondent manufacturers. Said respondent manufacturers cause their respective products, when sold, to be transported from their said places of business, located as aforesaid, to the purchasers of said products at their various points of location in the several States of the United States, in the District of Columbia and in foreign countries.

PAR. 2. Respondent Pep Boys—Manny, Moe and Jack, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Pennsylvania, with its office and principal place of business located at Tenth Street and Somerville Avenue, Philadelphia, Pa. Said respondent is engaged in the sale and distribution of a line of automotive accessories including radio sets, radio parts, and like products. It sells and distributes said products through branch stores located in the several States of the United States and in the District of Columbia. It causes said products, when sold, to be transported from its various stores at their respective points of location to the purchasers of said products, many of whom are located in States other than the State of origin of said shipments. Said respondent conducts stores in the District of Columbia and makes sales of said products from said stores to purchasers located in the District of Columbia and in various States

of the United States and it causes such products, when sold, to be transported from said stores in the District of Columbia to said purchasers at their respective points of location.

PAR. 3. All of said respondents now maintain, and for more than 1 year last past have maintained, a course of trade in said products so sold and distributed by them in commerce among and between the various States of the United States, in the District of Columbia and with foreign countries.

In the course and conduct of their said businesses, the respondents are now, and for more than one year last past have been, in competition with other corporations and with individuals and partnerships engaged in the business of manufacturing, selling, and distributing, and in the business of selling and distributing, radio sets, radio parts, and like products in commerce among and between the various States of the United States, in the District of Columbia and with foreign countries.

PAR. 4. Each of the respondent manufacturers and the respondent Pep Boys—Manny, Moe and Jack, Inc., in cooperation with each other, have been for the several years last past, and are now, engaged in a scheme to deceive the public and to compete unfairly with other distributors of radio sets, radio parts, and like products who are in competition with all of said respondents in commerce among and between the several States of the United States, in the District of Columbia and with foreign countries. In furtherance of said scheme, said respondent manufacturers have cooperated with the respondent Pep Boys—Manny, Moe, and Jack, Inc., by adopting and using as marks or brands to designate radio sets, radio parts, and like products, sold to respondent Pep Boys—Manny, Moe, and Jack, Inc., for distribution to the purchasing public, the names, marks and brands of corporations, partnerships, and individuals well and favorably known to the purchasing public and long established in various industries, which names, marks, and brands were adopted and used, and are now being used, by the respondents without the authority or consent of the legal owners and users thereof, for the purpose and with the effect of deceiving the purchasing public and injuring competitors. Among the names, marks, and brands so adopted and used by the respondents to identify their said radio sets, radio parts, and like products is the name "Remington."

PAR. 5. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their said radio sets, radio parts, and like products, respondents have published and have circulated among prospective customers throughout the United States, in the District of Columbia and in foreign countries, adver-

tisements in letters, pamphlets, circulars, and newspapers, distributed by mail and otherwise, in which the name "Remington" is featured as a brand name or mark on radio sets, radio parts, and like products, referred to in said advertisements, and they have placed upon the dials and name plates fixed and attached to said radio sets, radio parts, and like products, to identify said products, the name "Remington." The radio sets, radio parts, and like products to which reference is made in said advertisements and upon which are placed dials and name plates bearing the word "Remington" are not manufactured and sold by one of the legal owners and users of said name Remington who are well and favorably known to the public and long established in industry, but are manufactured and sold by said respondent manufacturers and sold by the respondent Pep Boys—Manny, Moe and Jack, Inc., as hereinabove alleged.

PAR. 6. There is a preference among the purchasing public for products manufactured and sold by well and favorably known and long established concerns whose products are well and favorably known for quality, workmanship, and performance, and the products bearing the names, marks, and brands adopted and used by the respondents as aforesaid, and more especially the products bearing the name "Remington," have long been recognized by the purchasing public as being of superior quality, workmanship, and performance produced by well and favorably known and long established concerns. Purchasers buy respondents' said radio sets, radio parts, and like products so marked and branded with the name "Remington" under the mistaken belief that they are buying the products of well known and long established concerns whose reputation for quality, workmanship, and performance they rely upon and to whom such purchasers look for satisfaction in the event of the failure of performance, or defect in quality or workmanship, of the products so purchased. Many purchasers have bought respondents' aforesaid products under the mistaken and erroneous belief, induced by respondents' said use of the said name "Remington" in the manner aforesaid, that the products so purchased were the products manufactured and sold by well known and long established legal owners and users of the name Remington, as a mark or brand to designate the products manufactured and sold by them.

PAR. 7. There are among the competitors of the respondents herein described other corporations, and individuals and partnerships, engaged in the business of selling and distributing radio sets, radio parts, and like products in commerce among and between the several States of the United States, in the District of Columbia, and in foreign countries, who do not misbrand or falsely represent

their said products. Among such competitors are legal owners and users of the name Remington, who use, and have used, said name as a mark or brand to identify products like or similar to those sold and distributed by the respondents.

The products bearing the name Remington, and known and described as Remington products, enjoy a favorable reputation among members of the purchasing public for quality, workmanship, and performance, and the name Remington has a great monetary good-will value to the manufacturers of such products.

PAR. 8. The use by the respondents of the name "Remington" in the manner aforesaid as a mark or brand to designate said radio sets, radio parts, and like products is deceptive and misleading, and has had, and now has, the capacity and tendency to, and does, mislead and deceive members of the purchasing public into the mistaken and erroneous belief that respondents' said products so marked and branded are the products of other well known and long established concerns who use, and have a lawful right to the use of, the name Remington. Said respondent manufacturers and the respondent Pep Boys—Manny, Moe and Jack, Inc., by the said use of the said name "Remington," have placed in the hands of others who deal in their said products a means and instrumentality whereby unscrupulous sellers may mislead and deceive purchasers into the aforementioned mistaken and erroneous belief. As a result of the mistaken and erroneous belief, induced by the respondents' said acts, practices, and representations as herein alleged, purchasers have purchased a substantial quantity of respondents' said products, with the result that trade has been, and is, unfairly diverted to the respondents from their competitors engaged in selling radio sets, radio parts, and like products in commerce among and between the several States of the United States, in the District of Columbia and in foreign countries, who do not misrepresent the nature, character, quality, and sources of their respective products. As a consequence thereof, substantial injury has been done, and is now being done, by the respondents to competitors in said commerce between and among the various States of the United States, in the District of Columbia and in foreign countries.

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

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 14, 1939, issued, and subquently served, its complaint in this proceeding charging respondents, Automatic Radio Manufacturing Co., Inc., Galvin Manufacturing Corporation, Ferguson Radio and Television Co., Inc., and Pep Boys—Manny, Moe, and Jack, Inc., 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. Respondents, Automatic Radio Manufacturing Co., Inc., Galvin Manufacturing Corporation, and Pep Boys—Manny, Moe, and Jack, Inc., filed answers.

Thereafter, testimony and other evidence in support of the allegations of the complaint were introduced by Carrel F. Rhodes, attorney for the Commission, and in opposition thereto by Charles E. Green, attorney for respondent Galvin Manufacturing Corporation, and by Daniel R. Forbes and James O. Wrightson, Jr., attorneys for respondent Pep Boys—Manny, Moe, and Jack, Inc., before Lewis C. Russell, 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 on the complaint, the answers of respondents, said testimony and other evidence, brief of attorney for the Commission, brief of attorneys for respondent Pep Boys—Manny, Moe, and Jack, Inc., and the Commission having duly considered the matter, and being now fully advised in the premises, finds that the proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Ferguson Radio and Television Co., Inc., was a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and had its principal office and place of business at 745 Broadway, New York, N. Y. This respondent is no longer engaged in business and has discontinued all corporate activities, its business having been liquidated in a bankruptcy proceeding prior to the issuance of complaint herein.

Par. 2. Respondent, Automatic Radio Manufacturing Co., Inc. (hereinafter referred to as Automatic Co.), a Massachusetts corporation, with its principal place of business at 122 Brookline Avenue,

Boston, Mass., has been engaged for several years last past in the manufacture and sale of radio sets and radio parts bearing the name "Remington" which were sold exclusively to respondent, Pep Boys—Manny, Moe, and Jack, Inc., and has caused its products, when so sold, to be transported in commerce from Boston, Mass., to respondent, Pep Boys—Manny, Moe, and Jack, Inc., at its branch places of business located in various States other than Massachusetts.

PAR. 3. Respondent, Galvin Manufacturing Corporation (hereinafter referred to as Galvin Co.), an Illinois corporation having its principal place of business at 4545 Augusta Boulevard, Chicago, Ill., is engaged, and has been engaged for several years last past, in the manufacture and sale of radios and radio parts, and during said times it sold automobile radios to respondent, Pep Boys—Manny, Moe, and Jack, Inc., bearing the name "Remington," which it placed thereon at the request of respondent, Pep Boys—Manny, Moe, and Jack, Inc. The respondent sold its radios bearing the name "Remington" exclusively to respondent, Pep Boys—Manny, Moe, and Jack, Inc., and caused such radios, when so sold, to be transported in commerce from Chicago, Ill., to respondent, Pep Boys—Manny, Moe, and Jack, Inc., at its branch places of business located in various States other than Illinois.

PAR. 4. Respondent, Pep Boys—Manny, Moe, and Jack, Inc., (hereinafter referred to as Pep Boys Co.) is a Pennsylvania corporation with its principal office and place of business at Tenth Street and Somerville Avenue, Philadelphia, Pa., and is now and for a number of years has been engaged in the sale of radios, radio tubes, and other radio parts, through 52 stores operated by it which are located in 7 of the States of the United States and in the District of Columbia. Said respondent causes said radios and other products when sold by it to be transported from its various stores to the purchasers thereof located in States other than the State of origin of the shipment and located in the District of Columbia. Many of the radios transported in said commerce between and among the various States of the United States and in the District of Columbia had plates affixed thereto carrying the name "Remington" and had been advertised by said respondent under the trade name "Remington." Said radios so distributed in said commerce were manufactured for this respondent by said respondents, Automatic Co. and Galvin Co., as hereinabove set out.

PAR. 5. Respondents, Automatic Co., Galvin Co., and Pep Boys Co., now maintain and for more than two years last past have maintained, a course of trade in radios, radio tubes, and other radio parts sold and

distributed by them in commerce among and between the various States of the United States and in the District of Columbia.

In the course and conduct of their said business, the above respondents are now, and for more than 1 year last past have been, in substantial competition with corporations, firms and individuals engaged in the sale and distribution of radios, radio tubes, and other radio parts in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. Each of the respondents named in paragraph 5 hereof has been for several years last past, and is now, in cooperation with the other two respondents, engaged in a scheme to deceive the public and to compete unfairly with other distributors of radios, radio tubes, and other radio parts, who are engaged in the sale of radios, radio tubes, and other radio parts in commerce. In furtherance of said scheme, said respondent manufacturers have cooperated with the respondent, Pep Boys Co., in adopting and using the name "Remington" to identify and designate radios sold by them to respondent, Pep Boys Co., for resale to the purchasing public. The name "Remington" is the name or part of the name of a number of corporations transacting and doing business in the United States which are and have been well and favorably known to the purchasing public and which are and have been long established in various industries. Some of these corporations use the name "Remington" as a trade name, mark, or brand for the products manufactured and sold by them. The trade name, mark, or brand "Remington" was adopted and used and is now being used by said respondents without the authority or consent of any of said corporations which have heretofore used the name "Remington" in their corporate name or as a trade or brand name and for the purpose and with the effect of deceiving the purchasing public into the belief that respondents' radios were made or sold by one of said long-established concerns using the name "Remington" as a trade name, mark, or brand.

PAR. 7. In the course and conduct of its business as aforesaid, and to carry into effect the scheme referred to above, and for the purpose of inducing the purchase of its said radios, radio tubes, and other radio parts, respondent, Pep Boys Co., has published and circulated among prospective customers throughout the United States and in the District of Columbia advertisements in catalogs and newspapers, distributed by mail and otherwise, in which the name "Remington" is and was featured as a brand name or mark of its radios, radio tubes, and other radio parts, and it has caused the name "Remington" to be placed upon the dials and name plates fixed and attached to said radios, to identify them.

PAR. 8. There is a preference among the purchasing public for products manufactured and sold by the well and favorably known and long-established concerns whose identity is connected with the name "Remington," and whose products are well and favorably known for quality, workmanship and performance, and the products bearing the names, marks, and brands adopted and used by such concerns have long been recognized by the purchasing public as being of superior quality, workmanship, and performance.

PAR. 9. The use by respondents of the name "Remington" in the manner aforesaid as a mark or brand to designate said radios is deceptive and misleading, and it has had, and now has, the capacity and tendency to deceive and mislead, and it has deceived and misled, members of the purchasing public into the belief that the respondents' radios, radio tubes and other radio parts marked and branded "Remington" were the products of well-known and long-established concerns which rightfully use "Remington." The respondent manufacturers and the respondent, Pep Boys Co., by the sale of their radios, radio tubes, and other radio parts with the name "Remington" thereon, have placed in the hands of dealers and others the instrumentality and the means whereby innocent, as well as unscrupulous dealers, or others, who resell or otherwise dispose of the radios, may also deceive and mislead purchasers into the belief that the respondents' radios, radio tubes, and other radio parts were the products of one of the well-known concerns referred to above. As a result of the erroneous belief above described, the public has been induced to purchase respondents' radios, radio tubes and other radio parts in preference to radios sold by competitors, and trade has been, and is, thereby diverted to the respondents from their competitors. As a consequence of the acts and practices of respondents set forth above, substantial injury has been done to competitors and to the public.

PAR. 10. There are among the competitors of said respondents herein described corporations, individuals, and partnerships engaged in the business of selling and distributing radios, radio tubes, and other radio parts in commerce among and between the several States of the United States and in the District of Columbia who do not misbrand or misrepresent their said 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 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, Automatic Radio Manufacturing Co., Inc., Galvin Manufacturing Corporation, and Pep Boys—Manny, Moe, and Jack, Inc., testimony and other evidence taken before Lewis C. Russell, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, and in opposition thereto, briefs filed therein and oral arguments by Carrel F. Rhodes, counsel for the Commission, and Daniel R. Forbes and James O. Wrightson, Jr., counsel for the respondent, Pep Boys—Manny, Moe, and Jack, Inc., and the Commission having made its findings as to the facts and its conclusion that said respondents, Automatic Radio Manufacturing Co., Inc., Galvin Manufacturing Corporation, and Pep Boys—Manny, Moe, and Jack, Inc., have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Automatic Radio Manufacturing Co., Inc., Galvin Manufacturing Corporation, and Pep Boys—Manny, Moe, and Jack, Inc., collectively and severally, their officers, representatives, agents, or employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of radio sets and radio tubes and parts in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

Using the word "Remington" or any simulation thereof, whether spelled the same or not, as a brand or name to mark, designate, describe, or refer to radios, radio tubes, or other radio parts.

It is further ordered, That 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.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to respondent Ferguson Radio and Television Co., Inc.

IN THE MATTER OF

CENTURY METALCRAFT CORPORATION

MODIFIED CEASE AND DESIST ORDER

Docket 3601. Order, Sept. 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 29, 1939, 28 F. T. C. 1526, and in which Circuit Court of Appeals for the Seventh Circuit on May 18, 1940, in *Century Metalcraft Corporation* v. *Federal Trade Commission*, 112 F. (2d) 443, 30 F. T. C. 1676, rendered its opinion, and on June 15, 1940, issued its decree modifying order in question in certain particulars and affirming same in other particulars—

Requiring respondent, its officers, etc., in connection with offer, etc., in commerce, of kitchen utensils, to forthwith cease and desist from representing that doctors or hospitals have endorsed and recommended its said utensils, or that it manufactures same, or circulating, etc., unfair or disparaging statements concerning competitors or their products, or representing that food cooked in granite or aluminum utensils is dangerous, or that the usefulness, etc., of its utensils, sold under trade name "Silver Seal", is enhanced or affected by reason of silver therein contained, or that its said utensils contain no aluminum, etc., or are more durable and easily cleaned, etc., involve new or revolutionary method, insure improved health, or were used generally by the Army during the World War, as in said order below in detail specified.

Mr. Donovan Divet for the Commission.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on April 29, 1939, the Commission made its findings as to the facts herein and concluded therefrom that respondent had violated the provisions of the Federal Trade Commission Act and issued and subsequently served its order to cease and desist; and it further appearing that on May 18, 1940, the United States Circuit Court of Appeals for the Seventh Circuit rendered its opinion and on June 15, 1940, 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 said decree.

It is ordered, That the respondent Century Metalcraft 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 kitchen utensils in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that doctors or hospitals have endorsed and recommended petitioner's utensils unless and until such recommendation and endorsement has been made by doctors who are dietary experts or by hospitals acting by and through their dietary experts.

2. Representing that petitioner manufactures said utensils unless and until it owns and operates or directly and absolutely controls the factory or factories wherein the same are manufactured by it.

3. Circulating or publishing unfair or disparaging statements concerning the business status or the quality of the products of the competitors of the petitioner.

4. Representing that food cooked in granite or aluminum utensils is dangerous to the health of the consumers of such food.

5. 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.

6. Representing that the utensils now designated as "Silver Seal" contain no aluminum or are not aluminum.

7. Representing that the utensils now designated as "Silver Seal" are more durable or more easily cleaned than are aluminum or granite utensils manufactured by competitors; that said utensils will not pit; that the method of cooking made possible by said utensils is new or revolutionary; that the use of food cooked in said utensils will insure improved health; or that said utensils were used generally by the United States Army during the World War.

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

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 AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3798. Complaint, June 1, 1939—Decision, Sept. 25, 1940

Where a corporation engaged in manufacture of glucose or corn syrup unmixed, and in distribution and sale thereof to, mostly, manufacturers of candy who were competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers in the various States and in the District of Columbia, of said product, in most kinds of which such syrup is used as an ingredient to some extent, and in production of many varieties of which it is one of major raw materials, with cost thereof to candy manufacturer purchasers constituting (1) a substantial part of cost of raw materials used in particular candies, having relatively high syrup content and of total cost of manufacturing extensive line of candies having wide range of syrup contents, and (2) a significant and possibly determinative factor in competitive sale to customers and especially chain store and other large quantity purchasers of many candies containing substantial quantity of syrup ingredient, priced at few cents a pound, and bearing no differentiating name or brand, and in sale of which candy sellers attract customers by selling at small fraction per pound lower than competitor—

(*a*) Sold its said syrup at certain delivered prices and during certain period to purchasers in cities of Chicago and Danville, Ill., while contemporaneously selling such syrup of like grade and quality to purchasers in various other cities, and in accordance with particular city in which particular customer was located, at higher prices;

(*b*) Sold its said syrup thereafter to purchasers in City of Chicago at certain delivered prices, while contemporaneously selling such syrup of like grade and quality to purchasers in Danville and in various other cities and in accordance with particular city in which located, at higher prices; and

(*c*) Sold its said syrup for delivery in containers different in type and smaller in size than tank cars, at higher prices to some purchasers than prices at which it sold such syrup for delivery in same type and size of container to other purchasers;

With result that

(1) It discriminated through said varying prices, differences between which, not justified by it, made more than due allowance for differences in cost of delivery, in price between said purchasers who had paid the various different prices for its said product, and unfavored purchaser manufacturers of candies, containing substantial quantity of such syrup, priced at few cents per pound only, and sold competitively on basis of a small fraction of a cent per pound, and particularly to chain stores and other purchasers of large quantities, as above set forth, were compelled to decrease their profit to extent necessary to absorb higher cost imposed as aforesaid, and, in event of such impairment to any material degree, to make only selective sales at non-

competitive prices to customers on basis of service, or some other nonprice basis, and had their volume of sales directly reduced and overhead unit costs increased through resulting unused capacity, with further impairment of profits;

(2) There was consequent tendency to discourage and weaken financially unfavored candy manufacturers, and possiblity of bringing about their elimination and effective deterrent to establishment of new candy manufacturing enterprises in those areas in which it discriminated, as above set forth, was constituted; and

(3) It conferred upon favored purchasers substantial monetary benefit, giving them substantial competitive advantage, and enabling them to reduce prices of their candy, lower costs, and increase volume and profits; and

With result that effect of discriminations in question and results thereof, as above set forth, had been and might be substantially to lessen competition between favored and unfavored purchasers and tend to create monopoly in former and injure, destroy, and prevent competition therewith:

Held, That in discriminating in price between different purchasers of glucose, under circumstances set forth, it violated provisions of Sec. 2 (a) of Clayton Act, as amended by Robinson-Patman Act.

Before *Mr. John P. Bramhall*, trial examiner.

Mr. P. R. Layton and *Mr. Frank Hier* for the Commission.

Nagel, Kirby, Orrick & Shepley, of St. Louis, Mo., for respondent.

Complaint

The Federal Trade Commission, having reason to believe that the 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. Respondent, Anheuser-Busch, Inc., is a corporation organized and existing under the laws of Missouri with its principal office and place of business at Ninth and Pestalozzi Streets in the city of St. Louis and State of Missouri.

Par. 2. Respondent owns and operates a plant at St. Louis, Mo. This plant has a corn grinding capacity in excess of 10,000 bushels per day, with complete facilities for the finished fabrication of corn products, both for household and industrial use.

Par. 3. For many years respondent has been and is now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) starch, both for food and other purposes; (2) glucose or corn syrup; and (3) corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by

treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of syrups.

The principal by-products of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

Respondent in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities at said plant and has sold and shipped and does now sell and ship such commodities in commerce between and among the various States of the United States from the State in which its factory is located across State lines to purchasers thereof located in States other than the State in which respondent's said plant is located in competition with other persons, firms, and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondent has been and is now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several States of the United States and the District of Columbia in that the respondent has been and is now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondent to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by the respondent, as set forth in paragraph 5 herein, may be substantially to lessen competition in the sale and distribution of corn products between the respondent and its competitors; tend to create a monopoly in the line of commerce in which the respondent is engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the respondent and its competitors

PAR. 7. The effect of said discriminations in price made by the respondent, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondent receiving said lower discriminatory prices and other buyers from respondent competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from the respondent are engaged; and to injure, destroy, and prevent competi-

tion in the lines of commerce in which those who purchase from the respondent are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondent constitute a violation of 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).

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, (U. S. C. title 15, sec. 13), the Federal Trade Commission on June 1, 1939, 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 respondent's various products in violation of subsection (a) of section 2 of said act as amended.

After the issuance and service of said complaint, a motion to dismiss the complaint or make it more definite and certain was filed by respondent, which said motion was denied by order of the Commission on June 30, 1939. Thereafter, on July 21, 1939, and pursuant to an extension of time granted by the Commission, an answer was filed by respondent. Pursuant to written notice to respondent of the time, date, and place, hearings were commenced on May 22, 1940, before John P. Bramhall, an examiner designated by the Commission, at which hearings evidence in support of the charge made in the complaint was introduced by P. R. Layton and Frank Hier, attorneys for the Commission, and other evidence was introduced into the record by stipulation between counsel for the Commission and counsel for respondent. Respondent presented no testimony in opposition to the charge contained in the complaint and waived all intervening procedure, oral arguments, the filing of briefs and further hearings, all of which appears of record herein.

Thereafter this proceeding came on for final disposition by the Commission on said complaint and answer and the record herein 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 Anheuser-Busch, Inc., is a corporation organized and existing under the laws of Missouri with its principal office and place of business at Ninth and Pestalozzi Streets, St. Louis, Mo.

PAR. 2. For many years respondent has been and is now engaged in the business of manufacturing, distributing, and selling glucose or corn syrup unmixed. Such syrup is one of the principal products derived in the refining of corn.

PAR. 3. For the purpose of refining corn and the manufacture of such syrup, respondent owns and operates a corn refining plant at St. Louis, Mo. This plant has a corn grinding capacity in excess of 10,000 bushels per day with facilities for the finished fabrication of corn products, including such syrup.

PAR. 4. For many years in the course and conduct of its business respondent has sold and shipped and does now sell and ship such syrup in commerce between and among the several States of the United States, causing such syrup to be sold and shipped from its said plant in St. Louis, Mo., across State lines to purchasers thereof located in other States of the United States in competition with other corporations engaged in similar lines of commerce.

PAR. 5. Most of such purchasers so located purchase such syrup which is of like grade and quality for use in the manufacture of candy. Such purchasers are competitively engaged in the sale of such candy to various customers including chain stores, wholesalers and retailers, all located in the several States of the United States and in the District of Columbia.

Such syrup has been sold and delivered by respondent in several types and sizes of containers, at prices per cwt. which increase over the tank car price per cwt. according to the size and type of container as follows:

Container	Price per hundredweight over tank car	
	Price per cwt.	
Barrels	.33¢	
Half barrels	.58¢	
10-gallon kegs	.98¢	
5-gallon kegs	1.08¢	
Returnable drums	.13¢	Where there is no return freight on empty drums.
" "	.18¢	Where return freight on empty drum is between 50 and 75 cents per hundredweight.
" "	.23¢	Where return freight on empty drum is between 76 and 90 cents per hundredweight.
" "	.28¢	Where return freight on empty drum is between 91 cents and $1.00.
" "	.33¢	Where return freight on empty drum is more than $1.00.

PAR. 6. Between June 19, 1936, and August 1, 1937, respondent has sold such syrup at higher delivered prices per one hundred pounds to purchasers located in certain cities other than Chicago, Ill., and Danville, Ill., than it has sold such syrup in containers of like size and type to purchasers located in Chicago, Ill., and Danville, Ill.; and between September 14, 1937, and the present time, respondent has sold such syrup to purchasers located in Danville, Ill., and to other purchasers located elsewhere outside of Chicago, Ill., at higher prices per one hundred pounds than it has sold such syrup in containers of like size and type to purchasers located in Chicago, Ill.

The higher prices at which such syrup was sold by respondent to such purchasers located in cities other than Chicago, Ill., were not uniformly higher than the prices at which such syrup was concurrently sold by respondent to purchasers located in Chicago, Ill., but such higher prices varied with the geographical location of the cities in which such purchasers were located.

Thus, on the following dates respondent sold such syrup to such purchasers located respectively in each of the following cities at the delivered prices per hundred pounds which are shown opposite said cities for such syrup (43° Baumé), in tank cars, or in other containers, in which latter case, for the purposes of comparison, no differential has been added for the containers:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill	2.44	3.04	2.29	2.09
Danville, Ill	2.44	3.04	2.435	2.20
St. Louis, Mo	2.60	3.20	2.47	2.27
Centralia, Ill	2.60	3.20	2.47	2.27
Davenport, Iowa	2.60	3.20	2.47	2.27
Kansas City, Mo	2.80	3.40	2.69	2.49
St. Joseph, Mo	2.80	3.40	2.69	2.49
Memphis, Tenn	2.80	3.40	2.69	2.49
Sioux City, Iowa	2.80	3.40	2.69	2.49
Aberdeen, Miss	2.81	3.41	2.69	2.49
Chattanooga, Tenn	2.82	3.42	2.71	2.51
Nashville, Tenn	2.82	3.42	2.71	2.51
Jackson, Miss	2.82	3.42	2.71	2.51
New Orleans, La	2.855	3.455	2.75	2.55
Iola, Kans	2.96	3.56	2.86	2.66
Little Rock, Ark	2.99	3.59	2.89	2.69
Denver, Colo	3.24	3.64	2.95	2.75
Jacksonville, Tex	3.14	3.74	3.06	2.86
Ft. Worth, Tex	3.17	3.77	3.09	2.89
Dallas, Tex	3.17	3.77	3.09	2.89
Abilene, Tex	3.20	3.80	3.12	2.92

The differentials shown above as existing between the foregoing prices on August 1, 1936, and on August 1, 1937, were substantially the same during the entire period from June 19, 1936, until after August 1, 1937; and the differentials shown above as existing between the foregoing prices on August 1, 1938, and on August 1, 1939, were

substantially the same during the entire period from September 14, 1937, until the present time.

PAR. 7. Since June 19, 1936, respondent has also sold such syrup for delivery in containers different in type and smaller in size than tank cars at higher prices to some purchasers than it has sold such syrup for delivery in the same type and size of containers to other purchasers.

Thus, in St. Louis, Mo., respondent sold such syrup delivered in returnable drums to some purchasers at a price of 13 cents per hundredweight over the tank car price in accordance with its pricing policy as set forth in paragraph 5 hereof but respondent concurrently sold such syrup in identical containers to other purchasers in St. Louis at a price of only 4 cents per hundredweight over the tank car price.

PAR. 8. By selling such syrup at said different prices as found in paragraphs 6 and 7, the differences between which prices have not been justified by respondent and which differences make more than due allowance for differences in the cost of delivery, it has discriminated in price between such purchasers who have paid the various different prices for such syrup.

PAR. 9. The result of said discriminations has been to place the unfavored purchasers paying the greater prices for such syrup under a competitive disadvantage.

Such syrup is used as an ingredient to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties of candy.

Not only is the quantity of such syrup used significant, but the price paid therefor by such purchasers is a substantial part of the cost of the raw materials used in particular candies having a relatively high syrup content as well as of the total cost of manufacturing an extensive line of candies having a wide range of syrup contents. Said costs of the unfavored of such purchases increase over said costs of such favored purchasers directly as the amount of the discrimination between them increases.

Many candies containing a substantial quantity of such syrup are priced at but a few cents per pound. As to products so priced and bearing no differentiating name or brand, sellers have attracted customers by selling at only a small fraction of a cent per pound lower than a competitor. This has been especially true in selling such candies to chain stores and other purchasers of large quantities to whom such a small difference in price is determinative in placing their business.

Under such circumstances an unfavored purchaser's higher raw material costs are difficult if not impossible to recover by increasing

the price of the candy manufactured if such unfavored purchaser hopes to maintain volume sales. The effect on such unfavored purchaser of the higher cost of such syrup is to decrease profit to the extent necessary to absorb the higher direct per unit cost imposed by the higher syrup cost as long as such unfavored purchaser attempts to sell his candy at a competitive price.

Where such absorption causes an impairment of profit to any material degree, it results in such unfavored purchaser making only selective sales at non-competitive prices to customers on the basis of service or some other nonprice basis and directly causes reduced volume of sales resulting in unused capacity and increased overhead unit costs on particular as well as on all products; the consequence again being impairment of profits.

Such impairment of profits tends to discourage and to weaken financially existing unfavored candy manufacturers; may bring about the elimination of such unfavored candy manufacturers from the industry and does prove an effective determent to the establishment of new candy manufacturing enterprises in those areas in which respondent discriminates as found above.

A further result of said discriminations has been to confer upon the favored purchasers receiving the benefit of said discriminations a substantial monetary benefit which has given such benefited purchasers a substantial competitive advantage, enabling them to reduce the selling prices of their candy, lower costs, increase volume and increase profits.

The effect of the discriminations found in paragraphs 6, 7, and 8, and the results therefrom as set out hereinabove, has been and may be substantially to lessen competition between the favored and unfavored purchasers, tend to create a monopoly in such favored purchasers and injure, destroy, and prevent competition with such favored purchasers.

CONCLUSION

The Commission concludes that in discriminating in price between different purchasers of glucose as set forth in the above findings of fact, the respondent, Anheuser-Busch, Inc., has violated the provisions of section 2 (a) 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 answer of respondent, the testimony taken and stipulated, and other evidence introduced

before John P. Bramhall, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, no evidence having been presented in opposition thereto by respondent, and further hearings, oral argument, and the filing of briefs having been waived by the respondent; the Commission having made its findings as to the facts and its conclusion, which findings and conclusion are hereby made a part hereof, that 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, U. S. C. A.).

It is ordered, That respondent, Anheuser-Busch, Inc., its officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of glucose or corn syrup unmixed in interstate commerce and in the District of Columbia do forthwith cease and desist:

1. From discriminating in price between different purchasers of glucose or corn syrup unmixed of like grade and quality either directly or indirectly in the manner and degree as found by the Commission in paragraphs 6 and 7 of the Commission's findings as to the facts and conclusion.

2. From continuing or resuming the discriminations in prices found by the Commission in paragraphs 6 and 7 of the aforesaid findings as to the facts and conclusion.

3. From otherwise discriminating in price in the manner and degree substantially similar to the discriminations found in paragraphs 6 and 7 of the Commission's findings as to the facts and conclusion.

4. From otherwise selling said glucose or corn syrup unmixed to some purchasers thereof at a different price than to other purchasers, the effect whereof may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which customers of the respondent are engaged, or to injure, destroy or prevent competition with any person who either grants or receives the benefit of such discrimination, provided that nothing shall prevent price differences which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered; and provided further that nothing shall prevent respondent from showing that its lower price to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor.

It is further ordered, That the said respondent, Anheuser-Busch, 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

CURTIS C. WALKER, TRADING AS DIAMOND 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 4224. Complaint, Aug. 7, 1940—Decision, Sept. 26, 1940

Where an individual engaged in manufacture of candy and in sale and distribution of certain assortments thereof 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 included (1) number of bars of candy, together with push card for use in sale and distribution of such products to purchasing public under plan in accordance with which customer received bar without cost or paid therefor 1, 2, or 3 cents depending upon number secured by chance in accordance with particular disc of card pushed, and (2) various other assortments involving lottery or chance feature and similar in methods of sale and distribution to that above described from which they varied in detail only—

Sold such assortments, along with said push cards to dealer or retailer purchasers, by whom, as such direct or indirect purchasers, assortments in question were displayed and sold to purchasing public in accordance with aforesaid sales plans or methods, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of his candy in accordance with such plans or methods as above set forth, involving game of chance or sale of a chance to procure a bar of candy without cost, or at a 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 sales plans or methods involving game of chance or sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate consumers of said candy were attracted to said plans employed by him in the sale and distribution of his said products, and element of chance involved therein and were thereby induced to buy his said candy in preference to that offered and sold by said competitors who do not use such or equivalent sales plans or methods, and with result, through use of such plans or methods and because of said game of chance, of unfairly diverting trade to him from said competitors who do not use same or equivalent sales plans or methods; to the substantial injury of competition:

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 Curtis C. Walker, individually and trading as Diamond Candy 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, Curtis C. Walker, is an individual trading under the name of Diamond Candy Co., with his principal office and place of business located at 219 North Graham Street, Charlotte, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused said candy when sold to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof in various other States of the United States 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 candy in commerce between and among various States of the United States. In the course and conduct of his business respondent is and has been in competition with other individuals and partnerships, and with corporations engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold certain assortments of candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy, together with a device commonly called a push card. Said bars of candy are distributed to the consumers thereof by means of said push card in substantially the following manner:

The push card contains a number of partially perforated discs, and on the face of each of said discs is printed the word "push." Within each of said discs is printed either the letter "o" or number 1, 2, or 3, and the persons pushing the discs containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the discs containing either number 1, 2, or 3 pay in cents the amount appearing on the disc pushed. The said numbers printed within the said discs are effectively concealed from purchasers and prospective

purchasers until selections have been made and the discs separated or removed from said card. Whether a customer receives a bar of candy without cost or is required to pay 1 cent, 2 cents, or 3 cents therefor is thus determined wholly by lot or chance.

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

PAR. 3. Retail dealers who purchase respondent's said assortments of candy either directly or indirectly expose and sell the same to the purchasing public 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 and distribution of his 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 his 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.

PAR. 4. The sale of candy to the purchasing public, in the manner above alleged, involves a game of chance or the sale of a chance to procure a bar of candy without cost or 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 sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said candy are attracted by said sales plans or methods employed by respondent in the sale and distribution of his candy, and the element of chance involved therein, and are thereby induced to buy 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 sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or equivalent sales plans or methods and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among various States of the United States.

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 7, 1940, issued, and on August 8, 1940, served, its complaint in this proceeding upon respondent, Curtis C. Walker, individually and trading as Diamond Candy 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 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 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, Curtis C. Walker, is an individual trading under the name of Diamond Candy Co., with his principal office and place of business located at 219 North Graham Street, Charlotte, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture of candy and in the sale and distribution thereof to dealers. Respondent causes and has caused said candy, when sold, to be shipped or transported from his aforesaid place of business in the State of North Carolina to purchasers thereof in various other States of the United States 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 candy, in commerce between and among various States of the United States. In the course and conduct of his business, respondent is and has been in competition with other individuals and with partnerships and cor-

porations engaged in the sale and distribution of candy in commerce between and among various States of the United States.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold certain assortments of candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme, when said candy is sold and distributed to the consumers thereof. One of said assortments consists of a number of bars of candy, together with a device commonly called a push card. Said bars of candy are distributed to the consumers thereof by means of said push card in substantially the following manner.

The push card contains a number of partially perforated discs, and on the face of each of said discs is printed the word "push." Within each of said discs is printed either the letter "o" or number 1, 2, or 3, and the persons pushing the discs containing the letter "o" each receive a bar of said candy without cost, and the persons pushing the discs containing either number 1, 2, or 3 pay in cents the amount appearing on the disc pushed. The said numbers printed within the said discs are effectively concealed from purchasers and prospective purchasers until selection have been made and the discs separated or removed from said card. Whether a customer receives a bar of candy without cost or is required to pay 1 cent, 2 cents, or 3 cents therefor is thus determined wholly by lot or chance.

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

PAR. 3. Retail dealers who purchase respondent's said assortments of candy, either directly or indirectly, expose and sell the same to the purchasing public, 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 and distribution of his 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 his 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.

PAR. 4. The sale of candy to the purchasing public, in the manner above described, involves a game of chance or the sale of a chance to procure a bar of candy without cost or at a price much less than the normal retail price thereof. Many persons, firms, and corpora-

tions who sell or distribute merchandise in competition with respondent, as above described are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or the sale of a chance to win something by chance or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate consumers of, said candy are attracted by said sales plans or methods employed by respondent in the sale and distribution of his candy, and the element of chance involved therein, and are thereby induced to buy 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 sales plans or methods. The use of said sales plans or methods by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade to respondent from his said competitors who do not use the same or equivalent sales plans or methods and as a result thereof, substantial injury is being and has been, done by respondent to competition in commerce between and among 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 and the substitute answer of respondent, in which substitute answer, respondent admits all the material allegations of fact set forth in said complaint, and states that 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, Curtis C. Walker, individually and trading as Diamond Candy Co., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of candy or any other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing candy or any other merchandise so packed and assembled that sales of said candy, or any other merchandise, are to be made, or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to, or placing in the hands of others, push or pull cards, punchboards, or other lottery devices, either with assortments of candy, or other merchandise, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used in selling or distributing said candy, or other merchandise to the public.

3. 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

DR. PIERRE CHEMICAL COMPANY

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

Docket 4005. Complaint, Jan. 31, 1940—Decision, Sept. 27, 1940

Where a corporation engaged in the manufacture, sale and distribution in commerce among the various States and in the District of Columbia of its medicinal preparations known as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories and Dr. Pierre's Boro-Pheno-Form Vaginal Creme; in advertisements which it disseminated concerning its said medicinal preparations through the mails, through newspapers and periodicals of general circulation, and through circulars and other printed or written matter distributed in commerce among the various States, and through other means in commerce and otherwise, and which were intended and likely to induce purchase of its said product—

Represented directly or by implication that its said products constituted in all cases competent and effective contraceptives and were competent and effective germicides and possessed substantial therapeutic agents which healed irritated tissues and membranes and had been approved and accepted and were recommended by a substantial number of reputable physicians;

Facts being aforesaid products did not generally or in a majority of cases constitute competent or effective preventives for aforesaid purposes and while they possessed antiseptic ingredients of low toxicity were not competent or effective germicides generally; contained no substantial therapeutic agents or properties which would serve to heal irritated tissues or membranes and had not been approved, accepted, or recommended by any substantial number of reputable physicians;

With tendency and capacity to mislead and deceive substantial portion of the purchasing public into the erroneous belief that said representations were correct and constituted statements of fact, and with result, as direct consequence of such mistaken and erroneous beliefs induced by its said representations, that a number of the purchasing public bought substantial quantities of said Boro-Pheno-Form Vaginal Suppositories and Boro-Pheno-Form Vaginal Creme:

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. James L. Baker for the Commission.

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 Dr. Pierre Chemical Co., a corporation, hereinafter referred to as respondent, has

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

PARAGRAPH 1. Dr. Pierre Chemical Co. is a corporation created, organized, and existing under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 162 North Franklin Street, Chicago, Ill.

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 known as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories, and Dr. Pierre's Boro-Pheno-Form Vaginal Creme.

In the course and conduct of its business, the respondent causes said medicinal preparations, when sold, to be transported from its 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 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 the aforesaid business, the respondent has disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning its said medicinal 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 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 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:

So easy * * * One dainty Boro-Pheno-Form suppository—for Feminine Hygiene! How much easier and simpler than solutions and awkward apparatus! More and more modern wives are discovering this convenience and discovering too that Boro-Pheno-Form is soothing, odorless and perfectly harm-

less. In use for more than forty-seven years. Ask your druggist for enlightening booklet "The Answer." Dr. Pierre's BORO-PHENO-FORM for Feminine Hygiene. At all drug stores.

Ideal For more than forty-seven years Boro-Pheno-Form has given wives freedom from old-fashioned feminine hygiene methods. Today these convenient suppositories are widely accepted because they are so simple and dainty—ideal! They need no water nor accessories. No danger of "overdose" or "underdose." Soothing, harmless, odorless. Ask your druggists for enlightening free booklet—"The Answer." Dr. Pierre's BORO-PHENO-FORM for Feminine Hygiene. At all drug stores.

The answer: Personal Feminine Hygiene. The original BORO-PHENO-FORM Formula which has been approved and accepted by a substantial number of professional men, was developed by an eminent physician in 1890.

BORO-PHENO-FORM was formulated with a fundamental requirement in mind that a preparation which has no serious harmful effect on delicate tissue can be regarded as sufficient for its purpose; it must have a refreshing, astringent action, be soothing to irritated tissues and odorless.

In every sense of the word BORO-PHENO-FORM affords an accepted method for clean, scientific and convenient practice of Modern Feminine Hygiene.

The coca-butter base in BORO-PHENO-FORM melts rapidly at body heat, releasing the therapeutic agents shortly after the cone is inserted.

Many women, at one time or another, suffer from minor irritations of the vaginal tract.

The continued use, according to directions, of BORO-PHENO-FORM has always proved a safe procedure.

Here is convincing, * * * Final Proof of BORO-PHENO-FORM'S effectiveness.

SAFE—one dainty suppository is sufficient. No danger of "overdose" or "underdose."

EFFECTIVE—melts at body temperature, covering delicate inner tissues with a soothing coating.

The Answer to Modern Marriage Hygiene: the laboratory staff of the Dr. Pierre Chemical Company has devoted more than a generation to the study of this problem; the definite determination of the therapeutic values of various medicinal ingredients when placed in the vaginal canal; the elimination of caustic and tissue destroying drugs; and the determination of the properties which an efficient Feminine Hygiene agent must possess.

A Feminine Hygiene preparation must do the work expected of it.

But the problem must be looked upon broadly. There are many desirable properties which an efficient Feminine Hygiene agent should and must contain before the formula can be considered therapeutically sound. For more than 45 years BORO-PHENO-FORM cones have been supplying this need.

BORO-PHENO-FORM was formulated with these fundamental requirements in mind. The fact that a preparation has no harmful effect on delicate tissue is not enough. It must have a refreshing, soothing and astringent effect, it must cleanse and deodorize, but leave no tell-tale odor of its own.

Here is a simple, dainty and convenient method of Feminine Hygiene.

In every sense of the word, BORO-PHENO-FORM points the way to a scientific and convenient practice of Modern Marriage Hygiene.

BORO-PHENO-FORM is perfectly safe. The coca-butter base melts rapidly at body heat, releasing therapeutic agents within two minutes after the cone is inserted.

The action of BORO-PHENO-FORM is beneficial. The continued use according to directions, of BORO-PHENO-FORM will never prove harmful.

Two kinds of BORO-PHENO-FORM. Dr. Pierre's BORO-PHENO-FORM Vaginal Cones—The identical BORO-PHENO-FORM formula is now available in a tube. The same therapeutically as BORO-PHENO-FORM Suppositories.

Start now to enjoy the BORO-PHENO-FORM way to Modern Marriage Hygiene. I recommend it to each and every married woman.

Additional copies of this booklet will be gladly supplied by the publisher on request. Furnished to married women only.

Dr. Pierre Chemical Co.

162 N. Franklin Street, Chicago, Ill.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein the respondent represents directly or by implication that its said products constitute in all cases competent and effective preventatives against conception; that said products are competent and effective antiseptics and germicides; that said products possess substantial therapeutic agents which heal and soothe irritated tissue and membranes; that respondent's products have been approved and accepted and are recommended by a substantial number of reputable physicians.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's products do not generally or in the majority of cases constitute competent or effective preventatives against conception. While said products possess antiseptic ingredients of a low toxicity such products are not competent or effective antiseptics or germicides. Said products do not contain any substantial therapeutic agents or properties which will serve to heal or soothe irritated tissue or membranes. Respondent's products have not been approved or accepted by nor are they recommended by any substantial number of reputable physicians.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to its preparations, disseminated as aforesaid, has had and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements, representations and advertisements are true and induces a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's 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 the 31st day of January 1940, issued and on the 1st day of February 1940, served its complaint in this proceeding upon said respondent, Dr. Pierre Chemical 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 February 19, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, 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 its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Dr. Pierre Chemical Co. is a corporation duly organized and existing under the laws of the State of Delaware with its office and principal place of business at 162 North Franklin Street in the city of Chicago, Ill.

Par. 2. For several years, respondent has been and now is engaged in the business of manufacturing, selling, and distributing, in commerce among and between the various States of the United States and in the District of Columbia, medicinal preparations known as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories and Dr. Pierre's Boro-Pheno-Form Vaginal Creme.

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 advertisements concerning its said medicinal preparations by United States mails, by insertions in newspapers and periodicals, having a general circula-

tion, 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 advertisements concerning its said medicinal preparations, by various means, for the purpose of inducing, directly or indirectly, the purchase of its said medicinal preparations in commerce, as "commerce" is defined in the Federal Trade Commission Act. Among and typical of the representations contained in the advertisements disseminated and caused to be disseminated, as aforesaid, are the following:

So easy * * * One dainty Boro-Pheno-Form suppository—for Feminine Hygiene. How much easier and simpler than solutions and awkward apparatus! More and more modern wives are discovering this convenience and discovering too that Boro-Pheno-Form is soothing, odorless and perfectly harmless. In use for more than forty-seven years. Ask your druggist for enlightening booklet "The Answer." Dr. Pierre's BORO-PHENO-FORM for Feminine Hygiene. At all drug stores.

Ideal for more than forty-seven years Boro-Pheno-Form has given wives freedom from old-fashioned feminine hygiene methods. Today these convenient suppositories are widely accepted because they are so simple and dainty—ideal! They need no water nor accessories. No danger of "over-dose" or "underdose." Soothing, harmless, odorless. Ask your druggist for enlightening free booklet—"The Answer." Dr. Pieere's BORO-PHENO-FORM for Feminine Hygiene. At all drug stores.

The Answer: Personal Feminine Hygiene. The original BORO-PHENO-FORM Formula which has been approved and accepted by a substantial number of professional men, was developed by an eminent physician in 1890.

BORO-PHENO-FORM was formulated with a fundamental requirement in mind that a preparation which has no serious harmful effect on delicate tissue can be regarded as sufficient for its purpose; it must have a refreshing, astringent action, be soothing to irritated tissues and odorless.

In every sense of the word BORO-PHENO-FORM affords an accepted method for clean, scientific and convenient practice of Modern Feminine Hygiene.

The coca-butter base in BORO-PHENO-FORM melts rapidly at body heat, releasing the therapeutic agents shortly after the cone is inserted. Many women, at one time or another, suffer from minor irritations of the vaginal tract.

The continued use, according to directions, of BORO-PHENO-FORM has always proved a safe procedure.

Here is convincing * * * Final Proof of BORO-PHENO-FORM'S effectiveness.

SAFE—one dainty suppository is sufficient. No danger of "overdose" or "underdose."

EFFECTIVE—melts at body temperature, covering delicate inner tissues with a soothing coating.

The Answer to Modern Marriage Hygiene: the laboratory staff of the Dr. Pierre Chemical Company has devoted more than a generation to the study of this problem; the definite determination of the therapeutic values of various medicinal ingredients when placed in the vaginal canal; the elimination of caustic and tissue destroying drugs; and the determination of the properties which an efficient Feminine Hygiene agent must possess.

A Feminine Hygiene preparation must do the work expected of it.

But the problem must be looked upon broadly. There are many desirable properties which an efficient Feminine Hygiene agent should and must contain before the formula can be considered therapeutically sound. For more than 45 years BORO-PHENO-FORM cones have been supplying this need.

BORO-PHENO-FORM was formulated with these fundamental requirements in mind. The fact that a preparation has no harmful effect on delicate tissue is not enough. It must have a refreshing, soothing and astringent effect, it must cleanse and deodorize, but leave no tell-tale odor of its own.

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I recommend it to each and every married woman.

Additional copies of this booklet will be gladly supplied by the publisher on request. Furnished to married women only.

Dr. Pierre Chemical Co. 162 N. Franklin Street, Chicago, Ill.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents directly or by implication that its said products constitute in all cases competent and effective preventives of conception; that said products are competent and effective germicides; that said products possess substantial therapeutic agents which heal irritated tissues and membranes; that respondent's products have been approved and accepted and are recommended by a substantial number of reputable physicians.

PAR. 5. The two medicinal preparations described herein, Dr. Pierre's BORO-PHENO-FORM Vaginal Suppositories and Dr. Pierre's BORO-PHENO-FORM Vaginal Creme, do not generally or in the majority of cases constitute competent or effective preventives against conception. Although these products possess antiseptic ingredients of low toxicity, they are not competent or effective germicides generally. These products contain no substantial therapeutic agents or properties which will serve to heal irritated tissue or membranes. No sub-

stantial number of reputable physicians have approved, accepted or recommended these two products.

PAR. 6. The aforesaid acts and practices of this respondent 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 these representations are correct and constitute statements of fact. Furthermore, as a direct consequence of such mistaken and erroneous beliefs, induced by the representations of respondent as aforesaid, a number of the purchasing public have purchased substantial quantities of respondent's preparations, Dr. Pierre's BORO-PHENO-FORM Vaginal Suppositories and Dr. Pierre's BORO-PHENO-FORM Vaginal Creme.

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 the respondent and a stipulation as to the facts entered into between the respondent herein and W. T. Kelly, 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 proceedings, 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, Dr. Pierre Chemical Co., a corporation, its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of its medicinal preparations advertised as Dr. Pierre's Boro-Pheno-Form Vaginal Suppositories and Dr. Pierre's Boro-Pheno-Form Vaginal Creme, or of any other medicinal preparations composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in com-

merce, as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said products are generally or in the majority of cases competent or effective preventives of conception; that they are competent and effective germicides generally; that said products contain any substantial therapeutic agents or properties which will serve to heal irritated tissues or membranes; that said preparations have been approved, accepted or recommended by any substantial number of reputable physicians;

2. 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 any of said preparations, which advertisements contain any of the representations prohibited in paragraph 1, hereof.

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

MINNIN SHAPIRO AND JACK WINKLER, TRADING AS A. S. BUTLER & COMPANY

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

Docket 4192. Complaint, July 18, 1940—Decision, Sept. 27, 1940

Where two individuals engaged in sale and distribution of second-hand fruit jars which they purchased as such second-hand, old, used, and discarded product, from junk dealers, and which they thereafter caused to be cleaned, and to which they caused to be attached new rubber bands and new caps and to be placed in new cardboard cartons with 12 jars in each, and which products, after being cleaned and packed as aforesaid had appearance of new fruit jars never used, and cost of which to them and aforesaid steps was much less than that to manufacturers and wholesalers of manufacturing and packing, or obtaining and packing, new fruit jars, so as to enable them to sell their said product to retailers, and through them to purchasing public, at prices substantially lower than those at which the new product could be sold; and as aforesaid engaged in sale and distribution thereof to purchasers in various other States, in substantial competition with others engaged in sale and distribution in commerce among the various States of fruit jars adapted to and used for same general purposes as their said product—

Sold their said jars, with appearance aforesaid and with no label, marking, or designation on or about them or rubber bands, caps, or cartons, or elsewhere, to indicate that they were in fact old, second-hand, used, and discarded products, to retailers who resold to public without disclosing fact that said jars were used or old, second-hand or discarded;

With effect of misleading and deceiving retailers and members of purchasing public, with both of whom it is common belief and understanding that fruit jars having appearance of being new and unused and bearing no marking indicating that they are not new and unused, are in fact new jars never previously made use of, into erroneous and mistaken belief that said products were new and unused fruit jars, and into purchase of substantial quantities thereof, and of thereby unfairly diverting trade to them from competitors, many of whom do not engage in such practices; to the substantial injury of competition:

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 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 Minnin Shapiro and

Jack Winkler, individually, and trading as A. S. Butler & Co., hereinafter referred to as the 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 respondents, Minnin Shapiro and Jack Winkler, are individuals trading under the name of A. S. Butler & Co., and having their principal place of business at 667 North Clark Street in the city of Chicago and State of Illinois. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution in commerce between and among the various States of the United States of second-hand fruit jars. Respondents cause and have caused their said products, when sold, to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof located in various other States of the United States.

PAR. 2. 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, of fruit jars adapted to and used for the same general purposes as respondents' said fruit jars. Respondents have been, during the time aforesaid, and now are, in substantial competition with such other individuals, and with such firms and corporations.

PAR. 3. In the course and conduct of their aforesaid business, respondents buy second-hand, old, used, and discarded fruit jars from junk dealers which said fruit jars they cause to be cleaned and to which they cause to be attached new rubber bands and new caps. After the said second-hand fruit jars have been cleaned and the rubber bands and caps have been so attached as aforesaid, respondents cause said second-hand fruit jars to be placed in new cardboard cartons with 12 jars in each carton.

PAR. 4. The aforesaid second-hand, old, used, and discarded fruit jars, after being cleaned and packed as aforesaid, have the appearance of new fruit jars which have never been used, and are sold by respondents to retail dealers without any label, marking, or designation on or about said jars, rubber bands, caps or cartons, or elsewhere, to indicate that they are in fact old, second-hand, used and discarded fruit jars. Such retail dealers resell said jars to the public without disclosing the fact that said jars are used, old, second-hand, and discarded.

The cost to respondents of obtaining, cleaning, refitting, and packing said second-hand fruit jars is much less than the cost to manufacturers and wholesale dealers of manufacturing and packing or of obtaining and packing new fruit jars, and respondents are thereby able to sell

said second-hand fruit jars to retailers, and through them to the purchasing public, at prices which are substantially lower than the prices at which new jars can be sold.

PAR. 5. It is the common belief and understanding among retail dealers and the purchasing public that fruit jars having the appearance of being new and unused, and bearing no marking indicating that they are not new and unused, are in fact new fruit jars which have never been used previously. Retail dealers and members of the purchasing public, when buying fruit jars having the appearance of being new and unused, and without any marking indicating the contrary, expect to receive, and understand that they are receiving. new and unused fruit jars, and not second-hand, old, used, and discarded fruit jars which have been cleaned and refitted as aforesaid.

PAR. 6. The practice of the respondents in failing to disclose that their said fruit jars have been previously used has the tendency and capacity to, and does, mislead and deceive retail dealers and members of the purchasing public into the erroneous and mistaken belief that such fruit jars are new and unused fruit jars, and into the purchase of substantial quantities of such jars. As a result, trade has been unfairly diverted to respondents from their competitors, many of whom do not engage in the practices herein set forth. In consequence, 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.

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 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 18th day of July 1940, issued and subsequently served its complaint in this proceeding upon the respondents Minnin Shapiro and Jack Winkler, individually and trading as A. S. Butler & Co., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 28th day of August 1940, each of the respondents filed a separate answer in which answers respondents admitted all the material allegations of fact set forth in said complaint and

waived all intervening procedure and further hearing as to said facts. Thereafter, the 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. The respondents, Minnin Shapiro and Jack Winkler, are individuals trading under the name of A. S. Butler & Co., and having their principal place of business at 667 North Clark Street in the city of Chicago and State of Illinois. Respondents are now and for more than 3 years last past have been engaged in the sale and distribution in commerce between and among the various States of the United States of second-hand fruit jars. Respondents cause and have caused their said products, when sold, to be transported from their aforesaid place of business in the State of Illinois to the purchasers thereof located in various other States of the United States.

PAR. 2. 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, of fruit jars adapted to and used for the same general purposes as respondents' said fruit jars. Respondents have been, during the time aforesaid, and now are, in substantial competition with such other individuals, and with such firms and corporations.

PAR. 3. In the course and conduct of their aforesaid business, respondents buy second-hand, old, used, and discarded fruit jars from junk dealers, which said fruit jars they cause to be cleaned and to which they cause to be attached new rubber bands and new caps. After the said second-hand fruit jars have been cleaned and the rubber bands and caps have been so attached as aforesaid, respondents cause said second-hand fruit jars to be placed in new cardboard cartons with 12 jars in each carton.

PAR. 4. The aforesaid second-hand, old, used, and discarded fruit jars, after being cleaned and packed as aforesaid, have the appearance of new fruit jars which have never been used, and are sold by respondents to retail dealers without any label, marking, or designation on or about said jars, rubber bands, caps, or cartons, or elsewhere, to indicate that they are in fact old, second-hand, used, and discarded

fruit jars. Such retail dealers resell said jars to the public without disclosing the fact that said jars are used, old, second-hand, and discarded.

The cost to respondents of obtaining, cleaning, refitting, and packing said second-hand fruit jars is much less than the cost to manufacturers and wholesale dealers of manufacturing and packing or of obtaining and packing new fruit jars, and respondents are thereby able to sell said second-hand fruit jars to retailers, and through them to the purchasing public, at prices which are substantially lower than the prices at which new jars can be sold.

PAR. 5. It is the common belief and understanding among retail dealers and the purchasing public that fruit jars having the appearance of being new and unused, and bearing no marking indicating that they are not new and unused, are in fact, new fruit jars which have never been used previously. Retail dealers and members of the purchasing public, when buying fruit jars having the appearance of being new and unused, and without any marking indicating the contary, expect to receive, and understand that they are receiving, new and unused fruit jars, and not second-hand, old, used, and discarded fruit jars which have been cleaned and refitted as aforesaid.

PAR. 6. The practice of the respondents in failing to disclose that their said fruit jars have been previously used has the tendency and capacity to, and does, mislead and deceive retail dealers and members of the purchasing public into the erroneous and mistaken belief that such fruit jars are new and unused fruit jars, and into the purchase of substantial quantities of such jars. As a result, trade has been unfairly diverted to respondents from their competitors, many of whom do not engage in the practices herein set forth. In consequence, 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.

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 answers of the 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, Minnin Shapiro and Jack Winkler, individually, and trading as A. S. Butler & Company, or trading under any other name or names, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of second-hand or used fruit jars in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Selling or distributing used or second-hand fruit jars, unless there is firmly attached to each of such jars, and to each carton or container in which such jars are packed, a conspicuous label or other marking clearly disclosing that such jars are used or second-hand jars.

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

BADGER-BRODHEAD CHEESE COMPANY, KRAFT-PHENIX CHEESE CORPORATION, NATIONAL DAIRY PRODUCTS CORPORATION, THE BORDEN COMPANY, J. S. HOFFMAN AND COMPANY, AND TRIANGLE CHEESE COMPANY

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

Docket 4071. Complaint, Mar. 23, 1940—Decision, Oct. 1, 1940

Where three corporations which were engaged in purchase, as sole source of supply for the controlling and parent corporations, of Swiss and Limburger cheese in the Monroe area of the State of Wisconsin, source of substantially more than half of all such cheese produced in the United States, and in transporting, grading, inspecting, sorting, curing, selling, and distributing such products, and which, as dealer-purchasers of the output of some 200 of the 250 chiefly farmer-owned cheese factories in said area, constituted, along with such other relatively small dealer-purchasers in market in question, sole marketing mediums or outlets through which such factories could offer and dispose of their said product, and, prior to and but for acts and practices below set forth, in competition with one another in purchase in said area of said product for processing, packing, inspection, grading, sorting, and curing for subsequent sale to and through their principals, without State largely, and sale and distribution by latter in competition with one another, except as hindered by acts and practices herein;

Acting in response to situation first arising out of low price prevailing for cheeses in question and producers' dissatisfaction therewith, and intervention of State Department of Agriculture and suggestion for periodical meetings of dealer-purchasers and producers in area in question, and directed to securing for latter fair price for their said product—

Entered into and thereafter carried out an understanding, agreement, and combination with intent and effect of restricting and restraining competition in purchase of Swiss and Limburger cheese made and produced by such factories in said area, and, through such restricted and restrained competition, of suppressing and eliminating competition in sale of such cheese in trade and commerce between and among the several States and in the District of Columbia; and in pursuance of said agreement, etc., and acting for and in behalf of themselves and their said respective principals and parent companies—

(1) Agreed to and did hold monthly meetings sponsored by and under the supervision of the Department of Agriculture of said State, and over which representative of said department presided, to afford, in response to conferences called by said department and attended by its representatives and those of producers and dealers, and resulting interchange and discussion, opportunity for attempt to reach agreement as to fair prices to be paid by the dealers for cheese produced and made in factories in question, and

agreed to and did there fix, along with other representatives of other dealers and those of producers in said area, prices which would be and were paid to cheese factories therein for the Swiss and Limburger cheese which they produced and made;

(2) Acted, during such meetings and in furtherance of aforesaid understanding, agreement, and combination, and along with representatives of other dealers in said area, as a unit in offering representatives of the factories the prices which they, the dealers, would pay on cheese produced and made by such factories;

(3) Held, as aforesaid indicated, and prior to such meetings, separate meetings among themselves at which they agreed upon the initial price which they would offer at such meetings with representatives of the producers;

(4) Held, also, separate meetings among themselves in the course of their said meetings with representatives of producers, at which they agreed to and did set upper limits as to the prices which they would agree to pay the cheese factories at their meetings with the producers' representatives; and

(5) Acceded in very few instances at such meetings to request of producers' representatives for increased prices for their Swiss and Limburger cheeses, but, in such instances, required such representatives either to accept the lower prices offered by the dealers' representatives for said products produced by factories in question in said Monroe area, or to receive same prices therefor as were paid by dealers for said cheese for preceding month;

With result that capacity, tendency, and effect of such understanding, agreement, and combination, and acts, practices, and things done pursuant thereto by said dealer-purchasers and their principals and parent companies, were to materially affect and influence prices at which Swiss and Limburger cheese were sold in commerce as aforesaid, influence at least in part prices at which some other dairy products were sold and distributed in such commerce, unreasonably lessen, eliminate, restrict, and hinder competition in purchase of said cheeses produced and made by cheese factories in Monroe area, and unreasonably lessen and restrict competition in resale thereof to purchasers in the several States and in said District:

Held, That such acts and practices of said subsidiary dealer-purchasers and their principals and parent companies, for which they acted as aforesaid, under the circumstances set forth, were all to the prejudice of the public and constituted unfair methods of competition.

Mr. Fletcher G. Cohn for the Commission.

Nicholson, Snyder, Chadwell & Fagerburg, of Chicago, Ill., for Badger-Brodhead Cheese Co. and Kraft-Phenix Cheese Corp.

Mr. Robert S. Gordon and *Mr. W. L. Keitt*, of New York City, for National Dairy Products Corp.

Milbank, Tweed & Hope, of New York City, for The Borden Co.

Levinson, Becker, Peebles & Swiren, of Chicago, Ill., for J. S. Hoffman & Co. and Triangle Cheese 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 Badger-Brodhead Cheese Co., Kraft-Phenix Cheese Corp., National Dairy Products Corp., The Borden Co., J. S. Hoffman & Co., and Triangle Cheese Co., hereinafter referred to as respondents, have been, and are now using unfair methods of competition in commerce as "commerce" is defined by said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Badger-Brodhead Cheese Co. is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located in Monroe, Wis. In the course of its business, it is engaged in the buying, and then the selling and distributing of Swiss, Brick, Limburger, and Munster cheese (hereinafter referred to as "foreign type cheese"), which are manufactured in cheese factories located in the State of Wisconsin.

Respondent Kraft-Phenix Cheese Corp. is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at 500 Peshtigo Court, Chicago, Ill. It owns all the stock, except the qualifying shares, in respondent Badger-Brodhead Cheese Co., and directs and controls the business policies of its said subsidiary, Badger-Brodhead Cheese Co.

Respondent National Dairy Products Corp. is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 120 Broadway, New York, N. Y. It has as one of its solely owned subsidiaries, respondent Kraft-Phenix Cheese Corp., and directs and controls the business policies of said subsidiary.

Respondent The Borden Co., is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business being located at 350 Madison Avenue, New York, N. Y. As part of its business it operates a division known as Carl Marty & Co., which division is located in Monroe, Wis., and is engaged in the business of buying and then selling and distributing foreign types of cheese, which are manufactured in the State of Wisconsin.

Respondent J. S. Hoffman & Co. is a corporation organized and existing under the laws of the State of Illinois, with its principal

office and place of business being located at 320 West Illinois Street, Chicago, Ill. It is a dealer in American and foreign type cheese; it owns all the stock in respondent Triangle Cheese Co., and directs and controls the business policies of said respondent.

Respondent Triangle Cheese Co. is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business being located in Monroe, Wis. It buys foreign types of cheese manufactured in Wisconsin, which cheese is then sold and distributed by its parent corporation, respondent J. S. Hoffman & Co.

PAR. 2. Of the four varieties of foreign type cheese, Swiss and Brick constitute the bulk of the production. Approximately two-thirds of all the Swiss cheese produced in the United States is made in the State of Wisconsin, with approximately 90 percent of that amount being produced in an area comprising four southern counties of Wisconsin, i. e., Green, Lafayette, Dane, and Iowa, with the city of Monroe located in Green County, Wis., being the center of this foreign type cheese area (said area is hereinafter referred to as the "Monroe area"). There are located in said Monroe area approximately 250 factories making Swiss cheese, 90 percent of which are owned by the farmers in this locality on a cooperative basis, with the farmers generally being patrons of the factories in which they are interested. The manager of each factory is styled the cheese maker. About one-third of the factories operate on a year around basis with the rest operating only during the flush season, shutting down during the winter months.

The average cheese factory handles a comparatively small amount of cheese; it has no facilities for storing cheese for an appreciable length of time; and it has little, if any, financial reserve.

The owners of a given cheese factory—generally the farmer patron, choose one of their number as a business representative who sells the cheese produced at the factory to the dealers in cheese, which dealers are either located, or have representatives, in the Monroe area. There is no marketing agency for the selling of the cheese produced by the factories other than through these cheese dealers.

PAR. 3. Until 1921, there were many cheese dealers who were actively competing for the output of the various cheese factories in the Monroe area. However, in the last 15 years, there has been a gradual consolidation, of these cheese dealers and a centralized control in the sale of the output of the various factories.

In 1911, the first merger of any consequence of dealers in the Monroe area took place, when seven independent cheese dealers, located in said area, merged and organized the Badger Cheese Co., a Wisconsin cor-

poration. In 1920, Kraft Cheese Co. bought 51 perecent of the stock in this concern and in 1925 became the full owner. In 1926, Phenix Cheese Co. began operating in the Monroe area but shortly thereafter the Kraft and Phenix interests merged as the respondent Kraft-Phenix Cheese Corp. In 1928 this respondent bought the stock and assets of the Brodhead Cheese & Cold Storage Co., which was an active cheese dealer in the Monroe area, and formed a new corporation, respondent Badger-Brodhead Cheese Co., which was a merger of the Badger Cheese Co., which had been an active cheese buyer in the Monroe area and the aforementioned Brodhead Cheese & Cold Storage Co. Respondent Badger-Brodhead Cheese Co. is one of the largest, if not the largest, buyer of foreign type cheese in the United States. In 1929, respondent Kraft-Phenix Cheese Corp. secured the business of Charles Zweifel Co., Brodhead, Wis., which was then one of the largest cheese dealers in the Monroe area.

In 1938, Carl Marty & Co. of Monroe, Wis., a large cheese buyer of foreign type cheese in the Monroe area, purchased the assets and good will of a partnership known as Ackerman & Abplanalp, which was the third largest buyer of foreign type cheese in the Monroe area. Then on January 1, 1939, respondent The Borden Co., which theretofore had not been represented in this territory, purchased the stock and assets of the said Carl Marty & Co., which next to respondent Badger-Brodhead Cheese Co., was the largest cheese dealer in the Monroe area. Thus, respondents Kraft-Phenix Cheese Corp., acting for and on behalf of respondent National Dairy Products Corp., of which it is a subsidiary, and respondent The Borden Co., have gradually, by means of mergers and purchases eliminated practically all of the independent cheese dealers in the Monroe area.

Approximately 75 percent of the foreign type cheese produced in Wisconsin is purchased by the respondents, all dealers in this type of cheese, said purchases being made either directly by said respondents, or through their subsidiaries. None of the dealers in foreign type of cheese own any factories, but they purchase the output of certain cheese factories; out of the approximately 250 cheese factories making foreign types of cheese in the aforementioned Monroe area, respondent Badger-Brodhead Cheese Co., acting for and on behalf of respondents, Kraft-Phenix Cheese Corp. and National Dairy Products Corp., buys the annual output of from 40 to 60 of the cheese factories in said area; respondent The Borden Co., through its division, Carl Marty & Co., buys on an average the annual output of 75 of these factories; and respondents, J. S. Hoffman & Co., with its subsidiary, Triangle Cheese Co., annually purchase the output of approximately 60 of these

factories. Consequently the respondents herein purchase the annual output of approximately 200 of the 250 cheese factories located in the Monroe area.

PAR. 4. All the respondents, either directly or through their subsidiaries, assemble the foreign types of cheese, which they purchase from the cheese factories in the Monroe area, at their various warehouses located in the State of Wisconsin, and in the course and conduct of their business, they, or their subsidiaries, which they control and direct, ship, or cause to be shipped, said cheese from these warehouses located in the State of Wisconsin, to purchasers of the cheese located in States of the United States other than the State of Wisconsin, and in the District of Columbia. The said cheese, which respondents purchase from the cheese factories in the Monroe area, does not come to rest in the State of Wisconsin, but is sold and distributed either directly or indirectly, by the respondents or their subsidiaries, in commerce between and among the various States of the United States and in the District of Columbia, and the purchasers of said cheese by the respondents or their subsidiaries, from the cheese factories in the State of Wisconsin are an integral part of the interstate trade in commerce of said cheese. Respondents have maintained, and still do maintain, a course of trade, in foreign types of cheese, in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 5. Respondents are in competition with one another in the purchase of foreign types of cheese from the cheese factories which manufacture same in the aforementioned Monroe area, and in the sale of said cheese in commerce between and among the several States of the United States and in the District of Columbia, 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.

PAR. 6. The prices at which respondents, acting directly or through their subsidiaries, sell and distribute the aforesaid foreign types of cheese in commerce between and among the several States of the United States and in the District of Columbia, are fixed and determined by, and dependent upon, the prices at which the respondents purchase said cheese from the cheese factories in the aforementioned Monroe area.

PAR. 7. In 1938, respondents, Badger-Brodhead Cheese Co., acting for itself and also for and on behalf of respondents, Kraft-Phenix Cheese Corp. and National Dairy Products Corp., J. S. Hoffman & Co., acting both for itself and its subsidiary, Triangle Cheese Co., and Carl Marty & Co., acting for and on behalf of respondent The

Borden Co., which through its later purchase of the said Carl Marty & Co., did ratify and affirm the actions of the said Carl Marty & Co., entered into, and thereafter carried out, an understanding, agreement, combination, and conspiracy, for the purpose and with the intent and effect of restricting and restraining competition in the purchase of foreign types of cheese, and of monopolizing, and suppressing and eliminating competition in the sale of such cheese in trade and commerce, between and among the several States of the United States and in the District of Columbia.

PAR. 8. Pursuant to this understanding, agreement, combination, and conspiracy, entered into by and between the respondents, and in furtherance thereof, said respondents, among other acts and things did:

1. Agree to fix, and did fix the prices which they would pay to the cheese factories in the Monroe area for the foreign types of cheese produced by said factories.

2. Agree to holding monthly meetings in conjunction with representatives of the cheese factories in the Monroe area, at which they and said representatives of the cheese factories, would fix the prices to be paid to the cheese factories in the Monroe area for foreign types of cheese produced by said factories.

3. Hold, and since October 27, 1938, have held, such monthly meetings, at which the prices to be paid, and which were paid, for said cheese moving into the warehouses of said respondents were fixed, determined, and established.

4. Have their representatives hold separate meetings among themselves prior to the meeting of said representatives with the representatives of the cheese factories; at these meetings among the representatives of the respondents, the said representatives set the upper limits as to prices they would agree to pay to the cheese factories in their meetings with the representatives of said cheese factories.

PAR. 9. Each of the respondents, at the times mentioned herein, acted in concert with one or more of the other representatives in doing and performing the acts and things hereinabove alleged in furtherance of the understanding, agreement, combination, and conspiracy hereinbefore set forth.

PAR. 10. The capacity, tendency, and effect of said understanding, agreement, combination, and conspiracy and the acts and things done by the respondents pursuant thereto, are, and have been:

1. To control the prices at which foreign types of cheese are sold in commerce between and among the various States of the United States and the District of Columbia.

2. To determine, at least in part, the prices at which dairy products, other than foreign types of cheese, are sold and distributed in said commerce.

3. To monopolize in the the respondents the entire supply of foreign types of cheese, which are purchased by the respondents for the purpose of selling and distributing the same in said commerce.

4. To unreasonably lessen, eliminate, restrict, stifle, hinder, and suppress competition in the purchase of foreign types of cheese from the cheese factories in the aforementioned Monroe area.

5. To unreasonably lessen, eliminate, restrict, stifle, hinder, and suppress competition in the resale of the foreign types of cheese, purchased by the respondents from the cheese factories in the Monroe area, to the purchasers thereof located in the several States of the United States and in the District of Columbia.

PAR. 11. The understanding, agreement, combination, and conspiracy of the respondents, and the acts and things done by said respondents, thereunder and pursuant thereto, as above 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 the 23d day of March 1940, issued and served its complaint in this proceeding upon 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. Answers were filed by all of the respondents to this complaint. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by all of the respondents herein and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts of 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, the filing of briefs, or the filing of a report upon the evidence by a trial examiner. 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 Com-

mission 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, Badger-Brodhead Cheese Co. is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business located in Monroe, Wis. In the course of its business, it is engaged in buying, transporting, grading, inspecting, sorting, curing, selling, and distributing Swiss and Limburger cheese manufactured in cheese factories in the State of Wisconsin.

Respondent Kraft-Phenix Cheese Corporation is now named Kraft Cheese Co., and will be so designated hereinafter. It is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 500 Peshtigo Court, Chicago, Ill. It owns all of the stock, except the qualifying shares, in the respondent Badger-Brodhead Cheese Co., which respondent, in purchasing Swiss and Limburger cheese manufactured in the Monroe area in the State of Wisconsin, which area is hereinafter defined in paragraph 3, acts as the sole source of supply of said cheese for respondent Kraft Cheese Co., a substantial amount of the cheese thus purchased by respondent Badger-Brodhead Cheese Co. being sold and distributed by respondent Kraft Cheese Co. Respondent Badger-Brodhead Cheese Co., in purchasing said Swiss and Limburger cheese manufactured in the Monroe area of the State of Wisconsin, acts as the agent for the respondent Kraft Cheese Co., so that respondent Kraft Cheese Co. is legally responsible for the acts and practices of said respondent Badger-Brodhead Cheese Co., as hereinafter found, in purchasing said cheese.

Respondent The Borden Co. is a corporation organized and existing under the laws of the State of New Jersey, with its principal office and place of business located at 350 Madison Avenue, New York, N. Y., and as part of its business, it operates a division known as Lakeshire-Marty Division of the Borden Co. (referred to in the complaint as Carl Marty & Co.), located in Monroe, Wis. In the course of its business it is engaged in buying, transporting, grading, inspecting, sorting, curing, selling, and distributing Swiss and Limburger cheese manufactured in cheese factories located in the State of Wisconsin.

Respondent J. S. Hoffman Co. (referred to in the complaint as J. S. Hoffman & Co.), is a corporation organized and existing under

the laws of the State of Illinois, with its principal office and place of business located at 322 West Illinois Street, Chicago, Ill.; it owns all the stock in respondent Triangle Cheese Co.

Respondent Triangle Cheese Co. (referred to in the complaint as Triangle Cheese Co.), is a corporation organized under the laws of the State of Wisconsin, with its office and principal place of business located in Monroe, Wis. Said respondent is engaged in the business of buying, transporting, grading, inspecting, sorting, curing, and selling the Swiss and Limburger cheese manufactured in the cheese factories of the State of Wisconsin, and in the purchasing of said cheese, acts as the sole source of supply of same for respondent J. S. Hoffman Co.; all of said cheese, thus purchased by respondent Triangle Cheese Co., being sold and distributed by respondent J. S. Hoffman Co. On or about June 1, 1940, respondent Triangle Cheese Co. ceased purchasing Limburger cheese.

Respondent Triangle Cheese Co., in purchasing said Swiss and Limburger cheese manufactured by the factories in the Monroe area of the State of Wisconsin, acts as the agent for respondent J. S. Hoffman Co., so that said respondent J. S. Hoffman Co. is legally responsible for the acts and practices of respondent Triangle Cheese Co. as hereinafter found, in purchasing said cheese.

Respondent National Dairy Products Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 75 East Forty-fifth Street, New York, N. Y. It has as one of its solely owned subsidiaries respondent Kraft Cheese Co.

PAR. 2. Respondent National Dairy Products Corporation did not, directly or indirectly, engage in any of the acts or practices of the other respondents named in the caption herein as hereinafter found.

PAR. 3. Approximately two-thirds of all the Swiss cheese produced in the United States is made in the State of Wisconsin, with approximately 90 percent of the amount being produced in an area comprising four southern counties of Wisconsin, i. e., Green, Lafayette, Dane, and Iowa, with the city of Monroe, located in Green County, Wis., being the center of the area producing these cheeses, which area is referred to in this stipulation as the "Monroe area."

There are located in said Monroe area approximately 250 factories making and producing Swiss cheese, 90 percent of which are owned by the farmers in this locality on a cooperative basis, with the farmers generally being patrons of the factories in which they are interested. There is selected by said patrons, a manager of each factory, who is styled the cheese-maker. About one-third of the factories operate on a year-round basis, with the rest operating only during the flush

season and shutting down during the winter months. The average cheese factory handles a comparatively small amount of cheese; it has no facilities for storing cheese for any appreciable length of time; and it has little, if any, financial reserve.

The owners of a given cheese factory—generally the farmer patrons—choose one of their number as a business representative who sells the cheese produced at the factory to dealers in cheese, which dealers are either located, or have representatives, in the Monroe area.

Approximately 60 percent of the Limburger cheese produced in the United States is manufactured by cheese factories in the Monroe area, and the greater proportion of said cheese is purchased by respondents, Badger-Brodhead Cheese Co. and The Borden Co.; prior to on or about June 1, 1940, respondent Triangle Cheese Co. likewise purchased Limburger cheese in this area.

Each cheese factory makes but one type of cheese.

There is no marketing agency for either the Swiss or the Limburger cheese manufactured and produced by the factories of the Monroe area, other than through dealers in said cheese.

PAR. 4. In the year 1911, seven independent cheese dealers located in the Monroe area, organized the Badger Cheese Co., a Wisconsin corporation. In the year 1924, Kraft Cheese Co., a predecessor of the respondent Kraft-Phenix Cheese Corporation, bought 51 percent of the common stock of said Badger Cheese Co., and became the full owner of the common stock in 1928. The preferred stock of the Badger Cheese Co. remained outstanding in the hands of the general public until 1932, when it was retired. In the year 1926, Phenix Cheese Co. began operating in the Monroe area. In the year 1928, there was a merger of Kraft Cheese Co. and Phenix Cheese Co., resulting in the organization of a predecessor corporation of the respondent Kraft-Phenix Cheese Corporation. In the year 1928, said predecessor of respondent Kraft-Phenix Cheese Corporation purchased the capital stock of Brodhead Cheese & Cold Storage Co., which was then an active cheese dealer in the Monroe area. Some of the assets of the Brodhead Cheese & Cold Storage Co. were acquired by the Badger Cheese Co. from the predecessor of respondent Kraft-Phenix Cheese Corporation, and in 1929, the name of Badger Cheese Co. was changed to the present name of the respondent Badger-Brodhead Cheese Co. The latter-named respondent is one of the largest buyers of foreign type cheese in the United States. Subsequently respondent Kraft-Phenix Cheese Corporation changed its name Kraft Cheese Co.

In 1938, Carl Marty & Co., of Monroe, Wis., a large cheese dealer in foreign type cheese in the Monroe area, purchased the assets and good will of a partnership known as Ackerman & Abplanalp, which was one of the larger buyers of foreign type cheese in the Monroe area. On or about January 1, 1939, respondent The Borden Co., which theretofore had not been represented in the Monroe area, acquired the business of Carl Marty & Co., which business, since January 1, 1939, respondent The Borden Co. has operated as a part of the Lakeshire-Marty Division of The Borden Co.

Approximately 75 percent of the Swiss and Limburger cheese manufactured and produced in Wisconsin is purchased by the respondents Badger-Brodhead Cheese Co., The Borden Co. and Triangle Cheese Co., all dealers in these types of cheese, but since January 1, 1940, Triangle Cheese Co. has discontinued purchasing Limburger cheese.

None of the dealers in Swiss and Limburger cheese, including the aforementioned respondents, own any factories, but they purchase the output of certain cheese factories; out of approximately 250 cheese factories in the Monroe area the respondent Badger-Brodhead Cheese Co. buys the annual output of from 40 to 60 of said factories; respondent The Borden Co., through its Division, Lakeshire-Marty Co., buys, on an average, the annual output of 75 of these factories; and the respondent Triangle Cheese Co. annually purchases the output of approximately 60 of these factories. Consequently, these respondents purchase the annual output of approximately 200 of the 250 Swiss cheese factories located in the Monroe area. The purchases of Swiss and Limburger cheese, manufactured and produced in this area, by the remaining dealers in the Monroe area, are relatively small.

PAR. 5. In the last 15 years there has been a gradual consolidation of the dealers in Swiss and Limburger in the Monroe area, with the resultant effect that approximately 80 percent of the Swiss cheese factories and a majority of the Limburger cheese factories located in the Monroe area have sold their output of such cheese to respondents Badger-Brodhead Cheese Co., The Borden Co., or Triangle Cheese Co.

PAR. 6. Each of the respondents, Badger-Brodhead Cheese Co., The Borden Co., and Triangle Cheese Co., assemble the Swiss and Limburger cheese which they purchase from the cheese factories, which produce and manufacture said cheeses in the Monroe area, at the respective plants of said respondents located in the State of Wisconsin. It is there graded, reinspected, sorted, and thereafter dealt with in the manner hereinafter described.

Limburger cheese is held at the factory, where it is manufactured and produced, for some 12 to 14 days after manufacture, although there is no State law requiring this to be done with respect to Limburger cheese. The cheese is manufactured in 1- and 2-pound blocks. At the end of the customary holding period, at which time the cheese is purchased by said respondents, it is wrapped at the factory in a parchment, manila, and foil wrapper, and packed tightly in large wooden boxes containing from 1 to 200 blocks of cheese, and after being so packed, is transported to said respondents' plants. The manila or wax paper is used because of the necessity of curing the cheese after wrapping in an anaerobic seal in order to secure the proper Limburger flavor and consistency. After receipt in said respondents' plants, the cheese ordinarily is held at suitable temperatures for a period required for it to reach the flavor and consistency of the more desirable grade of said cheese. The combination of temperature controls and anaerobic seal serves to promote bacteriological action, changing the character but not the content of the product. With reference to Swiss cheese, the laws of the State of Wisconsin require it to be held on curing shelves in the factories for 6 weeks in the summer and 8 weeks in the winter after manufacture. At the end of the holding period, the cheese is graded by State graders at the factories and placed in skids furnished by the respondents Badger-Brodhead Cheese Co., The Borden Co., and Triangle Cheese Co. in which it is transported from the factory to the various plants of said respondents in Wisconsin. There the cheese is again inspected, graded, and sorted according to the moisture content, grade, and condition of the cheese. The weak-bodied cheese is sorted out, and that which will improve with further curing is set aside in said respondents' plants in Wisconsin, in curing rooms for that purpose, where the eye development and flavor improve, but the texture and composition remain unchanged. The cheese is placed in the curing rooms of said respondents' plants, of varying temperatures according to the condition of the body and the size of the eyes of the cheese.

The best grade of Swiss cheese is that of a firm body, not too high in moisture content, and with fully developed eyes. Cheese of this classification is placed in curing rooms at said respondents' plants at a relatively cool temperature which arrests further development of the eyes, and causes improvement in the Swiss cheese flavor, but does not alter the texture or content thereof. The Swiss cheese which has a firm body, but relatively small eyes, is placed in curing rooms at higher temperatures according to the body and size of the eyes. This permits further eye development, along with the improvement of the flavor, but does not alter the texture or content of the cheese.

The occasional wheel of Swiss cheese with poor body and high moisture content, is subjected to a firming process by being placed in a cool temperature room for a short period, but the texture and content of the cheese is not changed.

All of the cheese held at said respondents' plants is graded, stenciled with the grade in accordance with State requirements, and is placed in tubs containing three or four wheels each, which is necessary for shipment, the cheese not being stenciled or tubbed in the factories.

More than 90 percent of the Limburger and Swiss cheese purchased by said respondents is sold by them directly, or through affiliated companies, to be shipped, and is shipped, to points outside of the State of Wisconsin. It is known by said respondents, at the time they acquire the cheese from the factories, that this substantial percentage will ultimately be shipped out of the State. No shipments of cheese are made by said respondents from their plants in Wisconsin, except as the result of sales made upon orders received by said respondents. Purchases are not made by said respondents for the purpose of filling previous orders, but in the usual course of the business of said respondents, the orders received by said respondents will require shipment of at least 90 percent of said cheese to points outside the State of Wisconsin, which fact is known by said respondents at the time of said purchases.

PAR. 7. Respondents Badger-Brodhead Cheese Co., Kraft-Cheese Co. (referred to in the complaint as Kraft-Phenix Cheese Corporation), The Borden Co., J. S. Hoffman Co. (referred to in the complaint as J. S. Hoffman & Co.), and Triangle Cheese Co., in the manner. and by the methods hereinbefore found, have maintained, and still do maintain, a course of trade in commerce between and among the several States of the United States and in the District of Columbia, of the Swiss and Limburger cheese, which was, and is, purchased by them either directly or indirectly, from the cheese factories in the Monroe area which manufacture and produce said cheese.

Respondents, Badger-Brodhead Cheese Co., The Borden Co., and Triangle Cheese Co. were and are, in competition with one another, in the purchase of Swiss and Limburger cheese from the cheese factories which manufacture and produce same in the Monroe area (however, since on or about June 1, 1940, respondent Triangle Cheese Co. has ceased to purchase Limburger cheese manufactured and produced in said factories) and respondents The Borden Co., Kraft Cheese Co. (referred to in the complaint as Kraft-Phenix Cheese Corporation), acting directly or through its subsidiary, respondent Badger-Brodhead Cheese Co., and respondent J. S. Hoffman Co. (referred to in the complaint as J. S. Hoffman & Co.), acting directly or through its subsidiary, Triangle Cheese Co., are in competition with each other in the

sale and distribution of said Swiss and Limburger cheese, manufactured and produced by the factories in the Monroe area, in commerce between and among the several States of the United States and in the District of Columbia, except insofar as said competitions have been hindered, lessened, restrained, or restricted, or potential competitions among them forestalled, by the unfair practices and methods hereinafter found.

PAR. 8. The prices at which respondents Badger-Brodhead Cheese Co., Kraft Cheese Co. (referred to in the complaint, as Kraft-Phenix Cheese Corporation), The Borden Co., J. S. Hoffman Co. (referred to in the complaint as J. S. Hoffman & Co.), and Triangle Cheese Co. sell and distribute the Swiss and Limberger Cheese, manufactured and produced in the cheese factories in the Monroe area, in commerce between and among the several States of the United States and in the District of Columbia, are materially affected and influenced by the prices at which the respondents, Badger-Brodhead Cheese Co., The Borden Co., and Triangle Cheese Co. purchase said cheese from said cheese factories in the aforementioned Monroe area.

PAR. 9. In August 1938, as more fully set forth in paragraph 10 hereof, respondents Badger-Brodhead Cheese Co., acting both for itself, and also for and on behalf of respondent Kraft Cheese Co. (referred to in the complaint as Kraft-Phenix Cheese Corporation), J. S. Hoffman Co., (referred to in the complaint as J. S. Hoffman & Co.), acting both for itself and for and on behalf of respondent Triangle Cheese Co., and Carl Marty & Co., acting for and on behalf of respondent The Borden Co., which through its later purchase of the said Carl Marty & Co., did ratify and affirm the actions of the said Carl Marty & Co., entered into, and thereafter carried out, an understanding, agreement, and combination, for the purpose, and with the intent and effect of restricting and restraining competition in the purchase of the Swiss and Limburger cheese manufactured and produced by the factories in the Monroe area, and through such restricted and restrained competition, of suppressing and eliminating competition in the sale of such cheese in trade and commerce between and among the several States of the United States and in the District of Columbia.

PAR. 10. In August 1938, prices for Swiss and Limburger cheese were unusually low, resulting in the producers of same becoming very dissatisfied. Under these circumstances, an appeal was made by the producers, that is, the farmers who produce the milk used in the factories for the manufacture of such cheese, to the department of agriculture of the State of Wisconsin, for relief. Conferences were called by the said department of agriculture, and attended by representatives

of the department, of the producers and of the dealers, at which the representatives of the producers suggested that monthly meetings be held under the sponsorship of the department of agriculture of the State of Wisconsin, between representatives of the cheese factories and of the dealers, at which an attempt would be made to reach an agreement as to fair prices to be paid by the dealers for cheese produced and manufactured in the factories. The request was acquiesced in by representatives of the dealers. Beginning in October 1938, the respondents, Badger-Brodhead Cheese Co., and Triangle Cheese Co., together with other cheese dealers in the Monroe area, began attending such meetings; then in February 1939, respondent, The Borden Co., which acquired the business of Carl Marty & Co. on or about January 1, 1939, joined said dealers in sending a representative to such meetings. These meetings were sponsored by, and were held under the supervision of, the department of agriculture of the State of Wisconsin, and a representative of said department attended and presided over all such meetings. The meetings were open to the attendance of Swiss and Limburger dealers and producers in Wisconsin and were attended by many of them. At these meetings, the representatives of the respondents, Badger-Brodhead Cheese Co., The Borden Co., and Triangle Cheese Co., and of the other Swiss and Limburger dealers and the representatives of the producers, interchanged market information, discussed and agreed upon the prices to be paid for Swiss and Limburger cheese at the factories according to the grade. These prices were then generally charged by the producers and paid by the dealers in the Monroe area, including respondents Badger-Brodhead Cheese Co., The Borden Co., and Triangle Cheese Co., for the current month's Swiss and Limburger cheese.

PAR. 11. Pursuant to the agreement, understanding, and combination, hereinbefore found in paragraph 9, and as a part thereof, the said respondents Badger-Brodhead Cheese Co., acting both for itself and also for and on behalf of respondent Kraft Cheese Co. (referred to in the complaint as Kraft-Phenix Cheese Corporation), the Borden Co. and Triangle Cheese Co., acting both for itself and also for and on behalf of respondent J. S. Hoffman Co. (referred to in the complaint as J. S. Hoffman & Co.), did agree to hold and did hold, the monthly meetings, hereinbefore found in paragraph 10, and in said meetings, said respondents did agree to fix, and did fix, along with the representatives of the other dealers and those of the producers in the Monroe area, the prices which would be paid, and were paid, to the cheese factories in said area, for the Swiss and Limburger cheese produced and manufactured by said factories; also during said meetings, in furtherance of the aforefound understanding, agreement and combination, the representatives of respondents Badger-Brodhead

Cheese Co., The Borden Co., and Triangle Cheese Co., with the representatives of the other dealers in the Monroe area, acted as a unit in offering to the representatives of the factories the prices which the dealers would pay for the cheese produced and manufactured by said factories; and furthermore, said representatives of the aformentioned respondents and those of the other dealers in the Monroe area, did, prior to their meetings with the representatives of the producers, hold separate meetings among themselves at which they agreed upon the initial prices they would offer at these meetings with the representatives of the producers, and during their meetings with said representatives of the producers, did also hold separate meetings among themselves to which they agreed to set, and did set, the upper limits as to the prices they would agree to pay the cheese factories at their meetings with the representatives of the producers; likewise, at the said meetings with the representatives of the producers, which meetings were held in the manner heretofore found in paragraph 10 the representatives of the cheese dealers, including the representatives of the respondents Badger-Brodhead Cheese Co., The Borden Co., and Triangle Cheese Co., in very few instances acceded to the request of the representatives of the producers for increased prices for Swiss and Limburger cheese, said representatives of the producers, in most instances, being required to either accept the lower prices offered by the representatives of the dealers for the Swiss and Limburger cheese produced by the cheese factories in the Monroe area, or else receive the same prices for said cheese as were paid by the dealers for said cheese for the preceding month.

PAR. 12. The capacity, tendency, and effect of the understanding, agreement, and combination hereinbefore found in paragraph 9, and the acts, practices, and things done by the respondents Badger-Brodhead Cheese Co., Kraft Cheese Co. (referred to in the complaint as Kraft-Phenix Cheese Corporation), The Borden Co., J. S. Hoffman Co. (referred to in the complaint as J. S. Hoffman & Co.), and Triangle Cheese Co. pursuant thereto, as hertofore found in paragraphs 10 and 11, have been, and are, to materially affect and influence the prices at which Swiss and Limburger cheese are sold in commerce between and among the various States of the United States and in the District of Columbia, to influence, at least in part, the prices at which some other dairy products are sold and distributed in said commerce; to unreasonably lessen, eliminate, restrict, and hinder competition in the purchase of said Swiss and Limburger cheese produced and manufactured by the cheese factories in the Monroe area; and to unreasonably lessen and restrict competition in the resale of said cheese to the purchasers thereof located in the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, Badger-Brodhead Cheese Co., Kraft Cheese Co. (referred to in the complaint as Kraft-Phenix Cheese Corporation, the Borden Co., J. S. Hoffman Co. (referred to in the complaint as J. S. Hoffman & Co.), and Triangle Cheese Co., as hereinbefore found, are all to the prejudice of the public 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 the respondents, and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon respondents herein findings as to the facts and conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Badger-Brodhead Cheese Co., a corporation, Kraft Cheese Co. (referred to in the complaint as Kraft-Phenix Cheese Corporation), a corporation, The Borden Co., a corporation, J. S. Hoffman Co., (referred to in the complaint as J. S. Hoffman & Co.), a corporation, and Triangle Cheese Co. (referred to in the complaint as Triangle Cheese Co.), a corporation, and their respective officers, directors, representatives, agents, and employees, together with the successors or assigns of each of said respondents, directly, indirectly, through any corporate or other device or through or by means of any wholly or partially owned subsidiary, in connection with the offering to purchase or the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of Swiss or Limburger cheese, which is sold, or offered for sale, by the producers or manufacturers thereof or by an agent or representative of such a producer or manufacturer, forthwith cease and desist from fixing or maintaining, or attempting to fix or maintain, pursuant to agreement, understanding, or combination between or among themselves, or between or among any two or more of them, or between or among any one or more of them and any other competing corporation or corporations or any compet-

ing person or persons, the prices offered to be paid, or paid, for such cheese.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to the respondent, National Dairy Products Corporation, but 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.

It is further ordered, That the respondents, Badger-Brodhead Cheese Co., a corporation, Kraft Cheese Co. (referred to in the complaint as Kraft-Phenix Cheese Corporation), a corporation, The Borden Co., a corporation, J. S. Hoffman Co. (referred to in the complaint as J. S. Hoffman & Co.), a corporation, and Triangle Cheese Co. (referred to in the complaint as Triangle Cheese Co.), a corporation, 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

CHARLES D. BROWN, TRADING AS MICHIGAN MERCHANDISING COMPANY

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

Docket 4217. Complaint, Aug. 5, 1940—Decision, Oct. 1, 1940

Where an individual engaged in sale and distribution of small electric water heaters to purchasers in various other States, and maintaining course of trade therein in commerce between the various States and in District of Columbia—

(*a*) Made such representations, in the "Help Wanted" columns of newspapers, as "Man to look after deliveries. $25 salary and share in profits. References required. Give phone if possible. Must have $100 cash to pay for first consignment of goods. Box—";

(*b*) Represented, through persons employed by him to contact prospective distributors responding to such advertisements, and to induce them to sign contracts for purchase of heaters, that services required of distributors were only to make deliveries of and collections for such products, and that no selling was required of them, and that he would establish, directly or through such representatives, required number of dealers to handle heaters on consignment basis without any sales effort on part of distributor;

(*c*) Represented that said initial payment of $100 required of each distributor was in nature, or in lieu, of a temporary bond and would be refunded to distributor as soon as list of dealers had been secured and approved by him or his representatives, and that such procurement and approval was merely routine procedure requiring not more than 10 days, and that he would pay to distributor weekly salary of $25, commencing on day he signed contract, plus commission of 50 cents per heater for every one over two sold each week by each established dealer in distributor's territory;

Facts being contracts were so drawn as to make impossible of fulfillment conditions upon which refunds of initial payments were to be made by him, and no refund had ever been made, no salary or commission was ever paid by him to any so-called distributor, and no quota of dealers had ever been established by him or his representatives which met number required to be established to enable distributor to be entitled to refund of money paid and eligible to salary and commisions, aforesaid initial payment of $100 was not in nature, or in lieu, of temporary bond, but applied by him as payment for 48 of said heaters, and his various representations were all false and fraudulent, and business conducted by him was fraudulent scheme to extract money from persons in need of employment through false representation as above indicated, and under which so-called distributor became mere purchaser of said heaters, without any adequate outlets for disposal thereof or established dealers to handle same; and

(*d*) Sold and distributed said product through such fraudulent and deceptive sales methods with label bearing legend reading "Wonder Electric Water Heater—Introductory Price $5.95—Guaranteed Forever. Manufactured and guaranteed by the Jenner Mfg. Co., Pontiac, Mich.";

Facts being said heater was not manufactured by such company or guaranteed forever, had never been sold at price of $5.95, which was not introductory price, but wholly fictitious and greatly in excess of regular retail price of $2.25, and customer was required to pay 60 cents for repairs to or replacement of parts for such heaters;

With intent and effect of inducing many members of purchasing public to sign contracts for purchase of large numbers of such heaters and of inducing payment therefor by so-called distributors, and with result that members of public, as consequence of such false and misleading representations, plans, and methods, and believing in and relying on truth of such representations, were induced to and did buy large numbers of such heaters under erroneous and mistaken belief that they were to become distributors and not purchasers thereof, and were to receive salary plus commission on sales by dealers secured by him:

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 Charles D. Brown, an individual, trading as Michigan Merchandising 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, Charles D. Brown, is an individual trading under the firm name and style of Michigan Merchandising Co., with his principal place of business at 31 Allison Street, Pontiac, Mich. He is now, and for more than 1 year last past has been, engaged in the business of selling and distributing a small electric water heater, called "Wonder Electric Water Heater," alleged to be useful in heating small quantities of water and other liquids.

Par. 2. Said respondent, being engaged in business as aforesaid, causes said heaters, when sold, to be transported from his place of business in the State of Michigan to purchasers thereof located in various other States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said heaters 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 and for the purpose of inducing the purchase of said heaters, respondent has

inserted advertisements in the "Help Wanted" sections of newspapers. The following advertisement is typical of those so used:

Man to look after deliveries.
$25 salary and share in profits.
References required. Give phone if possible. Must have $100 cash to pay for first consignment of goods. Box —.

Said advertisements are false, misleading, and deceptive to members of the public seeking the employment mentioned in said advertisements. The business as conducted by respondent was, and is, a fraudulent scheme to extract money from persons in need of employment by falsely representing to them the character of the work to be performed, the purpose of an initial payment of $100 by the applicant for work, the terms of employment, the salary to be paid, the price for which said heater is regularly sold, the extent and nature of the guaranty on said heaters, and other matters in connection with the sale of said heaters, as hereinafter alleged.

The respondent employs representatives to contact prospective distributors who respond to the newspaper advertisements as hereinbefore set out. Said representatives, with the cooperation of the respondent, have made numerous misrepresentations to prospective distributors to induce them to sign contracts for the purchase of heaters. Among and typical of such misrepresentations are the following:

1. That the services required of the distributors are only to make deliveries of and collections for said heaters, and that no selling is required of said distributors.

2. That respondent will establish directly or through such representatives the required number of dealers to handle respondent's heaters on a consignment basis without any sales effort on the part of the distributor.

3. That the initial payment of $100 required of each distributor is in the nature of or in lieu of a temporary bond and will be refunded to the distributor as soon as the list of dealers has been secured and approved by respondent or his representative, and that the procurement and approval of such dealers is merely a routine procedure requiring not more than 10 days.

4. That respondent will pay to the distributor a weekly salary of $25, commencing on the day he signs the contract, plus a commission of 50 cents per heater for every heater over two sold each week by each established dealer in the distributor's territory.

PAR. 4. In truth and in fact, all of the representations hereinbefore set out are false and fraudulent, and are designed and intended to, and do, induce many members of the purchasing public to sign con-

tracts for the purchase of large numbers of respondent's heaters and to induce payment therefor by the so-called "distributor." Said contracts are so drawn as to make impossible of fulfillment the conditions upon which refunds of initial payments are to be made by the respondent, and in fact no refunds have ever been made by respondent. No salary or commission has ever been paid by respondent to any so-called "distributor." No quota of dealers has ever been established by respondent or his representatives which met the number to be established to enable the so-called "distributor" to be entitled to the refund of the money paid and eligible to salary and commissions. The initial payment of $100 was not in the nature of or in lieu of a temporary bond, but is applied by respondent as payment for 48 of said electric water heaters. Under the scheme as operated by respondent and his representatives, the so-called "distributor" becomes a mere purchaser of said heaters without any adequate outlets for disposal of the same or established dealers to handle them.

PAR. 5. The electric water heater sold and distributed by respondent through the fraudulent and deceptive sales methods hereinbefore set out bears a label reading as follows:

Wonder Electric Water Heater—
Introductory Price $5.95—Guaranteed Forever. Manufactured and guaranteed by the Jenner Mfg. Co., Pontiac, Mich.

In truth and in fact, said heater is not manufactured or guaranteed by the Jenner Manufacturing Co. It is not guaranteed forever, and has never been sold at a price of $5.95. The price of $5.95 is not an introductory price, but a wholly fictitious one, greatly in excess of the regular retail price of $2.25. The customer is required to pay 60 cents for repairs to, or replacement of parts for, said heaters.

PAR. 6. As a result of respondent's false and misleading representations, plans, and methods, as above set out, members of the public, believing and relying upon the truth of said representations, have been induced to buy, and have bought, large numbers of respondent's said heaters.

PAR. 7. The aforesaid acts and practices of the respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on August 5, 1940, issued and subsequently served its complaint in this proceeding upon respondent,

Charles D. Brown, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 7, 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, Charles D. Brown, is an individual trading under the firm name and style of Michigan Merchandising Co., with his principal place of business at 31 Allison Street, Pontiac, Mich. He is now, and for more than 1 year last past has been, engaged in the business of selling and distributing a small electric water heater, called "Wonder Electric Water Heater." Respondent claims that this heater is useful in heating small quantities of water and other liquids.

PAR. 2. Respondent causes said heaters, when sold, to be transported from his place of business in the State of Michigan to purchasers thereof located in various other States of the United States. Respondent maintains a course of trade in said heaters 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 and for the purpose of inducing the purchase of said heaters, respondent has inserted advertisements in the "Help Wanted" sections of newspapers. The following advertisement is typical of those so used:

Man to look after deliveries.
$25 salary and share in profits.
References required. Give phone if possible. Must have $100 cash to pay for first consignment of goods. Box —.

Said advertisements are false, misleading, and deceptive to members of the public seeking the employment mentioned in said advertisements. The business as conducted by respondent was, and is, a fraudulent scheme to extract money from persons in need of employment by falsely representing to them the character of the work to be performed, the purpose of an initial payment of $100 by the applicant for work, the terms of employment, the salary to be paid, the price for which said heater is regularly sold, the extent and

nature of the guaranty on said heaters, and other matters in connection with the sale of said heaters, as hereinafter set out.

The respondent employs representatives to contact prospective distributors who respond to the newspaper advertisements as hereinbefore set out. Said representatives, with the cooperation of the respondent, have made numerous misrepresentations to prospective distributors to induce them to sign contracts for the purchase of heaters. Among and typical of such misrepresentations are the following:

1. That the services required of the distributors are only to make deliveries of and collection for said heaters, and that no selling is required of said distributors;

2. That respondent will establish directly or through such representatives the required number of dealers to handle respondent's heaters on a consignment basis without any sales effort on the part of the distributor;

3. That the initial payment of $100 required of each distributor is in the nature of or in lieu of a temporary bond and will be refunded to the distributor as soon as the list of dealers has been secured and approved by respondent or his representative, and that the procurement and approval of such dealers is merely a routine procedure requiring not more than 10 days;

4. That respondent will pay to the distributor a weekly salary of $25, commencing on the day he signs the contract, plus a commission of 50 cents per heater for every heater over two sold each week by each established dealer in the distributor's territory.

PAR. 4. In truth and in fact, all of the representations hereinbefore set out are false and fraudulent, and are designed and intended to, and do, induce many members of the purchasing public to sign contracts for the purchase of large numbers of respondent's heaters and to induce payment therefor by the so-called "distributor." Said contracts are so drawn as to make impossible of fulfillment the conditions upon which refunds of initial payments are to be made by the respondent, and in fact no refunds have ever been made by respondent. No salary or commission has ever been paid by respondent to any so-called "distributor." No quota of dealers has ever been established by respondent or his representatives which met the number required to be established to enable the so-called "distributor" to be entitled to the refund of the money paid and eligible to salary and commissions. The initial payment of $100 is not in the nature of or in lieu of a temporary bond, but is applied by respondent as payment for 48 of said electric water heaters. Under the scheme as operated by respondent and his representatives,

the so-called "distributor" becomes a mere purchaser of said heaters without any adequate outlets for disposal of the same or established dealers to handle them.

PAR. 5. The electric water heater sold and distributed by respondent through the fraudulent and deceptive sales methods hereinbefore set out bears a label reading as follows:

Wonder Electric Water Heater—
Introductory Price $5.95—Guaranteed Forever. Manufactured and guaranteed by the Jenner Mfg. Co., Pontiac, Mich.

In truth and in fact, said heater is not manufactured or guaranteed by the Jenner Manufacturing Co. It is not guaranteed forever, and has never been sold at a price of $5.95. The price of $5.95 is not an introductory price, but a wholly fictitious one, greatly in excess of the regular retail price of $2.25. The customer is required to pay 60 cents for repairs to, or replacement of parts for, said heaters.

PAR. 6. As a result of respondent's false and misleading representations, plans, and methods, as above set out, members of the public, believing and relying upon the truth of said representations, have been induced to buy, and have bought, large numbers of respondent's said heaters under the erroneous and mistaken belief that they were to become distributors and not purchasers of said heaters and were to receive a salary plus a commission on sales by dealers secured by the respondent.

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, Charles D. Brown, his agents, representatives, and employees, directly or through any corporate or

other device in connection with the offering for sale, sale and distribution of electric water heaters in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing:

1. That the only services required of distributors are to make deliveries of, and collections for, said electric water heaters or that no selling is required of said distributors.

2. That dealers in any number have been or will be established by the respondent or by his field agents in any city or territory, when no such dealers have been established, and the establishment of such dealers is not contemplated.

3. That the initial payment required of each distributor is in the nature of, or in lieu of, a temporary bond, and that it will be refunded.

4. That the initial payment required of distributors represents anything other than the payment for a certain number of respondent's heaters.

5. That respondent will pay to the distributor a weekly salary of $25 or any other amount either with or without commissions.

6. That respondent's heater is manufactured and guaranteed by the Jenner Manufacturing Co. or that it is guaranteed forever.

7. That the price at which respondent's heater is customarily offered for sale is an introductory price, or a special price, or is anything other than the regular retail price at which said heater is sold.

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

ADOLPH KASTOR & 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 3466. Complaint, June 21, 1938—Decision, Oct. 3, 1940

Where a partnership and its corporate successor, representing substantially same ownership and operation, long engaged in manufacture of various articles of cutlery and in sale thereof, including knives below described, to purchasers in other States and in the District of Columbia, in substantial competition with others engaged in sale and distribution of pocket knives and outdoor knives in commerce as aforesaid, and including many, over long period of years involved, who have not been and are not entitled to mark, advertise, or otherwise represent their knives as approved or sponsored by the Boy Scouts of America and do not thus mark, etc., their said products, and others engaged in similar sale and distribution of such articles who have been and are entitled thus to mark, etc., their said knives as having been thus approved, and have truthfully marked, advertised, and represented them as such—

Marked, on handle of said knives sold by it as aforesaid, words "Scout Knife," and on sheath knives "Sportsman's Knife," and prepared and packed for sale said products in paper box on which appeared words "Scouting Set," together with picture of boys in the familiar Boy Scout uniform, tent, outdoor fire, and designs similar to the trefoil or fleur-de-lis emblem of said organization or movement, and marked and advertised for many years knives made and sold by it, which simulated knives adopted and approved by Boy Scout executives, with and through use of words "Boy Scout," "Boy Scouts of America," "Scouts," "Scouting," "Standard Scout," with or without, as case might be, emblems, or simulation thereof, of aforesaid organization, and pictures of boys in Scout uniforms and scenes of outdoor activity suggesting Boy Scouts and their activities, and thereby represented, directly and through implication, to members of purchasing public, that its said products were standard equipment authorized and approved by Boy Scouts of America;

Notwithstanding fact applications by it to organization in question for right to manufacture approved knife thereof and identified as such, considered on their merits, had been rejected, its said products were inferior to those of other manufacturers given approval over the course of the years as possessing the requisite qualities with respect to suitability, safety, and others deemed important and essential, after receipt of suggestions and submission of models and holding of conferences, and notwithstanding repeated protests by organization in question over its practice, as above indicated, in selling its said knives under such words and emblems and at lower prices than the genuine, more useful and superior, duly approved organization products, and notwithstanding repeated promises, not observed, to cease and desist such practices;

With result that, through such marketing and advertising, it enabled and caused retailers to represent and sell its said product as a part of the equipment

approved and sponsored by organization in question, and with effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that its said knives were thus approved and sponsored by said famous and esteemed organization, and of inducing a substantial number thereof, because of such belief, to purchase its said product in preference to those of its said competitors, and of thereby diverting trade in commerce unfairly to it from them; to their injury and that of the public:

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

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

Mr. Joseph C. Fehr for the Commission.

Weil, Gotshal & Manges, of New York City, for respondent.

Hughes, Richards, Hubbard & Ewing, of New York City, for Boy Scouts of America (amicus curiae).

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 Adolph Kastor & Bros., 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, Adolph Kastor & Bros., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal office and place of business located at 245 Fifth Avenue, in the city of New York, in the State of New York. Respondent is now, and for some time past has been, engaged in manufacturing, offering for sale, and selling various articles of cutlery. Among other things, respondent sells a pocket knife designated as a "Scout Knife," and a sheath knife designated as a "Sportsman's Knife," which said articles are manufactured for it by another concern.

When said knives are sold, respondent ships and transports same from its place of business in the State of New York to the purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia. There has been for some time past, and still is, a course of trade in said knives so distributed and sold by respondent in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 2. Respondent is now, and for some time past has been, engaged in substantial competition with other corporations, and with firms, partnerships, and individuals engaged in the sale and distribution of like and similar products, or products designed for similar usage, in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. Among the manufacturers and sellers of like and similar articles of merchandise referred to in paragraph 2 hereof, are manufacturers and sellers who are and have been making and selling pocket knives, sheath knives, and other products offered for sale and sold to the members of the organization known as "Boy Scouts of America" under the authority and sanction of said organization. Said organization was incorporated in 1910 as a nonprofit corporation, and it has ever since maintained uniformity and high standards of performance in various outdoor crafts requiring centralized supervision of equipment, and has sponsored, authorized, and approved the manufacture and sale of a large number of articles used by its members. Among other articles sponsored by the Boy Scouts of America, and used by its members, is the standard Boy Scout pocket knife, which is regarded as essential in the activities of the members of said organization. The Boy Scouts of America adopted, and for many years have used a distinctive trefoil fleur-de-lis design as their official emblem. Certain manufacturers, sellers and distributors have been authorized to use said organization's distinctive fleur-de-lis emblem in describing and marketing their articles of merchandise, including said pocket knife, and such articles have long been distinguished by reason of the use of such emblem as being products officially approved and sanctioned by the organization.

The business of the sale of such articles of merchandise constitutes and has constituted a very substantial part of the entire business in the sale of pocket knives, sheath knives, and other articles of merchandise authorized and sponsored by the Boy Scouts of America, throughout the various States of the United States and in the District of Columbia.

PAR. 4. In soliciting the sale of and in selling its products, and for the purpose of creating a demand upon the part of the purchasing public for said products, the respondent now causes, and for some time past has caused, its pocket knife and sheath knife to be placed in paper boxes on which appear and have appeared the words "Scouting Set," with pictorial representations of scouts in uniform, tents, and fire, and two decorations simulating the official Boy Scout trefoil badge commonly called fleur-de-lis. Respondent sold and now sells said "Scouting Set," containing a pocket knife, on the handle of which

is stamped the words "Scout Knife," and a sheath knife, on the blade of which is stamped the words "Sportman's Knife," in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 5. Through the use of the foregoing statements and others similar thereto, but not set out herein in detail, respondent represents, directly and through implication, to members of the purchasing public solicited to purchase their said products that certain of said knives described as "Scout Knife" and "Sportman's Knife," and the so-called "Scout Set" are official standard equipment authorized and sponsored by the Boy Scouts of America.

Respondent's so-called "Scouting Set" cartons and the pocket knife and sheath knife contained therein, by reason of the pictorial representations, together with the pseudo fleur-de-lis emblem and the words "Scout Knife" stamped on the handle of the pocket knife, are designed to deceive and mislead purchasers and prospective purchasers into the purchase of said products in the mistaken belief, thus induced, that said products are approved, endorsed, and sponsored by the Boy Scouts of America.

PAR. 6. In truth and in fact, the representations and implications made by respondent as hereinabove set forth in paragraphs 4 and 5, are false, misleading, and deceptive. Neither the so-called "Scout Knife," "Sportman's Knife," nor the "Scouting Set" as a whole is official equipment of the organization universally known and recognized throughout the United States as "Boy Scouts of America." The respondent is not, and has not been, authorized or sanctioned by said Boy Scouts of America, to represent, designate, or otherwise refer to its said products, either specifically or by implication, as official equipment approved by said organization.

PAR. 7. There are, among the competitors of respondent referred to in paragraphs 2 and 3 hereof, manufacturers, sellers, and distributors of pocket knives and sheath knives who truthfully advertise and represent them as standard articles of merchandise properly authorized and sanctioned by the Boy Scouts of America for use by its members. There are also among the competitors of respondent many manufacturers, sellers, and distributors of pocket knives and sheath knives who are not sanctioned or authorized by the Boy Scouts of America, and who do not advertise said products in such a manner as to deceive and mislead purchasers and prospective purchasers into the mistaken belief that said articles are manufactured and sold as standard equipment authorized, sponsored and approved by the Boy Scouts of America, for use by its members.

PAR. 8. Each and all of the misleading and deceptive statements and representations made by the respondent herein by means of advertisements, emblems, picture designs, branding, and in other ways, in connection with the offering for sale and selling of its products known as "Scout Knife" and "Scouting Sets," were and are calculated to, and had, and now have a capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the erroneous belief that said representations are true. Further, as a direct consequence of such mistaken and erroneous beliefs, induced by the representations thus made by the respondent, as aforesaid, a number of the purchasing public purchase a substantial volume of said products with the result that trade has been diverted unfairly from those competitors referred to in paragraph 7 hereof who truthfully advertise their products. As a result thereof, injury has been and is now being done by the respondent herein to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 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 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, 1938, issued and served its complaint in this proceeding upon the respondent Adolph Kastor & 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 of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Joseph C. Fehr, attorney for the Commission, and in opposition to the allegations of the complaint by Sylvan Gotshal, attorney for the respondent, before John L. Hornor, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest

of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Adolph Kastor & Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in the city and State of New York. Respondent is successor to Adolph Kastor & Bros., a partnership organized prior to 1890. Substantially the same individuals have owned and operated the partnership and corporation since the inception of the business and the partnership and corporation are treated as one in this findings as to the facts. The term "respondent," when hereinafter used, shall include the predecessor of respondent corporation unless otherwise stated.

PAR. 2. Respondent is now, and for some time in the past has been, engaged in manufacturing, offering for sale, and selling various articles of cutlery, among other items the knives hereinafter described, which, when sold, are and have been shipped from its said place of business to the purchasers thereof located in States of the United States other than the State of New York, and in the District of Columbia. For some time past respondent has carried on, and at present continues to carry on, a course of trade in such knives in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. Respondent is now, and for some time past has been, engaged in substantial competition with corporations, firms, partnerships, and individuals engaged in the sale and distribution of pocket knives and outdoor knives in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 4. Among the knives recently sold by respondent in commerce as aforesaid, were pocket knives marked on the handle "Scout Knife" and sheath knives marked "Sportsman's Knife." These knives were prepared for sale by packing in a paper box on which appeared the words "Scouting Set," together with pictures of boys in the familiar Boy Scout uniform, a tent, an outdoor fire, and two designs similar to the trefoil or fleur-de-lis emblem of the Boy Scouts of America.

PAR. 5. The Boy Scout movement started in England about the year 1906 as "Scouting For Boys." About 1909 the movement was brought to this country, first developing as a large number of groups, more or less independent of one another, but in February 1910, all were merged into the "Boy Scouts of America," on that date incor-

porated in the District of Columbia, with an expressed purpose to teach boys discipline, patriotism, courage, habits of observation, self-control, and ability to care for themselves in all exigencies of life. Later, June 15, 1916, the "Boy Scouts of America" was incorporated by Act of Congress, under which the new corporation succeeded to the right to use all emblems, badges, descriptive or designating marks, words or phrases then or theretofore used by the Boy Scouts of America, with the proviso that nothing in the act should interfere or conflict with established or vested rights. The purpose of the organization was expressed in the act as being to promote the ability of boys to do things for themselves and others, to train them in scoutcraft and to teach them patriotism, courage, self-reliance, and kindred virtues. From the beginning of the movement, even before the incorporation of the Boy Scouts of America, the words "Scout" and "Scouting" had acquired a secondary meaning as applying to the Boy Scout movement.

Immediately upon the advent of the movement in the United States it received wide and favorable publicity in the form of newspaper and magazine articles, public addresses and distribution of both English and American published handbooks and other books and pamphlets. Membership in the Boy Scouts of America grew rapidly. The first year of its incorporation, 1910, the membership increased from 5,000 to 300,000, and up to the present its membership has totaled some 8,900,000 since its organization in 1910. Its present membership is more than 1,200,000. Surveys have shown that three out of every four boys in the United States desire to belong to the organization.

PAR. 6. An important part of the Boy Scout program was to consist and has consisted of outdoor activities; hence one of the first concerns of the Boy Scout executives was to insure to the boys suitable and safe equipment and supplies for such activities. Early in 1910 consideration was given to a suitable and safe pocket knife, suggestions were invited and received from outdoorsmen and manufacturers, suggested models submitted by manufacturers, conferences held, specifications for a satisfactory knife evolved, and bids from manufacturers were invited for manufacture of the knife in quantity, with license to mark and identify the knife as the standard knife. Early in 1911 a contract was awarded. Since that time the Boy Scouts of America has maintained supervision by contracting from time to time with manufacturers for the production of the approved knife, with license to the contractees to mark the knife so as to identify it as the approved knife and it has been continuously so marked, and has been referred to universally as a "Scout" knife. It has been available for

purchase throughout the nation through various outlets. Respondent has from time to time made application to the Boy Scouts of America for the right to manufacture the approved knife and identify it as such, which applications have been considered on their merits and rejected.

PAR. 7. Respondent participated in the aforementioned conferences in 1910, submitted three models of knife and submitted a bid for the manufacture of the adopted knife, but its bid was not accepted.

Immediately after its bid was rejected in 1910, respondent began to manufacture and put on the market and to distribute widely, a knife similar in appearence to the adopted knife, with the words "Boy Scout" etched into the blade. Prior to that time there was and had been no pocket knife on the market marked with the word "Scout." Since 1910 and up to the present, respondent from time to time, over the protest of the Boy Scout executives, has manufactured and sold pocket knives, simulating the adopted knife, and has marked and advertised them in various ways, by the use of the words "Boy Scout," "Boy Scouts of America," "Scout," "Scouting," "Standard Scout," with and without emblems, or simulation of emblems, of the Boy Scouts of America, and with and without pictures of boys in scout uniform and scenes of outdoor activity suggesting the Boy Scouts of America and their activities. As early as May 1912, the Boy Scouts of America lodged such a protest with respondent and at various times respondent has agreed to cease such practices but has failed to live up to its promises. The knives so marked and advertised by respondent have been and are inferior in quality and usefulness to the adopted boy scout knife, and are offered for sale and sold at lower prices. Such marking and advertising has enabled and has caused retail dealers to represent and sell them as a part of the equipment approved and sponsored by the Boy Scouts of America.

PAR. 8. Through the use of the aforesaid practices, words, statements, and representations, respondent represents and has represented, directly and through implication, to members of the purchasing public that its knives marked as "Scout" knives, and advertised by use of the words "Scout," "Scouting," "Standard Scout," and the use of scenes and emblems, or simulation of emblems, identified in the public mind with the Boy Scouts of America and their activities, all as in paragraph 7 hereof described, that its knives are standard equipment authorized and approved by the Boy Scouts of America.

PAR. 9. The representations and implications aforesaid made by respondent are false, misleading, and deceptive. The knives so marked and advertised by respondent are not and have never been authorized

by the Boy Scouts of America as standard equipment nor has respondent been licensed by the Boy Scouts of America to represent, designate, or otherwise refer to its knives as such approved equipment.

PAR. 10. During all the time since 1910, many persons, firms, and corporations in the United States have been engaged in the selling of pocket knives and outdoor knives in commerce between and among the various States of the United States and in the District of Columbia, many of whom have not been and are not entitled to mark, advertise, or otherwise represent their knives as approved or sponsored by the Boy Scouts of America, and such persons, firms, and corporations do not and have not so marked, advertised, or otherwise represented their knives; and others of such persons, firms, and corporations, engaged in the sale and distribution of pocket knives and outdoor knives in commerce between and among the several States of the United States and the District of Columbia, have been and are entitled to mark, advertise, and represent their pocket knives and outdoor knives as having been approved by the Boy Scouts of America and have truthfully marked, advertised, and represented them as such. With all of these persons, firms, and corporations the respondent has been and is in substantial competition in the sale of the knives referred to in paragraphs 4 and 7 hereof in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 11. The false, misleading, and deceptive practices as hereinabove set forth have had and now have the capacity and tendency to mislead and deceive, and do mislead and deceive, a substantial portion of the purchasing public into the erroneous and mistaken belief that respondent's said knives are authorized, sponsored, or approved by the Boy Scouts of America and do induce a substantial number of the purchasing public, because of said erroneous belief, to purchase respondent's said knives in preference to those of its said competitors, mentioned in paragraphs 3 and 10 hereof, and thereby trade in commerce between and among the several States of the United States and in the District of Columbia has been unfairly diverted to the respondent from its competitors in said commerce, to their injury and to the injury of the public.

CONCLUSION

The aforesaid acts and practices of respondent, Adolph Kastor & Bros., Inc., 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 in support of the allegations of the complaint and in opposition thereto, briefs and oral argument by Joseph C. Fehr, counsel for the Commission, and by Sylvan Gotshal, 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, Adolph Kastor & Bros., Inc., its representatives, agents, and employees, directly or indirectly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of knives in interstate commerce or in the District of Columbia, do forthwith cease and desist from:

1. Marking or labeling said knives, or the containers or coverings in which they are enclosed, or display cards to which they are attached or on which they are displayed, with the words "Scout" or "Boy Scout" or "Scouting," or with any emblem or symbol adopted and used by the Boy Scouts of America to designate or symbolize that organization or the activities of its members; or

2. Marking, designating or describing knives as "Scout" or "Boy Scout" or "Scouting" knives; or

3. Using pictorial representations of outdoor life in which there appear boys in the uniform of the Boy Scouts of America or in uniforms simulating such uniform; or

4. Using, in any manner, any mark, symbol or emblem adopted and used by the Boy Scouts of America to represent or identify that organization or the activities of its members.

It is further ordered, That the respondent, Adolph Kastor & Bros., 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

THE HOUSE OF CRANE

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

Docket 4080. Complaint, Apr. 3, 1940—Decision, Oct. 4, 1940

Where a corporation engaged in sale and distribution of cigars, tobacco products, candy, and other articles of merchandise, including certain assortments which consisted of (1) number of pieces or boxes of candy, additional articles of merchandise and punchboard for distribution to consuming public under a plan, and in accordance with said board's explanatory legend, by which purchaser selecting from board by chance designated number was entitled to receive one of pieces of candy being thus disposed of, and person selecting another designated number was entitled to receive one of additional articles of merchandise, person selecting last number in each of 11 sections into which board was divided was likewise entitled to one of said boxes, and person selecting last number was entitled to such a box and to one of said other articles, and under which, further, person who did not qualify by obtaining one of numbers designated, received nothing for his money, and under which amount, if any, paid for chance varied from 1 to 4 cents depending upon particular numbers punched, and of (2) other assortments, together with push cards and punchboards, involving similar sales plans or methods to that above described, from which they varied in detail only—

Sold to dealers assortments as above set forth, by retailer-purchasers of which they were exposed and sold to purchasing public in accordance with such sales plans or methods involving game of chance or sale of a chance to procure articles of merchandise at prices much less than normal retail prices thereof and of a retail value exceeding that of costs incurred, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its products in accordance with such sales plans or methods, 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 plans or methods employed in connection with sale and distribution of its merchandise, and by element of chance involved therein and were thereby induced to buy and sell its said products in preference to like or similar merchandise of competitors who do not use same or equivalent methods, and with effect, through use of such plans or methods and because of said game of chance, of unfairly diverting trade to it from its competitors aforesaid who do not use such or equivalent methods or plans; 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. D. C. Daniel for the Commission.
Mr. Thomas D. Stevenson, of Indianapolis, Ind., 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 House of Crane, 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, The House of Crane, 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 124 South Meridian Street, Indianapolis, Ind. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of cigars, tobacco products, candy, and other articles of merchandise to dealers. Respondent causes and has caused its said merchandise, when sold, to be shipped or transported from its aforesaid place of business in the State of Indiana 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 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 its 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 consists of a number of pieces of candy and additional articles of merchandise, together with a device commonly known as a punchboard. Said boxes of candy and other articles of merchandise are distributed to the consuming public by means of said punchboard in the following manner:

The punchboard is divided into sections and each section contains a number of small tubes in each of which has been placed a slip of paper with a number appearing thereon. The board bears statements or legends informing purchasers and prospective purchasers that persons punching numbers ending in 1, 2, 3, and 4 pay 1 cent, 2 cents, 3 cents, and 4 cents respectively. Purchasers punching numbers ending in 5, 6, 7, 8, and 9 pay 5 cents, and all numbers ending in 0 are free. Each of said numbers is effectively concealed from purchasers and prospective purchasers until said number has been punched and removed from the board. Each person selecting a designated number is entitled to and receives one of said boxes of candy. The person selecting another designated number is entitled to and receives, one of said additional articles of merchandise. Each person selecting the last number in each of the first 11 of said sections is entitled to and receives one of said boxes of candy. The person selecting the last number on said board is entitled to and receives one of said boxes of candy and one of said other articles of merchandise. A person who does not qualify by obtaining one of said designated numbers receives nothing for his money. The retail value of each of said boxes of candy and other articles of merchandise is greater than any of the amounts above designated. The facts as to which of said articles of merchandise a purchaser is to receive, if any, with the exception of the last sale in said first 11 sections and the last sale on the board, and the sum, if any, to be paid therefor are thus determined wholly by lot or chance.

The respondent sells and distributes various assortments of its merchandise together with push card and punchboard devices by the sales plans or methods used in connection with the sale and distribution of each of said assortments, similar to the ones hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise expose and sell the same to the purchasing public 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 its products in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said 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 by the sales plans or methods as hereinabove alleged involves a game of

chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute merchandise in competition with respondent as above alleged are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed in connection with the sale and distribution of respondent's merchandise and by the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to like or similar merchandise of said competitors of respondent who do not use the same or equivalent methods. The use of said sales plans or 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 sales plans or methods and as a result thereof substantial injury is being and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 3, 1940, issued and thereafter served its complaint in this proceeding upon said respondent, The House of Crane, a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 15, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation in lieu of testimony in support of certain of the allegations in the complaint was entered into by and between counsel for the Commission and counsel for the respondent before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it (respondent having offered no proof in opposition to the allegations of the complaint) and said stipulation was recorded in the record of this proceeding, which record was filed

in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation (the respondent having waived all intervening procedure), and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The House of Crane, 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 124 South Meridian Street, Indianapolis, Ind. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of cigars, tobacco products, candy, and other articles of merchandise to dealers. Respondent causes and has caused its said merchandise, when sold, to be shipped or transported from its aforesaid place of business in the State of Indiana 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 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 its merchandise and devices commonly known as push cards and punchboards which were and are to be used in the sale and distribution of said merchandise to the purchasing public. One of said assortments consists of a number of pieces of candy and additional articles of merchandise, together with a punchboard. Said boxes of candy and other articles of merchandise are distributed to the consuming public by means of said punchboard in the following manner:

The punchboard is divided into sections and each section contains a number of small tubes in each of which has been placed a slip of paper with a number appearing thereon. The board bears statements or legends informing purchasers and prospective purchasers

that persons punching numbers ending in 1, 2, 3, and 4 pay 1 cent, 2 cents, 3 cents, and 4 cents respectively. Purchasers punching numbers ending in 5, 6, 7, 8, and 9 pay 5 cents, and all numbers ending in 0 are free. Each of said numbers is effectively concealed from purchasers and prospective purchasers until said number has been punched and removed from the board. Each person selecting a designated number is entitled to and receives one of said boxes of candy. The person selecting another designated number is entitled to and receives one of said additional articles of merchandise. Each person selecting the last number in each of the first 11 of said sections is entitled to and receives one of said boxes of candy. The person selecting the last number on said board is entitled to and receives one of said boxes of candy and one of said other articles of merchandise. A person who does not qualify by obtaining one of said designated number receives nothing for his money. The retail value of each of said boxes of candy and other articles of merchandise is greater than any of the amounts above designated. The facts as to which of said articles of merchandise a purchaser is to receive, if any, with the exception of the last sale in said first 11 sections and the last sale on the board, and the sum, if any, to be paid therefor are thus determined wholly by lot or chance.

The respondent sells and distributes various assortments of its merchandise together with push card and punchboard devices, but the sales plans or methods used in connection with the sale and distribution of each of said assortments are similar to the ones hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise expose and sell the same to the purchasing public 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 its products in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said 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 by the sales plans or methods as hereinabove described involves a game of chance or the sale of a chance to procure articles of merchandise at prices much less than the normal retail prices thereof. Many persons, firms, and corporations who sell and distribute merchandise in

competition with 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 contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed in connection with the sale and distribution of respondent's merchandise and by the element of chance involved therein and are thereby induced to buy and sell respondent's merchandise in preference to like or similar merchandise of said competitors of respondent who do not use the same or equivalent methods. The use of said sales plans or 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 sales plans or 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, the answer of respondent, and a stipulation in lieu of testimony in support of certain allegations in the complaint entered into by and between counsel for the Commission and counsel for respondent before Miles J. Furnas, an examiner of the Commission theretofore duly designated by it (respondent having offered no proof in opposition to said complaint and all intervening procedure having been waived) and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The House of Crane, 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 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 any other merchandise, are to be made, or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to, or placing in the hands of others, push or pull cards, punchboards or other lottery devices, either with assortments of candy, or other merchandise, or separately, which said push or pull cards, punchboards, or other lottery devices are to be used, or may be used in selling or distributing said candy, or other merchandise to the public.

3. 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

INTERWOVEN STOCKING COMPANY

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

Docket 4179. Complaint, July 11, 1940—Decision, Oct. 4, 1940

Where a corporation engaged in manufacture of men's hosiery of various designs and patterns, and in sale and distribution thereof from its factories in Maryland, Pennsylvania, Tennessee, and West Virginia, to purchasers in various other States and in the District of Columbia, and including department stores and retailers by whom said product was in turn resold to purchasing public—

Caused certain of its said hosiery to be marked, stamped, branded, or labeled "Made on Machinery Imported From England Genuine 6×3 Ribbed" and "Made on Machinery Imported From England Entirely Hand Embroidered," with words "Imported From England" stamped in large conspicuous type inside oval in such manner that words "Imported From" appeared immediately above, and were read in conjunction with, word "England," and with words "Made on Machinery" appearing inside top rim of such oval, so as to be capable of indicating merely that product in question was made by machinery, or thus made and "Imported from England," and, in some instances, superimposed above such oval, the figure or simulation of the English crown, with words "Trade Mark" thereunder, and words, under oval, "Genuine 6×3 Ribbed," and in other instances placed underneath oval words "Entirely Hand Embroidered," notwithstanding fact hosiery thus marked, labeled and branded was not imported from England, but was domestically made on machinery which was imported therefrom;

With effect of creating false and erroneous impression on part of purchasing public that products thus branded or labeled were machine-made and imported from said country, in which, only, originally, 6×3 hose were manufactured, and of misleading and deceiving purchasers and prospective purchasers of its said product into erroneous and mistaken belief that such false, misleading, and deceptive representations and implications were true, and that said men's hosiery was made or manufactured in England, for which, especially, along with other hosiery made in foreign countries, there has long been marked preference by substantial part of consuming public in United States, and of causing substantial number of purchasing public, because of such mistaken and erroneous belief thus engendered, to purchase substantial number of its said product:

Held, that such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair and deceptive acts and practices in commerce.

Mr. Charles S. Cox for the Commission.

Mr. J. E. Hutchinson, Jr., of Washington, D. C., and *Mr. Louis Prevost Whitaker*, 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 Interwoven Stocking 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, Interwoven Stocking Co., 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 New Brunswick, N. J., and owns, controls, or operates factories in the States of Maryland, Pennsylvania, Tennessee, and West Virginia.

PAR. 2. Respondent is now, and for more than five years last past has been, engaged in manufacturing, selling, and distributing men's hosiery of various designs and patterns. Respondent causes said men's hosiery when sold by it to be transported from its factories located in the States of Maryland, Pennsylvania, Tennessee, and West Virginia to purchasers thereof at their respective points of location in the various states of the United States other than the States of Maryland, Pennsylvania, Tennessee, and West Virginia, and in the District of Columbia.

PAR. 3. Respondent's said hosiery is sold to department stores and retailers who in turn resell the same to the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said men's hosiery 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 as aforesaid, the respondent causes certain of its hosiery to be marked, stamped, branded, or labeled as follows:

MADE ON MACHINERY
IMPORTED FROM
ENGLAND
GENUINE 6 X 3 RIBBED

MADE ON MACHINERY
IMPORTED FROM
ENGLAND
ENTIRELY HAND EMBROIDERED

The words "Imported from England" are stamped in large conspicuous type inside an oval in such a manner that the words "Imported from" appear immediately above and are read in conjunction with the

word "England," and the words "Made on Machinery" appearing inside the top rim of said oval can be read in such a sense as to indicate merely that the hose were made by machinery, or were made by machinery and are "Imported from England." In some instances respondent has superimposed above said oval the figure or simulation of the English Crown with the words "Trade Mark" appearing thereunder and just above said oval, while underneath said oval appear the words "Genuine 6x3 Ribbed."

In other instances, respondent has placed the words "Entirely Hand Embroidered" underneath said oval.

PAR. 5. The effect of the aforesaid branding, labeling, stamping, or printing is to create the false and erroneous impression on part of the purchasing public that the products so branded or labeled are machine-made and were and are imported from England. The presence of the English Crown superimposed above the oval portion of the stamping or printing followed by the words "Genuine 6x3 Ribbed" thereunder further implies that the hose were "Imported from England" but "Made on Machinery." Originally 6x3 ribbed hose were made only in England, although later machinery therefor was imported into the United States from England and other countries, and American machinery was later devised for the manufacture of 6x3 ribbed hose. The use of the word "Genuine" before "6x3 Ribbed" gives the further impression and effect that said hose are imported from England, inasmuch as England was originally the only source through which a "6x3 Ribbed" hose could be obtained.

PAR. 6. For many years a substantial part of the consuming public of the United States has had, and still has, a marked preference for men's hosiery which are manufactured in foreign countries, especially in England, and then imported into the United States.

PAR. 7. In truth and in fact, respondent's said hosiery so marked, labeled, and branded is not imported from England but is domestically manufactured on machinery which was imported from England.

PAR. 8. The aforesaid acts and practices of the respondent in connection with the manufacture, offering for sale, sale, and distribution of said men's hosiery as set forth in paragraphs 4 and 5 hereof have had, and now have, a capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondent's said products into the erroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and implications are true and that said products are made or manufactured in England, and cause a substantial number of the purchasing public because of said mistaken and erroneous belief so engendered to purchase a substantial number of respondent's said hosiery.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on July 11, 1940, issued, and on July 12, 1940, served its complaint in this proceeding upon respondent, Interwoven Stocking Co., 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 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, Interwoven Stocking Co., 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 New Brunswick, N. J., and owns, controls, or operates factories in the States of Maryland, Pennsylvania, Tennessee, and West Virginia.

PAR. 2. Respondent is now, and for more than 5 years last past, has been engaged in manufacturing, selling, and distributing men's hosiery of various designs and patterns. Respondent causes said men's hosiery when sold by it to be transported from its factories located in the States of Maryland, Pennsylvania, Tennessee, and West Virginia to purchasers thereof at their respective points of location in the various States of the United States other than the States of Maryland, Pennsylvania, Tennessee, and West Virginia, and in the District of Columbia.

PAR. 3. Respondent's said hosiery is sold to department stores and retailers who in turn resell the same to the purchasing public. Re-

spondent maintains, and at all times mentioned herein has maintained, a course of trade in said men's hosiery 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 as aforesaid, the respondent causes certain of its hosiery to be marked, stamped, branded, or labeled as follows:

MADE ON MACHINERY
IMPORTED FROM
ENGLAND
GENUINE 6 X 3 RIBBED

MADE ON MACHINERY
IMPORTED FROM
ENGLAND
ENTIRELY HAND EMBROIDERED

The words "Imported from England" are stamped in large conspicuous type inside an oval in such a manner that the words "Imported from" appear immediately above and are read in conjunction with the word "England," and the words "Made on Machinery" appearing inside the top rim of said oval can be read in such a sense as to indicate merely that the hose were made by machinery, or were made by machinery and are "Imported from England." In some instances respondent has superimposed above said oval the figure or simulation of the English Crown, with the words "Trade Mark" appearing thereunder and just above said oval, while underneath said oval appears the words "Genuine 6 x 3 Ribbed."

In other instances, respondent has placed the words "Entirely Hand Embroidered" underneath said oval.

PAR. 5. The effect of the aforesaid branding, labeling, stamping, or printing is to create the false and erroneous impression on part of the purchasing public that the products so branded or labeled are machine-made and were and are imported from England. The presence of the English Crown superimposed above the oval portion of the stamping or printing followed by the words "Genuine 6 x 3 Ribbed" thereunder further implies that the hose were "Imported from England" but "Made on Machinery." Originally 6 x 3 ribbed hose were made only in England although later machinery therefor was imported into the United States from England and other countries, and American machinery was later devised for the manufacture of 6 x 3 ribbed hose. The use of the word "Genuine" before "6 x 3 Ribbed" gives the further impression and effect that said hose are imported from England, inasmuch as England was originally the only source through which a "6 x 3 Ribbed" hose could be obtained.

PAR. 6. For many years a substantial part of the consuming public of the United States has had, and still has, a marked preference for men's hosiery which are manufactured in foreign countries, especially in England, and then imported into the United States.

PAR. 7. In truth and in fact, respondent's said hosiery so marked, labeled, and branded is not imported from England but is domestically manufactured on machinery which was imported from England.

PAR. 8. The aforesaid acts and practices of the respondent in connection with the manufacture, offering for sale, sale, and distribution of said men's hosiery as set forth in paragraphs 4 and 5 hereof have had, and now have, a capacity and tendency to, and do, mislead and deceive purchasers and prospective purchasers of respondent's said products into the arroneous and mistaken belief that the aforesaid false, misleading, and deceptive representations and implications are true, and that said products are made or manufactured in England and cause a substantial number of the purchasing public, because of said mistaken and erroneous belief so engendered, to purchase a substantial number of respondent's said hosiery.

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 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 Interwoven Stocking Co., its officers, representatives, agents, and employees, directly or indirectly, through any corporate or other device, in connection with the offering for sale, sale, and distribution of hosiery in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the term "Imported from England," except as provided in prohibition 2 hereof, either alone or in connection with any other term indicative of English or other foreign manufacture, to describe hosiery manufactured in the United States.

2. Using the term "Made on Machinery Imported from England," in any way to describe or refer to hosiery made in the United States on machinery imported from England, unless the words "Made on Machinery" appear in immediate connection with the words "Imported from England" in letters and type of equal prominence and conspicuousness.

3. Using a facsimile of the English crown, or any other symbol indicative of England, alone or in connection with the words, "Genuine 6 x 3 Ribbed," or in any other manner so as to import or imply that hosiery manufactured in the United States is imported from England.

4. Representing, in any manner, that hosiery made in the United States is imported from England or any other foreign country.

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

IN THE MATTER OF

JORDAN STEVENS COMPANY

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

Docket 4269. Complaint, Aug. 27, 1940—Decision, Oct. 7, 1940

Where a corporation engaged in sale and distribution of coffee, including certain assortments thereof which were so packed and assembled as to involve use of a lottery scheme when sold and distributed to the consumers thereof, and which included (1) 100 1-pound packages of said product and 25-piece set of dishes, together with advertising poster or card for use in sale and distribution of product and dishes under a plan in accordance with which that purchaser of pound of coffee whose name was placed on card opposite number corresponding to number concealed under card's seal received, without additional cost, such 25-piece set of dishes, and others not successful in so doing secured only coffee purchased by them; and (2) various other assortments of coffee involving lot or chance feature and sales plans or methods which were similar to that above described and from which they varied in detail only—

Sold said assortments to dealer or retailer purchasers, by whom, as direct or indirect buyers thereof, same were exposed and sold to purchasing public in accordance with such sales plans, involving game of chance or sale of a chance to procure set of dishes without cost, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its said merchandise in accordance with such sales plans or methods, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who sell and distribute coffee and are unwilling to adopt and use said or any method 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 coffee as above described, and were thereby induced to buy and sell its product in preference to that offered and sold by said competitors who do not use same or equivalent method, and with effect, through use of such methods and because of said game of chance, of unfairly diverting trade to it from its competitors aforesaid, who do not use such or equivalent methods; to the substantial injury of competition in commerce:

Held, That such acts and practices, under the circumstances set forth, were all to the 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 Jordan Stevens 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, Jordan Stevens Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 200 Third Avenue, North, Minneapolis, Minn. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of coffee to dealers located in various States of the United States. It causes and has caused said coffee, when sold, to be shipped or transported from its aforesaid place of business in the State of Minnesota to purchasers thereof in various other States of the United States at their respective points of location. There is now, and for more than 2 years last past has been, a course of trade by said respondent in such coffee in commerce between and among the various States of the United States. In the course and conduct of said 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.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells and has sold certain assortments of said coffee, so packed and assembled as to involve the use of a lottery scheme when said coffee is sold and distributed to the consumers thereof. One of said assortments was, and is, sold and distributed to the purchasing public in the following manner: This assortment consists of 100 1-pound packages of coffee and a 25-piece set of dishes, together with an advertising poster or card. Said card has space provided for the recording of 100 names, and the name of the purchaser of each pound of said coffee is recorded on the said card. The card contains a seal and concealed under said seal is a number corresponding to one of said numbers appearing elsewhere on said card. When the 100 pounds of coffee have been sold, the seal is removed and the number thereunder is disclosed. The person whose name is recorded opposite the number corresponding to the number under the seal is entitled to and receives, without additional cost, the

said 25-piece set of dishes. The number under said seal is concealed from purchasers and prospective purchasers until the 100 pounds of coffee have been sold and all of the names recorded on said card. Persons who are not successful in securing the set of dishes secure only the coffee purchased by them. The said set of dishes is thus distributed wholly by lot or chance. Respondent sells and distributes, and has sold and distributed, various assortments of coffee involving a lot or chance feature, but the sales plans or methods employed in connection with each of said assortments are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of coffee, 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 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 coffee and the sale of said coffee 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 coffee to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure a set of dishes without cost. Many persons, firms, and corporations who sell and distribute coffee 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 the sale of a chance to win something by chance, or any other method which 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 coffee in the manner above alleged and are thereby induced to buy and sell respondent's coffee in preference to coffee 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 to respondent from its competitors who do not use the same or equivalent methods in commerce between and among the various States of the United States. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

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 re-

spondent'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 27, 1940, issued and on August 29, 1940, served its complaint in this proceeding upon respondent, Jordan Stevens 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. Subsequently, the respondent filed its answer in which it 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 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, Jordan Stevens Co., is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 200 Third Avenue, North, Minneapolis, Minn. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of coffee to dealers located in various States of the United States. It causes and has caused said coffee, when sold, to be shipped or transported from its aforesaid place of business in the State of Minnesota to purchasers thereof in various other States of the United States at their respective points of location. There is now, and for more than 2 years last past has been, a course of trade by said respondent in such coffee in commerce between and among the various States of the United States. In the course and conduct of said 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.

Par. 2. In the course and conduct of its business as described in paragraph 1 hereof, respondent sells, and has sold, certain assortments of said coffee so packed and assembled as to involve the use of

a lottery scheme when said coffee is sold and distributed to the consumers thereof. One of said assortments was, and is, sold and distributed to the purchasing public in the following manner: This assortment consists of 100 1-pound packages of coffee and a 25-piece set of dishes, together with an advertising poster or card. Said card has space provided for the recording of 100 names, and the name of the purchaser of each pound of said coffee is recorded on the said card. The card contains a seal and concealed under said seal is a number corresponding to one of said numbers appearing elsewhere on said card. When the 100 pounds of coffee have been sold, the seal is removed and the number thereunder is disclosed. The person whose name is recorded opposite the number corresponding to the number under the seal is entitled to and receives, without additional cost, the said 25-piece set of dishes. The number under said seal is concealed from purchasers and prospective purchasers until the 100 pounds of coffee have been sold and all of the names recorded on said card. Persons who are not successful in securing the set of dishes secure only the coffee purchased by them. The said set of dishes is thus distributed wholly by lot or chance. Respondent sells and distributes, and has sold and distributed, various assortments of coffee involving a lot or chance feature, but the sales plans or methods employed in connection with each of said assortments are similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of coffee, 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 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 coffee and the sale of said coffee 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 coffee to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure a set of dishes without cost. Many persons, firms, and corporations who sell and distribute coffee 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 the sale of a chance to win something by chance, or any other method which 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 coffee in the manner above described and are thereby induced to buy and sell respondent's coffee in preference to coffee 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 to respondent from its competitors who do not use the same or equivalent methods in commerce between and among the various States of the United States. As a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among 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 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 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, Jordan Stevens 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 coffee or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling or distributing coffee or any other merchandise so packed and assembled that sales of said coffee or other merchandise are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others push or pull cards, punchboards or other lottery devices, either with assortments of coffee or other merchandise, or separately, which said push or pull cards,

punchboards, or other lottery devices are to be used or may be used in selling or distributing said coffee or other merchandise to the public.

3. 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

RALPH CORN UNDERWEAR, INC.

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

Docket 4017. Complaint, Feb. 5, 1940—Decision, Oct. 8, 1940

Where a corporation engaged in sale and distribution of women's wearing apparel, including slips, gowns, and pajamas, to retailer purchasers in the various States and in the District of Columbia; in making various representations concerning character and quality of its said garments, including fiber and material of which made, and as to character of business conducted by it, through descriptive circulars distributed through the mails and otherwise, and by labels attached to such garments, and by use of letterheads used in correspondence with purchasers and prospective purchasers of its products—

(*a*) Made use, as typical of such representations as to material or fiber, of words "satin" and "crepe," and also of word "silk," through such statements in its circulars, distributed as above set forth, as "* * * Satin and Pigment Crepe Slips, Gowns and Man-Tailored Pajamas," "Pigment Back Silk Satin Slip," "Pigment Crepe Heavy Quality Satin Striped Gown," and "Multifilament Crepe Gowns," notwithstanding fact none of said garments sold by it were made entirely of silk, product of cocoon of silkworm, as long associated in minds of public with words "satin" and "crepe," unqualified, and used in connection with descriptions or designations of women's clothing, with materials made of product of silkworm, and as descriptive of fabrics of products thereof, long held in great public esteem and confidence for their preeminent qualities, and by reason thereof decidedly preferred on part of purchasing public, but were made of rayon, or other material and rayon, which, when so manufactured as to simulate silk has appearance and feel thereof, and is by purchasing public practically indistinguishable therefrom, and is, therefore, readily believed to be and accepted by purchasing public as being silk as aforesaid; and

(*b*) Represented itself, as aforesaid, as manufacturer of garments sold and distributed by it, through use in its advertising material and on its letterheads of words "Manufacturers of Silk Undergarments," facts being garments in question were designed, patterned, and cut by its employees on its own premises from piece goods, trimmings, and other necessary materials purchased by it on open market, with such materials then sewed by independent sewing concerns under contract with it, and finished garments returned to it for distribution to trade, and it was not manufacturer and did not own, operate, or control any manufacturing plant;

With capacity and tendency to mislead and deceive substantial portion of members of purchasing public into erroneous belief that items of wearing apparel advertised by it as above set forth were made entirely of silk, and into purchase of substantial volume thereof on account of such belief, and with result, through designation of itself as manufacturer of silk garments, of influencing purchasers to deal with its as manufacturer, for dealing with whom directly there has long been preference on part of substantial portion

of consuming public and trade as thereby bringing lower prices, elimination of middlemen's profits, superior products and other advantages, in preference to dealing with distributors of similar products who are not manufacturers thereof:

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

Mr. J. W. Brookfield, Jr., for the Commission.

Mr. Milton Zuckerman, 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 Ralph Corn Underwear, 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, the Commission hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Ralph Corn Underwear, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 36 East Thirty-first Street, New York City, N. Y. Respondent is now, and during the year last past has been, engaged in the sale and distribution of women's wearing apparel, including slips, gowns, and pajamas. Respondent sells its products to retail dealers located in the various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the city of New York to purchasers at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, by means of descriptive circulars distributed through the United States mails, and otherwise, by labels attached to said garments, and by the use of letterheads used in correspondence with purchasers and prospective purchasers of its products, respondent has made various false representations concerning the character and quality of its said garments, including the fiber and material of which the same are made.

Among and typical of the false representations made by respondent as to the material or fiber of which respondent's products are made are the following statements contained in its circulars and distributed as above stated:

Ralph Corn Underwear, Inc., the king of Satins, Satin and Pigment Crepe Slips, Gowns, and Man-tailored Pajamas.

Pigment Back Silk Satin Slip.

Pigment Crepe Heavy Quality Satin Striped Gown.

Multifilament Crepe Gowns.

Respondent has also used in its advertising material and on its letterheads the words "Manufacturers of Silk Undergarments." Through the use of the foregoing representations and other representations of similar import not specifically set out herein the respondent represents that its said products are made entirely of silk, the product of the cocoon of the silkworm.

PAR. 3. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, none of the garments sold by respondent are made entirely of silk, the product of the cocoon of the silkworm, but the same, on the contrary, are made of rayon or other material that is not silk, or of a mixture of rayon and silk.

PAR. 4. The word "silk" for many years last past has had, and still has in the minds of the purchasing and consuming public generally, a definite and specific meaning, to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities, and because of such reputation there is a decided preference on the part of the purchasing public for such products. Silk fibers have long been woven into fabrics and certain descriptive terms have been applied to such fabrics. Among such are the words "satin" and "crepe." The words "satin" and "crepe," when used alone or unaccompanied by the name of a specific fabric or fiber, in connection with the description or designation of women's clothing, have been for a long time, and still are, associated in the minds of the public with materials made of the product of the cocoon of the silkworm, and such words when used as aforesaid, are considered as being descriptive of silk fabrics. The word "rayon" is the name of 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.

PAR. 5. Respondent, through the use of the word "Manufacturers," as aforesaid, has represented itself as the manufacturer of the garments sold and distributed by it. In truth and in fact, respondent does not manufacture any of the garments sold and distributed by it, but buys the material on the open market and has such garments manufactured by other parties.

PAR. 6. There has long been a preference on the part of a substantial portion of the consuming public and the trade for dealing directly with the manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products and other advantages can thereby be obtained.

PAR. 7. The use by the respondent of the false and misleading representations set forth herein has had, and now has, the capacity and tendency to, and does, mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that such representations are true and into the purchase of a substantial volume of respondent's products on account of such belief so induced.

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 February 5, 1940, issued its complaint against respondent, Ralph Corn Underwear, 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 February 20, 1940, the respondent filed its answer in this proceeding. Thereafter a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and its counsel, Milton Zuckerman, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, 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 such statement of facts to make its report, stating its findings as to the facts (including inferences which it may draw from the said stipulated facts), and its conclusion based thereon, and enter an order disposing of the proceeding, reserving to the respondent the right to submit brief or oral argument or both with respect to respondent's claim to be a manufacturer. Thereafter the proceeding regularly came on for final hear-

ing before the Commission on the said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, 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, Ralph Corn Underwear, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 36 East Thirty-first Street, New York City, N. Y. Respondent is now, and during the year last past has been, engaged in the sale and distribution of women's wearing apparel, including slips, gowns, and pajamas. Respondent sells its products to retail dealers located in the various States of the United States and in the District of Columbia, and causes said products, when sold by it, to be transported from its place of business in the city of New York to purchasers at their respective points of location in various States of the United States, other than the State of New York, and in the District of Columbia.

Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its aforesaid business, by means of descriptive circulars distributed through the United States mails, and otherwise, by labels attached to said garments, and by the use of letterheads used in correspondence with purchasers and prospective purchasers of its products, respondent has made various representations concerning the character and quality of its said garments, including the fiber and material of which the same are made, and as to the character of business conducted by respondent.

Among and typical of the representations made by respondent as to the material or fiber of which respondent's products are made are the following statements contained in its circulars and distributed as above stated:

Ralph Corn Underwear, Inc., the king of Satins, Satin and Pigment Crepe Slips, Gowns, and Man-Tailored Pajamas.

Pigment Back Silk Satin Slip.

Pigment Crepe Heavy Quality Satin Striped Gown.

Multifilament Crepe Gowns.

PAR. 3. The word "silk" for many years last past has had, and still has, in the minds of the purchasing and consuming public generally, a definite and specific meaning; to wit, the product of the cocoon of the silkworm. Silk products for many years have held, and still hold, great public esteem and confidence for their preeminent qualities, and because of such reputation there is a decided preference on the part of the purchasing public for such products. Silk fibers have long been woven into fabrics and certain descriptive terms have been applied to such fabrics. Among such are the words "satin" and "crepe." The words "satin" and "crepe," when used alone or unaccompanied by the name of a specific fabric or fiber, in connection with the description or designation of women's clothing, have been for a long time, and still are, associated in the minds of the public with materials made of the product of the cocoon of the silkworm, and such words, when used as aforesaid, are considered as being descriptive of silk fabrics. The word "rayon" is the name of 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 to be, and is accepted by the purchasing public as being silk, the product of the cocoon of the silkworm.

PAR. 4. In truth and in fact, none of the garments sold by respondent are made entirely of silk, the product of the cocoon of the silkworm, but the same, on the contrary, are made of rayon or other material that is not silk, or a mixture of rayon and silk.

PAR. 5. Respondent has further used in its advertising material and on its letterheads the words "Manufacturers of Silk Undergarments." Respondent through the use of the word "Manufacturers," as aforesaid, has represented itself as the manufacturer of the garments sold and distributed by it.

The method of manufacture of the garments sold and distributed by respondent is as follows:

Respondent purchases on the open market piece goods, trimmings, and the other necessary materials from which its garments are made. The garments are designed, patterned, and cut by respondent's employees on its own premises and the materials are then sewed by independent sewing contractors under contract with the respondent, and the finished garments are then returned to respondent for distribution to the trade.

The Commission finds that this method does not constitute respondent a manufacturer. The Commission further finds that respondent does not own, operate, or control any manufacturing plant.

PAR. 6. There has long been a preference on the part of a substantial portion of the consuming public and the trade for dealing directly with the manufacturer in the belief that lower prices, elimination of middlemen's profits, superior products, and other advantages can thereby be obtained.

PAR. 7. The use by the respondent of the representations set forth herein has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the members of the purchasing public into the erroneous belief that the items of wearing apparel, advertised by the respondent in the manner set forth in paragraph 2 hereof, are made entirely of silk and into the purchase of a substantial volume of respondent's wearing apparel on account of such belief.

The respondent's designation of itself as a manufacturer of silk undergarments has also influenced purchasers to deal with respondent in preference to dealing with distributors of similar products who are not manufacturers of such products.

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 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 facts as stated 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 an order disposing of the proceeding and briefs in support of the complaint and in opposition thereto; and the Commission having made its findings as to the

facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Ralph Corn Underwear, 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 women's wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the unqualified terms "satin" or "crepe" or any other descriptive terms indicative of silk, to describe or designate any garment or fabric which is not composed wholly of silk, the product of the cocoon of the silkworm; provided, however, that when said terms are used truthfully to designate or describe the type of weave, construction, or finish, such terms shall be qualified by using in immediate connection or 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 such products are made.

2. Using the unqualified term "silk" or any other term of similar import or meaning, to describe or designate any garment or fabric which is not composed wholly of silk, the product of the cocoon of the silkworm; provided, however, that in the case of a garment or fabric 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 such term or terms are 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. Advertising, offering for sale, or selling garments or fabrics composed in whole or in part of rayon, without clearly disclosing the fact that such garments or fabrics are composed of rayon, and when such garments or fabrics are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including the rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

4. Using the word "Manufacturer" or "Manufacturers" to designate or describe respondent's business, or otherwise representing that respondent is a manufacturer or that respondent manufactures the products sold by it.

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

IN THE MATTER OF

PARKER T. FREY, DOING BUSINESS AS PARKER T. FREY COMPANY AND NEARBY SALES 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 AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 4290. Complaint, Aug. 29, 1940—Decision, Oct. 8, 1940

Where an individual engaged for many years, in his own right and trading under certain firm names, in (1) acting as broker in sale of food products, and particularly canned sea food and vegetables; and in (2) buying and selling, for his own account, such products, and in causing same, thus purchased, to be shipped and transported by sellers thereof from their respective other States to himself or, pursuant to instructions and directions, to respective purchasers to whom said products had been resold by him—

Received and accepted, in course of business of buying, as aforesaid, for his own account, such products, from numerous sellers thereof, brokerage fee or allowance or discount in lieu thereof on many purchases made, as above set forth, for his said own account and for resale:

Held, That, in accepting and receiving discounts and allowances in lieu of brokerage upon such own account purchases in interstate commerce as above set forth, he violated provisions of section 2 (c) of Clayton Act, as amended by Robinson-Patman Act.

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

COMPLAINT

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (U. S. C. title 15, sec. 13), as amended by an act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has been, and is now, violating the provisions of subsection (c) of section 2 of said act, as amended, issues its complaint against said respondent and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondent Parker T. Frey is an individual doing business principally under the firm name and style of the Parker T. Frey Co. but also under the firm name and style of the Nearby Sales Co. The respondent has his principal office and place of business at 135 South Second Street, Philadelphia.

PAR. 2. Respondent is now, and for many years prior hereto has been, engaged in the business of acting as broker in the sale of food products, particularly canned sea food and vegetables, said business having been carried on by him principally under the firm name and style of Parker T. Frey Co.

Respondent is also engaged, and for many years prior hereto has been engaged, in the business of buying and selling for his own account food products, particularly canned sea food and vegetables, said business having been carried on by him principally under the firm name and style of the Nearby Sales Co. but also under the firm name and style of Parker T. Frey Co.

Since June 19, 1936, respondent has made many purchases of said food products aforementioned, for his own account, for resale, from sellers located in States other than the State of Pennsylvania, pursuant to which purchases, such commodities have been shipped and transported by the sellers thereof from the respective States in which they are located, across State lines, either to respondent, or pursuant to instructions and directions from respondent, to the respective purchasers to whom such products have been resold by said respondent.

PAR. 3. In the course and conduct of his business of buying food products for his own account in commerce as aforesaid, the respondent, trading under the firm names and styles aforementioned, has been, and is now, receiving and accepting from numerous sellers of said products, so purchased, brokerage fees, or allowances or discounts in lieu thereof, on many of said purchases for his own account.

PAR. 4. The aforesaid acts of the respondent constitute a violation of subsection (c) of section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936.

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 an act of Congress approved June 19, 1936, The Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 29th day of August 1940, issued and served its complaint in this proceeding upon respondent, Parker T. Frey, charging the respondent with violation of the provisions of subsection (c) of section 2 of the said act.

On September 9, 1940, the respondent filed his answer, admitting all the material allegations of fact set forth in said complaint, waiving

all intervening procedure and further hearings as to said facts, and waiving the filing of briefs and presentation of oral argument. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, and the Commission, having duly considered the matter and being now fully advised in the premises and being of the opinion that section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act has been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Parker T. Frey, is an individual who, in his own right and trading principally under the style and firm name of Parker T. Frey Co. and oftentimes under the style and firm name of Nearby Sales Co., is now, and for many years prior hereto has been, engaged in the business of acting as broker in the sale of food products, particularly canned sea food and vegetables. Respondent's principal office and place of business is now located at 8 South Front Street, Philadelphia, Pa.

PAR. 2. The respondent, in his own right and trading principally under the style and firm name of Nearby Sales Co. and oftentimes under the style and firm name of Parker T. Frey Co., is now, and for many years prior hereto has been, engaged in the business of buying and selling for his own account for resale food products, particularly canned sea food and vegetables, and since June 19, 1936, has caused such food products so purchased for his own account as aforesaid to be shipped and transported by the sellers thereof from the respective States in which such sellers are located across State lines either to respondent, or, pursuant to instructions and directions from respondent, to the respective purchasers to whom such products have been resold by respondent.

PAR. 3. That in the course of the business of buying such food products aforesaid for his own account in commerce for resale, as aforesaid, the said respondent, Parker T. Frey, trading in his own behalf and right principally under the style and firm name of Nearby Sales Co. and oftentimes under the name of Parker T. Frey Co., has received and accepted, and is now receiving and accepting, from numerous sellers of such products, so purchased, a brokerage fee, or an allowance or discount in lieu thereof, on many purchases made as aforesaid for his own account for resale.

CONCLUSION

In accepting and receiving discounts and allowances in lieu of brokerage upon purchases of commodities for his own account in interstate commerce, as set forth in the foregoing findings as to the facts, the respondent, Parker T. Frey, individually and while trading under the style and firm name of Nearby Sales Co., and also while trading under the style and firm name of Parker T. Frey Co., violated the provisions of section 2 (c) 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 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 its conclusion that the respondent has violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in purchasing commodities in interstate commerce the respondent, Parker T. Frey, individually, and trading under the names of Nearby Sales Co. and Parker T. Frey Co., or any other name, his agents, employees, and representatives, directly or through any corporate or other device, do forthwith cease and desist from:

1. Accepting from sellers directly or indirectly on purchases of commodities made for the respondent's own account any brokerage and any allowances and discounts in lieu of brokerage, in whatever manner or form said allowances and discounts may be offered, allowed, granted, paid or transmitted; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof upon purchases of commodities made for respondent's own account.

It is further ordered, That the said respondent, Parker T. Frey, 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 the order to cease and desist hereinabove set forth.

IN THE MATTER OF

MEYER BRODIE AND MORRIS WHITE, TRADING AS M & M BAG AND SUITCASE COMPANY

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

Docket 4046. Complaint, Mar 4, 1940—Decision, Oct. 9, 1940

Where two individuals engaged in sale and distribution of leather luggage, consisting of traveling bags, suitcases, and other such products, to retailers and members of purchasing public in the various States and in the District of Columbia—

Represented, through the use of such statements on labels attached to their said products as "This Article is Made of Genuine Buffalo Walrus Leather," that certain of their said suitcases and bags were made of such product, facts being they were not made thereof, but of buffalo leather;

With effect of misleading and deceiving substantial part of purchasing public into mistaken belief that such representations were true and that said products were made of such designated material, and, as result of such mistaken belief, of inducing said public to purchase substantial quantities of such 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.

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

Mr. S. Brogdyne Teu, II, for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Meyer Brodie and Morris White, individually and trading as M & M Bag and Suit Case 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 Meyer Brodie and Morris White are individuals trading as M & M Bag and Suit Case Co. with their principal office and place of business located at 26 Exchange Place in the city of Jersey, State of New Jersey.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the business of selling and distributing leather luggage consisting of traveling bags, suit cases, and other luggage. Respondents sell their products to retailers and members of the pur-

chasing public situated in the various States of the United States and in the District of Columbia and cause said luggage, when sold by them, to be transported from their principal place of business in the State of New Jersey to the purchasers thereof at their respective points of location 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. In the course and conduct of their said business, the respondents have engaged in the practice of falsely representing the material of which their various traveling bags, suit cases, and other luggage are made, such representations being made by means of labels attached to such luggage, and by other means.

PAR. 4. Among and typical of such false representations used by respondents as aforesaid is the following:

This Article is Made of Genuine Buffalo Walrus Leather.

Through the use of such representation and others of similar import not specifically set out herein, the respondents represent that certain of their suit cases and traveling bags are made of Walrus Leather. Such representations are false and misleading. In truth and in fact said suit cases and traveling bags are not made of Walrus Leather but are made of Buffalo Leather.

PAR. 5. The use by respondents of false and misleading representations with respect to their products, 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 representations are true and that respondents' products are made of certain designated kinds of materials, when such is not the fact. As a result of such erroneous and mistaken belief, engendered as above set forth, the purchasing public is induced to, and does, purchase substantial quantities of respondents' products.

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 the 4th day of March 1940, issued and subsequently served its complaint in this proceeding upon the respondents, Meyer Brodie and Morris White, individually, and trad-

ing as M & M Bag and Suitcase 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 13, 1940, the respondents filed their answer in this proceeding. Thereafter an agreed statement of facts was entered into by and between counsel for the Commission and the respondents whereby it was stipulated and agreed that such statement as to the facts might be taken as the facts in the case. The said stipulations as to the facts was entered in the record of this proceeding, which record was duly filed in the office of the Commission, and the respondents thereafter further waived the filing of a report upon the evidence by the trial examiner, the filing of briefs and other intervening procedure in the case. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents, Meyer Brodie and Morris White, are individuals trading as M & M Bag and Suitcase Co. Their principal office and place of business is located at 26 Exchange Place, Jersey City, N. J.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the business of selling and distributing leather luggage consisting of traveling bags, suitcases, and other luggage. Respondents sell their products to retailers and members of the purchasing public, and cause such products, when sold, to be transported from their place of business in Jersey City, N. J., to purchasers thereof at their respective points of location in the various States in the United States and in the District of Columbia. The respondents maintain and have, for some time last past, maintained a course of trade in their products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In connection with the sale of their traveling bags, suitcases, and other luggage, respondents, by the use of labels attached thereto and by other means, have made various representations respecting the material of which their products are made. Among and typical of such representations used by the respondents is the following:

This Article is Made of Genuine Buffalo Walrus Leather.

Through the use of such representations and others similar thereto, respondents represent that certain of their suitcases and traveling bags are made of walrus leather. In fact, such suitcases and traveling bags are not made of walrus leather but are made of buffalo leather.

PAR. 4. The use by the respondents of the foregoing representations with respect to their products as herein set forth, and other representations similar thereto but not herein set forth, has had, and now has, the tendency and capacity to, and does, mislead and deceive a substantial part of the purchasing public into the mistaken belief that such representations are true and that respondents' products are made of certain designated materials when such is not the fact. As a result of such mistaken belief the purchasing public is induced to, and does, purchase substantial quantities of respondents' products.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondents, and an agreed statement of facts entered in the record herein in lieu of testimony or other evidence, which agreed statement also waived the filing of briefs and all other intervening procedure; and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Meyer Brodie and Morris White, individually and trading as M & M Bag and Suitcase Co., or trading under any other 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 traveling bags, suitcases, and other luggage in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that traveling bags, suitcases, or other articles of luggage made of buffalo leather, are made of walrus leather.

2. Representing that any traveling bag, suitcase, or other article of luggage is made of any specified material, when such traveling bag, suitcase, or other article of luggage is not in fact made of the material specified.

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

SIEGEL-KAHN COMPANY, INC., DOING BUSINESS UNDER THAT NAME AND AS MANSHIRE MILLS AND SNUGINTUCKS MILLS

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

Docket 4204. Complaint, July 30, 1940—Decision, Oct. 9, 1940

Where a corporation engaged in sale and distribution of women's undergarments to purchasers in various other States and in the District of Columbia, and, in course and conduct of its said business, in practice of representing falsely constituent fibers or materials of which its products were made, through legends appearing on labels attached thereto, and by other means—

(*a*) Represented, as typical of such false representations, that certain of its products designated "Snugintucks" contained, as case might be, 30 percent wool and 15 percent wool, through statements "8 Ply crotch Snugintucks 30% pure wool," and "8 Ply crotch Snugintucks 15% pure wool," facts being neither of said products contained percentage of wool specified, but actual fiber content thereof was 88 percent cotton, 9 percent rayon and 3 percent wool;

(*b*) Represented, as aforesaid, that its products designated "Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, 30% Pure Wool" and "Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, 15% Pure Wool" contained 30 percent and 15 percent wool, respectively, facts being product represented as containing 30 percent wool was composed of 85 percent cotton and only 15 percent wool, while product represented as containing 15 percent wool contained 90 percent cotton and only 10 percent wool;

(*c*) Represented, through use of word "Woolywarms" in designating its product "Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, Full Combed," unaccompanied by any specific designation of fiber content thereof, that said product contained substantial percentage of wool, facts being it contained no wool whatsoever, but was composed entirely of cotton;

(*d*) Sold and distributed undergarments composed in part of rayon, without disclosing such garments' content of such chemically manufactured fiber or fabric, which, when so made as to simulate wool, has appearance and feel thereof and is by purchasing public practically indistinguishable from wool, or fleece or hair obtained from sheep, as long definitely understood in minds of purchasing public from word "wool," fabrics of which have established reputation for possessing superior cold resisting and wearing, as well as other superior qualities over those made of rayon, and to which purchasers and prospective purchasers of undergarments, therefore, decidedly prefer same;

(*e*) Represented, through use of word "Mills" in trade names employed by it, and by other means, that it owned and operated a mill or mills where its products were made, and that it was manufacturer thereof, facts being it purchased all its products from others, did not own or operate any mills, and was not a manufacturer of products, for dealing directly with whom, rather than with wholesalers, jobbers or other dealers, there is preference on

part of substantial portion of purchasing public, by reason, in part, of belief that by so dealing lower prices and other advantages may be obtained; and

(*f*) Represented, through use of term "Dr. Ames" in connection with certain of its products, as aforesaid, that such products were designed, recommended or approved by a physician, facts being none of them had been thus designed, recommended or approved;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that its said products possessed certain qualities and characteristics which they did not in fact possess, and with result, as consequence of such erroneous and mistaken belief, engendered as above set forth, that such public was induced to, and did, purchase substantial quantities of its 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. 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 Siegel-Kahn Co., Inc., a corporation doing business under that name and as Manshire Mills and as Snugintucks Mills, 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, Siegel-Kahn Co., Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 93 Worth Street in the city of New York, State of New York. Respondent trades under its corporate name and also under the names Manshire Mills and Snugintucks Mills.

Par. 2. Respondent is now and for more than one year last past has been engaged in the business of selling and distributing women's undergarments. Respondent causes its said products, when sold to be transported from its place of business in the State of New York, or from the places of business of the concerns from which it purchases said products, 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 its 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 its business the respondent has engaged in the practice of falsely representing the constituent fibers

or materials of which its products are made, such representations being made by means of legends appearing on labels attached to its products, and by other means. Among and typical of such false representations are the following:

8 Ply crotch Snugintucks 30% pure wool.
8 Ply crotch Snugintucks 15% pure wool.
Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch 30% Pure Wool.
Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, 15% Pure Wool.
Dr. Ames Treat Yourself Woolywarms Multi-Play Crotch, Full Combed.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein the respondent represents that certain of its products designated "Snugintucks" contain 30 percent and 15 percent wool, respectively. In truth and in fact, neither of said products contains the specified percentage of wool, the actual fiber content of each of said products being 88 percent cotton, 9 percent rayon, and 3 percent wool.

Respondent further represents, in the manner aforesaid, that its products designated "Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, 30% Pure Wool" and "Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, 15% Pure Wool" contain 30 percent wool and 15 percent wool, respectively. In truth and in fact the product represented as containing 30 percent wool is composed of 85 percent cotton and only 15 percent wool, while the product represented as containing 15 percent wool contains 90 percent cotton and only 10 percent wool.

Through the use of the word "Woolywarms" in designating its said product "Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, Full Combed," unaccompanied by any specific designation of the fiber content of said product, the respondent represents that said product contains a substantial percentage of wool. In truth and in fact, such product contains no wool whatsoever, but is composed entirely of cotton.

PAR. 5. A further practice on the part of the respondent is the sale and distribution of undergarments composed in part of rayon, without disclosing the rayon content of such garments. Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate wool, and when so manufactured it has the appearance and feel of wool and is by the purchasing public practically indistinguishable therefrom.

The word "Wool" for many years last past has had and now has in the minds of the purchasing public a definite and specific meaning, to wit: fleece or hair obtained from sheep. Fabrics made of wool have established a reputation for possessing superior cold-resisting and wearing qualities, as well as other superior qualities, over fabrics

made of rayon. Because of such reputation, purchasers and prospective purchasers of undergarments have a decided preference for wool fabrics over fabrics composed of rayon.

PAR. 6. The respondent has also represented, through the use of the word "Mills" in its trade names Manshire Mills and Snugintucks Mills, and by other means, that it owns or operates a mill or mills where its products are manufactured and that it is the manufacturer of such products. In truth and in fact, the respondent does not own, or operate, any mill, nor does it manufacture any of its products. The respondent purchases all of its products from other parties.

PAR. 7. The use by the respondent of the word "Mills" in its trade names as aforesaid constitutes within itself a false and misleading representation that the respondent owns or operates a mill or mills in connection with its said business, and that it manufactures its said products.

PAR. 8. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer of products rather than with wholesalers, jobbers, or other dealers, such preference being due in part to a belief on the part of the public that by dealing directly with the manufacturer lower prices and other advantages may be obtained.

PAR. 9. Through the use of the term "Dr. Ames" in connection with certain of its products as aforesaid the respondent also represents that such products are designed, recommended or approved by a physician. In truth and in fact, none of respondent's products have been designed, recommended or approved by any physician.

PAR. 10. The acts and practices of the respondent as herein set forth 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 respondent's products possess certain qualities and characteristics which they do not in fact possess, and as a result of such erroneous and mistaken belief, engendered as herein set forth, the purchasing public has been induced to, and has, purchased substantial quantities of respondent's products.

PAR. 11. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 30, 1940, issued and subsequently served its complaint in this proceeding upon respondent

Seigel-Kahn Co., Inc., a corporation, doing business under that name and as Manshire Mills and as Snugintucks Mills, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 9, 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 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, Siegel-Kahn Co., Inc., a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at 93 Worth Street in the city of New York, State of New York. Respondent trades under its corporate name and also under the names Manshire Mills and Snugintucks Mills.

PAR. 2. Respondent is now and for more than 1 year last past has been engaged in the business of selling and distributing women's undergarments. Respondent causes its said products, when sold, to be transported from its place of business in the State of New York, or from the place of business of the concerns from which it purchases said products, 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 its 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 its business the respondent has engaged in the practice of falsely representing the constituent fibers or materials of which its products are made, such representations being made by means of legends appearing on labels attached to its products, and by other means. Among and typical of such false representations are the following:

8 Ply crotch Snugintucks 30% pure wool.
8 Ply crotch Snugintucks 15% pure wool.
Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch 30% Pure Wool.
Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, 15% Pure Wool.
Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, Full Combed.

PAR. 4. Through the use of the foregoing representations and others of similar import not specifically set out herein, the respondent represents that certain of its products designated "Snugintucks" contain 30 percent and 15 percent wool, respectively. In truth and in fact, neither of said products contains the specified percentage of wool, the actual fiber content of each of said products being 88 percent cotton, 9 percent rayon, and 3 percent wool.

Respondent further represents, in the manner aforesaid, that its products designated "Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, 30% Pure Wool" and "Dr. Ames Treat Yourself Woolywarm Multi-Ply Crotch, 15% Pure Wool" contain 30 percent and 15 percent wool, respectively. In truth and in fact, the product represented as containing 30 percent wool is composed of 85 percent cotton and only 15 percent wool, while the product represented as containing 15 percent wool contains 90 percent cotton and only 10 percent wool.

Through the use of the word "Woolywarms" in designating its said product "Dr. Ames Treat Yourself Woolywarms Multi-Ply Crotch, Full Combed," unaccompanied by any specific designation of the fiber content of said product, the respondent represents that said product contains a substantial percentage of wool. In truth and in fact, such product contains no wool whatsoever but is composed entirely of cotton.

PAR. 5. A further practice on the part of the respondent is the sale and distribution of undergarments composed in part of rayon, without disclosing the rayon content of such garments. Rayon is a chemically manufactured fiber or fabric which may be so manufactured as to simulate wool, and when so manufactured it has the appearance and feel of wool and is by the purchasing public practically indistinguishable therefrom.

The word "wool" for many years last past has had and now has in the minds of the purchasing public a definite and specific meaning, to wit: fleece or hair obtained from sheep. Fabrics made of wool have established a reputation for possessing superior cold-resisting and wearing qualities, as well as other superior qualities, over fabrics made of rayon. Because of such reputation, purchasers and prospective purchasers of undergarments have a decided preference for wool fabrics over fabrics composed of rayon.

PAR. 6. The respondent has also represented, through the use of the word "Mills" in its trade names Manshire Mills and Snugintucks Mills and by other means, that it owns or operates a mill or mills where its products are manufactured and that it is the manufacturer of such products. In truth and in fact, the respondent does

not own, or operate, any mill, nor does it manufacture any of its products. The respondent purchases all of its products from other parties.

PAR. 7. The use by the respondent of the word "Mills" in its trade names as aforesaid constitutes within itself a false and misleading representation that the respondent owns or operates a mill or mills in connection with its said business, and that it manufactures its said products.

PAR. 8. There is a preference on the part of a substantial portion of the purchasing public for dealing directly with the manufacturer of products rather than with wholesalers, jobbers, or other dealers, such preference being due in part to a belief on the part of the public that by dealing directly with the manufacturer lower prices and other advantages may be obtained.

PAR. 9. Through the use of the term "Dr. Ames" in connection with certain of its products as aforesaid the respondent also represents that such products are designed, recommended or approved by a physician. In truth and in fact, none of respondent's products have been designed, recommended or approved by any physician.

PAR. 10. The acts and practices of the respondent as herein set forth 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 respondent's products possess certain qualities and characteristics which they do not in fact possess, and as a result of such erroneous and mistaken belief engendered as herein set forth, the purchasing public has been induced to, and has, purchased substantial quantities of respondent's products.

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 it waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclu-

sion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Siegel-Kahn Co., Inc., a corporation, trading under that name and under the names Manshire Mills and Sungintucks Mills, 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 undergarments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's products are composed of fibers or materials other than those of which such products are actually composed.

2. Representing that any garment or fabric contains a stated percentage of wool unless such garment or fabric does in fact contain wool in the proportion stated.

3. Advertising, offering for sale or selling garments or fabrics composed in whole or in part of rayon, without clearly disclosing the fact that such garments or fabrics are composed of rayon, and when such garments or fabrics are composed in part of rayon and in part of other fibers or materials, such fibers or materials, including rayon, shall be named in the order of their predominance by weight, beginning with the largest single constituent.

4. Using the term "Woolywarms" or any other term containing the word "wool" to designate, describe or refer to any garment or fabric which is not composed entirely of wool, provided, however, that such terms may be used to designate or describe any garment or fabric composed of wool and other materials when the true percentage of wool contained therein is clearly and adequately disclosed.

5. Using the word "Doctor" or "Dr." to designate or describe any garment or fabric which has not in fact been designed, recommended or approved by physicians.

6. Using the word "Mills" or "Mill" as a part of respondent's trade name or names, or otherwise representing that respondent owns or operates a mill or that respondent manufactures the products sold by it.

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

IN THE MATTER OF

FRANK SPORS, TRADING AS THE SPORS COMPANY

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

Docket 4246. Complaint, Aug. 20, 1940—Decision, Oct. 9, 1940

Where an individual engaged in sale and distribution of various drugs, cosmetics, fountain pens, mending tissue, household accessories, and numerous other products, including (1) Super-Pure Laxative Bromide Quinine Tablets, (2) Electro Heat-Kwik water heater, (3) Savarip, for silk and rayon garments, and (4) Elgin Style Pointed (fountain) Pens; in advertisements of his said Bromide Quinine Tablets, which he disseminated and caused to be disseminated through the mails and in newspapers and periodicals and by circulars, leaflets, and other advertising literature, and otherwise, and which were intended and likely to induce purchase of said preparation—

(*a*) Represented that said tablets constituted a cure or remedy for colds, through such statements as "The Easiest and quickest way to get rid of a cold" and others of similar import, facts being, while said medicinal preparation might afford partial and temporary relief from symptoms of colds, it did not constitute cure or remedy for such ailment or condition; and

Where said individual; in advertisements of said water heater, Savarip and pens, which he caused to be inserted in periodicals and other publications, and in catalogs, circulars, and other printed or written matter distributed among purchasers and prospective purchasers—

(*b*) Represented that said heater was capable of heating substantial quantities of water, such as required for family laundry and bathing, and that it might be used with entire safety, and heated such quantities more quickly than gas, coal or wood, and had been approved by the Underwriters' Laboratories, facts being it was incapable of heating such quantities for purposes aforesaid, was not entirely safe and might cause severe shock to user coming in contact with any grounded metal object, did not heat substantial quantities more quickly than gas, coal or wood, and, while cord attached to said product might have been approved as aforesaid, the heater had not been;

(*c*) Represented that said Savarip was of substantial value in prevention of runs, snags, and breaks in silk and rayon hosiery and lingerie and rendered such garments rain-spot proof and prevented shrinkage and fading and prolonged life thereof, facts being it was of no substantial value in prevention of runs, etc., as above claimed, did not accomplish aforesaid results and was of no value in prolonging life of such garments; and

(*d*) Represented that his said fountain pens were comparable to those retailing for sums up to $5.00 each, and that flow of ink therefrom was unusually even and steady, and that agents and salesmen reselling the same were enabled to make a profit of 300 percent, facts being said products did not compare favorably with pens selling for $5.00, or for any sum approxi-

mating such amount, nor compare favorably with those selling for more than $1.00, flow of ink therefrom was not unusually even or steady, and it was not possible for agents or salesmen to make such a profit or one approaching such profit from resale of said products;

With effect of misleading and deceiving substantial number of purchasing public into erroneous and mistaken belief that such statements and representations were true, and into purchase of substantial quantities of his 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. 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 Frank Spors, an individual trading as The Spors 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, Frank Spors, is an individual trading as The Spors Co. and has his office and principal place of business at Le Center, in the State of Minnesota.

Respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing various drugs, cosmetics, fountain pens, mending tissue, household accessories and numerous other products, among which are: a medicinal preparation known as Super-Pure Laxative Bromide Quinine Tablets, intended as a cure for colds; a small electric water heater known as Electro Heat-Kwik water heater; a composition intended to strengthen, and prevent runs in, silk and rayon garments, known as Savarip; and fountain pens sometimes described as Elgin Stylo Pointed Pens.

Respondent causes each and all of said products, when sold, to be transported from his aforesaid place of business in the State of Minnesota, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in all of 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 his aforesaid business the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements con-

cerning his said product Super-Pure Laxative Bromide Quinine Tablets by the United States mails and by various 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 product; and respondent has also 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.

In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his products Electro Heat-Kwik water heater, Savarip, and Elgin Stylo Pointed Pen, the respondent has caused various statements and representations relative to said products to be inserted in periodicals and other publications and in catalogs, circulars, and other printed or written matter, all of which are distributed among purchasers and prospective purchasers of said products.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements with respect to respondent's said medicinal preparation, Super-Pure Laxative Bromide Quinine Tablets, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

The Easiest and quickest way to get rid of a cold.

Among and typical of the statements and representations concerning said product Electro Heat-Kwik water heater, are the following:

For washing, shaving, bathing, clothing, and dishwashing.

The Electro Heat-Kwik has been found to be safe, sanitary, and quicker acting than either gas, coal or wood.

With this handy new device you get hot water in a jiffy by merely plugging the underwriters approved 8 foot cord to your light socket.

You'll find the Underwriters' Laboratories seal of approval on every Electro Heat-Kwik 8 foot cord.

Among and typical of the statements and representations concerning said product Savarip are the following:

Helps prevent runs. A preparation that helps to prevent and retard runs, snags, and breaks in silk and rayon hosiery or lingerie. Rain spot proof.

Doubles the wear of hosiery and lingerie.

Prevents shrinking and fading.

Among and typical of the statements and representations concerning said product Elgin Stylo Pointed Pens are the following:

Compare with $5 fountain pen performance.

Ink flows as evenly and as steady as an electric current.

Ball on concealed end of point regulates the steady even ink flow—Eliminates blotting and keeps the point ever ready for quick starting.

You can sell it for 99¢ and make a 300% profit.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, respondent represents that said medicinal preparation "Super-Pure Laxative Bromide Quinine Tablets" constitutes a cure or remedy for colds. In a similar manner the respondent has represented that said "Electro Heat-Kwik" water heater is capable of heating substantial quantities of water such as are required for family laundry and for baths; that it may be used with entire safety; that it heats substantial quantities of water more quickly than gas, coal or wood and that such device has been approved by the Underwriters' Laboratories. In a similar manner, respondent has represented that the product "Savarip" is of substantial value in the prevention of runs, snags, and breaks in silk and rayon hosiery and lingerie; that it renders such garments rain-spot proof, prevents shrinking and fading and prolongs the life of such garments. In a similar manner respondent has represented that said fountain pens are comparable to fountain pens retailing for sums up to $5.00 each; that the flow of ink from said pens is unusually even and steady; and that agents and salesmen reselling said pens are enabled to make a profit of 300 percent.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. While respondent's medicinal preparation may afford partial and temporary relief for the symptoms of colds, it does not constitute a cure or remedy for colds. Said water heater is incapable of heating substantial quantities of water such as are required for family laundering or for bathing purposes. It is not entirely safe, as it may cause severe shock to a user coming in contact with any grounded metal object. It does not heat substantial quantities of water more quickly than gas, coal or wood. While the cord attached to said water heater may have been approved by the Underwriters' Laboratories, said heater has not been so approved.

Respondent's product Savarip is of no substantial value in the prevention of runs, snags or breaks in silk or rayon hosiery or lingerie. It does not render such garments rain-spot proof, nor does it prevent shrinking or fading. It is of no value in prolonging the life of such garments. Respondent's said fountain pens do not compare favorably with fountain pens selling for $5.00 each or for any sum approximating that amount. Such pens do not compare favorably with pens selling for more than $1.00 each. The flow of ink from such pens is

not unusually even or steady. It is not possible for agents or salesmen to make a profit of 300 percent, or any profit approaching such figure, from the resale of such pens.

PAR. 5. 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 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 products.

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 August 20, 1940, issued and subsequently served its complaint in this proceeding upon respondent Frank Spors, an individual trading as the The Spors Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 17, 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 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, Frank Spors, is an individual trading as The Spors Co. and has his office and principal place of business at Le Center, in the State of Minnesota.

Respondent is now and for more than 2 years last past has been engaged in the business of selling and distributing various drugs, cosmetics, fountain pens, mending tissue, household accessories, and numerous other products, among which are: a medicinal preparation known as Super-Pure Laxative Bromide Quinine Tablets, intended as a cure for colds; a small electric water heater known as Electro Heat-Kwik water heater; a composition intended to strengthen, and

prevent runs in, silk and rayon garments known as Savarip; and fountain pens sometimes described as Elgin Stylo Pointed Pens.

Respondent causes each and all of said products, when sold, to be transported from his aforesaid place of business in the State of Minnesota, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in all of 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 his aforesaid business the respondent has caused and is now causing the dissemination of, false advertisements concerning his said product Super-Pure Laxative Bromide Quinine Tablets by the United States mails and by various 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 product; and respondent has also 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.

In the course and conduct of his aforesaid business, and for the purpose of inducing the purchase of his products Electro Heat-Kwik water heater, Savarip, and Elgin Stylo Pointed Pen, the respondent has caused various statements and representations relative to said products to be inserted in periodicals and other publications and in catalogs, circulars, and other printed or written matter, all of which are distributed among purchasers and prospective purchasers of said products.

Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements with respect to respondent's said medicinal preparation, Super-Pure Laxative Bromide Quinine Tablets, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails, by advertisements in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

The Easiest and quickest way to get rid of a cold.

Among and typical of the statements and representations concerning said product Electro Heat-Kwik water heater, are the following:

For washing, shaving, bathing, clothing, and dishwashing.

The Electro Heat-Kwik has been found to be safe, sanitary and quicker acting than either gas, coal or wood.

With this handy new device you get hot water in a jiffy by merely plugging the underwriters approved 8 foot cord to your light socket.

You'll find the Underwriters' Laboratories seal of approval on every Electro Heat-Kwik 8 foot cord.

Among and typical of the statements and representations concerning said product Savarip are the following:

Helps prevent runs. A preparation that helps to prevent and retard runs, snags, and breaks in silk and rayon hosiery or lingerie. Rain spot proof.

Doubles the wear of hosiery and lingerie.

Prevents shrinking and fading.

Among and typical of the statements and representations concerning said product Elgin Stylo Pointed Pens are the following:

Compare with $5 fountain pen performance.

Ink flows as evenly and as steady as an electric current.

Ball on concealed end of point regulates the steady even ink flow—Eliminates blotting and keeps the point ever ready for quick starting.

You can sell it for 99¢ and make a 300% profit.

PAR. 3. Through the use of the foregoing statements and representations and others of similar import not specifically set out herein, respondent represents that said medicinal preparation "Super-Pure Laxative Bromide Quinine Tablets" constitutes a cure or remedy for colds. In a similar manner the respondent has represented that said "Electro Heat-Kwik" water heater is capable of heating substantial quantities of water such as are required for family laundry and for baths; that it may be used with entire safety; that it heats substantial quantities of water more quickly than gas, coal or wood; and that such device has been approved by the Underwriters' Laboratories. In a similar manner, respondent has represented that the product "Savarip" is of substantial value in the prevention of runs, snags, and breaks in silk and rayon hosiery and lingerie; that it renders such garments rain-spot proof, prevents shrinking and fading and prolongs the life of such garments. In a similar manner respondent has represented that said fountain pens are comparable to fountain pens retailing for sums up to $5.00 each; that the flow of ink from said pens is unusually even and steady; and that agents and salesmen reselling said pens are enabled to make a profit of 300 percent.

PAR. 4. The foregoing representations are grossly exaggerated, false, and misleading. While respondent's medicinal preparation may afford partial and temporary relief for the symptoms of colds, it does not constitute a cure or remedy for colds. Said water heater is incapable of heating substantial quantities of water such as are required for family laundering or for bathing purposes. It is not entirely safe, as it may cause severe shock to a user coming in contact with

any grounded metal object. It does not heat substantial quantities of water more quickly than gas, coal or wood. While the cord attached to said water heater may have been approved by the Underwriters' Laboratories, said heater has not been so approved.

Respondent's product Savarip is of no substantial value in the prevention of runs, snags, or breaks in silk or rayon hosiery or lingerie. It does not render such garments rain-spot proof, nor does it prevent shrinking or fading. It is of no value in prolonging the life of such garments. Respondent's said fountain pens do not compare favorably with fountain pens selling for $5 each or for any sum approximating that amount. Such pens do not compare favorably with pens selling for more than $1 each. The flow of ink from such pens is not unusually even or steady. It is not possible for agents or salesmen to make a profit of 300 percent, or any profit approaching such figure, from the resale of such pens.

PAR. 5. 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 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 products.

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 he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Frank Spors, individually and trading as The Spors 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 or distribution of his medicinal preparation designated

Super-Pure Laxative Bromide Quinine Tablets, 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, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (a) by means of the United States mails or (b) by any means in commerce as "commerce" is defined in the Federal Trade Commission Act, which advertisements represent, directly or through inference, that said preparation is a cure or remedy for colds.

2. 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 contain any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent, Frank Spors, individually and trading as The Spors 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 his products known as Electro Heat-Kwik water heaters, Savarip, and Elgin Style Pointed Pens, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(*a*) Representing that said Electro Heat-Kwik water heaters are capable of heating substantial quantities of water such as are required for family laundering or for bathing purposes.

(*b*) Representing, through failure to reveal that a user of said Electro Heat-Kwik water heater coming in contact with any grounded metal object may suffer severe shock, or in any other manner, that said water heaters are entirely safe for use.

(*c*) Representing that said Electro Heat-Kwik water heaters will heat substantial quantities of water more quickly than gas, coal or wood.

(*d*) Representing that said Electro Heat-Kwik water heaters have been approved by the Underwriters' Laboratories.

(*e*) Representing that said product Savarip is of any substantial value in the prevention of runs, snags or breaks in silk or rayon hosiery or lingerie, or that it renders such garments rain-spot proof, or that it prevents shrinking or fading, or that it is of any value in prolonging the life of silk or rayon hosiery or lingerie.

(*f*) Representing that said Elgin Style Pointed Pens compare favorably with fountain pens retailing for any sum in excess of $1.00, or that the flow of ink from said pens is unusually even or steady, or that said pens can be resold at a profit of 300 percent or at any profit approximating such figure.

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

BLANCHE KAPLAN, DOING BUSINESS AS PROGRESSIVE MEDICAL COMPANY, PROGRESSIVE LABORATORIES, LADIES AID COMPANY, LADIES AID, AND LADIES AID PRODUCTS

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

Docket 4261. Complaint, Aug. 22, 1940—Decision, Oct. 9, 1940

Where an individual engaged, under names Progressive Medical Co., Progressive Laboratories, Ladies Aid Co., and others, in sale and distribution of certain medicinal preparations designated as Ladies Aid No. 1 H. Y. G. Tablets, Ladies Aid No. 4, Promeco Cod Liver Oil Compound Tablets, and Ladies Aid Reducing Tablets; in advertisements of her said products which she disseminated and caused to be disseminated through the United States mails and through circulars, leaflets, pamphlets, and other advertising literature, and otherwise, and which were intended and likely to induce purchase of her said products—

(*a*) Represented that her said Ladies Aid No. 1 H. Y. G. Tablets constituted a competent vaginal antiseptic and reliable germ destroyer, and was an effective prophylactic against venereal diseases and a dependable contraceptive, facts being her said product was not a competent vaginal antiseptic and reliable germ destroyer, nor effective prophylactic against such diseases, nor dependable contraceptive;

(*b*) Represented that her said Ladies Aid No. 4 was a competent and effective treatment for leucorrhea, vaginitis, pruritus vulvae, and cases of fetid discharges, facts being said product was not such a treatment for said conditions, which are only symptoms that arise from vaginal and uterine infections or other pathological conditions, and can only be corrected by eliminating the causes thereof, and at best said preparation could only be useful as an accessory to the treatment of such causes;

(*c*) Represented that her said Promeco Cod Liver Oil Compound Tablets was a new scientific discovery and constituted an effective remedy for every condition for which physicians might prescribe cod liver oil, facts being said product was not a new scientific discovery nor an effective remedy for every such condition;

(*d*) Represented that her said Ladies Aid Reducing Tablets constituted an amazing new scientific discovery and was safe and harmless, and that by use thereof one could easily reduce five pounds a week without diet or exercise, and that it contained the ingredients of a wonderful and newly discovered ocean plant that are effective in the treatment of obesity, facts being her said product was not an amazing new scientific discovery, nor safe and harmless, one could not reduce 5 pounds a week or any other appreciable amount by use thereof without diet or exercise, and it did not contain the ingredients of such plant, but the only ingredient contained therein, other than the commonly known drugs of phenolphthalein and aloin, was powdered extract of bladder wrack, which does not possess any therapeutic properties,

and said Ladies Aid reducing preparation was not safe and harmless, in that two of its ingredients, aloin and phenolphthalein, are irritating cathartics, the repeated use of which would result in watery evacuations of the bowels, and repeated use of said latter drug produces skin eruptions and keratosis in some persons, while such use of former drug may cause colitis with resulting atony of the bowel, and any weight which might be lost as result of taking said preparation would follow solely because of the withdrawal of water from the tissues as a result of harmful excessive purgation; and

(*e*) Failed to reveal, in her said advertisements, that use of said Ladies Aid Reducing Tablets, under conditions prescribed therein or 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 statements, representations, and advertisements were true, and of inducing a portion of such public, because of such erroneous and mistaken belief, to purchase her said medicinal preparations:

Held, That such acts and practices, under the conditions above 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 Blanche Kaplan, doing business under the trade names Progressive Medical Co., Progressive Laboratories, Ladies Aid Co., Ladies Aid, and Ladies Aid Products, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Blanche Kaplan, is an individual trading under the names Progressive Medical Co., Progressive Laboratories, Ladies Aid Co., Ladies Aid, and Ladies Aid Products, with her office and principal place of business heretofore located a 3944 Pine Grove Avenue, Chicago, Ill., but at present located at 330 South Wells Street, Chicago, Ill., from which last named address she transacts business under the above trade names.

Par. 2. Respondent is now, and for more than 2 years last past has been engaged in the sale and distribution of certain medicinal preparations designated as Ladies Aid No. 1 H. Y. G. Tablets, Ladies Aid No. 4, Promeco Cod Liver Oil Compound Tablets, and Ladies Aid Reducing Tablets.

In the course and conduct of her business, 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, and now maintains, 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 her aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said products by the United States mails and by various 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 respondent has also disseminated and is now disseminating, and has caused and is now causing, the dissemination of, false advertisements concerning her said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

With respect to Ladies Aid No. 1 H. Y. G. Tablets—

LADIES AID NO. 1
FOR FEMININE HYGIENE
A VAGINAL ANTISEPTIC
A MARRIED WOMAN'S NECESSITY

H. Y. G. Tablets are a wonderful, effective, yet safe vaginal germ preventive. No longer need you fuss with messy and often dangerous douche solutions—so many of which contain elements injurious to delicate tissues. Ladies Aid No. 1 H. Y. G. Tablet is dainty, snow white and odorless * * * upon contact with the vaginal mucosa, it releases a gentle foam of germ destroying oxygen, which penetrates and reaches into all the folds and crevices of the vaginal tract. * * * they are effective against unwanted germ life, even several hours after application.

With respect to Ladies Aid No. 4—

Ladies Aid No. 4 is used in many hospitals and by a great many nurses themselves. Made largely of copper sulphate and alum, it is highly recommended in the treatment of leucorrhea, vaginitis, pruritus vulvae and cases of fetid discharges.

With respect to Promeco Cod Liver Oil Compound Tablets—

A new scientific discovery for every condition for which physicians recommend cod liver oil.

With respect to Ladies Aid Reducing Tablets—

At last you can have normal weight without strenuous dieting or exhausting exercises.

* * * An amazing new scientific discovery has made it possible to reduce safely and easily, without dieting or exercising. You can lose five pounds a week. Ladies Aid Reducing Tablets contain the vital element of a newly discovered ocean plant. Science has extracted from this wonderful plant its basic ingredients which are used in these tablets.

Why be handicapped by obesity? Send for a box of Ladies Aid Reducing Tablets at once.

These tablets are absolutely safe. They contain no dinitrophenol or other harmful or dangerous drugs. Just take one tiny concentrated tablet after each meal, then watch the results.

We highly recommend our reducing tablets to men who are overweight and anxious to regain that slender youthful appearance which they once prized so highly. Order a supply today. Supply for 1 month $1—For 2 months $1.75—For 3 months $2.50.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that her preparation, known and designated as Ladies Aid No. 1 H. Y. G. Tablets, is a competent vaginal antiseptic and reliable germ destroyer; that it is an effective prophylactic against venereal diseases; and that it is a dependable contraceptive; that her preparation, known and designated as Ladies Aid No. 4, is a competent and effective treatment for leucorrhea, vaginitis, pruritus vulvae and cases of fetid discharges; that her preparation, known and designated as Promeco Cod Liver Oil Compound Tablets, is a new scientific discovery and that it is an effective remedy for every condition for which physicians might prescribe cod liver oil; that her preparation, known and designated as Ladies Aid Reducing Tablets, is an amazing new scientific discovery; that it is safe and harmless; that by its use one can easily reduce five pounds a week without diet or exercise; that it contains the ingredients of a wonderful and newly discovered ocean plant that are effective in the treatment of obesity.

PAR. 5. In truth and in fact respondent's preparation known and designated as Ladies Aid No. 1 H. Y. G. Tablets is not a competent vaginal antiseptic and reliable germ destroyer; it is not an effective prophylactic against venereal diseases; and it is not a dependable contraceptive; respondent's preparation known and designated as Ladies Aid No. 4 is not a competent and effective treatment for leucorrhea, vaginitis, pruritus vulvae and cases of fetid discharges, which are only symptoms that arise from vaginal and uterine infec-

tions or other pathological conditions, and can only be corrected by eliminating the causes thereof, and at best said preparation could only be useful as an accessory to the treatment of such causes; respondent's preparation known and designated as Promeco Cod Liver Oil Compound Tablets is not a new scientific discovery and it is not an effective remedy for every condition for which physicians might prescribe cod liver oil; and respondent's preparation known and designated as Ladies Aid Reducing Tablets is not an amazing new scientific discovery; it is not safe and harmless; by its use one cannot reduce five pounds a week or any other appreciable amount, without diet or exercise; and it does not contain the ingredients of a wonderful and newly discovered ocean plant that are effective in the treatment of obesity, but the only ingredient contained in said preparation, other than the commonly known drugs of phenolphthalein and aloin, is powdered extract of bladder wrack, which does not possess any therapeutic properties.

Respondent's preparation, Ladies Aid Reducing Tablets, is not safe and harmless, in that two of its ingredients, aloin and phenolphthalein, are irritating cathartics, the repeated use of which would result in watery evacuations of the bowels; and the repeated use of phenolphthalein produces skin eruptions and keratoses in some persons, while the repeated use of aloin may cause colitis with resulting atony of the bowel. Moreover, any weight which might be lost as a result of taking said preparation would follow solely because of the withdrawal of water from the tissues as a result of purgation, and excessive purgation is harmful.

In addition to the representations hereinabove set forth, 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 Reducing Tablets, 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 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 induces 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 respondent, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 22, 1940, issued, and on August 26, 1940, served, its complaint in this proceeding upon respondent, Blanche Kaplan, an individual doing business under the trade names Progressive Medical Co., Progressive Laboratories, Ladies Aid Co., Ladies Aid, and Ladies Aid Products, charging her with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 16, 1940, the respondent filed her answer, in which answer she 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, Blanche Kaplan, is an individual trading under the names Progressive Medical Co., Progressive Laboratories, Ladies Aid Co., Ladies Aid, and Ladies Aid Products, with her office and principal place of business heretofore located at 3944 Pine Grove Avenue, Chicago, Ill., but at present located at 330 South Wells Street, Chicago, Ill., from which last named address she transacts business under the above trade names.

PAR. 2. Respondent is now, and for more than 2 years last past has been, engaged in the sale and distribution of certain medicinal preparations designated as Ladies Aid No. 1 H. Y. G. Tablets, Ladies Aid No. 4, Promeco Cod Liver Oil Compound Tablets, and Ladies Aid Reducing Tablets.

In the course and conduct of her business, 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, and now maintains, 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 her aforesaid business, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said products by the United States mails and by various 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 respondent has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning her said products, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of her said products in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated, as hereinabove set forth, by the United States mails and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

With respect to Ladies Aid No. 1 H. Y. G. Tablets—

LADIES AID NO. 1
FOR FEMININE HYGIENE
A VAGINAL ANTISEPTIC
A MARRIED WOMAN'S NECESSITY

H. Y. G. Tablets are a wonderful, effective, yet safe vaginal germ preventive. No longer need you fuss with messy and often dangerous douche solutions—so many of which contain elements injurious to delicate tissues. Ladies Aid No. 1 H. Y. G. Tablet is dainty, snow white and odorless * * * upon contact with the vaginal mucosa, it releases a gentle foam of germ destroying oxygen, which penetrates and reaches into all the folds and crevices of the vaginal tract. * * * they are effective against unwanted germ life, even several hours after application.

With respect to Ladies Aid No. 4—

Ladies Aid No. 4 is used in many hospitals and by a great many nurses themselves. Made largely of copper sulphate and alum, it is highly recommended in the treatment of leucorrhea, vaginitis, pruritus vulvae and cases of fetid discharges.

With respect to Promeco Cod Liver Oil Compound Tablets—

A new scientific discovery for every condition for which physicians recommend cod liver oil.

With respect to Ladies Aid Reducing Tablets—

At last you can have normal weight without strenuous dieting or exhausting exercises.

* * * An amazing new scientific discovery has made it possible to reduce safely and easily, without dieting or exercising. You can lose five pounds a week. Ladies Aid Reducing Tablets contain the vital element of a newly discovered ocean plant. Science has extracted from this wonderful plant its basic ingredients which are used in these tablets.

Why be handicapped by obesity? Send for a box of Ladies Aid Reducing Tablets at once.

These tablets are absolutely safe. They contain no dinitrophenol or other harmful or dangerous drugs. Just take one tiny concentrated tablet after each meal, then watch the results.

We highly recommend our reducing tablets to men who are overweight and anxious to regain that slender youthful appearance which they once prized so highly. Order a supply today. Supply for 1 month $1—For 2 months $1.75—For 3 months $2.50.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, respondent represents that her preparation, known and designated as Ladies Aid No. 1 H. Y. G. Tablets, is a competent vaginal antiseptic and reliable germ destroyer; that it is an effective prophylactic against venereal diseases; and that it is a dependable contraceptive; that her preparation, known and designated as Ladies Aid No. 4, is a competent and effective treatment for leucorrhea, vaginitis, pruritus vulvae, and cases of fetid discharges; that her preparation, known and designated as Promeco Cod Liver Oil Compound Tablets, is a new scientific discovery and that it is an effective remedy for every condition for which physicians might prescribe cod liver oil; that her preparation, known and designated as Ladies Aid Reducing Tablets, is an amazing new scientific discovery; that it is safe and harmless; that by its use one can easily reduce 5 pounds a week without diet or exercise; that it contains the ingredients of a wonderful and newly discovered ocean plant that are effective in the treatment of obesity.

PAR. 5. In truth and in fact respondent's preparation known and designated as Ladies Aid No. 1 H. Y. G. Tablets is not a competent vaginal antiseptic and reliable germ destroyer; it is not an effective prophylactic against venereal diseases; and it is not a dependable contraceptive; respondent's preparation known and designated as Ladies Aid No. 4 is not a competent and effective treatment for leucorrhea, vaginitis, pruritus vulvae, and cases of fetid discharges, which are only symptoms that arise from vaginal and uterin infections or other pathological conditions, and can only be corrected by eliminating the causes thereof, and at best said preparation could only be useful as an accessory to the treatment of such causes; respondent's

preparation known and designated as Promeco Cod Liver Oil Compound Tablets is not a new scientific discovery, and it is not an effective remedy for every condition for which physicians might prescribe cod liver oil; and respondent's preparation known and designated as Ladies Aid Reducing Tablets is not an amazing new scientific discovery; it is not safe and harmless; by its use one cannot reduce 5 pounds a week or any other appreciable amount, without diet or exercise; and it does not contain the ingredients of a wonderful and newly discovered ocean plant that are effective in the treatment of obesity, but the only ingredient contained in said preparation, other than the commonly known drugs of phenolphthalein and aloin, is powdered extract of bladder wrack, which does not possess any therapeutic properties.

Respondent's preparation, Ladies Aid Reducing Tablets, is not safe and harmless, in that two of its ingredients, aloin and phenolphthalein, are irritating cathartics, the repeated use of which would result in watery evacuation of the bowels; and the repeated use of phenolphthalein produces skin eruptions and keratoses in some persons, while the repeated use of aloin may cause colitis with resulting atony of the bowel. Moreover, any weight which might be lost as a result of taking said preparation would follow solely because of the withdrawal of water from the tissues as a result of purgation, and excessive purgation is harmful.

In addition to the representations hereinabove set forth, 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 Reducing Tablets, 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 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 induces 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 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Blanche Kaplan, an individual doing business under the trade names, Progressive Medical Co., Progressive Laboratories, Ladies Aid Co., Ladies Aid, and Ladies Aid Products, or doing business under any other name or names, her agents, representatives, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of her medicinal preparations designated as Ladies Aid No. 1 H. Y. G. Tablets, Ladies Aid No. 4, Promeco Cod Liver Oil Compound Tablets and Ladies Aid Reducing Tablets, or of any other preparations composed of substantially similar ingredients or possessing substantially the same properties, whether sold under the same name or names, or under any other name or names, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation designated as Ladies Aid No. 1 H. Y. G. Tablets, is a competent and effective vaginal antiseptic or reliable germ destroyer, or that said preparation constitutes an effective prophylactic, or that said preparation is a dependable contraceptive; or which advertisement represents, directly or through inference, that said preparation designated as Ladies Aid No. 4, is a competent and effective treatment for leucorrhea, vaginitis, pruritus vulvae, or cases of fetid discharges, or that said preparation possesses any therapeutic value in the treatment of such conditions beyond its use as an accessory therein; or which advertisement represents, directly or through inference, that said preparation designated as Promeco Cod Liver Oil Compound Tablets, is a new scientific discovery, or that said preparation constitutes an effective remedy for every condition for which physicians might prescribe cod liver oil; or which advertisement represents, directly or through inference, that said preparation designated as Ladies Aid Reducing Tablets, is an amazing new

scientific discovery, or that said preparation is safe and harmless, or that by its use one can reduce 5 pounds a week or any other appreciable amount, or that said preparation is a competent and effective weight reducer without diet or exercise, or that said preparation contains the ingredients of a newly discovered ocean plant which are effective in the treatment of obesity, or that the use of said preparation will produce any weight reduction of a permanent nature; or which advertisement with respect to said preparation Ladies Aid Reducing Tablets fails to reveal that the use of said preparation may result in skin eruptions and excessive irritation of the bowels,

2. 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, Ladies Aid No. 1 H. Y. G. Tablets, Ladies Aid No. 4, Promeco Cod Liver Oil Compound Tablets, and Ladies Aid Reducing Tablets, which advertisement contains any representations prohibited in paragraph (1) hereof, or which advertisement with respect to said preparation Ladies Aid Reducing Tablets fails to reveal that the use of said preparation may result in skin eruptions and excessive irritation of the bowels.

It is further ordered, That the respondent shall, within 10 days after 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 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.

IN THE MATTER OF

NEW METHOD FILE GRINDERS, INC., ALSO TRADING AS AUTOMOBILE BODY SUPPLY COMPANY

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

Docket 4020. Complaint, Feb. 6, 1940—Decision, Oct. 15, 1940

Where a corporation engaged in purchase of used and second-hand files from automobile manufacturers, garages, automobile body repair establishments, and other sources, and in cleaning, reconditioning, or resharpening said products and selling and distributing same to trade; in advertisements in advertising matter having general interstate circulation—

Represented to purchasers that some of its said files were water damaged or had been through fires and damaged by water, but were otherwise new and unused, facts being that some of the products thus represented were files which had actually been used by mechanics and other operators and artisans and had thereafter been purchased by it in normal course of its business for purpose of reconditioning and sale;

With tendency and capacity to mislead and deceive substantial part of purchasing public into mistaken belief that such representations were true, and with result that, as consequence of such belief thus engendered, substantial part of such public was induced to and did purchase its said products:

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 W. Addison*, trial examiner.

Mr. S. Brogdyne Teu, II, for the Commission.

Mr. Robert E. Dunne, 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 New Method File Grinders, Inc., a corporation, trading as Automobile Body Supply 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, New Method File Grinders Co., Inc., 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 5120 South Halsted Street, city of Chicago, State of Illinois. It also trades as Automobile Body Supply Co.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of used, reconditioned, and resharpened files. Respondent causes its said product when sold to be transported from its 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. At all times mentioned herein, respondent 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. In the course and conduct of its business, it has been and is the practice of respondent to purchase used or second-hand files from automobile manufacturers, garages, automobile body repair establishments, and from other sources. These files are shipped to the respondent's place of business where they are cleaned, reconditioned, or resharpened, and then resold to the trade.

PAR. 4. Respondent solicits business through the medium of advertising matter having a general interstate circulation, and in said advertisements respondent represents to purchasers and prospective purchasers that its said files are water damaged, or have been through a fire and were damaged by water, but are otherwise new and unused.

In truth and in fact, the files represented by the respondent as being water damaged but otherwise new and unused, are files which actually have been used by mechanics or other operators and artisans, and which thereafter have been purchased by the respondent in the normal course and conduct of its business for the purpose of reconditioning and sale.

PAR. 5. The practice of the respondent in representing to the purchasing trade that the files offered by it are new, except for water damage, when in truth and in fact said files are not new, water damaged files, but are in fact used files purchased by the respondent in the normal course of its business, has the tendency and capacity to and does mislead and deceive a substantial part of the purchasing public into the erroneous and mistaken belief that respondent's files are new files, water damaged. As a result of such erroneous and mistaken belief engendered as herein set forth, a substantial part of the purchasing public have been induced to purchase, and have purchased, respondent's said product.

PAR. 6. 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 February 6, 1940, issued, and subsequently served its complaint in this proceeding upon respondent New Method File Grinders, Inc., charging it with the use of unfair and deceptive acts and practices in commerce, in violation of the provisions of said act. On February 29, 1940, the respondent filed its answer. Thereafter this matter coming on for the taking of testimony, an agreed statements of facts was read into the record whereby it was stipulated and agreed that such statement of facts might be taken as the facts in the case, and in lieu of testimony in support of the charges in the complaint, or in opposition thereto. Respondent thereafter through counsel further agreed to waive the filing of a trial examiner's report upon the evidence, the filing of briefs and all other intervening procedure. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and agreed statement of facts, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent New Method File Grinders, Inc., also trading as Automobile Body Supply Co., is a corporation organized and doing business under the laws of the State of Illinois. It has its principal office and place of business at 5120 South Halsted Street, Chicago, Ill.

Par. 2. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of used, reconditioned, and resharpened files. Respondent causes its products to be sold and transported from its principal place of business in Chicago, Ill., to purchasers thereof located in various other States of the United States and in the District of Columbia. The respondent for some time past has maintained a course of trade in its products in commerce among and between the various States of the United States and in the District of Columbia.

Par. 3. In the conduct of its business it has been the practice of the respondent to purchase used and second-hand files from automobile manufacturers, garages, automobile body repair establishments, and from other sources. These files are shipped to the respondent's place of business where they are cleaned, reconditioned, or resharpened and sold to the trade.

PAR. 4. Respondent solicits its business through the medium of advertising matter having a general interstate circulation, and in some of its advertisements respondent has represented to purchasers of its products that some of its files are water damaged, or have been through fire and damaged by water but that the files are otherwise new and unused.

The truth is that some of the files represented by the respondent as being water damaged but otherwise new and unused are files which actually have been used by mechanics and other operators and artisans and have thereafter been purchased by the respondent in the normal course of its business for the purpose of reconditioning and sale.

PAR. 5. The practice of the respondent in representing to the purchasing trade that the files offered by it are new except for water damage has a tendency and capacity to mislead and deceive a substantial part of the purchasing public into the mistaken belief that such representations are true, and by reason of such mistaken belief, so engendered, a substantial part of the purchasing public have been induced to purchase and have purchased respondent's said products.

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 and an agreed statement of facts read into the record wherein it was agreed that such statement of facts might be taken as the facts in the case in lieu of testimony in support of the allegations of the complaint or in opposition thereto and a further agreement that the filing of briefs and all other intervening procedure was waived; 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 Method File Grinders, Inc., also trading as Automobile Body Supply Co., or trading under any other name, 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 used and reconditioned

files, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly representing:

That such files are new files, or are new files which have been damaged in some way, or are anything other than used files which have been reconditioned.

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

IN THE MATTER OF

C. H. STALLMAN & 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 4096. Complaint, Apr. 23, 1940—Decision, Oct. 15, 1940

Where a corporation engaged in sale and distribution of cigars, candy, and various other articles of merchandise, including certain assortments thereof which were so packed and assembled as to involve use of game of chance, gift enterprise, or lottery scheme when merchandise in question was sold and distributed to consumers, and included (1) number of cigars and punchboard, to be used in sale and distribution of said cigars under a plan and in accordance with said board's explanatory legend, by which purchaser or customer received for penny paid 1, 3, 5, or 10 cigars in accordance with success or failure in selecting by chance from board designated numbers, person selecting last number in each of sections into which board was divided received one cigar, and those not making such selection or securing one of said designated numbers received nothing, and (2) other assortments with punchboards and push cards for use in sale and distribution of merchandise involved to consuming public by means of sales plans or methods similar to that above described and varying therefrom in detail only;

Sold such assortments, as above set forth, to dealer or retailer purchasers, by whom they were exposed and sold to purchasing public in accordance with aforesaid sales plans or methods, and thereby supplied to and placed in hands of others means of conducting lottery in sale and distribution of their merchandise in accordance with such plans or methods, involving 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 criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plans or methods involving a game of chance or sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate purchasers of said or like or similar merchandise were attracted by such sales plans or methods employed by it in the sale and distribution of its merchandise and element of chance involved therein, and were thereby induced to buy such merchandise in preference to that offered and sold by its said competitors who do not use same or equivalent sales plans or methods, and with effect, through use of such plans or methods by it and because of said game of chance, of diverting unfairly trade to it from its competitors aforesaid who do not use same 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.

Before *Mr. Arthur F. Thomas*, trial examiner.
Mr. D. C. Daniel for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that C. H. Stallman & Son, 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, C. H. Stallman & Son, Inc., 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 31 West Philadelphia Street, York, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of cigars, candy, and various other articles of merchandise to dealers. Respondent causes, and has caused, said merchandise, when sold, to be shipped or transported from its aforesaid principal 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 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 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 consumer thereof. One of said assortments consists of a number of cigars, together with a device commonly called a punchboard. Sales are 1 cent each. Said punchboard is divided into sections, and each section contains a number or small sealed tube in which a slip of paper with a number printed thereon is concealed. The board bears legends or statements informing purchasers and prospective purchasers that persons

selecting certain designated numbers each receive 10 of said cigars; that persons selecting certain other designated numbers each receive 5 cigars; that persons selecting certain other designated numbers each receive 3 cigars; that persons selecting certain other designated numbers each receive 1 cigar; and that the person selecting the last number in each of said sections receives 1 cigar. Persons not successful in selecting one of said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The said cigars are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes, and has sold and distributed, various assortments of said merchandise, together with punchboards and push cards, but all of said assortments of merchandise are sold and distributed to the consuming public by means of sales plans or methods similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise expose and sell the same to the purchasing public 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 and distribution of its merchandise 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 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 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 respondent, as above alleged, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or a sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, said merchandise or like or similar merchandise, 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 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 sales plans or methods. The use of said sales plans or 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 sales plans or methods and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 23, 1940, issued and thereafter served its complaint in this proceeding upon respondent C. H. Stallman & Son, 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 October 1, 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 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, C. H. Stallman & Son, Inc., 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 31 West Philadelphia Street, York, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of cigars, candy, and various other articles of merchandise to dealers. Respondent causes, and has caused, said merchandise, when sold, to be shipped or transported from its aforesaid principal 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 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 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 consists of a number of cigars, together with a device commonly called a punchboard. Sales are 1 cent each. Said punchboard is divided into sections, and each section contains a number of small sealed tubes in which a slip of paper with a number printed thereon is concealed. The board bears legends or statements informing purchasers and prospective purchasers that persons selecting certain designated numbers each receive 10 of said cigars; that persons selecting certain other designated numbers each receive 5 cigars; that persons selecting certain other designated numbers each receive 3 cigars; that persons selecting certain other designated numbers each receive 1 cigar; and that the person selecting the last number in each of said section receives 1 cigar. Persons not successful in selecting one of said designated numbers receive nothing for their money. The said numbers are effectively concealed from purchasers and prospective purchasers until said slips of paper have been punched or removed from said board. The said cigars are thus distributed to the purchasing public wholly by lot or chance.

The respondent sells and distributes, and has sold and distributed, various assortments of said merchandise, together with punchboards and push cards, but all of said assortments of merchandise are sold and distributed to the consuming public by means of sales plans or methods similar to the one hereinabove described varying only in detail.

PAR. 3. Retail dealers who purchase respondent's said assortments of merchandise expose and sell the same to the purchasing public 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 and distribution of its merchandise 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 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 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 respondent, as above found, are unwilling to adopt and use said sales plans or methods or any sales plans or methods involving a game of chance or a sale of a chance to win something by chance, or any other sales plans or methods that are contrary to public policy, and such competitors refrain therefrom. Many dealers in, and ultimate purchasers of, said merchandise or like or similar merchandise, 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 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 sales plans or methods. The use of said sales plans or 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 sales plans or methods and as a result thereof substantial injury is being, and has been, done by respondent to competition in commerce between and among 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, C. H. Stallman & Son, 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 cigars, 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, cigars, or any other merchandise so packed and assembled that sales thereof 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, push or pull cards, punchboards, or other lottery devices, either with assortments of candy, cigars, 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, cigars, or other merchandise to the public.

3. 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

LENARD GOTLIEB AND SARAH GOTLIEB, TRADING AS REED'S CUT-RATE STORE AND FOUNTAIN CUT-RATE STORES

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

Docket 4211. Complaint, July 31, 1940—Decision, Oct. 16, 1940

Where two individuals engaged in sale and distribution of various medicinal preparations and products, including drug preparation advertised as "Prescription Female Capsules" and "Lady Lydia Female Capsules," and also by such designations, together with words "Double Strength" or "Triple Strength," as case might be; in advertisements which they disseminated and caused to be disseminated through the mails, in newspapers, and by circulars and other advertising literature, and by various other means in commerce and otherwise, and which were intended and likely to induce purchase of their said preparation—

(*a*) Represented that their said product constituted competent and efficient treatment for delayed menstruation, and was safe and harmless, facts being it was not such treatment and was not safe or harmless, in that it contained drugs apiol green, ergotin, oil of savin, and aloin, 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, use thereof might result in gastro-intestinal disturbances and other serious conditions, and, where used to interfere with normal course of pregnancy, might lead to blood poisoning and other serious conditions and irreparable injury; and

(*b*) Failed to reveal in such advertisements facts material in the light of the above representations, and that use thereof under conditions prescribed therein, or under such conditions as are customary or usual, might result in injury to health;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous belief that such statements, representations, and advertisements were true, and that said preparation constituted a safe, competent, and effective treatment for aforesaid purpose, and to induce purchase by public 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. William L. Taggart, for the Commission.

Mr. J. C. McManaway, of Clarksburg, W. Va., 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 Lenard Gotlieb and

Sarah Gotlieb, individuals trading as Reed's Cut-Rate Store and Fountain Cut-Rate Stores, 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, Lenard and Sarah Gotlieb, are individuals trading and doing business as Reed's Cut-Rate Store and as Fountain Cut-Rate Stores, with their principal office and place of business located at 127 South Fourth Street, Clarksburg, W. Va.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondents is a drug preparation advertised as "Prescription Female Capsules" and as "Lady Lydia Female Capsules," also designated as "Prescription Female Capsules—Double Strength," "Prescription Female Capsules—Triple Strength," and as "Lady Lydia Female Capsules—Double Strength," and "Lady Lydia Female Capsules—Triple Strength."

Respondents cause their said preparation, when sold, to be transported from their place of business in the State of West Virginia 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 their said 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused, and are now causing the dissemination of, false advertisements concerning their said product, by United States mails, and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product, and respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said product by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements

in newspapers, and by circulars and other advertising literature are the following:

MODERN WOMEN!

DON'T WORRY OVER DELAYED PERIODS * * *

If your menstrual period is delayed because of worry, wet feet, colds or other like causes use the safe speedy PRESCRIPTION FEMALE CAPSULES. Hundreds of women have received excellent results.

Mail Orders Given Prompt Attention!

SOLD ONLY AT

REED'S CUT RATE

511 Market Street

Parkersburg, W. Va.

MODERN WOMEN!

Don't worry over delayed periods. If your menstrual period is delayed because of worry, wet feet, colds or other like causes, use the safe and speedy LADY LYDIA CAPSULES. Hundreds of women have received excellent results. Mail Orders Given Prompt Attention.

Sold Only at

FOUNTAIN CUT RATE

Clarksburg Elkins Weston

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondents have represented, directly and by implication, that their preparation designated as "Prescription Female Capsules" and as "Lady Lydia Female Capsules," also designated as "Prescription Female Capsules—Double Strength," "Prescription Female Capsules— Triple Strength," and as "Lady Lydia Female Capsules—Double Strength," and "Lady Lydia Female Capsules—Triple Strength" is a competent and efficient treatment for delayed menstruation and that said preparation is safe and harmless.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation is not a competent or efficient treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions described in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in

those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

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 in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has had, and now has, 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 such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce directly or indirectly, the purchase by the public of the respondents' said preparation.

PAR. 8. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 31, 1940 issued and on August 1, 1940 served its complaint in this proceeding upon respondents Lenard Gotlieb and Sarah Gotlieb, individuals trading as Reed's Cut-Rate Store and Fountain Cut-Rate Stores charging them with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 20, 1940, the respond-

ents filed their answers, in which answers they admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Lenard and Sarah Gotlieb, are individuals trading and doing business as Reed's Cut-Rate Store and as Fountain Cut-Rate Stores, with their principal office and place of business located at 127 South Fourth Street, Clarksburg, W. Va.

PAR. 2. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondents is a drug preparation advertised as "Prescription Female Capsules" and as "Lady Lydia Female Capsules," also designated as "Prescription Female Capsules—Double Strength," "Prescription Female Capsules—Triple Strength," and as "Lady Lydia Female Capsules—Double Strength," and "Lady Lydia Female Capsules—Triple Strength."

Respondents cause their said preparation, when sold, to be transported from their place of business in the State of West Virginia 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 their said 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 their aforesaid business, the respondents have disseminated and are now disseminating, and have caused, and are now causing the dissemination of, false advertisements concerning their said product, by United States mails, and by various other means in commerce as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of their said product, and respondents have also disseminated, and are now disseminating, and have caused, and are now causing the dissemination of false advertisements concerning their said product by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of their said product in commerce, as commerce is de-

fined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature are the following:

MODERN WOMEN!

DON'T WORRY OVER DELAYED PERIODS * * *

If your menstrual period is delayed because of worry, wet feet, colds or other like causes use the safe speedy PRESCRIPTION FEMALE CAPSULES. Hundreds of women have received excellent results.

Mail Orders Given Prompt Attention!

SOLD ONLY AT

REED'S CUT RATE

511 Market Street
Parkersburg, W. Va.

MODERN WOMEN!

Don't worry over delayed periods. If your menstrual period is delayed because of worry, wet feet, colds or other like causes, use the safe and speedy LADY LYDIA CAPSULES. Hundreds of women have received excellent results. Mail Orders Given Prompt Attention.

Sold Only At

FOUNTAIN CUT RATE

Clarksburg Elkins Weston

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondents have represented, directly and by implication, that their preparation designated as "Prescription Female Capsules" and as "Lady Lydia Female Capsules," also designated as "Prescription Female Capsules—Double Strength," "Prescription Female Capsules—Triple Strength," and as "Lady Lydia Female Capsules—Double Strength," and "Lady Lydia Female Capsules—Triple Strength" is a competent and efficient treatment for delayed menstruation and that said preparation is safe and harmless.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondents as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondents' preparation is not a competent or efficient treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin, and aloin, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions described in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, catharsis, nausea, and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

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 in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondents of the aforesaid false, misleading, and deceptive statements and representations with respect to their said preparation, disseminated as aforesaid, has had, and now has, 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 such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondents' said preparation.

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 its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Lenard Gotlieb and Sarah Gotlieb, individually and trading as Reed's Cut-Rate Store and as Fountain Cut-Rate Stores, 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, or distribution of their medicinal preparation designated as "Prescription Female Capsules" and as "Lady Lydia Female Capsules," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation is a competent or effective treatment for delayed menstruation; that said preparation is safe or harmless; or which advertisement fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and, in the case of pregnancy, may cause uterine infection and blood poisoning.

2. 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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and, in the case of pregnancy, may cause uterine infection and blood poisoning.

It is further ordered, That the respondent shall within 10 days after service upon them of this order, file with the Commission an interim report in writing, stating whether they intend to comply with this order and, if so, the manner and form in which they intend to comply; and that within 60 days after the service upon them of this order, said respondents shall file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

WAIN'S LABORATORY, INC.

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

Docket 4203. Complaint, July 30, 1940—Decision, Oct. 18, 1940

Where a corporation engaged in sale and distribution of its "Ama-Gon" or, as subsequently designated, "Wain's Compound," drug-containing preparation for bronchial asthma and coughs; in advertisements thereof which it disseminated and caused to be disseminated through the mails, newspapers, circulars, and other advertising matter, and in commerce and otherwise, and which were intended or likely to induce purchase of its said product—

(*a*) Represented, directly and by implication, in its various statements and representations thus made, and which purported to be descriptive of the remedial, curative, and therapeutic properties of said preparation, that it was an effective and competent treatment for bronchial asthma and coughs, and that its use gave immediate or prompt relief from the paroxysms of asthma, and that it was entirely safe and harmless and might be used without danger of ill effects upon health of user;

Facts being such representations were grossly exaggerated, false and misleading, it was not an effective or competent treatment for bronchial asthma or coughs, and had no therapeutic value in treatment of such conditions in excess of furnishing temporary symptomatic relief from paroxysms of asthma and bronchial irritations, and, by virtue of potassium iodide content in quantity present, was not in all cases safe or harmless, but might, in some instances, cause injury to health if taken under conditions prescribed in said advertisements or under such conditions as are customary or usual, and, thus used, might be harmful to those having healed lesions of arrested tuberculosis or goitre; and

(*b*) Failed to reveal, in its said advertisements disseminated as aforesaid, facts material in the light of its representations and that use thereof, under the conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in injury to health;

With effect of misleading substantial portion of purchasing public into erroneous and mistaken belief that all of such false statements and representations were true, and of inducing substantial portion of such public to purchase its said preparation because of such erroneous and mistaken belief engendered as above set forth:

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. John M. Russell 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 Wain's Laboratory,

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, Wain's Laboratory, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, having its office and principal place of business at 4687 Hollywood Boulevard, Hollywood, Calif.

PAR. 2. Respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a certain preparation containing drugs, formerly designated Ama-Gon and now offered for sale and sold under the name "Wain's Compound," recommended for use in the treatment of bronchial asthma and bronchial coughs. Respondent sells its said product to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said product when sold by it, to be transported from its place of business in the State of California 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 its said product 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 product by the United States mails, and by various 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 respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinbefore set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

TO PALLIATE ATTACKS OF BRONCHIAL
ASTHMA
And Bronchial Coughs

The active ingredient in Wain's Compound works rapidly. In a few minutes it is taken into the blood stream and starts its work. No matter how long you have suffered from torturing attacks of Bronchial Asthma and Bronchial Coughs, we want you to prove the value of Wain's Compound to yourself today. Accept this generous trial offer. You must be entirely satisfied. Wain's Compound helps you, or your MONEY BACK IS GUARANTEED.

Sold at all OWL DRUG STORES

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's said preparation, respondent directly and by implication represents that said preparation is an effective and competent treatment for bronchial asthma and bronchial coughs; that its use gives immediate or prompt relief from the paroxysms of asthma; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not an effective or competent treatment for bronchial asthma or bronchial coughs, and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary symptomatic relief from the paroxysms of asthma and bronchial irritations.

Said preparation is not in all cases safe or harmless as it contains potassium iodide in quantities sufficient to cause in same instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis or goitre. In arrested cases of tuberculosis the tendency of potassium iodide is to resolve the fibrous tissues about the healed lesions and thereby to reactivate the tuberculous process. The hazard in cases of goitre is the tendency to convert a benign adenoma to a toxic adenoma.

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 in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the foregoing false, deceptive and misleading statements and representations disseminated as aforesaid, has had, and now has, the tendency and capacity to, and does,

mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such false statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

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 July 30, 1940, issued, and on August 3, 1940, served, its complaint in this proceeding upon the respondent, Wain's Laboratory, 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 September 11, 1940, 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 hearings 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, Wain's Laboratory, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, having its office and principal place of business at 4687 Hollywood Boulevard, Hollywood, Calif.

PAR. 2. Respondent is now and has been for more than two years last past engaged in the business of selling and distributing a certain preparation containing drugs, formerly designated Ama-Gon and now offered for sale and sold under the name "Wain's Compound," recommended for use in the treatment of bronchial asthma and bronchial coughs. Respondent sells its said product to members of the purchasing public situated in various States of the United States and in the District of Columbia, and causes said product when sold by it, to be transported from its place of business in the State of California to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent main-

tains, and at all times mentioned herein has maintained, a course of trade in its said product 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 product by the United States mails, and by various 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 respondent has also 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, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinbefore set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

TO PALLIATE ATTACKS OF BRONCHIAL

ASTHMA

And Bronchial Coughs

The active ingredient in Wain's Compound works rapidly. In a few minutes it is taken into the blood stream and starts its work. No matter how long you have suffered from torturing attacks of Bronchial Asthma and Bronchial Coughs, we want you to prove the value of Wain's Compound to yourself today. Accept this generous trial offer. You must be entirely satisfied. Wain's Compound helps you, or your MONEY BACK IS GUARANTEED. Sold at all OWL DRUG STORES.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and other similar statements and representations not specifically set out herein, all of which purport to be descriptive of the remedial, curative, and therapeutic properties of respondent's said preparation, respondent directly and by implication represents that said preparation is an effective and competent treatment for bronchial asthma and bronchial coughs; that its use gives immediate or prompt relief from the paroxysms of asthma; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

PAR. 5. The foregoing representations are grossly exaggerated, false and misleading. In truth and in fact, respondent's preparation is not an effective or competent treatment for bronchial asthma or

bronchial coughs, and has no therapeutic value in the treatment of such conditions in excess of furnishing temporary symptomatic relief from the paroxysms of asthma and bronchial irritations.

Said preparation is not in all cases safe or harmless as it contains potassium iodide in quantities sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis or goitre. In arrested cases of tuberculosis the tendency of potassium iodide is to resolve the fibrous tissues about the healed lesions and thereby to reactivate the tuberculous process. The hazard in cases of goitre is the tendency to convert a benign adenoma to a toxic adenoma.

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 in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations disseminated as aforesaid has had, and now has, the tendency and capacity to, and does, mislead a substantial portion of the purchasing public into the erroneous and mistaken belief that all of such false statements and representations are true and to induce a substantial portion of the purchasing public to purchase respondent's said preparation because of such erroneous and mistaken belief engendered as above set forth.

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 it waives all intervening procedure and further hearing as to said facts, and the Commission having made it 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, Wain's Laboratory, 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, or distribution of its medicinal preparation designated "Wain's Compound," or any other medicinal preparation, composed of substantially similar ingredients, or possessing substantially similar therapeutic properties, whether sold under the same name or under any other name, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents directly or through inference that said preparation has any therapeutic value in the treatment of bronchial asthma or bronchial coughs, in excess of relief from the paroxysms of asthma and bronchial irritations; that said preparation is in all cases safe or harmless; or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goitre (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goitre).

2. 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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goitre (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goitre).

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

IN THE MATTER OF

HARRY PURE, TRADING AS TRADING 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 3406. Complaint, May 6, 1938—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of manicure sets, electric lamps, leather wallets, silverware, clothing, and numerous various other articles of merchandise, to purchasers in the various other States and in the District of Columbia—

(*a*) Sold and distributed his said merchandise by means of a game of chance, gift enterprise, or lottery scheme under which he distributed to representatives or prospective representatives advertising or sales circulars depicting and describing, on the last page thereof, number of products being offered, and listing 22 articles and prices thereof, for use in sale and distribution of such articles under a plan by which particular article secured by customer and price paid therefor by him was dependent upon the legend concealed under the particular tab on accompanying pull card selected by particular customer, and under which scheme operator of card was compensated either by right to retain specified amount of total money received by him through sale of card's chances, or to receive from said individual premium as specified, and "Notice to Purchasers" on pull card device, advising that articles there listed might be purchased at prices set forth in connection therewith, was not called to attention of or seen by customer-purchasers; and

Supplied thereby to and placed in the hands of others means of selling and distributing his said merchandise by means of a game of chance or lottery scheme in accordance with such sales plan, involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, and under which particular article of merchandise received by purchaser and fact as to whether he was required to pay more or less than prices designated for various articles on list thereof displayed as aforesaid, and what amount, were determined wholly by lot or chance, contrary to an established public policy of the United States Government and in violation of criminal law, and in competition with many who are unwilling to adopt and use said or any other sales plan or method involving game of chance, or sale of a chance to win something by chance, or which is contrary to public policy, and refrain therefrom;

With result that many persons were induced to buy and sell his said merchandise in preference to that offered and sold by his competitors aforesaid, and trade was thereby unfairly diverted to him from them, to their substantial injury; and

(*b*) Made such various false, deceptive and misleading statements and representations in his said sales circular as "Absolutely Free—Gifts for All—Absolutely Free," "How to Get Your Big Reward Premium Without Any Cost," "Special Offer—2 Extra Surprise Gifts—Free," and "All Shipping Charges are Paid by Us," facts being none of his said articles were thus given away without cost to such operators or representatives, but they

were required, before receiving same, to sell or procure sale of said 22 designated articles and remit amount procured thereby, operator or person selecting his reward premium, in addition to such sale, was required also to remit additional dollar before premium could be procured by such operator, and said individual did not pay all shipping charges, but those desiring premium as aforesaid were required to pay such additional amount as shipping charge before receiving such premium;

With effect of misleading and deceiving substantial number of members of purchasing public into mistaken belief that he gave away certain of his articles and merchandise without cost to the operators of the pull cards, and also paid all shipping charges on such articles, and with capacity and tendency to deceive and mislead substantial portion of purchasing public into mistaken and erroneous belief that his said statements and representations were true, and to cause such public to purchase substantial quantity of his merchandise as result thereof, and with result that trade was unfairly diverted to him from competitors, many of whom do not use such false, misleading and deceptive statements and representations in connection with sale and distribution of their products; to the substantial injury 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. Randolph Preston*, trial examiner.

Mr. D. C. Daniel and *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 Harry Pure, individually and trading as Trading 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. Respondent is an individual trading under the name of Trading Sales Co., with his principal office and place of business located at 354 West Thirty-eighth Street, New York City, N. Y. He is now, and for some time last past has been, engaged in the sale and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, clothing, bedding, clocks, watches, cameras, dolls, tool sets, cosmetics, and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products, when sold, to be shipped or transported from his place of business in the State of New York to purchasers thereof located in the 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 respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other individuals and with partnerships and corporations likewise 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 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 said articles of merchandise by means of a lottery scheme or game of chance. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including, among other things, a sales circular. Respondent's merchandise is distributed to the purchasers thereof in the following manner: A portion of said sales circular consists of a list on which are designated a number of items of merchandise and the respective prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that the purchasers and prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the customer for the price designated on the tab which he pulls. The apparent greater values and higher regular prices of some of said articles of merchandise as compared to the prices the customer will be required to pay in the event he secures said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise having greater values and higher regular prices than the designated prices to be paid therefor. The facts as to whether a purchaser of one of said pull card tabs receives an article of greater value than the price designated for same on said

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 a person or representative operating a pull card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the said sums to the respondent, the said respondent thereupon ships to said representative the merchandise sold by means of said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes various assortments of said merchandise and furnishes various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principal involved.

PAR. 3. The persons to whom respondent furnishes the said pull 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 such merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and which is in violation of 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 apparent normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in commerce as herein defined 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 which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of said merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors

of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondent from his said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to said competitors of respondent.

PAR. 5. In the course and conduct of his business as hereinabove related, respondent has caused various false, deceptive, and misleading statements and representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Absolutely Free—Gifts For All—Absolutely Free.
How to Get Your Big Reward Premium Without Any Cost.
Select any gift from this folder that you desire.
It Will be Yours—at absolutely No Cost.
Special Offer—2 Extra Surprise Gifts—Free.
All Shipping Charges are Paid by Us.

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the various States of the United States and in the District of Columbia, by inducing them to mistakenly believe (1) that respondent gives away certain of his said articles of merchandise without cost to his said representatives, and (2) that respondent prepays all shipping charges on all of his said articles of merchandise.

PAR. 6. In truth and in fact, none of respondent's premiums or so-called gifts are given away "free" or "without cost," but said premiums or so-called gifts which are represented as being "free" to said representatives are either purchased with labor by them, or the price of said premiums or so-called gifts is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called gifts can be procured by them. For a number of premiums or so-called gifts, certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondent does not prepay all of the shipping charges on his said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondent's said articles of merchandise.

PAR. 7. The use by respondent of the false, deceptive, and misleading statements and representations set forth herein has had and now has the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as the result of such erroneous belief. There are among the competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like or similar products who do not make such false, deceptive and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 6, 1938, issued and thereafter served its complaint in this proceeding upon respondent Harry Pure, individually and trading as Trading Sales Company, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel and L. P. Allen, Jr., attorneys for the Commission (respondent having offered no proof in opposition to the allegations of the complaint), 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, brief in support of the complaint (respondent having filed no brief and oral argument having been waived); and the Commis-

sion 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 Pure is an individual trading under the name of Trading Sales Co., with his principal office and place of business located in New York City, N. Y. Respondent is now, and for more than four years last past has been, engaged in the sale and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware, chinaware, clothing, bedding, clocks, watches, cameras, dolls, tool chests, cigarette lighters, jewelry, cosmetics, teaspoons, and various other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes, and has caused said products, when sold to be shipped or transported from his aforesaid place of business in the State of New York to purchasers thereof located in the 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 all of the time mentioned hereinabove, 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 so conducting said business, respondent was, and is, in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of like or similar articles of merchandise as those sold and distributed by respondent in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In so conducting his said business as described in paragraph 1 hereof, respondent sells and distributes, and has sold and distributed, said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent's said business is, and has been, conducted in substantially the following manner: Respondent distributes and causes to be distributed to representatives or prospective representatives an advertising or sales circular. Said sales circular is used in the sale and distribution of said merchandise in the following manner: On the last or back page of said sales circular there appears picturizations of a number of said articles of merchandise and printed matter descriptive thereof. There also appears on said page a list of 22 articles of merchandise and the prices

thereof, with space provided for the recording of the name of each purchaser opposite the name of the article of merchandise purchased. Adjacent to said list there is a device commonly called a pull card. Said pull card consists of a number of small tabs, on the reverse side of each of which there appears the name of an article of merchandise and the price thereof, the prices of said articles of merchandise varying in amounts from 9 cents to 39 cents. Each purchaser separates or pulls one of said tabs from said device. The name of the article of merchandise and the price thereof are so concealed that the purchasers and prospective purchasers are unable to ascertain which article of merchandise they are to receive or the amount of money they are to pay, until after the tabs are separated or pulled from said card. When a purchaser has separated or pulled a tab from the card and learned what article of merchandise he is to receive, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have retail values and regular prices greater than the prices so designated for them, while others of said articles of merchandise have retail prices less than the prices designated for them, but they all are distributed to the customers for the prices designated under the tabs that such customers pull. The facts as to which articles of merchandise the purchaser is to receive; and the amount he is required to pay therefor are thus determined wholly by lot or chance.

The said 22 articles of merchandise sell for $7.65, and when the person or representative operating the said pull card has sold all of said 22 articles of merchandise and collected said amount, he may retain $3 for his services and remit the balance of the $7.65 to respondent, and the respondent in turn ships said 22 articles of merchandise to said person or representative, who distributes the same to the individual purchasers thereof; or said person or representative remits the $7.65 to respondent, and respondent ships the said 22 articles of merchandise to said person or representative, together with a premium for said person or representative in payment for services in so selling said articles of merchandise. Such premiums are illustrated and described in respondent's circular, and the person or representative desiring such a premium may make his selection from said premiums.

The respondent has distributed by mail 250,000 of said sales circulars to customers and prospective customers in the various States of the United States and in the District of Columbia. As a result thereof, the respondent has received and filled approximately 16,000 orders for said 22 articles of merchandise.

Immediately above the said pull card device there appears the following:

NOTICE TO PURCHASERS:—On the back of each slip is printed the price of an article. If after deliberation you decide that you want the article, pay the holder of this book the price shown on the slip. If you do not want the article you need not buy it.

The Commission finds that such notice was not called to the attention of, or seen by, the purchasers of said 22 articles of merchandise from said pull tab device and that said 22 articles of merchandise were, in fact, distributed as hereinabove described.

PAR. 3. The Commission finds that the persons or representatives to whom respondent has furnished or supplied said pull cards have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the sales plan or method as described in paragraph 2 hereof. Respondent has thus supplied to, or placed in the hands of, others a means of selling and distributing said merchandise by means of a game of chance or lottery scheme in accordance with said sales plans. The use of said sales plan by respondent in the sale and distribution of his said merchandise, and the sale thereof by the use and aid of said sales plan, 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 law.

PAR. 4. The Commission finds that the sale of said merchandise in the manner described in paragraph 2 hereof involves a game of chance, or a sale of a chance, to procure an article of merchandise at a price much less than the normal retail price thereof. Respondent has many competitors, who sell and distribute merchandise in commerce between and among the various States of the United States and in the District of Columbia, who are unwilling to adopt and use said sales plan or method in the sale of their merchandise, or any other sales plan or method involving a game of chance, or the sale of a chance, to win something by a chance, or any sales plan or method which is contrary to public policy, and such competitors refrain therefrom. Because of said element of chance involved in said sales plan or method employed by respondent as hereinabove described, many persons have been induced to buy and sell respondent's merchandise in preference to the merchandise offered for sale and sold by said competitors.

PAR. 5. The Commission finds that in conducting his business as hereinabove described, respondent causes, and has caused, various false, deceptive, and misleading statements and representations to

appear in his said sales circular, which said statements and representations are as follows:

Absolutely Free—Gifts for All—Absolutely Free.

How to Get Your Big Reward Premium Without Any Cost.

Select any gift from this folder that you desire. It Will be Yours—at absolutely No Cost.

Special Offer—2 Extra Surprise Gifts—Free.

All Shipping Charges are Paid By Us.

By such statements and representations the respondent, in offering for sale and selling said articles of merchandise, misleads and deceives, and has misled and deceived, a substantial number of the members of the purchasing public into the mistaken belief that respondent gives away certain of his said articles of merchandise without cost to the operators of said pull cards, and further that the respondent pays all shipping charges on all of his said articles of merchandise.

PAR. 6. The Commission finds that, in truth and in fact, none of respondent's said articles of merchandise are given away without cost to said operators or representatives, but that the said operators or representatives, before they receive such articles of merchandise or premiums, must sell, or procure the sale of, 22 designated articles of merchandise and remit the amount procured by the sale of said 22 designated articles of merchandise. Said operator or person who selects respondent's reward premium No. 201, in addition to the sale of said merchandise as hereinabove described, must also remit an additional $1 before said premium can be procured by said operator or person. The Commission finds that the respondent does not pay all of the shipping charges on all of his merchandise, but, in truth and in fact, the operators or persons who desire respondent's reward premium No. 201 are required to pay an additional $1 as a shipping charge on said premium before said operator or person will receive the same.

PAR. 7. The Commission finds that said statements and representations are false, deceptive, and misleading and have had, and now have, the tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations are true; and to cause the purchasing public to purchase a substantial quantity of respondent's merchandise as a result thereof. There are many of respondent's competitors who are and have been engaged in the sale and distribution of merchandise like or similar to that sold by respondent, as described in paragraph 1 hereof, who do not use such false, misleading and deceptive statements and representations in connection with the sale and distribution of their merchandise.

PAR. 8. As a result of the use of said sales plan described in paragraph 2 hereof, and said statements and representations by respondent, trade is being, and has been, unfairly diverted to respondent from such competitors, and substantial injury is being, and has been, done to said competitors by respondent 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 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 said complaint (respondent having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondent not having filed brief and oral argument having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Harry Pure, individually, and trading as Trading Sales Company, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware, chinaware, clothing, bedding, clocks, watches, cameras, dolls, tool chests, cigarette lighters, jewelry, cosmetics, teaspoons, or any other articles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other lottery devices which are to be used or may be used in the sale or distribution of said merchandise to the public by the use thereof.

2. Shipping, mailing, or transporting to agents or to distributors, or to members of the public push or pull cards, punchboards, or other lottery devices which are to be used or may be used in the sale or distribution of said merchandise to the public 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. Using the terms "free" or "without any 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 any 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.

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

TOMMY LOUGHRAN

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

Docket 3976. Complaint, Dec. 16, 1939—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of correspondence courses in which he outlined methods of physical culture, exercise, and instructions as to diet intended to improve health and physical condition of purchasers thereof—

Represented, through statements and claims disseminated in commerce through the mail and advertisements in newspapers and magazines of general circulation and otherwise, directly or by implication, that his courses of instruction would keep everyone in a healthy condition, insuring everyone of big muscles and a huge, robust, powerful body, and would produce health and a perfect functioning of the organisms for all users thereof, and that his book "Puissant Body Building" would show how all users could obtain big muscles and a robust body, and that such courses would enable everyone to become a paragon of strength;

Facts being that, while proper exercise and diet are important factors in building up and preserving health and body strength, they do not constitute all that is necessary to be done to correct ill health or preserve health and strength, and following his instructions as to exercise and diet would not produce health for everyone or keep everyone in a healthy condition, nor insure everyone of big muscles or a huge, robust and powerful body, nor result in the perfect functioning of the human body, his said book would not teach everyone how to obtain such big muscles and powerful body, and his said courses would not enable everyone to become a "paragon of strength";

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 such public, because of such erroneous and mistaken belief, to purchase his said correspondence courses; to the injury of the public in various States and in the District of Columbia:

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. Clark Nichols, for the Commission.

Cross & Quinlan, of Philadelphia, Pa., for respondent.

COMPLAINT

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

an individual, hereinafter referred to as respondent, has violated the provisions of 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 Tommy Loughran is an individual doing business in his own name with his principal office and place of business located at 4 South Fifteenth Street, Philadelphia, Pa. Respondent is now, and has been for several years last past, engaged in the business of preparing and selling correspondence courses which teach methods of building and improving the body physically and improving general health, by use of certain exercises and apparatus and advice about proper food and proper methods of selecting and eating food. Respondent sells such correspondence courses directly to the purchasers thereof by the use of direct advertising through the United States mails and by newspaper and magazine advertising.

In the conduct of his business as aforesaid, respondent has been, and is, engaged in commerce among and between the various States of the United States, by causing his correspondence courses to be mailed from his aforesaid place of business in the State of Pennsylvania to purchasers thereof at their respective points of location in the various States of the United States other than the State of Pennsylvania, and in the District of Columbia.

PAR. 2. In the course and conduct of his business aforesaid respondent has been and is engaged in preparing courses of instruction wherein he teaches the purchasers thereof in several lessons how to breathe properly, how to use certain apparatus he furnishes with the lessons and how to exercise the different external and internal muscles through different setting up exercises. In several of the lessons he explains the qualities of different foods, advising which classes and kinds of food his students should eat in order to obtain optimum health. He assures his students through the correspondence courses that if they follow his instruction and perform the exercises therein set forth and eat the foods he mentions and recommends, perfect health will be produced and maintained and large muscles and a powerful, robust body will be built; that his object is to spread the gospel of perfect health and puissant body building and that if students and purchasers of his courses follow his teachings they will become paragons of strength.

All of the statements and claims aforesaid are disseminated in commerce as hereinabove described, by use of the United States mails and by advertising in newspapers and magazines of general circulation.

Among and typical of the statements made in said false advertisements disseminated and caused to be disseminated as aforesaid, with reference to such correspondence courses are the following:

You will find my rules for proper living sound, and following them will keep you in health.

Tells how to build a powerful body.

Now do you believe me when I say my big ambition in life is to spread the gospel of perfect health and Puissant Body Building? Where on earth could you expect to get this big, massive body with its perfectly functioning organism for such a ridiculous price as I am passing it out today? I only wish someone had offered it to me.

Do you want big muscles and a huge robust body? My book "Puissant Body Building" is absolutely FREE.

Any man who will sacrifice a few dollars he daily wastes on so-called empty pleasures can become a paragon of strength if he will only settle down to do it.

PAR. 3. Through the use of said statements in said advertising, disseminated as aforesaid, and others similar thereto not herein set out, all of which purport to represent the benefits to the general health and physical condition of the purchasers and users of respondent's correspondence courses, the respondent represents, directly and by implication, that his course of instruction will keep every one in a healthy condition; will insure everyone big muscles, and a huge, robust, powerful body; that his course of study will produce health and perfect functioning of the organism for all users thereof; that his book "Puissant Body Building" will show how all users can obtain big muscles and a robust body; and that his course will enable everyone to become a paragon of strength.

In truth and in fact respondent's course will not produce health for everyone nor keep everyone in a healthy condition. It will not insure everyone big muscles or a huge, robust, and powerful body. It will not produce perfect health and perfect functioning of the organism for all who use it. Respondent's book "Puissant Body Building" will not show everyone how to obtain big muscles and a powerful body, and the course of instruction will not enable everyone to become a paragon of strength. While proper exercise and diet are important factors in building up and preserving health and body strength, they are not the only ones. On account of physiological and other factors, many people, even though following such course of instruction and diet, cannot attain perfect health or perfect functioning of the body organism, nor can they obtain huge, robust or powerful bodies nor are they enabled to have big muscles or a powerful body, nor become paragons of strength.

PAR. 4. The use by the respondent of the foregoing deceptive and misleading statements and representations with respect to the beneficial effects of his course of study 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 causes a portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's course of study.

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 December 16, 1939, issued and served its complaint in this proceeding upon respondent, Tommy Loughran, an individual, 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, the proceeding 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, Tommy Loughran, an individual with his principal place of business at 4 South Fifteenth Street, Philadelphia, Pa., is now, and has been for several years last past, engaged in the sale and distribution of correspondence courses, wherein he outlines methods of physical culture, exercise, and instructions as to diet intended to improve the health and physical condition of purchasers thereof. Respondent causes, and has caused, said correspondence courses, when sold, to be transported from his place of business in Philadelphia, Pa., to the purchasers thereof located at

various points in the several States of the United States, other than the State of Pennsylvania, and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said correspondence courses 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 his business as aforesaid, respondent prepares courses of instruction wherein he teaches the purchasers thereof in several lessons how to breathe properly, how to use certain apparatus he furnishes with the lessons, and how to exercise the various external and internal muscles through different exercises. In other lessons he explains the qualities of foods, advising students as to the qualities of foods they should eat in order to obtain optimum health. He assures his students, through said courses, that, if they follow his instructions and perform the exercises therein set forth and eat the foods he mentions and recommends, perfect health will be produced and maintained and large muscles and powerful, robust body will be built; that his object is to spread the gospel of perfect health and puissant body building; and that if students and purchasers of his correspondence courses follow his teaching they will become paragons of strength. All of the statements and claims aforesaid are disseminated in commerce as hereinabove described, by use of the United States mail and by advertisements inserted in newspapers and magazines of general circulation. Among and typical of the statements made in said false advertisements, disseminated and caused to be disseminated, as aforesaid, with reference to such correspondence courses are the following:

You will find my rules for proper living sound, and following them you will keep your health.

Tells how to build a powerful body.

Now do you believe me when I say my big ambition is to spread the gospel of perfect health and Puissant Body Building? Where on earth could you expect to get this big, massive body with its perfect functioning organisms for such a ridiculous price as I am passing it out today? I only wish someone had offered it to me.

Do you want big muscles and a huge robust body? My book, "Puissant Body Building" is absolutely free.

Any man who will sacrifice a few dollars he daily wastes on so-called empty pleasures can become a paragon of strength if he will only settle down to do it.

PAR. 3. Through the use of said statements in said advertisements, disseminated as aforesaid, the respondent represents directly or by implication that his courses of instruction will keep everyone in a healthy condition; that they will insure everyone of big muscles, and a huge, robust, powerful body; that his courses of study will produce health and a perfect functioning of the organisms for all users

thereof; that his book "Puissant Body Building" will show how all users can obtain big muscles and a robust body; and that his courses will enable everyone to become a paragon of strength.

PAR. 4. The following of the instructions as to exercise and diet outlined in said correspondence courses prepared by respondent will not produce health for everyone or keep everyone in a healthy condition. Said exercise and diet outlined in said courses will not insure everyone of big muscles or a huge, robust and powerful body, or result in the perfect functioning of the human body. Respondent's said book "Puissant Body Building" will not teach everyone how to obtain big muscles and a powerful body, and said courses of instruction will not enable everyone to become a "paragon of strength." While proper exercise and diet are important factors in building up and preserving health and body strength, they do not constitute all that is necessary to be done to correct ill health or to preserve health and body strength.

PAR. 5. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the results to be obtained by all those purchasing said correspondence courses and following the instructions therein outlined 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 such erroneous and mistaken belief, to purchase respondent's said correspondence courses. In consequence thereof, injury has been, and is now being, done by the respondent to the public in 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 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, Tommy Loughran, an individual, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his correspondence courses on health and physical culture, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Representing, directly or by implication that following the instructions as to exercise and diet outlined in said correspondence courses will produce good health for everyone or keep everyone in a healthy condition; or will insure everyone of "big" muscles or a "huge," "robust," and powerful body; or enable one to become a "paragon" of strength.

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

CHESTER E. THOMAS, TRADING AS THOMAS BROTHERS

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

Docket 4151. Complaint, June 4, 1940—Decision, Oct. 21, 1940

Where an individual engaged in manufacture of candy, salted peanuts, and other products, and in sale and distribution of certain assortments of such products which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers, and which included (1) plaster of paris toy and 30 bags of salted peanuts of uniform size, shape, and quality, stapled to cardboard sheet for sale and distribution to purchasers under a plan, and in accordance with said sheet's explanatory legend, by which purchaser paid from 1 to 5 cents for bag of peanuts, in accordance with number concealed on card's tabs as disclosed by removal of bag from card and the opening of the tab attached, and under which purchaser of last package or bag received aforesaid toy; (2) box of chocolate candy and number of candy bars of uniform size and shape, together with push card for use in sale and distribution of said candy under a plan, and in accordance with said card's explanatory legend, by which purchaser received, for nickel paid, only one, or additional bars, dependent upon success or failure in securing by chance from card certain designated numbers, and under which purchaser making last punch on card received, without additional cost, said box of candy; and (3) various other assortments of peanuts or candy involving lot or chance feature similar to those respectively above described, from which they varied in detail only—

Sold such assortments to wholesalers, jobbers, and retailers by whom, as direct or indirect retailer-purchasers thereof, assortments in question were exposed and sold to purchasing public in accordance with sales plans aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his said products in accordance with such sales plans as above set forth, involving game of chance or sale of a chance to procure bags of peanuts at prices which are much less than normal retail prices thereof, or additional pieces or boxes 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 plans or methods employed by him in sale and distribution of his candy and other products and element of chance involved therein, and were thereby induced to buy and sell his said products in preference to those of his competitors above set forth, and with effect, through use of such methods and because of said game of chance, of diverting trade unfairly to him from his said competitors who do not use same or equivalent methods:

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

Mr. L. P. Allen, Jr., for the Commission.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Chester E. Thomas, individually and trading as Thomas Bros., 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 Chester E. Thomas is an individual trading as Thomas Bros. with his principal office and place of business located at 20 Northeast Weidler Street, Portland, Oreg. Respondent is now, and for more than 10 years last past has been, engaged in the manufacture and in the sale and distribution of candy, salted peanuts, and other products to wholesale dealers, jobbers, and retail dealers located at points in various States of the United States and in the District of Columbia. The respondent causes and has caused said products, when sold, to be transported from his place of business in the city of Portland, Oreg., to purchasers thereof, at their respective points of location, in the various States of the United States other than Oregon and in the District of Columbia. There is now, and has been for more than 10 years last past a course of trade by respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and salted peanuts so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent but this list is not all inclusive of the various assortments nor does

it include all of the details of the several plans which respondent has been or is using in the sale and distribution of candy and salted peanuts by lot or chance:

(*a*) One assortment is composed of a plaster of paris toy and 30 bags of salted peanuts of uniform size, shape and quality, the latter being stapled to a sheet of cardboard. Attached at the top of each of said bags of peanuts where the bag is stapled to the board is a small paper tab with a number thereon. The said numbers range from 1 to 5 and the board contains a legend or statement informing purchasers and prospective purchasers that they pay in cents the amount of the number on the said tab. The numbers on the said tabs are concealed from purchasers and prospective purchasers until a bag of peanuts has been removed from the board and the attached paper tab opened. The purchaser of the last package of peanuts receives the said plaster of paris toy. The said toy is distributed and the price of the bags of peanuts is thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of salted peanuts involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

(*b*) Another of respondent's assortments is as follows: This assortment consists of a box of chocolate candy and a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has a number of small partially perforated discs on the face of each of which is printed the word "Push." When a disk is pushed or separated from the said card a number is disclosed. The numbers begin with 1 and continue to the number of pushes there are on the card but are not arranged in numerical sequence. The price for pushing one of said disks on said card is 5 cents. The said card contains a legend or instructions informing purchasers and prospective purchasers that each purchaser of a chance on the card receives one of the said bars of candy and that certain designated numbers entitle the purchasers thereof to additional bars of candy without additional cost. The purchaser making the last punch on the card receives the said box of chocolate candy without additional cost. The numbers within the said disks are effectively concealed from purchasers and prospective purchasers until a disk is pushed or separated from the card. The box of candy and additional bars of candy are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance

feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who purchase respondent's said products, directly or indirectly, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his products and the sale of said products by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy and salted peanuts to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure bags of peanuts at much less than the normal retail price thereof or additional pieces or boxes of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy and other products in competition with respondent, as above alleged, are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of his candy and other products and the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to and does unfairly divert trade 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 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. 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 June 4, 1940, issued and served its complaint in this proceeding upon respondent Chester E. Thomas, individually and trading as Thomas Bros. charging him with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On June 29, 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 a 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 Chester E. Thomas is an individual trading as Thomas Bros. with his principal office and place of business located at 20 Northeast Weidler Street, Portland, Oreg. Respondent is now and for more than 10 years last past has been, engaged in the manufacture and in the sale and distribution of candy, salted peanuts, and other products to wholesale dealers, jobbers, and retail dealers located at points in various States of the United States and in the District of Columbia. The respondent causes and has caused said products, when sold, to be transported from his place of business in the city of Portland, Oreg., to purchasers thereof, at their respective points of location, in the various States of the United States other than Oregon and in the District of Columbia. There is now, and has been for more than 10 years last past a course of trade by respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondent is and has been in competition with other individuals and with partnerships 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 his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy and salted peanuts so packed and assembled as to involve the use of

games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. Certain of said assortments are hereinafter described for the purpose of showing the methods used by respondent but this list is not all inclusive of the various assortments nor does it include all of the details of the several plans which respondent has been or is using in the sale and distribution of candy and salted peanuts by lot or chance:

(*a*) One assortment is composed of a plaster of paris toy and 30 bags of salted peanuts of uniform size, shape, and quality, the latter being stapled to a sheet of cardboard. Attached at the top of each of said bags of peanuts where the bag is stapled to the board is a small paper tab with a number thereon. The said numbers range from 1 to 5 and the board contains a legend or statement informing purchasers and prospective purchasers that they pay in cents the amount of the number on the said tab. The numbers on the said tabs are concealed from purchasers and prospective purchasers until a bag of peanuts has been removed from the board and the attached paper tab opened. The purchaser of the last package of peanuts receives the said plaster of paris toy. The said toy is distributed and the price of the bags of peanuts is thus determined wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of salted peanuts involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

(*b*) Another of respondent's assortments is as follows: This assortment consists of a box of chocolate candy and a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has a number of small partially perforated disks on the face of each of which is printed the word "Push". When a disk is pushed or separated from the said card a number is disclosed. The numbers begin with 1 and continue to the number of pushes there are on the card but are not arranged in numerical sequence. The price for pushing one of said disks on said card is 5 cents. The said card contains a legend or instructions informing purchasers and prospective purchasers that each purchaser of a chance on the card receives one of the said bars of candy and that certain designated numbers entitle the purchasers thereof to additional bars of candy without additional cost. The purchaser making the last punch on the card receives the said box of chocolate candy without additional cost. The numbers within the said disks are effectively concealed from purchasers and prospective purchasers until a disk is pushed or separated from

the card. The box of candy and additional bars of candy are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondent sells and distributes and has sold and distributed various assortments of candy along with push cards involving a lot or chance feature but such assortments are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said products expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to, and places in the hands of, others the means of conducting lotteries in the sale of his products in accordance with the sales plans hereinabove set forth. The use by respondent of said sales plans or methods in the sale of his products and the sale of said products by and through the use thereof and by the aid of said sales plans or methods is a practice of a sort which is contrary to an established public policy of the Government of the United States and in violation of the criminal laws.

PAR. 4. The sale of candy and salted peanuts to the purchasing public by the methods and plans hereinabove set forth involves a game of chance or the sale of a chance to procure bags of peanuts at prices which are much less than the normal retail price thereof or additional pieces or boxes of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy and other products in competition with respondent, as above found, are unwilling to adopt and use said methods or any method involving a game of chance or the sale of a chance to win something by chance or any other method contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plans or methods employed by respondent in the sale and distribution of his candy and other products and the element of chance involved therein and are thereby induced to buy and sell respondent's products in preference to products of said competitors of respondent who do not use the same or equivalent methods. The use of said methods by respondent because of said game of chance has a tendency and capacity to and does unfairly divert trade 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.

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, Chester E. Thomas, individually and trading as Thomas Bros., or trading under any other name or names, his representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of candy or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others push or pull cards, pull tabs, punchboards or other lottery devices, either with assortment of merchandise or separately, which said push or pull cards, pull tabs, punchboards, or other lottery devices are to be used, or may be used in selling or distributing such candy or other merchandise to the public.

3. 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.

IN THE MATTER OF

LOUIS TALESNICK, TRADING AS HOOSIER CANDY 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 4209. Complaint, July 31, 1940—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of candy and other confectionery products, including certain assortments which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold or distributed to consumers thereof, and which included (1) 200 pieces of candy of uniform size and shape, together with push card for use in sale and distribution of said candy to purchasers under a plan, and in accordance with said card's explanatory legend, by which customer-purchaser received for penny paid one or more pieces, in accordance with success or failure in securing certain numbers concealed in card; and (2) assortments or products with other push cards for use in sale and distribution of its candy by means of game of chance, gift enterprise, or lottery scheme similar to that above described and varying therefrom in detail only—

Sold such assortments, as aforesaid, to wholesalers, jobbers, and retailers by whom, as direct or indirect purchasers of it, such candy was exposed and sold to purchasing public in accordance with such sales plans, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of his products in accordance with plans as above set forth, 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 the result that many persons were attracted by said sales plans or methods and by element of chance involved therein, and were thereby induced to buy and sell his said candy in preference to that of competitors who do not use same or equivalent methods, and with effect, through use of said method and because of said game of chance, of unfairly diverting trade to him from his said competitiors who do not use same 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 in commerce and unfair and deceptive acts and practices therein.

Mr. L. P. Allen, Jr., for the Commission.

COMPLAINT

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

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

PARAGRAPH 1. Respondent, Louis Talesnick, is an individual trading as Hoosier Candy Sales Co., with his principal office and place of business located at 426 South Meridian Street, Indianapolis, Ind. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of candy and other confectionery products to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products, when sold, to be transported from his aforesaid place of business in the State of Indiana 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 now, and has been for more than 1 year last past, a course of trade by respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his 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 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, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of approximately 200 pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card has 150 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 from the said card corresponds with any of the numbers set out in the legend at the top of the card the purchaser thereof is entitled to, and receives, additional pieces of candy without additional cost. Sales are 1 cent each and those not securing a winning number receive one piece of candy. The numbers within the said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk pushed or separated from the card. The additional

pieces of candy are thus distributed to purchasers of punches on the said card wholly by lot or chance.

The respondent furnishes and has furnished various other push cards for use in the sale and distribution of his candy by means of a game of chance, gift enterprise, or lottery scheme. Such other cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy 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 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 candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade 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, 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 July 31, 1940, issued and served its complaint in this proceeding upon respondent, Louis Talesnick, individually and trading as Hoosier Candy 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 September 5, 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 a 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, Louis Talesnick, is an individual trading as Hoosier Candy Sales Co., with his principal office and place of business located at 426 South Meridian Street, Indianapolis, Ind. The respondent is now and for more than 1 year last past has been engaged in the sale and distribution of candy and other confectionery products to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products, when sold, to be transported from his aforesaid place of business in the State of Indiana 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 now, and has been for more than 1 year last past, a course of trade by respondent in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of his 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 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, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof.

One of said assortments is hereinafter described for the purpose of showing the method used by respondent and is as follows:

This assortment consists of approximately 200 pieces of candy of uniform size and shape, together with a device commonly called a push card. The push card has 150 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 from the said card corresponds with any of the numbers set out in the legend at the top of the card the purchaser thereof is entitled to, and receives, additional pieces of candy without additional cost. Sales are 1 cent each and those not securing a winning number receive one piece of candy. The numbers within the said disks are effectively concealed from purchasers and prospective purchasers until a selection has been made and the disk pushed or separated from the card. The additional pieces of candy are thus distributed to purchasers of punches on the said card wholly by lot or chance.

The respondent furnishes and has furnished various other push cards for use in the sale and distribution of his candy by means of a game of chance, gift enterprise, or lottery scheme. Such other cards are similar to the one hereinabove described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 pieces of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with 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 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 candy and in the element of chance involved therein and are thereby induced to buy

and sell respondent's candy in preference to candy of said competitors who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade 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, 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 the material allegations of fact set forth in said complaint, and states that he waives all intervening procedure and further hearing as to said fact, 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 Talesnick, individually and trading as Hoosier Candy 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 candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others 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 or distributing such candy or other merchandise to the public.

3. 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.

IN THE MATTER OF

HOWARD DECKELBAUM, TRADING AS SUN CUT RATE STORE

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

Docket 4213. Complaint, Aug. 2, 1940—Decision, Oct. 21, 1940

Where an individual engaged in sale and distribution of various medicinal preparations, including drug-containing product variously advertised as "Harmless Prescription Capsules" and "Special Prescription Capsules," and otherwise designated as "Prescription Female Capsules—Double Strength," and as "Prescription Female Capsules—Triple Strength"; in advertisements of his said product which he disseminated and caused to be disseminated through the mails, in newspaper advertisements, circulars, other advertising literature, and in commerce and otherwise, and which were intended and likely to induce purchase thereof—

(*a*) Represented, directly and by implication, that his said preparation, designated as above set forth, constituted a competent and efficient treatment for delayed menstruation, and that it was safe and harmless, facts being his said statements and representations, used and disseminated as above, were grossly exaggerated, false, and misleading, such preparation was not a competent or efficient treatment for said purpose and was not safe or harmless by virtue of inclusion therein of drugs apiol green, ergotin, oil of savin and aloin, 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

(*b*) Failed to reveal, in said advertisements thus disseminated, facts material in the light thereof, and that use of said product, under the conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in injury to health, and might cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy might cause uterine infection and blood poisoning and other serious conditions and complications;

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 such preparation was a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, purchase by such public of his said 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. William L. Taggart, 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 Deckelbaum, trading as Sun Cut Rate Store, 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, Howard Deckelbaum, is an individual trading and doing business as Sun Cut Rate Store, with his principal office and place of business located at 817 Fourth Avenue, Huntington, W. Va.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is a drug preparation advertised as "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength."

Respondent causes its said preparation, when sold, to be transported from its place of business in the State of West Virginia 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 its said 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 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, and by various 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 respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be dissem-

inated as hereinabove set forth, by the United States mails, advertisements in newspapers, and by circulars and other advertising literature are the following:

WOMEN
DELAYED!
Use Genuine Harmless
Prescription Capsules
DON'T WAIT—START TODAY
Don't Be Discouraged

Don't be alarmed over delayed, unnatural, suppressed periods. A new discovery, Special Prescription Capsules, the fast acting, safe aid to women, acts without discomfort or inconvenience, even in obstinate cases. Ask today for Special Prescription Capsules.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated as "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength" is a competent and efficient treatment for delayed menstruation and that said preparation is safe and harmless.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or efficient treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin and aloin, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions described in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and

in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

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 in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to its said preparation, disseminated as aforesaid, has had, and now has, 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 such preparation is a safe, competent and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said preparation.

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 August 2, 1940, issued, and on August 5, 1940, served, its complaint in this proceeding upon the respondent, Howard Deckelbaum, trading as Sun Cut Rate Store, charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of the said act. On August 16, 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 fully advised in the premises, finds that this proceeding is in the interest 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 Deckelbaum, is an individual trading and doing business as Sun Cut Rate Store, with his principal office and place of business located at 817 Fourth Avenue, Huntington, W. Va.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of various medicinal preparations. Among the various preparations sold and distributed by the respondent is a drug preparation advertised as "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength." Said preparation contains the drugs apiol green, ergotin, oil of savin, and aloin.

Respondent causes his said preparation, when sold, to be transported from his place of business in the State of West Virginia 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 his said 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 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, and by various 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 respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature are the following:

WOMEN
DELAYED!
Use Genuine Harmless
Prescription Capsules
DON'T WAIT—START TODAY
Don't be Discouraged

Don't be alarmed over delayed, unnatural, suppressed periods. A new discovery, Special Prescription Capsules, the fast acting, safe aid to women, acts without discomfort or inconvenience, even in obstinate cases. Ask today for Special Prescription Capsules.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that its preparation designated as "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength" is a competent and efficient treatment for delayed menstruation and that said preparation is safe and harmless.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent, as hereinabove set forth, are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a competent or efficient treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs apiol green, ergotin, oil of savin and aloin, in quantities sufficient to cause serious and irreparable injury to health if used under the conditions described in said advertisements or under such conditions as are customary or usual.

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 in the light of such representations and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual, may result in injury to health.

Such use of said preparation may result in gastro-intestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

PAR. 7. Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause an abortion in some instances and may result in a severe toxic condition, such as hemorrhagic diarrhea, and in other instances producing a gangrenous condition of

the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

PAR. 8. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to his said preparation, disseminated as aforesaid, has had, and now has, 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 such preparation is a safe, competent, and effective treatment for delayed menstruation, and to induce, directly or indirectly, the purchase by the public of the respondent's said 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 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 its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Howard Deckelbaum, trading as Sun Cut Rate Store, or under any other name or names, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of his medicinal preparation designated as "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength," or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or any other name or names, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails, or (*b*) by any means in commerce, as commerce is defined in the Federal Trade Commis-

sion Act, which advertisement represents, directly or through inference, that said preparation is a competent or effective treatment for delayed menstruation; that said preparation is safe or harmless; or which advertisement fails to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy may cause uterine infection and blood poisoning; or

2. 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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fail to reveal that the use of said preparation may cause gastro-intestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in the case of pregnancy, may cause uterine infection and blood poisoning.

It is further ordered, That the respondent shall, within 30 days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

TRINIDAD CREAMERY COMPANY

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

Docket 4251. Complaint, Aug. 21, 1940—Decision, Oct. 21, 1940

Where a corporation engaged in the processing of butter and in the sale and distribution thereof, including certain packages which were so packed as to involve use of a game of chance, gift enterprise, or lottery scheme when sold and distributed to consumers thereof, and including (1) one-pound, individually wrapped packages sold at designated prices and containing coupons bearing one of letters making up name of product in question, for use under plan by which customer-purchaser who assembled, as thus secured, and remitted, with 25 cents in stamps, necessary coupons to spell aforesaid name received, without further cost, choice of number of listed articles of merchandise, retail value of each of which severally exceeded aforesaid amount, and (2) various other sales plans involving use of game of chance, gift enterprise, or lottery scheme similar to one above described and varying therefrom in detail only—

Sold such butter to dealer or retailer purchasers; by whom as such direct or indirect buyers, same was exposed and sold to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in sale of its said butter in accordance with such sales plans or methods, involving game of chance or sale of a chance to procure an additional article of merchandise at a 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 method 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 element of chance involved in sale of said butter as above set forth, and were thereby induced to buy and sell its said product in preference to butter offered and sold by such competitors who do not use same or equivalent methods, and with tendency and capacity thereby unfairly to divert trade to it from its competitors who do not use same or equivalent sales plans or methods in commerce between and among various States of the United States; 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. 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 Trinidad Creamery 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, Trinidad Creamery Co., is a corporation organized and doing business under the laws of the State of Colorado, with its principal office and place of business located at 328 Commercial Street, Trinidad, Colo. Respondent is now and for more than 1 year last past has been engaged in the processing of butter and in the sale and distribution thereof to dealers located in various States of the United States. It causes and has caused said butter, when sold, to be shipped or transported from its aforesaid place of business in the State of Colorado to purchasers thereof in various other States of the United States 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 butter in commerce between and among various States of the United States. In the course and conduct of said 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 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 dealers packages of its said butter, which said packages are so packed as to involve the use of a game of chance, gift enterprise, or lottery scheme when said butter is sold and distributed to the consumers thereof. Said packages of butter are sold and distributed to the purchasing public in substantially the following manner:

The name of said butter is "Colorado Gold Butter," and said butter is sold in 1-pound individually wrapped packages at designated prices. In each of said packages is placed a coupon bearing, among other things, one of the letters contained in said name. Persons successful in purchasing packages of said butter containing coupons bearing the necessary letters for the spelling of said name may submit said letters, together with 25 cents in stamps, to respondent, and in turn therefor will receive their choice of a number of listed articles of merchandise without further cost from respondent. Each of said listed articles of merchandise has a retail value greater than 25 cents.

The said letters on said coupons are effectively concealed from purchasers and prospective purchasers until the said packages of butter have been purchased, unwrapped, and said coupons removed therefrom. Said listed articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent in the sale and distribution of its butter has employed various sales plans or methods involving the use of games of chance, gift enterprises, or lottery schemes, but all of said sales plans or methods were similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's butter 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 a means of conducting lotteries in the sale of its butter in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its butter and the sale of such butter 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 butter to the purchasing public in the manner above alleged, involves a game of chance or the sale of a chance to procure an additional article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute butter in competition with respondent as above alleged are unwilling to adopt and use said method or any method involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said butter in the manner above alleged, and are thereby induced to buy and sell respondent's butter in preference to butter 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 to respondent from its competitors who do not use the same or equivalent sales plans or methods in commerce between and among various States of the United States. At a result thereof, substantial injury is being and has been done by respondent to competition in commerce between and among various States of the United States.

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 respond-

ent'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 21, 1940, issued and thereafter served its complaint in this proceeding upon respondent, Trinidad Creamery 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 October 1, 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 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, Trinidad Creamery Co., is a corporation organized and doing business under the laws of the State of Colorado, with its principal office and place of business located at 328 Commercial Street, Trinidad, Colo. Respondent is now and for more than one year last past has been engaged in the processing of butter and in the sale and distribution thereof to dealers located in various States of the United States. It causes and has caused said butter, when sold, to be shipped or transported from its aforesaid place of business in the State of Colorado to purchasers thereof in various other States of the United States 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 butter in commerce between and among various States of the United States. In the course and conduct of said 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 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 dealers pack-

ages of its said butter, which said packages are so packed as to involve the use of a game of chance, gift enterprise, or lottery scheme when said butter is sold and distributed to the consumers thereof. Said packages of butter are sold and distributed to the purchasing public in substantially the following manner:

The name of said butter is "Colorado Gold Butter," and said butter is sold in 1 pound individually wrapped packages at designated prices. In each of said packages is placed a coupon bearing, among other things, one of the letters contained in said name. Persons successful in purchasing packages of said butter containing coupons bearing the necessary letters for the spelling of said name may submit said letters, together with 25 cents in stamps, to respondent, and in turn therefor will receive their choice of a number of listed articles of merchandise without further cost from respondent. Each of said listed articles of merchandise has a retail value greater than 25 cents. The said letters on said coupons are effectively concealed from purchasers and prospective purchasers until the said packages of butter have been purchased, unwrapped, and said coupons removed therefrom. Said listed articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent in the sale and distribution of its butter has employed various sales plans or methods involving the use of games of chance, gift enterprises or lottery schemes, but all of said sales plans or methods were similar to the one hereinabove described, varying only in detail.

PAR. 3. Retail dealers who purchase respondent's butter 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 a means of conducting lotteries in the sale of its butter in accordance with the sales plans or methods hereinabove set forth. The use by respondent of said methods in the sale of its butter and the sale of such butter 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 butter to the purchasing public in the manner above found involves a game of chance or the sale of a chance to procure an additional article of merchandise at a price much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute butter in competition with respondent as above found are unwilling to adopt and use said method or any

method involving the use of a game of chance or the sale of a chance to win something by chance, or any other method that is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said methods and by the element of chance involved in the sale of said butter in the manner above found, and are thereby induced to buy and sell respondent's butter in preference to butter 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 to respondent from its competitors who do not use the same or equivalent sales plans or methods in commerce between and among various States of the United States. As a result thereof, substantial injury is being, and has been done by, respondent to competition in commerce between and among 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 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, Trinidad Creamery 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 butter 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 butter or any other merchandise so packed and assembled that sales of said butter or other merchandise are to be made or may be made by means of a lottery, gaming device, or gift enterprise.

2. Supplying to or placing in the hands of others packages of butter containing coupons which said coupons are to be used or may be used in the distribution of other butter to the public by means of a lottery, game of chance, or gift enterprise.

3. Supplying to or placing in the hands of others any merchandise, together with any device or separately, which said device is to be or may be used in the distribution of merchandise to the public by means of a lottery, game of chance, or gift enterprise.

4. Selling or otherwise distributing merchandise by means of a lottery, game of chance, or gift enterprise.

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

ROBERT R. RAYNOR, TRADING AS SOUTHERN 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 4297. Complaint, Aug. 30, 1940—Decision, Oct. 21, 1940

Where an individual engaged in manufacture of candy, and in sale and distribution of certain assortments thereof which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) 37 candy bars of uniform size and shape, together with push card for use in sale and distribution of said candy under a plan in accordance with which purchaser paid from 1 to 5 cents for candy in question, in accordance with particular number secured by chance from card, and person pushing last disk received extra bar without additional cost, and (2) assortments with various other push cards for use in sale and distribution of his said product by means of game of chance, gift enterprise, or lottery scheme similar to that above described and varying therefrom in detail only—

Sold such assortments to wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, assortments in question were exposed and sold to purchasing public in accordance with sales plan aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of his said products, in accordance with such plan involving game of chance or sale of a chance to procure candy bars at prices much less than normal retail prices thereof, or additional bars 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 the result that many persons were attracted by said sales plan or method employed by him in sale and distribution of his said candy and by element of chance involved therein, and were thereby induced to buy and sell his said product in preference to that of competitors 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 him from his said competitors who do not use same or equivalent methods:

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.

Mr. J. W. Wilson, of Dunn, N. 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 Robert R. Raynor, individually and trading as Southern Sales Co., hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Robert R. Raynor is an individual trading as Southern Sales Co., with his office and principal place of business located at Dunn, N. C. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondent causes, and has caused, said products when sold to be transported from his place of business in the city of Dunn, N. C., to purchasers thereof at their respective points of location in various States of the United States other than North Carolina. There is now, and for more than 1 year last past has been, a course of trade by respondent in said candy in commerce between and among various States of the United States. 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 candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games or chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 37 bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 36 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4, and 5 pay 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents, respectively. The purchaser pushing the last disk on the said card receives an extra bar of candy without additional cost. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of his 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, directly or indirectly, purchase respondent's said candy expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof or additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy 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 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 candy and in the element of chance involved therein, and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said 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 various States of the United States 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 various States of the United States.

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 30, 1940, issued and served

its complaint in this proceeding upon respondent Robert R. Raynor, individually and trading as Southern 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 September 11, 1940, the respondent filed his answer, in which answer he admitted all the material allegations of fact set forth in said complaint. The respondent has 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 at to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Robert R. Raynor, is an individual trading as Southern Sales Co., with his office and principal place of business located at Dunn, N. C. Respondent is now, and for more than 1 year last past has been, engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondent causes, and has caused, said products when sold to be transported from his place of business in the city of Dunn, N. C., to purchasers thereof at their respective points of location in various States of the United States other than North Carolina. There is now, and for more than 1 year last past has been, a course of trade by respondent in said candy in commerce between and among various States of the United States. 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 candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of his business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of 37 bars of candy of uniform size and shape, together with a device commonly called a push card. The

said push card has 36 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4, and 5 pay 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents, respectively. The purchaser pushing the last disk on the said card receives an extra bar of candy without additional cost. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of his 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, directly or indirectly, purchase respondent's said candy expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of his products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of his 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof or additional bars of candy without additional cost. Many persons, firms, and corporations who sell and distribute candy in competition with 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 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 candy and in the element of chance involved therein, and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said method by respondent because of said game of chance has a tendency and capacity to, and does, unfairly divert trade in com-

merce between and among various States of the United States to respondent from his said competitors who do not use the same or equivalent methods.

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 fact, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Robert R. Raynor, individually and trading as Southern 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 candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others 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 or distributing such candy or other merchandise to the public.

3. 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.

IN THE MATTER OF

THE FAIRFACTS COMPANY

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

Docket 2327. Complaint, Mar. 13, 1935—Decision, Oct. 23, 1940

Where a corporation engaged in sale and distribution of recessed china bathroom accessories and related products, to various contractors, retailers, and purchasers located in other States, in competition with others engaged in manufacture, sale, and distribution of similar products in commerce among the various States, and including those who manufacture such accessories and products and truthfully represent themselves as so doing to purchasing public—

Represented itself as a manufacturer, and displayed such designation on all of its stationery, billheads, invoices, and other printed matter, and in classified telephone directory advertising described itself as "Manufacturers," notwithstanding fact it did not own and operate or directly and absolutely control any pottery or plant wherein such products were produced or made, and it was not such a manufacturer, from whom a substantial portion of buyers of such accessories and related products, including contractors and retail dealers who purchase such bathroom fixtures, prefer to buy, rather than from jobbers or wholesalers, due to fact that standard grade of fixtures may not be had from jobbers or nonmanufacturing sellers, and commodity advertised, when not made by such jobbers or dealers, may not be obtainable therefrom in event of breakage;

With effect of misleading and deceiving retailers into erroneous and mistaken belief that products offered and sold by it were by it made, or that it was a manufacturer and not a seller and distributor of recessed china bathroom accessories and related products made by some other concern, and with result that some of aforesaid dealers and purchasers, who prefer to buy from such manufacturers, as above set forth, products in question, purchased same of it, representing itself, as aforesaid, as manufacturer, believing it to be maker of products sold and distributed by it, and substantial volume of commodity in question was purchased of it by consuming public, and trade was diverted unfairly to it from those engaged in sale of such accessories and related products who manufacture same and truthfully represent themselves as such manufacturers; to the substantial injury of competition in commerce:

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

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

Mr. Morton Nesmith, 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 Fairfacts Co., a corporation, has been or is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. That respondent, the Fairfacts Co., is a corporation organized under and by virtue of the laws of the State of New York, with its principal office and place of business located in the city of Trenton, N. J. Said respondent is engaged in the sale and transportation of recessed china bathroom accessories between and among the different States of the United States. The respondent, in the course and conduct of its business, as aforesaid, has caused and still causes the articles in which it deals to be transported from its said place of business in the State of New Jersey into and through the other States of the United States and in the District of Columbia to various contractors, retailers, and purchasers. Said respondent is in competition with other individuals, partnerships, and corporations engaged in the manufacture, sale, and transportation of china bathroom accessories and recessed china bathroom accessories in commerce between and among the different States of the United States.

PAR. 2. That the respondent, in the course and conduct of its business, as aforesaid, stated and represented in its price lists, catalogs, advertisements, and advertising matter circulated in interstate commerce among customers and prospective customers, that it was a manufacturer of china bathroom accessories. Said representations made by respondent are false and misleading and have the tendency and capacity to mislead and deceive the purchasers of respondent's products into the belief that when purchasing from respondent they are dealing with the manufacturer of the products purchased and thereby are gaining an advantage by saving the middleman's profits. The said false representations also have the capacity and tendency unfairly to divert and do divert trade to the respondent from its competitors.

PAR. 3. In truth and in fact, respondent, the Fairfacts Co., is not a manufacturer of china bathroom accessories or recessed china bathroom accessories, nor does it own, operate, or control any factory wherein the products which it sells and distributes in interstate commerce, as aforesaid, are made, manufactured, or fabricated.

PAR. 4. There are among the competitors of the respondent many persons, firms, and corporations who manufacture china bathroom accessories and recessed china bathroom accessories, and sell and distribute the same in interstate commerce and who truthfully hold themselves out as manufacturers; there are also among the competitors of the respondent many persons, firms, and corporations who do not manufacture china bathroom accessories and recessed china bathroom accessories, but who purchase said products from certain manufacturers and resell same in interstate commerce, which last-named distributors and wholesalers do not hold themselves out as manufacturers. Both of said classes of competitors sell their products in interstate commerce.

PAR. 5. The above alleged acts and things done by the respondent are all to the injury and prejudice of the public and of the competitors of respondent 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 the 13th day of March 1935, issued and subsequently served its complaint in this proceeding upon respondent, The Fairfacts Co., a corporation, charging it with the use of unfair methods in competition in commerce. After the issuance of said complaint (the respondent filed no answer thereto), testimony and other evidence in support of the allegations of said complaint were introduced by Morton Nesmith, attorney for the Commission, and in opposition to the allegations of the complaint by W. L. Hart, vice president of the respondent corporation, before Robert S. Hall and John W. Addison, 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 the complaint, testimony and other evidence, brief in support of the complaint (respondent not having filed brief, and oral argument not having been requested), and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Fairfacts Company, is a New York corporation with its principal office and place of business located in Trenton, N. J. It is engaged in the sale and distribution of recessed china bathroom accessories and related products. In the course and conduct of its business, respondent has caused recessed china bathroom accessories and related products to be transported from its place of business in New Jersey into and through the other States of the United States and in the District of Columbia to various contractors, retailers, and purchasers located in States other than New Jersey. It is in competition with individuals, partnerships, and other corporations, engaged in the manufacture, sale, and distribution of similar products in commerce, among and between the various States of the United States.

PAR. 2. The respondent, The Fairfacts Co., has represented itself to be a manufacturer as far back as May 1939, and the designation "manufacturer" appeared on all of its stationery, bill heads, invoices, and other printed matter, as far back as May 1929. Typical of the advertisement used by the respondent in a classified telephone directory the following appears in large, bold black type:

BATHROOM ACCESSORIES—CHINA—MANUFACTURES

Fairfacts Company, The, 2324 W. 14th Street.

Prior to the issuance of the complaint herein, the respondent The Fairfacts Co. was not a manufacturer of recessed china bathroom accessories and related products, nor did it own and operate or directly and absolutely control any pottery or plant wherein such products were produced or manufactured.

PAR. 3. There are competitors of the respondent who sell and distribute in commerce among and between the various States of the United States recessed china bathroom accessories and related products which they manufacture and who truthfully represent to the purchasing public that they manufacture said products.

PAR. 4. A substantial portion of the purchasers of recessed china bathroom accessories and related products, including contractors and retail dealers who purchase fixtures incident to bathrooms such as the respondent sells and transports in commerce as herein described, prefer to purchase from manufacturers of such commodities rather than to purchase from jobbers or wholesalers, because when such purchases may be made from jobbers or sellers who are not manufacturers, a standard grade of fixtures may not be had, and such jobbers or dealers who are not the manufacturers of the articles advertised

might not be able to supply such purchasers and dealers the commodity in the event of breakage. Some of such dealers and purchasers have purchased the products sold and distributed by respondent, representing itself to be the manufacturer as stated herein, believing the respondent to be the manufacturer of the products sold and distributed.

PAR. 5. The use by the respondent of the acts and practices set forth herein has the capacity and tendency to, and does, mislead and deceive retail dealers and members of the purchasing public into the erroneous and mistaken belief that the products offered for sale and sold by the respondent are manufactured by the respondent or that the respondent is a manufacturer and not a seller and distributor of recessed china bathroom accessories and related products manufactured by some other corporation, firm or person.

PAR. 6. It is further found that as the direct consequence of the erroneous and mistaken belief induced by respondent in advertising and representing itself to be the manufacturer of the commodity sold and distributed, a substantial volume is purchased by the consuming public and trade has been diverted unfairly to respondent from corporations, individuals, firms, and partnerships also engaged in the business of selling recessed china bathroom accessories and related products, who manufacture such products and who truthfully represent that they are the manufacturers thereof. As a result thereof, substantial injury has been done by respondent to competition in commerce 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 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 Robert S. Hall and John W. Addison, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by Morton Nesmith for the Commission (the respondent not having filed brief, and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclu-

sion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Fairfacts 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 bathroom fixtures 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 "manufacturers" or through the use of any word or terms of similar import or meaning, or through any means or device or in any manner, that respondent is the manufacturer of the products sold by it, unless and until respondent actually owns and operates, or directly and absolutely controls a manufacturing plant wherein said products are manufactured by it.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, forward to 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

DIXIE CANDY COMPANY, INC.

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

Docket 4255. Complaint, Aug. 22, 1940. Decision, Oct. 23, 1940

Where a corporation engaged in the manufacture of candy, and in sale an distribution of certain assortments thereof which were so packed and as sembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) number of bars of uniform size and shape, together with push card for use in sale and distribution of said candy under a plan, in accordance with which purchasers paid for such bars amounts ranging from 1 to 5 cents, in accordance with their success or failure in securing by chance certain numbers concealed in card, and (2) assortments with various other push cards for use in sale and distribution of its said candy by means of game of chance, gift enterprise, or lottery scheme, similar to that above described and varying therefrom in detail only—

Sold such assortments to wholesalers, jobbers, and retailers, by whom, as direct or indirect retailer-purchasers thereof, assortments in question were exposed and sold to purchasing public in accordance with sales plans aforesaid, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of its products in accordance with such plans, involving game of chance or sale of a chance to procure bars of candy at prices 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 the result that many persons were attracted by said sales plan or method employed by it in sale and distribution of its candy and element of chance involved therein, and were thereby induced to buy and sell its said candy in preference to that of competitors 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 it from its said competitors who do not use same or equivalent methods:

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

Mr. L. P. Allen, Jr., for the Commission.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Dixie Candy Co., Inc.,

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

PARAGRAPH 1. Respondent, Dixie Candy Co., Inc., is a corporation, organized and existing under the laws of the State of North Carolina with its principal office and place of business located at 732 East Seventh Street, Charlotte, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products when sold to be transported from its place of business in the city of Charlotte, N. C., to purchasers thereof, at their respective points of location, in various States of the United States other than North Carolina. There is now and for more than 1 year last past, has been a course of trade by respondent in said candy in said commerce between and among various States of the United States. In the course and conduct of its said business respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 40 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4, and 5 pay 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents, respectively. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof. 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 respondent in the sale and distribution of its candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said 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 various States of the United States 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 various States of the United States.

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 22, 1940, issued and on August 23, 1940, served its complaint in this proceeding upon respondent, Dixie Candy Co., Inc., a corporation, charging it 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 respondent's answer, the Commission, by order entered herein, granted respondent's request for permission to withdraw said answer and to substitute in lieu thereof 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent, Dixie Candy Co., Inc., is a corporation, organized and existing under the laws of the State of North Carolina with its principal office and place of business located at 732 East Seventh Street, Charlotte, N. C. Respondent is now and for more than 1 year last past has been engaged in the manufacture and in the sale and distribution of candy to wholesale dealers, jobbers, and retail dealers. Respondent causes and has caused said products when sold to be transported from its place of business in the city of Charlotte, N. C., to purchasers thereof, at their respective points of location, in various States of the United States other than North Carolina. There is now and for more than 1 year last past has been a course of trade by respondent in said candy in said commerce between and among various States of the United States. In the course and conduct of its said business respondent is and has been in competition with other corporations and with partnerships and individuals engaged in the sale and distribution of candy in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business, as described in paragraph 1 hereof, respondent sells and has sold to wholesale dealers, jobbers, and retail dealers certain assortments of candy so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondent, and is as follows:

This assortment is composed of a number of bars of candy of uniform size and shape, together with a device commonly called a push card. The said push card has 40 partially perforated disks, on the face of which is printed the word "Push." Concealed within the said disks are numbers ranging from 1 to 5, inclusive. When the disks are pushed or separated from the card a number is disclosed. Purchasers punching numbers 1, 2, 3, 4, and 5 pay 1 cent, 2 cents, 3 cents, 4 cents, and 5 cents, respectively. The numbers are effectively concealed from purchasers and prospective purchasers until the disks are pushed or separated from the card. The prices of said bars of candy are thus determined wholly by lot or chance.

The respondent furnishes, and has furnished, various push cards for use in the sale and distribution of its candy by means of a game of chance, gift enterprise, or lottery scheme. Such cards are similar to the one herein described and vary only in detail.

PAR. 3. Retail dealers who directly or indirectly purchase respondent's said candy, expose and sell the same to the purchasing public in accordance with the sales plan aforesaid. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its products in accordance with the sales plan hereinabove set forth. The use by respondent of said sales plan or method in the sale of its 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 or plan hereinabove set forth involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail price thereof. Many persons, firms, and corporations who sell and distribute candy in competition with 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 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 candy and in the element of chance involved therein and are thereby induced to buy and sell respondent's candy in preference to candy of said competitors of respondent who do not use the same or equivalent methods. The use of said 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 various States of the United States to respondent from its said competitors who do not use the same or equivalent methods.

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 hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Dixie Candy 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 candy or any other merchandise in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the general public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others 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 or distributing such candy or other merchandise to the public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER OF

RENE P. BALDITT, TRADING AS CLITO COMPANY

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

Docket 4262. Complaint, Aug. 23, 1940—Decision, Oct. 23, 1940

Where an individual engaged, as "Clito Company," in sale and distribution of two drug preparations advertised under name "Clito," and designated respectively as "Clito Emmenagogue Capsules" and "Rayo De Sol"; in advertisements of his said preparations which he disseminated and caused to be disseminated through the mails and by various other means in commerce, through advertisements in newspapers and by circulars and other advertising literature, and otherwise—

(*a*) Represented, directly and by implication, that his said product designated as "Clito," and also as "Clito Emmenagogue Capsules," was a competent and effective treatment for delayed menstruation, and was safe and harmless, facts being said preparation was not a competent or efficient treatment for such condition, and was not safe or harmless, in that it contained apiol and various other drugs in quantities sufficient to cause serious and irreparable injury to health if used under conditions described in said advertisements or under such conditions as are customary and usual, and might result in gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs and, in case of pregnancy, might cause uterine infection and blood poisoning and other serious conditions, resulting, in some instances, in serious and irreparable loss and injury to health;

(*b*) Represented that said "Rayo De Sol" was a competent and efficient cure for cataracts, cloudiness of vision, or film carnosity, ulcers, and inflammation of the eyes, and possessed therapeutic value in the treatment of such conditions, facts being said "Rayo De Sol" was not a competent and efficient cure for conditions above set forth, and had no value in treatment thereof; and

(*c*) Failed to reveal in said advertisements facts material in the light of such representations, and that use of said "Clito Emmenagogue Capsules," under conditions prescribed in such advertisements or under such conditions as are customary or usual, might result in serious and irreparable injury to health;

With capacity and tendency to mislead and deceive substantial portion of purchasing public into erroneous and mistaken belief that said false, misleading, and deceptive statements, representations, and advertisements were true, and that said preparation designated as "Clito Emmenagogue Capsules" was a safe, competent, and effective treatment for delayed menstruation, and that said preparation designated as "Rayo De Sol" was a competent and efficient treatment and cure for aforesaid conditions of the eyes, and to induce purchase by the public of his said preparations:

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

Mr. R. P. Bellinger, for the Commission.

Mr. 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 Rene P. Balditt, trading as Clito 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, Rene P. Balditt, is an individual trading and doing business as Clito Co., with his principal office and place of business located at 325 North Frio Street, San Antonio, Tex.

PAR. 2. Respondent is now, and for some time past has been, engaged in the sale and distribution of two drug preparations advertised under the name "Clito," and designated respectively as "Clito Emmenagogue Capsules" and as "Rayo De Sol."

Respondent causes his said preparations, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in the various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of, false advertisements concerning his said preparations, by United States mails, and by various 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 respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, are the following:

SENORAS CASADAS

Periodo irregular o suspendido hasta por tres messes aliviado immediatamente con !! CLITO !! Solo unas cuantas dosis y el resultado viene. No tiene riesgo

ni se interpone con su trabajo. Quitese esa duda. Ordene este remedio hoy mismo! FUERZA ENTERA, $2.35—MUY EFFECTIVO para casos largos y obstinados $5. Tratamiento completo. Remita valor o pidalo C. O. D. a Clito Company, P. O. Box 1294—Dept. P, San Antonio, Tex.

The English translation of the above advertisement is as follow:

MARRIED WOMEN

Irregular period or period suspended for as much as three months, relieved immediately with CLITO! Only a few doses for results. There is no risk and it does not interfere with your work. Get rid of that doubt. Order this remedy this very day. Full strength $2.35. Very effective for long-standing and obstinate cases $5.00. Complete treatment. Send money or order it C. O. D. of Clito Company, P. O. Box 1294, Dept. P, San Antonio, Texas.

No vaya a Quedar Ciego!

"RAYO DE SOL." Tratamiento para combatir cataratas o NUBLAZON de la vista o nubes, carnosidades, ulceras o inflamaciones de los ojos. Miles de personas sanadas.

NUEVO PRECIO: $1.35
Mande valor o pidalo C. O. D. a
CLITO CO.—Box 1294
San Antonio, Texas

The English translation of the above advertisement is as follows:

DON'T BECOME BLIND!

"RAYO DE SOL," a treatment to combat cataracts, CLOUDINESS of vision, or film, carnosity, ulcers or inflammation of the eyes. Thousands of persons cured.

NEW PRICE: $1.35
Send the amount or order it C. O. D. from
CLITO CO.—Box 1294
San Antonio, Texas

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that his preparation designated as "Clito," also designated as "Clito Emmenagogue Capsules," is a competent and effective treatment for delayed menstruation and that said preparation is safe and harmless, and that the preparation designated as "Rayo De Sol" is a competent and efficient cure for cataracts, cloudiness of vision, or film carnosity, ulcers, and inflammation of the eyes and possesses therapeutic value in the treatment of such conditions.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation designated as "Clito Emmenagogue Capsules" is not a competent or efficient treatment for delayed menstruation. More-

over, said preparation is not safe or harmless, in that it contains the drugs, apiol, ext. cotton root bark, ext. viburnum prunifolium, ext. pulsatilla, ext. sumbul and ext. helonias, in quantities sufficient to cause serious and irreparable injury to health, if used under the conditions described in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxic conditions such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

In truth and in fact, respondent's preparation "Rayo de Sol" is not a competent and efficient cure for cataracts, cloudiness of vision, or film carnosity, ulcers, and inflammation of the eyes and said preparation has no value in the treatment of such conditions.

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 of the preparation designated as "Clito Emmenagogue Capsules," failed to reveal facts material in the light of such representations and failed to reveal that the use of such preparation under the conditions prescribed in such advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to his said preparations, disseminated as aforesaid, has had, and now has, 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 that the preparation designated as "Clito Emmenagogue Capsules," is a safe, competent, and effective treatment for delayed menstruation, and that the preparation designated as "Rayo De Sol" is a competent and effi-

cient treatment and cure for cataracts, cloudiness of vision, or film carnosity, ulcers, and inflammation of the eyes, and to induce purchase by the public of the respondent's said preparations.

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 August 23, 1940, issued, and on August 28, 1940, served its complaint in this proceeding upon respondent, Rene P. Balditt, an individual trading as Clito Co., charging him with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 10, 1940, 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, Rene P. Balditt, is an individual trading and doing business as Clito Co., with his principal office and place of business located at 325 North Frio Street, San Antonio, Tex.

PAR. 2. Respondent is now, and for some time past has been, engaged in the sale and distribution of two drug preparations advertised under the name "Clito," and designated respectively as "Clito Emmenagogue Capsules," and as "Rayo De Sol."

Respondent causes his said preparations, when sold, to be transported from his place of business in the State of Texas to purchasers thereof located in the various States of the United States. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said preparation in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of his aforesaid business, the respondent has disseminated and is now disseminating, and has caused, and is now causing, the dissemination of, false advertisements concerning his said preparations, by United States mails, and

by various 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 respondent has also disseminated, and is now disseminating, and has caused, and is now causing, the dissemination of false advertisements concerning his said preparations by various means, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of his said preparations in commerce, as commerce is defined in the Federal Trade Commission Act. Among and typical of the false, misleading, and deceptive statements and representations contained in said false advertisements disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by advertisements in newspapers, and by circulars and other advertising literature, as the following:

SENORAS CASADAS

Periodo irregular o suspendido hasta por tres meses, aliviado immediatamente con !! CLITO !! Solo unas cuantas dosis y el resultado viene. No tiene riesgo ni se interpone con su trabajo. Quitese esa duda. Ordene este remedio hoy mismo] FUERZA ENTERA, $2.35—MUY EFECTIVO para casos largos y obstinados $5, Tratamiento completo. Remita valor o pidalo C. O. D. a Clito Company, P. O. Box 1294—Dept. P—San Antonio, Tex.

The English translation of the above advertisement is as follows:

MARRIED WOMEN

Irregular period or period suspended for as much as three months, relieved immediately with CLITO! Only a few doses for results. There is no risk and it does not interfere with your work. Get rid of that doubt. Order this remedy this very day. Full strength, $2.35. Very effective, for long-standing and obstinate cases $5.00. Complete treatment. Send money or order it C. O. D. of Clito Company, P. O. Box 1294, Dept. P, San Antonio, Texas.

No Vaya a Quedar Ciego!

"RAYO DE SOL." Tratamiento para combatir cataratas o NUBLAZON de la vista o nubes, carnosidades, ulceras o inflamaciones de los ojos. Miles de personas sanadas.

NUEVO PRECIO: $1.35
Mande valor o pidalo C. O. D. a
CLITO CO.—Box 1294
San Antonio, Texas.

The English translation of the above advertisement is as follows:

DON'T BECOME BLIND!

"RAYO DE SOL," a treatment to combat cataracts, CLOUDINESS of vision, or film, carnosity, ulcers or inflammation of the eyes. Thousands of persons cured.

NEW PRICE: $1.35
Send the amount or order it C. O. D. from
CLITO CO.—Box 1294
San Antonio, Texas.

PAR. 4. Through the use of the statements and representations hereinabove set forth, and others similar thereto not specifically set out herein, the respondent has represented, directly and by implication, that his preparation designated as "Clito," also designated as "Clito Emmenagogue Capsules" is a competent and effective treatment for delayed menstruation and that said preparation is safe and harmless, and that the preparation designated as "Rayo De Sol" is a competent and efficient cure for cataracts, cloudiness of vision, or film carnosity, ulcers, and inflammation of the eyes and possesses therapeutic value in the treatment of such conditions.

PAR. 5. The aforesaid statements and representations used and disseminated by the respondent as hereinabove set forth are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation designated as "Clito Emmenagogue Capsules" is not a competent or efficient treatment for delayed menstruation. Moreover, said preparation is not safe or harmless, in that it contains the drugs, apiol, ext. cotton root bark, ext. viburnum prunifolium, ext. pulsatilla, ext. sumbul, and ext. helonias, in quantities sufficient to cause serious and irreparable injury to health, if used under the conditions described in said advertisements or under such conditions as are customary or usual.

Such use of said preparation may result in gastro-intestinal disturbances, catharsis, nausea and vomiting, with pelvic congestion, congestion of the uterus, leading to excessive uterine hemorrhage, and in those cases where said preparation is used to interfere with the normal course of pregnancy, such use may result in uterine infection with extension to other pelvic and abdominal structures and even to the blood stream, causing the condition known as septicemia or blood poisoning.

Such use of said preparation may also produce a severe circulatory condition by the congestion of the blood vessels, contraction of the involuntary muscles, often with poisonous effect upon the human system, and tending to cause abortion in some instances, and may result in severe toxis conditions, such as hemorrhagic diarrhea and in some instances producing a gangrenous condition of the lower limbs, resulting either in possible loss of limbs or in other serious and irreparable injury to health.

In truth and in fact, respondent's preparation "Rayo De Sol" is not a competent and efficient cure for cataracts, cloudiness of vision, or film carnosity, ulcers, and inflammation of the eyes and said preparation has no value in the treatment of such conditions.

PAR. 6. In addition to the representations hereinabove set forth, the respondent has also engaged in the dissemination of false ad-

vertisements in the manner above set forth, in that said advertisements of the preparation designated as "Clito Emmenagogue Capsules," failed to reveal facts material in the light of such representations and failed to reveal that the use of such preparation under the conditions prescribed in such advertisements or under such conditions as are customary or usual, may result in serious and irreparable injury to health.

PAR. 7. The use by the respondent of the aforesaid false, misleading, and deceptive statements and representations with respect to his said preparations, disseminated as aforesaid, has had, and now has, 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 that the preparation designated as "Clito Emmenagogue Capsules," is a safe, competent, and effective treatment for delayed menstruation, and that the preparation designated as "Rayo De Sol" is a competent and efficient treatment and cure for cataracts, cloudiness of vision, or film carnosity, ulcers, and inflammation of the eyes, and to induce purchase by the public of the respondent's said 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 he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Rene P. Balditt, an individual, trading as Clito Co., or trading under any other name or names, his agents, representatives, servants, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of his drug preparations advertised under the name "Clito," and designated respectively as "Clito Emmenagogue Capsules" and as "Rayo De Sol," or of any other prep-

arations composed of substantially similar ingredients or possessing substantially the same properties, whether sold under the same names or under any other name or names, do forthwith cease and desist from, directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of United States mails, or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation, designated as "Clito Emmenagogue Capsules," is a safe, competent, or effective treatment for delayed menstruation; or which advertisement represents, directly or through inference, that said preparation, designated as "Rayo De Sol," is a cure or remedy for cataracts, cloudiness of vision, film carnosity, ulcers, and inflammation of the eyes, or has any value in the treatment of such conditions; or which advertisement of "Clito Emmenagogue Capsules" fails to reveal that the use of said preparation may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy, may cause uterine infection and blood poisoning.

2. 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, "Clito Emmanagogue Capsules" and "Rayo De Sol," which advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement of "Clito Emmenagogue Capsules" fails to reveal that the use of said preparation may cause gastrointestinal disturbances and excessive congestion and hemorrhage of the pelvic organs, and in case of pregnancy may cause uterine infection and blood poisoning.

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

IN THE MATTER OF

MAF HAT WORKS, INC., ALSO TRADING AS NEW SYSTEM HAT MANUFACTURING COMPANY, AND ALEX MILDER

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

Docket 1897. Complaint, Oct. 13, 1939[1]*—Decision, Nov. 1, 1940*

Where a corporation and an individual, who was its president and had long managed, controlled, and dominated its affairs and activities, engaged in manufacture of hats from hat bodies and other materials obtained from old, worn, and previously used hats purchased by them, and in cleaning, steaming, ironing, and shaping said articles, and fitting same with new trimmings, sweat bands, and size labels, so that, after having been thus processed and treated, said products had appearance of new hats made from hat bodies which had never been used or worn—

Sold said hats, with appearance aforesaid, and with no marking or designation stamped thereon to indicate to purchasing public that they were in fact made from old, worn, and previously used hat bodies and other materials, cleaned and renovated by them as above set forth, and with no designation in billing or invoicing thereof to disclose kind or type of materials from which made, to jobbers, wholesalers, and retailers who resold to purchasing public said articles, without disclosure of fact that they were made of old hat bodies which had been previously worn and then cleaned and renovated, and under such circumstances that purchasers were led to believe that they were in fact new products made from new materials, and failed, through use of phrase "Made Over Hat" immediately following words "None Better Jay Bee $5 Special" and other similar names or words made use of in designating their merchandise and embossed on sweat bands attached to articles in question, to disclose to purchasers that products in question were made from old, worn, and previously used bodies, as distinguished from products made from shopworn hat bodies never used, by hat manufacturers in accordance with practically same process as they employed in manufacture of hats from old, worn, and previously used hat bodies;

With effect of misleading and deceiving substantial number of wholesale dealers, jobbers, retailers, and members of purchasing public into erroneous and mistaken belief that said products were made from either new and unused materials or from new, but shop-worn bodies, and into purchase of a substantial number thereof because of such belief, and with result, as direct consequence of such belief induced by them, that number of consuming public purchased substantial volume of their products, nature of which, as not made entirely from new materials, would not be disclosed by hat purchaser's casual examination, and trade was diverted unfairly to them from those engaged in sale of hats made from old, worn, and previously used hat bodies and other materials, and manufacturers who make hats from new materials; to the substantial injury of competition in commerce:

[1] Amended and supplemental.

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

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

Mr. Robert Mathis, Jr., for the Commission.

Mr. Alex Milder, of Newark, N. J., for respondents.

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 Maf Hat Works, Inc., a corporation, trading under its own name and also trading as New System Hat Manufacturing Company, and Alex Milder, individually and as an officer of Maf Hat Works, Inc., hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent Maf Hat Works, 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. Respondent Alex Milder is an individual and is president of respondent Maf Hat Works, Inc., and has been such president continuously since on or about June 1931, and as such officer manages, controls, and dominates its corporate affairs and activities with reference to the unfair methods of competition and unfair and deceptive acts and practices herein alleged. Respondent Maf Hat Works, Inc., a corporation, trading under its own name and also trading as New System Hat Manufacturing Co., and respondent Alex Milder, individually and as an officer of Maf Hat Works, Inc., are now, and for more than 7 years last past and during said time have been, engaged in the business of manufacturing hats and caps from hat bodies and other materials obtained from old, worn, and previously used hats and of selling same to retailers, jobbers, and wholesalers, located in various States of the United States and in the District of Columbia. Said respondents have their office and principal place of business at 102 Murray Street in the city of Newark, State of New Jersey. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said hats and caps, as described above, in commerce among and

between 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 and caps to be transported from their place of business in the city of Newark, State of New Jersey, to the purchasers thereof, at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia.

PAR. 2. In the course and conduct of their said business respondents are, and have been at all times referred to herein, in competition with other corporations, individuals, firms, and partnerships, also engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of hats and caps manufactured from old, worn, and previously used hat bodies and other materials, and manufacturers who make hats and caps from new materials.

PAR. 3. In the course and conduct of said business, as herein described, respondents buy old, worn, and previously used hat bodies. The old, worn, and previously used hat bodies are cleaned, steamed, ironed, and shaped by respondents and in some instances fitted with new trimmings, sweat bands, size labels, and then sold by respondents to retailers, jobbers, and wholesalers, who in turn sell said products to the purchasing public.

PAR. 4. The aforesaid old, worn, and previously used hat bodies after having been made by respondents into hats and caps with new trimmings, sweat bands and size labels, as described herein, have the appearance of new hats and caps manufactured from hat bodies which have never been used or worn, and said hats and caps are sold by respondents to wholesalers, to jobbers and to retail dealers without any marking or designation stamped thereon to indicate to the purchasing public that said hats and caps are in fact manufactured from old, worn, and previously used hat bodies and other materials which have been cleaned and renovated by respondents. Said hats and caps are sold to jobbers and wholesale dealers, and are resold by said jobbers and wholesale dealers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats and caps are manufactured from old hat bodies which have previously been worn and then cleaned and renovated and under such circumstances as to indicate that they are in fact new hats and caps.

In the course of the operation of their business respondents use the words "None Better Jay Bee $5.00 Special" 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 and caps. Immediately following the words "None Better Jay Bee $5.00 Special" or other similar terms and names used by respondents in designating said hats and caps, respondents have cause to be embossed the words "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 new felt hat bodies obtained from new but shop-worn hats, as well as from newly manufactured materials. Shop-worn hats are new hats which are 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 the same manner as hats made from old, worn, and previously used hat bodies.

By the use of the words "Made Over" in the manner aforesaid, and the failure to use words or wording clearly indicating that said hats and caps are made from old, worn, and previously used hat bodies, respondents fail to disclose to purchasers that said hats and caps are made from old, worn, and previously used hat bodies and other materials as distinguished from shop-worn hat bodies which have never been worn or used.

PAR. 5. The use by respondents of the acts and practices as 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 and caps are manufactured from either new and unused materials or are made from new but shop-worn hat bodies, and into the purchase of a substantaial number of said hats and caps because of such erroneous and mistaken beliefs.

PAR. 6. Further, as a direct consequence of the erroneous and mistaken beliefs induced by respondents, a number of the consuming public purchased, and now purchases, a substantial volume of respondents' products, and trade has been diverted unfairly to respondents from corporations, individuals, firms, and partnerships also engaged in the business of selling hats and caps manufactured from old, worn, and previously used hat bodies and other materials, and manufacturers who manufacture hats and caps from new materials, and who truthfully advertise their products. As a result thereof, substantial injury has been done and is now being done by respondents to competition in commerce 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 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 13th day of October 1939, issued and subsequently served its amended and supplemental complaint in this proceeding upon respondents, Maf Hat Works, Inc., a corporation trading under its own name and also trading as New System Hat Manufacturing Co., and Alex Milder, individually and as an officer of Maf Hat Works, Inc., 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 amended and supplemental complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of said amended and supplemental complaint were introduced by Robert Mathis, Jr., Attorney for the Commission, and in opposition to the allegations of the amended and supplemental complaint by Alex Milder, appearing for the respondents, 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 amended and supplemental complaint, the answer thereto, 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. Respondent Maf Hat Works, 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. Respondent Alex Milder is an individual and is president of respondent corporation, Maf Hat Works, Inc., and has been such president continuously since on or about June 1931 and as such officer manages, controls, and dominates its corporate affairs and activities.

Respondents, Maf Hat Works, Inc., trading under its own name and also trading as New System Hat Manufacturing Co., and Alex Milder, individually and as president of Maf Hat Works, Inc., are now and for more than 7 years last past, have been continuously engaged in the business of manufacturing hats from hat bodies and other materials obtained from old, worn, and previously used hats and of selling same to retailers, jobbers, and wholesalers located in various States of the United States and in the District of Columbia.

Said respondents have their office and principal place of business at 102 Murray Street in the city of Newark, State of New Jersey. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said hats in commerce among and between the various States of the United States, and in the District of Columbia.

Respondents cause, and for the past 7 years have caused, such hats to be transported from their place of business in the city of Newark, State of New Jersey, to the purchasers thereof at their respective points of location in various States of the United States other than the State of New Jersey, and in the District of Columbia.

PAR. 2. In the course and conduct of said business respondents are, and have been at all times referred to herein, in competition with other corporations, individuals, firms, and partnerships also engaged in the sale and distribution in commerce among and between the various States of the United States, and in the District of Columbia, of hats manufactured from old, worn, and previously used hat bodies, and other material, and manufacturers who make hats from new materials. In the course and conduct of said business as described herein, respondents buy old, worn, and previously used hat bodies, which are then cleaned, steamed, ironed, and shaped by respondents; and in some instances fitted with new trimmings, sweat bands, size labels, and then sold by respondents to retailers, jobbers, and wholesalers, 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 and size labels, have the appearance of new hats manufactured from hat bodies which have never been used or worn, and said hats are sold by respondents to wholesalers, to jobbers, and to retail dealers without any marking or designation stamped thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn, and previously used hat bodies and other materials which have been cleaned and renovated by respondents. In billing and invoicing purchasers for said hats, respondents do

not use any designation to disclose to said purchasers the kind or type of materials from which said hats have been made but, instead, use various numbers in describing said products. Therefore, said hats are sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers, who sell them to the purchasing public without making any disclosure of the fact that said hats are manufactured from old hat bodies which have been previously worn and then cleaned and renovated, and under such circumstances that purchasers are led to believe that they are in fact new hats manufactured from new materials.

In the course of the operation of their said business, respondents have used the words "None Better Jay Bee $5 Special," and other similar names or words in designating said merchandise. Respondents cause said words or similar words or names to be embossed on the sweat bands which are attached to said hats. Immediately following the words "None Better Jay Bee $5 Special" or other similar terms and names used by respondents in designating said hats, respondents have embossed the words "Made Over Hat," and in a large portion of the respondents' hats which are manufactured from used hats, no marking appears other than the words "Made Over Hat." It is the practice of various manufacturers of hats to manufacture finished hats from previously used hat bodies and from new felt hat bodies obtained from new but shop-worn hats, as well as from newly manufactured materials. A shopworn hat is one that is discolored or badly used in window display or badly handled inside the store so that it is not salable again, or it also might be a hat that came through with a mark or defacement on the surface of the felt or any part of it. It is an unsalable hat. Said shop-worn hats are cleaned, steamed, and renovated by said hat manufacturers in practically the same manner as hats from old, worn, and previously used hat bodies.

By the use of the words "Made Over Hat" in the manner as described herein and the failure to use words or wording clearly indicating that said hats are made from old, worn, and previously used hat bodies, respondents fail to disclose to purchasers that said hats are made from old, worn, and previously used hat bodies and other materials, as distinguished from shop-worn hat bodies which have never been used.

PAR. 4. The use by respondents of the acts and practices set forth herein 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 belief that said hats are manufactured from either new

and unused materials or are made from new but shop-worn hat bodies, and into the purchase of a substantial number of said hats because of such erroneous and mistaken belief. The casual examination, such as the purchaser makes when buying a hat, would not disclose to such purchaser that respondents' products are not made entirely from new materials.

PAR. 5. It is further found that as a direct consequence of the erroneous and mistaken belief induced by respondents, a number of the consuming public purchased, and now purchases, a substantial volume of respondents' products, and trade has been diverted unfairly to respondents from corporations, individuals, firms, and partnerships also engaged in the business of selling hats manufactured from old, worn, and previously used hat bodies and other materials, and manufacturers who manufacture hats from new materials. As a result thereof, substantial injury has been done by respondents to competition in commerce 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 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 amended and supplemental complaint of the Commission, the answer of respondents, testimony, and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondents not having filed brief, and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondent, Maf Hat Works, Inc., a corporation, trading under its own name and also trading as New System Hat Manufacturing Co., or trading under any other name or names, its officers, representatives, agents, and employees, and respondent Alex Milder, individually and as an officer of said corporation, his representatives, agents, and employees, directly or through any cor-

porate or other device, in connection with the offering for sale, sale and distribution of hats in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats composed in whole or in part of used or second-hand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats made in whole or in part from old, used or second-hand materials are new or are composed of new materials.

It is further ordered, That 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

BASIC FOODS, INC., AND CURTIS HOWE SPRINGER

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

Docket 2844. Complaint, June 16, 1936—Decision, Nov. 1, 1940

Where a corporation and an individual, who was president thereof and in control of its business and of the advertising and sale of its product, respectively engaged in manufacture, sale, and distribution, or sale, of certain so-called herb, drug, and health preparations, including their "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" proprietary products, to dealers for resale and to members of public in various other States and in District of Columbia, in substantial competition with others engaged in sale in commerce among the several States and in said District, of various products sold and distributed for some of the same purposes for which they offered and sold their products, and including among said competitors many who do not misrepresent the nature or character of the products sold by them, or the efficacy thereof in the treatment of diseases or ailments—

(*g*) Represented through use of abbreviation "Dr." in names of their aforesaid products and advertisements thereof in newspapers and periodicals circulated in various States and in said District, and broadcasts and through other statements made orally to the public in advertising the same, that individual in question was a physician or doctor of medicine, licensed to practice by duly constituted authority empowered to issue licenses for such practice, and that products in question were made under direct supervision and with approval of a regularly qualified and duly licensed physician or doctor of medicine, and were, therefore, of substantial therapeutic value and efficacy in the treatment of various diseases, ailments, or symptoms mentioned by them in their advertising;

Notwithstanding fact individual in question was not a physician or doctor of medicine or licensed to practice same by any such authority empowered to issue licenses therefor, and products in question were not preparations made under direct supervision and with approval of regularly qualified and duly licensed physician or doctor of medicine;

(*b*) Represented, in their said advertising, that most human aches and pains are due to congestion of the glands and organs of the body, and due to constipation and overacid conditions;

Facts being most such aches and pains are not due to such congestion or constipation or overacid conditions;

(*c*) Represented, as aforesaid, that their said products were beneficially effective for the glands and organs of the body by removing poisons therefrom, and that products in question were respectively beneficial, effective and safe therapeutic remedies for majority of human aches and pains, and for treatment, among other ailments, of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, and nervousness;

Facts being—

(1) Said "Dr. Springer's Antediluvian Tea" has no beneficial, curative, or remedial value for any malady or diseased condition of body, possesses no therapeutic value for treatment of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, nervousness, or any other conditions of body, except to extent that constipation or impaired elimination, as symptom of disease or ailment, may be relieved by administration of mild laxative, and anyone drinking five or six glasses of water daily would derive substantially same effect as from use of said tea according to directions on containers, while use in large quantities, or as recommended, might have deleterious effects upon those suffering from any of a number of conditions of which constipation is symptom, and might result in rupture of intestine if taken by those suffering from ulcer thereof; and,

(2) Said "Dr. Springer's Re-Hib," in which were included, in addition to certain known digestants, number of substances commonly used in neutralization of stomach acids, has no beneficial, curative or remedial value for any condition or malady of body and possesses no therapeutic value in treatment of any such condition or malady, except to extent that same is caused by hyperacidity of stomach, which may be relieved by administration of such a product as a palliative or acid neutralizer, and to extent that digestion may be aided by administration of said product as a digestant, while habitual use of substances of type of which said product was composed, for relief of pain after eating, as recommended, would, in some cases, tend to prevent making of definite diagnosis of cause of such pain and delay treatment for diseases or ailments characterized by pain after eating, would have tendency to be injurious, in certain cases, and use thereof would not, as represented, be effective treatment or remedy for all cases of so-called "heartburn" or "insomnia"; and

(*d*) Represented, in their said advertising, that they, in their desire to cooperate with existing laws and regulations, had submitted and were submitting packages of their said products, together with all advertising literature relating thereto, to the Administration in Washington, and to all Federal agencies having any interest therein, offering to make any changes in the products or the literature that the Administration would suggest; with intent and effect of representing falsely to public that their said products had been approved by Federal governmental agencies as sold and distributed by them in conformity with existing laws and regulations applicable thereto;

Notwithstanding fact their said products had not been inspected, supervised, and approved by competent governmental authorities having jurisdiction over food and drugs and the advertising matter relating thereto, and their said advertising literature had not been thus approved;

With effect of engendering in minds of a substantial number of purchasing public erroneous belief that said statements, representations, and claims were true, that said individual possessed qualifications implied by use of abbreviation "Dr.," that their said products possessed therapeutic value claimed and would accomplish results indicated, and that said products and advertising had been approved by competent governmental authorities, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of their said prod-

ucts, and with result that trade was diverted unfairly to them from their competitors, engaged as above set forth, and who truthfully advertise the nature, character, effectiveness, and therapeutic value 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. Edward E. Reardon* and *Mr. John L. Hornor*, trial examiners.

Mr. Jay L. Jackson, for the Commission.

Mr. Leland W. Walker, of Somerset, Pa., for respondents.

Complaint

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Basic Foods, Inc., and Curtis Howe Springer, hereinafter referred to as respondents, have been and now are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent, Basic Foods, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business and address located at Somerset, in the State of Pennsylvania. Said respondent is now and for more than 1 year last past has been engaged in manufacturing, offering for sale, selling, and distributing prepared food, herb, drug, and health products, more specifically known and designated as "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," in commerce among and between various States of the United States, and in the District of Columbia, and has caused and now causes said products, when sold or ordered, to be shipped and transported from the State of origin thereof to various States of the United States other than the State of origin of said shipments, and to the District of Columbia, in the course and conduct of which said corporate respondent has been and now is in competition with corporations, firms, partnerships, and individuals engaged in selling and distributing products for like purposes and in like commerce as that of said respondent.

Respondent, Curtis Howe Springer, is an individual, president of respondent, Basic Foods, Inc., and an agent and employee thereof, with his principal place of business and address located at Somerset,

in the State of Pennsylvania, and as such is now and at all times material to this complaint has been engaged in and with the business of said corporate respondent and in and with the organization of said corporation and with the advertising, promotion, offering for sale, sale, and distribution of its said products in commerce, all as aforesaid.

PAR. 2. Respondents have sold and now sell the said "Antediluvian Tea" and "Re-Hib" in interstate commerce, as set forth in paragraph 1 above, by use of the mails, interstate carriers, and other channels of interstate commerce, by means of radio broadcasting, oral statements, newspapers, magazines, pamphlets, periodicals, labels, and other forms of printed matter and advertising literature which have had and have a circulation in and through the various States of the United States and in the District of Columbia and which have been and are circulated and distributed by respondents to customers and prospective customers in and through the various States of the United States and in the District of Columbia, in the course and conduct of which respondents, Basic Foods, Inc., and Curtis Howe Springer, individually and together, have made and now make false and misleading statements and representations, all to the injury of the public and to the injury of competitors of respondent, Basic Foods, Inc.

PAR. 3. The word "Doctor," or its abbreviation "Dr." when used in connection with the advertising and sale of drugs, medicines, and products having to do with human health and with the treatment of disease, sickness, or human ailments, either as a part of the trade name of said products or as a title and prefix before the proper name of any person publicly advising, prescribing, or sponsoring the use of such products, for many years has been and now is understood by the purchasing and consuming public in general to mean and signify, and does mean and signify, that such products have the approval of competent medical authority in the form of a doctor, physician, or practitioner of medicine who has been and is duly licensed by some competent and recognized governmental authority to practice medicine in some form, either general or specialized, and that the said word refers to a person under whose name, advice, prescription, or auspices the said products are offered and sold and that said person is one who is, or has been a doctor, physician, or practitioner of medicine and as such is duly licensed by some competent and recognized governmental authority to practice medicine in some form, either general or specialized.

PAR. 4. In the course and conduct of said corporate respondent's business, as aforesaid, respondents did and do advertise, offer for sale, sell, and distribute the said tea and Re-Hib products by causing the words and trade name "Dr. Springer's" to be labeled and to appear thereon and in combination with the words and name "Antediluvian

Tea" and "Re-Hib," and otherwise caused and cause said products to be advertised, offered for sale, sold, and distributed as and for products known and described as "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" and as products advised, prescribed, and sponsored by one Dr. Springer, thereby falsely and misleadingly representing said products as having the approval of competent medical authority and as being products sold under the name, advice, prescription, or auspices of one who is, or has been, a doctor, physician, or practitioner of medicine and as such is duly licensed by some competent and recognized governmental authority to practice medicine in some form, either general or specialized; that said person is one known as "Dr. Springer," and that said person is, or has been, a doctor, physician, or practitioner of medicine and as such is duly licensed by some competent and recognized governmental authority to practice medicine in some form, either general or specialized; whereas, in truth and in fact, the said products are not sold under the name, advice, prescription, or auspices of one who is, or has been, a doctor, physician, or practitioner of medicine and as such duly licensed by any competent and recognized governmental authority to practice medicine in any form, either general or specialized, and whereas further, the said person referred to as "Dr. Springer" is not and has not been a doctor, physician, or practitioner of medicine and is not duly licensed by any competent and recognized governmental authority to practice medicine in any form, either general or specialized.

PAR. 5. In the course and conduct of the business of said corporate respondent, all as aforesaid, respondents, individually and together, did and do falsely and misleadingly represent and disseminate facts and information relative to the conditions, symptoms, and causes of human aches, pains, ailments, and disease, and relative to cures, correctives, and remedies therefor, and in connection therewith did and do falsely and misleadingly advertise, state, imply, and represent, among other things, that most human aches and pains are due to congestion of the glands and organs of the body; that the majority of human aches and pains are due to constipation and to digestive systems suffering from an over-acid condition; that the majority of human beings suffer from constipation and an over-acid condition and are in need of correctives or remedies therefor; that the said "Dr. Springer's Antediluvian Tea" acts beneficially and effectively upon the glands and organs of the body, removes poison or poisons from the body, and is a beneficial and effective therapeutic remedy or corrective for the majority of human aches and pains, for gas, aches, and pains due to congestion of the glands and organs of the body, for congestion of the glands and organs of the body, and

for kidney troubles, diseased tonsils, stiff and aching joints, swollen feet, so-called "heartburn," inability to sleep or rest at night, and nervousness; whereas, in truth and in fact, most human aches and pains are not due to congestion of the glands and organs of the body and not to constipation or to digestive systems suffering from an over-acid condition; the majority of human beings do not suffer from constipation and an over-acid condition and are not in need of correctives or remedies therefor; the said "Antediluvian Tea" is primarily a laxative or purgative, does not act beneficially and effectively upon the glands and organs of the body, does not and cannot remove poison or poisons from the body, and is not a beneficial and effective therapeutic remedy or corrective for the majority of human aches and pains, for gas, aches, and pains due to congestion of the glands and organs of the body, for congestion of the glands and organs of the body, or for kidney troubles, diseased tonsils, stiff and aching joints, swollen feet, heartburn, inability to sleep or rest at night, or for nervousness.

Respondents, individually and together, further did and do falsely and misleadingly advertise, state, imply, and represent, that an over-acid condition of the stomach and of the digestive system is common to and suffered by most human beings; that the said "Re-Hib" is a beneficial and effective therapeutic remedy or corrective for all cases of over-acidity, for so-called "heartburn," for all gas pains of the stomach, and for inability to sleep or rest at night; that said product is a beneficial drug compound for the majority of human beings, will enable one to overcome gas of the stomach of whatever cause, to eat heavy foods without suffering stomach pains, and that the same contains digestants of a quality and quantity sufficient to aid and enable the digestion of all foods which a person or persons may find difficult to digest; whereas, in truth and in fact, most human beings do not suffer from over-acidity; the said "Re-Hib" is not a beneficial and effective therapeutic remedy or corrective for all cases of over-acidity, or for heartburn, all gas pains of the stomach, or for inability to sleep or rest at night; that said product is not a beneficial drug compound for the majority of or any substantial percentage of human beings and should not be taken except upon doctor's prescription following diagnosis of the condition and needs of the person taking the same; the said product will not enable one to overcome gas of the stomach of whatever cause, or in all cases to eat heavy foods without suffering stomach pains, and said product does not contain digestants of a quality and quantity sufficient to aid and enable the digestion of all foods which a person or persons may find difficult to digest.

Respondents, individually and together, further did and do advertise, state, imply, and represent that respondents submitted and were submitting packages of both of the aforesaid products, together with bulletins and all literature relative thereto, to the administration in Washington, offering to make any changes they would suggest, in respondents' desire to cooperate, should any statements on labels or in the said literature be found to be contrary to existing laws and regulations, thereby falsely and misleadingly implying and representing that the said products and the labels, advertising statements, and literature relative thereto were and are being submitted to all Federal agencies having an interest therein and any regulatory jurisdiction over the same, and that the same were and are being approved by Federal governmental agencies as being in conformity with existing laws and regulations; whereas, in truth and in fact, it is not the present function of any Federal governmental agency, as related to products of said corporate respondent, to approve or censure the same or the advertising statements and literature relative thereto, in advance of or concurrent with the shipment and distribution thereof in the channels of interstate commerce, and said products, labels, advertising statements, and literature were not and are not being submitted to all Federal agencies having an interest therein and regulatory jurisdiction thereover, and the same were not and are not being approved by Federal governmental agencies as being in conformity with existing laws and regulations.

PAR. 6. The aforesaid false and misleading statements, implications, and representations as set out in paragraphs 4 and 5 above, have had and have, and each of them has had and has, the tendency and capacity to confuse, mislead, and deceive the purchasing and consuming public into the false and erroneous belief that the said statements, implications, and representations are, and each of them is, true, and into the purchase and consumption of the said products of respondent, Basic Foods, Inc., in the place and stead of competing products of said respondent's competitors, which said competitors offer and sell for like purposes and uses as those for which said corporate respondent offers and sells its products, and thereby to divert trade to said corporate respondent from its competitors in interstate commerce who do not offer for sale and sell their products by means of false and misleading statements, implications, or representations.

PAR. 7. The above acts, conduct, and things done by respondents are to the injury and prejudice of the public and to competitors of respondent, Basic Foods, Inc., in interstate commerce within the meaning and intent of section 5 of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Report, Findings as to the Facts, and Order

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 16th day of June 1936, issued its complaint in this proceeding and caused the complaint to be served upon the respondents, Basic Foods, Inc., and Curtis Howe Springer, charging the respondents with the use of unfair methods of competition in commerce in violation of the provisions of said act. The respondents did not make answer to the complaint.

Thereafter, testimony and other evidence in support of the allegations of the complaint were introduced by Jay L. Jackson, attorney for the Commission, and in opposition to the allegations of the complaint by Curtis Howe Springer, pro se, and as president of respondent Basic Foods, Inc., before Edward E. Reardon and John L. Hornor, trial examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint, testimony and other evidence, and brief in support of the complaint, respondent not having filed brief and oral argument not having been requested, and the Commission, having duly considered the 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 the conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondent Basic Foods, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Somerset, Pa. It is now, and since more than 1 year prior to June 16, 1936, has been, engaged in the manufacture and in the sale and distribution in commerce of certain so-called herb, drug, and health products, including the proprietary products "Dr. Springer's Antediluvian Tea," and "Dr. Springer's Re-Hib."

Par. 2. Respondent Curtis Howe Springer is and at all times referred to above has been the president of respondent Basic Foods, Inc., with his principal place of business at Somerset, Pa., and at all of said times he has been in control of the business of Basic Foods, Inc., and of the advertising and sale of its products.

Par. 3. The respondents, during the times referred to above, have sold the products of respondent Basic Foods, Inc., to dealers for resale and to members of the public located in various States of the United States other than Pennsylvania, and in the District of Columbia, and

they have caused said products, including "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," when so sold, to be transported, in commerce, from the place of business of respondent Basic Foods, Inc., in Somerset, Pa., to the purchasers thereof located in the other States of the United States and in the District of Columbia.

In the course and conduct of their business, as aforesaid, the respondents have been in substantial competition with corporations, firms, and individuals engaged in the sale, in commerce between and among the several States of the United States and in the District of Columbia, of various products sold and distributed for some of the same purposes of use for which the respondents have offered for sale and sold the products of respondent Basic Foods, Inc. There are many among said competitors of respondents who do not misrepresent the nature or character of the products sold by them, or the efficacy of their products when used in the treatment of diseases or human ailments.

PAR. 4. The word "Doctor" and the abbreviation "Dr.," when used in connection with the name of an individual engaged in the treatment of human ailments, or used in connection with the name of an individual engaged in the sale of drugs or products sold for the treatment of human ailments, are understood by the public to mean that the individual so described is one who has been duly qualified and licensed to practice medicine by some governmental or other duly authorized agency.

PAR. 5. During all the times referred to above, and in order to further the sale of their products designated "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," the respondents have caused advertisements thereof to be published in newspapers, magazines, and periodicals which have been circulated among the public in various States of the United States and in the District of Columbia, and to be broadcast by means of the radio, and they have also caused other statements to be made orally to the public advertising said products.

Through the use of the abbreviation "Dr." in the names of said products and in the advertisements thereof, the respondents have represented that the respondent Curtis Howe Springer is a physician or doctor of medicine, licensed to practice medicine by a duly constituted authority empowered to issue licenses for the practice of medicine, and that the products called "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" are preparations made under the direct supervision of, and with the approval of, a regularly qualified and duly licensed physician or doctor of medicine, and are therefore of substantial therapeutic value and efficacy in the treatment of the various diseases, ailments, or symptoms mentioned by respondents in their advertising.

PAR. 6. In the course and conduct of respondents' advertising, as aforesaid, respondents, among other things, further stated, implied, and represented that most human aches and pains are due to congestion of the glands and organs of the body and due to constipation and overacid conditions, and that their products, "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," are beneficially effective for the glands and organs of the body by removing poisons from the body, and that these products, respectively, are beneficial, effective, and safe therapeutic remedies for the majority of human aches and pains and for the treatment, among other ailments, of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, and nervousness.

PAR. 7. The respondents have further represented in the advertising matter mentioned above that they, in their desire to cooperate with existing laws and regulations, had submitted and were submitting packages of the products "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," together with all the advertising literature relating thereto, to the Administration in Washington and to all Federal agencies having any interest therein, offering to make any changes in the products or the literature that the Administration would suggest, with the intent on the part of the respondents, and with the effect, of falsely representing to the public that respondents' products have been approved by Federal governmental agencies as products being sold and distributed by respondents in conformity with existing laws and regulations applicable thereto.

PAR. 8. As a matter of fact, respondent Curtis Howe Springer is not a physician or doctor of medicine, or licensed to practice medicine by any duly constituted authority empowered to issue licenses for the practice of medicine, and the products of respondents, "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," are not preparations made under the direct supervision of, and with the approval of, a regularly qualified and duly licensed physician or doctor of medicine. Most human aches and pains are not due to congestion of the glands and organs of the body or to constipation or overacid conditions.

PAR. 9. Respondents' preparation, called "Dr. Springer's Antediluvian Tea," has no beneficial, curative, or remedial value for any malady or diseased condition of the human body, and possesses no therapeutic value for use in the treatment of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, nervousness, or the treatment of any other condition of the human body except to the extent that constipation, or impaired elimination, as a symptom of disease, or as an ailment, may be relieved by the administration of a mild laxative. Any person using five or six glasses

of drinking water daily would derive substantially the same effect from the water as would be obtained from the use of respondents' "Antediluvian Tea" according to the directions printed on the packages or cartons thereof. The use of "Dr. Springer's Antediluvian Tea" in large quantities, or as recommended by respondents, might have deleterious effects upon persons suffering from any of a number of pathological conditions of which constipation is a symptom. If so taken by a person suffering from an ulcer in the intestines, the use of "Antediluvian Tea" might result in rupture of the intestine, a condition which presents an immediate surgical emergency associated with a high mortality rate.

Respondent's preparation called "Dr. Springer's Re-Hib" contains, in addition to certain substances known as digestants, a number of substances commonly used in the neutralization of acids of the stomach. It has no beneficial, curative, or remedial value for any condition or malady of the human body, and possesses no therapeutic value in the treatment of any condition or malady of the human body except to the extent that such condition or malady is caused by hyperacidity of the stomach which may be relieved by the administration of such product as a palliative or acid neutralizer, and except to the extent that the digestion of foods may be aided by the administration of said product as a digestant. The habitual use of substances of the type of which "Re-Hib" is composed, for the relief of pain after eating, as recommended by respondents, in some cases would tend to prevent the making of a definite diagnosis of the cause of such pain and would delay treatment for diseases or ailments characterized by pain after eating. In the case of a person suffering from gastro-intestinal-tract lesion, for example, the use of such a product would have a tendency to be injurious. The use of said product would not, as represented by respondents, be an effective treatment or remedy for all cases of so-called "heartburn" or "insomnia."

PAR. 10. Respondents' products "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib" have not been inspected, supervised, and approved by competent governmental authorities having jurisdiction over food and drugs and the advertising matter relating thereto, and respondents' advertising literature has not been so approved.

PAR. 11. The use by the respondents of the foregoing statements, representations and claims, disseminated as aforesaid, has had and now has the capacity and tendency to and does engender in the minds of a substantial number of the purchasing public the erroneous belief that said statements, representations and claims are true; that respondent Curtis Howe Springer possesses the qualifications implied

by the use of the abbreviation "Dr."; that respondents' products possess the therapeutic value claimed and will accomplish the results indicated, and that respondents' products and advertising have been approved by competent governmental authorities, and has caused and causes a substantial portion of the purchasing public situated in various States of the United States and in the District of Columbia, because of such erroneous and mistaken belief, to purchase substantial quantities of respondents' products. As a result, trade is and has been diverted unfairly to the respondents from their competitors who are likewise engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of similar medicinal preparations or other preparations intended for similar usage who truthfully advertise the nature, character, effectiveness, and therapeutic value 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, testimony and other evidence taken before Edward E. Reardon and John L. Hornor, examiners of the Commission, theretofore duly designated by it, in support of the allegations of the complaint and in opposition thereto, and brief of counsel for the Commission, (respondents having filed no answer to the complaint and no brief in opposition to the allegations of the complaint, and no request for oral argument having been made) 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, Basic Foods, Inc., a corporation, its officers, representatives, agents, and employees, and Curtis Howe Springer, an individual, his representative, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of medicinal preparations now designated as "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib", or any other medicinal preparation or preparations containing substantially similar ingredients or possessing substantially similar therapeutic properties, whether sold or distributed under the

same name or 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. Using the word "Doctor" or any abbreviation thereof, to designate, identify or refer to any person or product when the person so designated is not, or has not been, a physician or practitioner of medicine, duly licensed as such to practice medicine by a recognized governmental authority, and when the product so designated or identified is not the product or prescription of, and approved or sponsored by, such a physician or practitioner of medicine.

2. Representing that the majority of human aches and pains are due to congestion of the glands and organs of the body, or to constipation or over-acid conditions.

3. Representing that the preparations called "Dr. Springer's Antediluvian Tea" and "Dr. Springer's Re-Hib," or any products of like or substantially similar composition, may be beneficially or safely taken by all persons.

4. Representing that the preparation called "Dr. Springer's Antediluvian Tea," or any product of like or substantially similar composition, has any beneficial, curative or remedial value for any malady or diseased condition of the human body; or possesses any therapeutic value in the treatment of kidney trouble, diseased tonsils, stiff and aching joints, swollen feet, heartburn, insomnia, nervousness, or in the treatment of any other condition of the human body except to the extent the symptoms thereof may be relieved by the administration of a mild laxative.

5. Representing that the preparation called "Dr. Springer's Re-Hib," or any product of like or substantially similar composition, has any beneficial, curative or remedial value for any condition or malady of the human body, or possesses any therapeutic value in the treatment of any condition or malady of the human body except to the extent that such condition or malady is caused by hyperacidity of the stomach which may be relieved by the administration of said product as a palliative or acid neutralizer, and except to the extent that the digestion of foods may be aided by the administration of said product as a digestant.

6. Representing that any of respondents' products are approved by any governmental agency.

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

IDEAL CANDY NOVELTIES COMPANY, INC., AND ABRAHAM ARONOFF AND ROSE ARONOFF, INDIVIDUALLY 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 4086. Complaint, Apr. 8, 1940—Decision, Nov. 1, 1940

Where a corporation and two individuals, who were its president and vice president and secretary, and formulated, controlled, and directed its acts, practices, and policies, engaged in sale and distribution of certain assortments of candy and other articles of merchandise which were so packed and assembled as to involve use of games of chance, gift enterprises, or lottery schemes when sold and distributed to consumers thereof, and which included (1) 150 penny pieces of individually wrapped caramels, of uniform size and shape, together with 14 common lead pencils and 8 pencil sets consisting of ruler, pencil, and penholder, for sale and distribution under a plan in accordance with which purchasers securing by chance chocolate caramels were entitled to and received without additional cost one of such pencils, those procuring one of the red caramels were similarly entitled to and received one of such pencil sets, and purchaser of last caramel in assortment also became entitled to and thus received one of such sets, and (2) various other assortments of candy and other articles involving lot or chance feature, but similar to that described and varying therefrom in detail only; acting together in cooperation with each other in such acts and things—

Sold such assortments to brokers, wholesalers, jobbers, and retailers, by whom, as direct or indirect purchasers thereof, said assortments and other articles were exposed and sold to purchasing public in accordance with aforesaid sales plan, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale of their products in accordance with such plan, as above set forth, involving game of chance or sale of a chance to procure an article of merchandise at a price much less than normal retail price thereof, contrary to an established public policy of the United States Government and in violation of the criminal laws, and in competition with many who are unwilling to adopt and use said or any method involving game of chance or sale of a chance to win something by chance, or any other method contrary to public policy, and who refrain therefrom;

With result that many persons were attracted by said sales plan or method employed by them and element of chance involved therein, and were thereby induced to buy and sell their said products in preference to those of competitors aforesaid, and with tendency and capacity, through use of said method and because of such game of chance, unfairly to divert trade in commerce to them from their said competitors who do not use same or equivalent method:

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

Before *Mr. Arthur F. Thomas*, 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 Ideal Candy Novelties Co., Inc., a corporation, and Abraham Aronoff and Rose Aronoff, individually and as officers of Ideal Candy Novelties 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 Ideal Candy Novelties Co., 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 770 Coney Island Avenue, Brooklyn, N. Y. Respondent Abraham Aronoff, an individual, is president of the corporate respondent. Respondent Rose Aronoff, an individual, is vice president and secretary of the corporate respondent. Both of the individual respondents have their offices at the same address as corporate respondent. Respondents Abraham Aronoff and Rose Aronoff, formulate, control, and direct the acts, practices and policies of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter alleged. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of candy and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof, at their respective points of location, in the various States of the United States other than New York and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by said respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other corporations and individuals and with

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 their business, as described in paragraph 1 hereof, respondents sell and have sold to brokers, wholesale dealers, jobbers, and retail dealers certain assortments of candy and other articles of merchandise so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One of said assortments is hereinafter described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of 150 pieces of caramel candy of uniform size and shape, together with 14 common lead pencils and 8 pencil sets. The said pencil sets contain a ruler, a pencil and a penholder. Seven of the said caramels are red, 14 are chocolate and the remainder, 129, are vanilla. The said caramels are individually wrapped and the color of each is effectively concealed from purchasers and prospective purchasers until a purchase has been made and the wrapper removed therefrom. All of the caramels retail at the price of 1 cent each. Purchasers procuring 1 of the said chocolate caramels are entitled to and receive, without additional cost, 1 of the said pencils. Purchasers procuring 1 of the said red caramels are entitled to and receive, without additional cost, 1 of the said pencil sets. The purchaser of the last caramel in said assortment is entitled to and receives, without additional cost, 1 of the said pencil sets. The said pencils and pencil sets are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy and other articles of merchandise 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 respondents' said candy and other articles of merchandise, 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 products and the sale of said products 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 and other articles 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 candy and other articles of merchandise in competition with the respondents, as above alleged, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win something by chance or any other method that is contrary to public policy and such competitors refrain therefrom. Many persons are attracted by said sales plan or method employed by respondents in the sale and distribution of their candy and other articles of merchandise and the element of chance involved therein and are thereby induced to buy and sell respondents' said products in preference to products offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents because of said game of chance has a tendency and a 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 equivalent method, and as a result thereof substantial injury is being and has been done by respondents to competition in commerce between and among the various States of the United States and in the District of Columbia.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on April 8, 1940, issued and served its complaint in this proceeding upon respondents Ideal Candy Novelties Co., Inc., a corporation, and Abraham Aronoff and Rose Aronoff, individually and as officers of Ideal Candy Novelties Co., Inc., 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 October 2, 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 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 Ideal Candy Novelties Co., 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 770 Coney Island Avenue, Brooklyn, N. Y. Respondent Abraham Aronoff, an individual, is president of the corporate respondent. Respondent Rose Aronoff, an individual, is vice-president and secretary of the corporate respondent. Both of the individual respondents have their offices at the same address as corporate respondent. Respondents Abraham Aronoff and Rose Aronoff, formulate, control, and direct the acts, practices, and policies of the corporate respondent. Said respondents act together and in cooperation with each other in doing the acts and things hereinafter set forth. Respondents are now and for more than 1 year last past have been, engaged in the sale and distribution of candy and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia. Respondents cause and have caused said products, when sold, to be transported from their aforesaid place of business in the State of New York to purchasers thereof, at their respective points of location, in the various States of the United States other than New York and in the District of Columbia. There is now, and has been for more than 1 year last past, a course of trade by said respondents in such products in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other corporations and individuals and with 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 their business, as described in paragraph 1 hereof, respondents sell and have sold to brokers, wholesale dealers, jobbers, and retail dealers certain assortments of candy and other articles of merchandise so packed and assembled as to involve the use of games of chance, gift enterprises, or lottery schemes when sold and distributed to the consumers thereof. One

of said assortments is hereinafter described for the purpose of showing the method used by respondents and is as follows:

This assortment consists of 150 pieces of caramel candy of uniform size and shape, together with 14 common lead pencils and 8 pencil sets. The said pencil sets contain a ruler, a pencil and a penholder. Seven of the said caramels are red, 14 are chocolate and the remainder, 129, are vanilla. The said caramels are individually wrapped and the color of each is effectively concealed from purchasers and prospective purchasers until a purchase has been made and the wrapper removed therefrom. All of the caramels retail at the price of 1 cent each. Purchasers procuring 1 of the said chocolate caramels are entitled to and receive, without additional cost, 1 of the said pencils. Purchasers procuring 1 of the said red caramels are entitled to and receive without additional cost, 1 of the said pencil sets. The purchaser of the last caramel in said assortment is entitled to and receives, without additional cost, 1 of the said pencil sets. The said pencils and pencil sets are thus distributed to the purchasing and consuming public wholly by lot or chance.

Respondents sell and distribute and have sold and distributed various assortments of candy and other articles of merchandise 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 directly or indirectly purchase respondents' said candy and other articles of merchandise 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 products and the sale of said products 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 and other articles 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 candy and other articles of merchandise in competition with the respondents, as above found, are unwilling to adopt and use said method or any method involving a game of chance or the sale of a chance to win

something by chance or any other method that is contrary to 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 candy and other articles of merchandise and the element of chance involved therein and are thereby induced to buy and sell respondents' said products in preference to products offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said method by respondents, because of said game of chance, has a tendency and a 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 equivalent method.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondents, in which answer respondents admit all the material allegations of fact set forth in said complaint and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent Ideal Candy Novelties Co., Inc., a corporation, its officers, Abraham Aronoff and Rose Aronoff, individually, and as officers of Ideal Candy Novelties Co., 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 candy or any other merchandise in commerce as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from—

1. Selling and distributing candy or any merchandise so packed and assembled that sales of such candy or other merchandise to the public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others, assortments of candy or other merchandise or any lottery devices, which are to be used, or which may be used, to conduct a game of chance, gift enterprise, or lottery scheme in the sale or distribution of said candy or other merchandise to the public.

3. Supplying to or placing in the hands of others 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 articles of merchandise or larger pieces of candy which are to be, or may be, given as prizes to the purchasers procuring pieces of said candy of a particular color.

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 them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

JACOB SCHACHNOW, TRADING AS MODERN HAT WORKS

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

Docket 2047. Complaint, Aug. 10, 1939[1]*—Decision, Nov. 2, 1940*

Where an individual engaged in manufacture of men's and boys' hats from felts obtained from old, worn, and previously used hat bodies purchased by him, through cleaning, steaming, ironing, blocking, and fitting with new trimmings, sweat bands, and size labels and, in some instances, new linings, such bodies—

Sold, to jobbers and wholesalers by whose retailer vendees they were sold to purchasing public, his said hats, thus processed, a portion of which had appearance of new hats never worn or used, with no label, marking or designation thereon to indicate to purchasing public that said hats were in fact made from old, worn and previously used bodies which had been dry cleaned and renovated by him, and with no designation in invoicing and billing purchasers to indicate or disclose that his said products were in fact made from old, worn, and previously used bodies, and failed, through use of phrase "Made Over," embossed on hats' sweat bands, immediately under words "Personality Hats" or similar matter, to disclose to members of purchasing public that said hats were made as aforesaid from old, worn, and previously used, rather than shopworn, hat bodies or from new materials which had never been used or worn, as made by manufacturers from new but shopworn, discolored, or otherwise unsalable new hats with much the same process employed in manufacture of such products from old, worn, and previously used hat bodies;

With effect of misleading and deceiving substantial number of wholesalers, jobbers, retailers, and members of purchasing public into erroneous and mistaken belief that his said products were made from new and unused materials or from new or shopworn bodies which had never been worn or used, and into purchase of a substantial number of his said hats, nature of which was not made entirely from new materials would not be disclosed by hat purchaser's casual examination, because of aforesaid 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.

Before *Mr. Robert S. Hall*, trial examiner.
Mr. Robert Mathis, Jr., for the Commission.

AMENDMENT 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 Jacob Schachnow,

[1] Amended and supplemental.

an individual trading as Modern Hat Works, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended and supplemental complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Jacob Schachnow, is an individual trading as Modern Hat Works, with his office and principal place of business located at 313 Third Street, Jersey City, N. J. Respondent is now and for more than 1 year last past has been, engaged in the business of manufacturing hats from felts and other materials obtained from old, worn, and previously used hats, and of selling the same to jobbers, wholesale dealers, and retailers in various States of the United States and in the District of Columbia. Respondent causes and at all times herein mentioned has caused such hats to be transported from his place of business in the city of Jersey City, State of New Jersey, to the aforesaid purchasers thereof at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia.

PAR. 2. In the course and conduct of said business described in paragraph 1 hereof, the respondent buys old, worn, and used hats. The old, worn, and used hat bodies are cleaned, steamed, ironed, and shaped by respondent and then, in some cases, fitted with new trimmings, sweat bands, and size labels and sold by respondent to retailers, jobbers, and wholesale dealers who, in turn, sell such products to the purchasing public.

PAR. 3. The aforesaid old, worn, and previously used hat bodies, after having been made over by respondent into hats with new trimmings, sweat bands, and size labels, as described in paragraph 2 hereof, have the appearance of new hats, manufactured from hat bodies or materials which have never been worn or used, and said hats are sold by respondent to retailers, and to jobbers and wholesalers without any label, marking, or designation stamped thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn, and previously used hat bodies which have been cleaned and renovated by respondent. Said hats are also sold to jobbers and wholesale dealers and are resold by said jobbers and wholesale dealers to retail dealers who sell them to the purchasing public without disclosing the fact that said hats are manufactured from hat bodies which have been previously worn and then cleaned and renovated, and under such circumstances as to indicate that they are in fact new hats.

In the course and operation of his business the respondent uses the words "Excello, John Dee," "Personality Hats" and other similar

words or names in designating said merchandise. Respondent causes said words or other similar words or names to be stamped or embossed on sweat bands which are attached to said hats. Immediately under the words "Excello, John Dee" and "Personality Hats" or other similar terms and names used by respondent in designating said hats, respondent has caused to be stamped or embossed the words "Made Over in U. S. A. Reg." and the words "Made Over."

It is the practice of various manufacturers of hats to manufacture finished hats from previously used hat bodies, and from new 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 manufacturers and which have never been worn or used. Said shop-worn hats are cleaned, steamed, and renovated by such hat manufacturers in the same manner as hats made from old, worn and previously used hat bodies.

By the use of the words "Made Over U. S. A. Reg." and the words "Made Over" in the manner aforesaid and the failure to use words or wording clearly indicating that said hats are made from old, worn, and previously used hat bodies, respondent fails to disclose to purchasers that said hats are made from old, worn, and previously used hat bodies, as distinguished from hats made from shop-worn hat bodies or newly manufactured materials which have never been worn or used.

PAR. 4. The use by the respondent of the acts and practices, above set forth, has the tendency and capacity to, and does, mislead and deceive a substantial number of wholesale dealers, jobbers, and retail dealers and members of the purchasing public into the erroneous and mistaken belief that the said hats are manufactured from new and unused materials or are made from new but shop-worn hat bodies which have never been worn or used, and into the purchase of a substantial number of said hats because of such erroneous and mistaken belief.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 10th day of August 1939, issued and subsequently served its amended and supplemental complaint in this proceeding upon respondent Jacob Schachnow, an

individual, trading as Modern Hat Works, 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, testimony, and other evidence in support of the allegations of said complaint were introduced by Robert Mathis, Jr., attorney for the Commission, and in opposition to the allegations of said complaint by Joseph Schachnow, appearing for the respondent, before Robert S. Hall, a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, testimony, and other evidence, brief in support of the complaint (respondent not having filed brief, and oral argument not having been requested); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Jacob Schachnow is an individual trading as Modern Hat Works with his office and principal place of business located at 313 Third Street in the city of Jersey City, State of New Jersey. Respondent is now and has been continuously since the 6th day of June 1932, engaged in the business of manufacturing men's and boy's hats from felts obtained from old, worn, and previously used hat bodies, and of selling the same to purchasers in various States of the United States and in the District of Columbia. Respondent causes such hats, when sold, to be transported from his place of business in the city of Jersey City, State of New Jersey, to the aforesaid purchasers at their respective points of location in various States of the United States other than the State of New Jersey and in the District of Columbia.

PAR. 2. In the course and conduct of his business the respondent buys old, worn, and previously used hat bodies which he cleans, steams, irons, and blocks, and then fits with new trimmings, sweat bands, and size labels, and, in some instances, with new linings. Said hats are then sold by respondent to jobbers and wholesale dealers who in turn sell them to retailers, and said retailers sell such hats to the purchasing public.

PAR. 3. Said hats are sold by the respondent, as aforesaid, without any label, marking, or designation thereon to indicate to the purchasing public that said hats are in fact manufactured from old, worn,

and previously used hat bodies which have been dry-cleaned and renovated by respondent. A portion of respondent's products have the appearance of new hats which have never been worn or used.

PAR. 4. In the course and conduct of his business the respondent uses the words "Personality Hats" and other similar words and names in designating said merchandise. Respondent causes said words or other similar words to be stamped or embossed on sweat bands which are attached to said hats. Immediately under the words "Personality Hats" or other similar terms and names used by respondent in designating said hats, respondent has caused to be stamped or embossed the words "Made Over."

PAR. 5. The Commission finds that the practice of respondent in stamping or embossing his said hats with the words "Made Over" does not disclose to members of the purchasing public that said hats are manufactured from old, worn, and previously used hat bodies rather than from shopworn hat bodies or from new materials which have never been used or worn. The casual examination such as a purchaser makes when buying a hat does not disclose to such purchaser that respondent's products are made from materials which are not new.

In invoicing and billing purchasers of his products, respondent does not indicate or disclose that his products are in fact made from old, worn, and previously used hat bodies. On such invoices and bills respondent's products are designated by certain numbers only.

PAR. 6. Shopworn hats are new hats which are discolored or which have been used in window displays to the extent that they are not in salable condition or which have marks or defacements thereon. Shopworn hats are cleaned and renovated in much the same manner as hats made from old, worn, and previously used hat bodies. It is the practice of various manufacturers of hats to manufacture hats from previously used hat bodies and from new hat bodies obtained from new but shopworn hats, as well as from newly manufactured materials.

PAR. 7. The use by the respondent of the acts and practices above set forth has the tendency and capacity to and does mislead and deceive a substantial number of wholesale dealers, jobbers, and retail dealers and members of the purchasing public into the erroneous and mistaken belief that said hats are manufactured from new and unused materials or are made from new or shopworn hat bodies which have never been worn or used, and into the purchase of a substantial number of respondent's hats 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 amended and supplemental complaint of the Commission, testimony and other evidence taken before Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed by counsel for the Commission (respondent not having filed brief and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Jacob Schachnow, individually, and trading as Modern Hat Works, 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 hats in commerce, as commerce is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that hats composed in whole or in part of used or second-hand materials, are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

2. Representing in any manner that hats made in whole or in part from old, used, or second-hand materials are new or are composed of new materials.

It is further ordered, That 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

ALBERT T. CHERRY, DOING BUSINESS AS A. T. CHERRY COMPANY AND AS ATCO SOAP COMPANY

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

Docket 3416. Complaint, May 11, 1938—Decision, Nov. 2, 1940

Where an individual engaged in sale and distribution of soap and soap powder to purchasers in various States and in the District of Columbia, in active and substantial competition with others engaged in sale and distribution of such products in commerce as aforesaid;

In selling his said products to house-to-house canvassers for resale in so-called "Combination Deals" in case lots of 48 cartons of soap to the case and at prices ranging from $2.30 to $3.00 a case, together with boxes of soap powder with trade name, usually, but without price mark, on each, for sale in combination with such soap, in case lots of 100 boxes to the case, at $1.75 per case—

Offered and sold said soap in 3-cake cardboard cartons on which were printed brand name of soap and statement "Combination Deal 75¢," or some equivalent words, for sale, as aforesaid, in combination deals as made up by individual canvassers and as sometimes suggested by him, and including, as typical, two cartons of soap, four boxes of powder, costing wholesale about 18 cents, and consisting, in other instances, of three boxes of powder and three cartons of soap, and in still others of one box and one carton of each, respectively;

Notwithstanding fact price of 75 cents indicated on said cartons or such other amount as might be indicated thereon, did not represent the price at which such carton was generally and customarily offered and sold at retail, and such prices were wholly fictitious and in no sense represented actual retail selling price of soap concerned, but were greatly in excess thereof; and

Supplied thereby to and placed in the hands of house-to-house canvassers, means whereby purchasing and consuming public might be misled and deceived as to regular retail price and value of his said soap products, in accordance with general public understanding of custom of marking or stamping actual retail prices on various commodities, and into purchase by it of substantial volume of merchandise in reliance upon such custom to extent of accepting prices thus marked as indicating quality and fair market price of such commodities thus price-marked;

With result that such acts and practices, in marking such cartons of soap containing three cakes with legend "Combination Deal 75¢," or some other equivalent statement indicating price for three bars of said product, led many members of purchasing public erroneously and mistakenly to belief that regular and customary retail price of soap concerned was 75 cents per box of three cakes, or amount indicated thereon, and of causing them to purchase substantial quanity of his said soap because of such belief, and with effect that trade in commerce was diverted to him from his competitors who do not use deceptive and misleading representations in connection with sale and distribution of their products:

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

Before *Mr. Edward E. Reardon*, *Mr. Randolph Preston*, *Mr. Arthur F. Thomas*, and *Mr. Lewis C. Russell*, trial examiners.

Mr. Alden S. Bradley, *Mr. S. Brogdyne Teu, II*, and *Mr. Dewitt T. Puckett*, for the Commission.

Holland & Holland, of Dayton, Ohio, for respondent.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Albert T. Cherry, an individual doing business as A. T. Cherry Co., and as Atco Soap Co., hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

Paragraph 1. The respondent, Albert T. Cherry, is an individual doing business as A. T. Cherry Co., and as Atco Soap Co., at 289 Linden Avenue, Dayton, Ohio. He is engaged in the sale and distribution of soap and soap products.

Respondent now causes, and for several years last past has caused, his soap and soap products, when sold by him, to be shipped from his said place of business in Dayton, Ohio, to the purchasers thereof, located in the various States of the United States other than Ohio, and in the District of Columbia. There is now, and has been at all times mentioned herein, a course of trade in said soap so sold and distributed in commerce by the respondent between and among the various States of the United States and in the District of Columbia.

Respondent is, and for several years last past has been, in substantial competition with other individuals, and with partnerships and corporations, engaged in the sale and distribution of soap and soap products in commerce between and among the various States of the United States and in the District of Columbia.

Par. 2. Some of the soap which respondent offers for sale and sells, as aforesaid, is put up in cartons, 3 cakes to the carton, and sold by house-to-house canvassers. The said cartons bear fictitious price marks. Representative of the fictitious price marks borne by said cartons are the following: "Combination Deal, 75¢" and "Cherry's Original Skin Balm Facial Soap, 75¢." Various other

fictitious representations with respect to the retail price of the soap appear on the cartons.

PAR. 3. The aforesaid fictitious price marks serve as representations on the part of respondent to purchasers and prospective purchasers that respondent's said soap has actual values or retail selling prices closely approximating such fictitious price marks and far in excess of the actual values or retail selling prices of said soap.

In fact, the prices marked on the respondent's cartons, as aforesaid, in no sense represent the actual values or retail selling prices of the products so marked but are fictitious and are greatly in excess of the actual values or the true retail selling prices thereof. The said fictitious prices are intended by the respondent to be far in excess of the prices actually charged the ultimate customer purchasing such soap in the usual course of trade.

PAR. 4. The public generally understands the custom of marking or stamping the actual retail price or value on various commodities, and has been led to, and does, place its confidence in the price markings so stamped on the commodities and the representations thereby made as to the quality and price of such products to the extent that it purchases a substantial volume of merchandise in reliance on this aforesaid custom. As a result of respondent's representations, aforesaid, members of the purchasing public are led to erroneously and mistakenly believe that the actual values and selling prices of respondent's soap are the prices stamped or marked thereon when, in fact, the prices so stamped or marked on said cartons are fictitious and in no sense represent the actual retail selling prices or true values of said soap.

PAR. 5. The use by respondent of the representations set forth herein, has had, and now has, the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous belief that such representations are true and into the purchase of substantial quantities of respondent's soap as a result of such erroneous belief.

There are among the competitors of respondent as mentioned in paragraph 1 hereof, distributors of soap who do not misrepresent the values of their soap or the prices at which their soap is offered for sale and sold. By the representations aforesaid, trade is diverted unfairly to respondent from such competitors and as a result thereof, injury is being, and has been, done by respondent to competition in commerce among and between the various States of the United States, and in the District of Columbia.

PAR. 6. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respond-

ent'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 11, 1938, issued and served its complaint in this proceeding upon respondent, Albert T. Cherry, an individual, doing business as A. T. Cherry Co. and as Atco Soap Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, the respondent having filed no answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by Alden S. Bradley, S. B. Teu, and D. T. Puckett, attorneys for the Commission, before trial examiners of the Commission, theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Respondent did not offer any evidence, file a brief, or request oral argument, though he was represented at some of the hearings by George F. Holland, Esq. Thereafter, the proceeding regularly came on for final hearing before the Commission on the said complaint, testimony and other evidence, and brief in support of the complaint, 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, Albert T. Cherry, is an individual doing business as A. T. Cherry Co. and as Atco Soap Co. at 2200 Northwestern Avenue, Dayton, Ohio. Respondent is now, and has been for more than 3 years last past, engaged in the sale and distribution of soap and soap powder.

Respondent ships his products, when sold, from his place of business in Dayton, Ohio, to the purchasers thereof located in various States of the United States and in the District of Columbia. During all of the time mentioned herein, respondent 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.

Respondent is in active and substantial competition with other individuals and with corporations and partnerships engaged in the sale and distribution of soap and soap powder in commerce among and

between the various States of the United States and in the District of Columbia.

PAR. 2. The respondent's soap is offered for sale and sold in cardboard cartons, three cakes to the carton. On each carton is printed the brand name of the soap and the statement "Combination Deal 75¢" or some equivalent statement. The soap is sold by the respondent in case lots, 48 cartons to the case, at prices ranging from $2.30 to $3.00 a case. Respondent also sells soap powder to be sold in combination with his soap. The powder is offered for sale and sold in cardboard boxes which usually bear a trade name but do not bear price marks. The boxes of soap powder are sold by respondent in case lots, 100 boxes to the case. The price per case is $1.75.

PAR. 3. The respondent sells his products to house-to-house canvassers, who sell said products in so-called "Combination Deals." A typical "deal" consists of two cartons of soap and four boxes of powder, the wholesale cost of which is approximately 18¢. In some instances "deals" consist of three boxes of powder and three cartons of soap; in others, one box of powder and one carton of soap. The respondent does not make up the deals but sometimes suggests to canvassers how they should be made up. Although each carton contains the statement "Combination Deal 75¢," or some equivalent statement, the "deals" are not uniform as to content or as to price, but each canvasser determines for himself the kind and number of articles to go into each "deal" and the price at which it is to be sold.

In truth and in fact, the price of 75¢ indicated on said cartons containing three bars of soap, or the other amount indicated thereon, does not represent the price at which said carton of soap is generally and customarily offered for sale and sold at retail. Said prices are wholly fictitious and in no sense represent the actual retail selling price of said soap but are greatly in excess thereof. The respondent thus supplies to, and places in the hands of, house-to-house canvassers the means whereby the purchasing and consuming public may be misled and deceived as to the regular retail price and the value of respondent's said soap products.

PAR. 4. The public generally understands the custom of marking or stamping actual retail prices on various commodities and relies upon such custom to the extent of accepting the prices so marked as indicating the quality and the fair market price of the commodity so price marked, and purchases a substantial volume of merchandise in reliance on said custom.

PAR. 5. The acts and practices of respondent in marking said cartons of soap containing three cakes of soap "Combination Deal 75¢,"

or some other equivalent statement indicating a price for three bars of soap, have led, and lead, many members of the purchasing public erroneously and mistakenly to believe that the regular and customary retail price of said soap is 75¢ per box of three cakes, or the amount indicated thereon, and have caused them to purchase a substantial quantity of respondent's said soap because of this erroneous and mistaken belief. As the result thereof, trade in commerce between and among the various States of the United States and in the District of Columbia has been diverted to respondent from his competitors who do not use deceptive and misleading representations in connection with the sale and distribution of their products.

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, testimony and other evidence taken before trial examiners of the Commission, theretofore duly designated by it, and brief filed herein in support of the allegations of the complaint (no brief having been filed by respondent and oral argument not having been requested), and the Commision 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, Albert T. Cherry, an individual, trading and doing business as A. T. Cherry Co. or as Atco Soap Co., or trading under any other name, his agents, employees, and representatives, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of soap or soap products in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the expression "Combination Deal 75¢" or the price mark "75¢," or any other expression or price marks indicating a price, on the container in which soap or soap products are sold, unless the quantity of soap or soap products enclosed in said container is regularly and customarily offered for sale or sold at 75 cents, or the sum indicated.

2. Representing as the customary or regular retail prices for soap or soap products prices which are in fact fictitious and in excess

of the prices at which said products are regularly and customarily offered for sale and sold in the normal course of business.

3. Supplying to, or placing in the hands of, house-to-house canvassers or others purchasing for resale any soap or soap products price marked or branded in violation of paragraphs 1 and 2 of this order.

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

JOSEPH SALADOFF, TRADING AS RELIABLE SALES SERVICE COMPANY

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

Docket 3535. Complaint, Aug. 15, 1938—Decision, Nov. 2, 1940

Where an individual engaged in sale and distribution, to retail merchants at points in the various States and in the District of Columbia, of sales promotion cards which were so designed and arranged as to involve use of a lottery scheme or gift enterprise when used by such merchants in promoting and increasing sales of their merchandise to consuming public, and included, as illustrative of various groups of such cards manufactured and distributed by him, and involving same lottery scheme or gift enterprise and varying in detail only from those described, cards (1) arranged for punching out $5 or $10 in trade, as case might be, and having concealed under card's "secret panel" legends entitling chance holder, upon the punching out of the total amount of trade called for and as set forth by card's explanatory notice and in accordance with particular legend as thus secured by chance, to amounts in trade ranging from 20 cents to $5, and (2) so packed and assembled by said individual that his customers knew amount of award stated under such panels—

Sold, together with various display posters and advertisements furnished for use of such retail merchants in distributing and using same, said cards to such merchants, by whom they were distributed, as suggested by such individual or otherwise, to their customers and prospective customers upon the making of purchases thereby, and by whom awards, as shown under such "secret panels," were honored through the opening thereof when numbers had been duly punched and customer became entitled to and received from merchant goods in amount shown by legend, without additional cost, and by whom, through use of such cards, their merchandise was sold and distributed by means of game of chance, gift enterprise or lottery scheme; and

Supplied thereby to and placed in the hands of others means of conducting lotteries in the sale and distribution of their said products, contrary to an established public policy of the United States Government and in competition with many who make and sell various sales promotion cards, trade cards, premium cards, coupons and trading stamps for use by retail merchants in promoting or increasing the sale of their merchandise, and who are unwilling to offer or sell their said products so designed and arranged, as above set forth or otherwise, as to involve game of chance, gift enterprise or lottery scheme when used in connection with sale or distribution of merchandise by retailers, and who refrain therefrom;

With result that, because of element of chance involved in sale and distribution of merchandise by retailers thereof through his said cards, many members of consuming public were induced to deal with or purchase merchandise from such merchants using his said cards in preference to such merchants using products of aforesaid competitors, and many retailers were thereby

induced to purchase his said cards in preference to products of such competitors who do not use such methods in designing and arranging their said products, and with further result, through his practice of so packing and assembling, as above set forth, his cards that customers knew amount of awards stated under "secret panels," that such customers were thus enabled to perpetrate a fraud on members of purchasing public in distribution thereto of cards in question, and substantial trade, as consequence of his said practices as above set forth, was unfairly diverted to him from his competitors aforesaid who do not engage therein:

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 Preston*, trial examiner.

Mr. P. C. Kolinski and *Mr. D. C. Daniel*, for the Commission.

Levi, Spooner & Quarles, of Milwaukee, Wis., 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 Joseph Saladoff, an individual, trading as Reliable Sales Service Co., hereinafter designated 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, Joseph Saladoff, is an individual doing business under the trade name of Reliable Sales Service Co., with his principal office and place of business located at 510 Arch Street, Philadelphia, Pa. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of sales promotion cards to retail merchants located at points in the various States of the United States and in the District of Columbia, and causes, and has caused, his said products, when sold, to be transported from his principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof 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 more than 1 year last past, a course of trade by said respondent in said sales promotion cards in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other individuals, with partnerships and corporations engaged in the manufacture of sales promotion cards, trade cards, premium cards, coupons and trading stamps, and in the sale and distribution thereof in commerce between and among the various States of the United States 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, cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of their merchandise to the consuming public.

The respondent manufactures and distributes several groups of sales promotion cards, but they all involve the same lottery scheme or gift enterprise, and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing arrangement, design, and principals involved. On the front, such cards are as follows:

(5) 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 | 5 (5)

25 / 25 / 25 / 25 / 25 (left side) — 15 / 15 / 15 / 15 / 15 (right side)

DISCOVER YOUR HIDDEN TREASURE
THIS CARD IS VALUABLE
UNDER THIS SECRET PANEL
IS YOUR AWARD
WARNING! VOID IF OPENED
NO BLANKS
EVERY CARD PAYS UP TO $5.00

(5) 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 10 | 15 | 15 | 15 (5)

Under the "secret panel" is the following:
When Properly Punched
Good For
25 Cents
In Trade

The secret panel referred to on said card is partially perforated to indicate where it may be opened, but until said panel is opened, the legend thereunder is effectively concealed from the holder of said card. The said legends under the secret panels vary in amounts from 20 cents to $5.00. The legend under the secret panel is effectively concealed until the panel has been opened, and the amount which the holder of said card will receive in trade is thus determined wholly by lot or chance. On the reverse, or back, of the said sales promotion cards is the following language:

NO BLANKS—AWARDS UP TO $5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the SECRET PANEL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THIS SECRET PANEL, THIS CARD BECOMES VOID. BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER.

—MERCHANT'S ADVERTISEMENT—

RELIABLE SALES SERVICE—310 ARCH STREET—PHILADELPHIA, PA.

Other cards manufactured and distributed by the respondent provide for recording the sale of $10 worth of merchandise by the members arranged around the border of said cards, and provide for the winning of amounts up to $10 by the legends under the secret panel.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The retail merchants to whom respondent sells assortment of said sales promotion cards distribute the same to their customers and prospective customers, and honor the awards as shown under the secret panel of said cards. One method advocated, or suggested by respondent and used by a substantial number of retail merchant customers, is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of said purchases are made around the margin of said card. When all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to merchandise from said merchant in the amount shown by the legend under the said secret panel free of charge.

PAR. 4. There are in competition with respondent various manufacturers and distributors of sales promotion cards, premium cards, price concession cards, coupons and trading stamps which, when used by retail merchants do not involve a lottery scheme or gift enterprise. By reason of the lottery scheme or gift enterprise connected with the distribution and use of the respondent's said cards, many retail merchants are induced to purchase respondent's said cards in preference to devices manufactured and distributed by respondent's competitors, and trade is thus unfairly diverted to respondent from his said competitors.

PAR. 5. The consuming public is induced to deal with, or purchase merchandise from, retail merchants using respondent's cards in preference to retail merchants using the devices of respondent's competitors, because of the lottery scheme or gift enterprise connected with respondent's said cards. By reason thereof, retail merchants are induced to purchase respondent's said cards in preference to devices of respondent's competitors and trade is thus unfairly diverted to respondent from his said competitors.

PAR. 6. The use by respondent of the said method in designing and arranging his said cards 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.

Many persons, firms, and corporations who make and sell various cards or devices for promoting or increasing the sales of retail merchants are unwilling to offer for sale, or sell, cards or devices so designed and arranged as above alleged, or otherwise designed and arranged, so as to involve a game of chance, lottery scheme, or gift enterprise, and such competitors refrain therefrom.

PAR. 7. The respondent, in shipping the said cards to his customers, assorts and packs them so that such customers know the amount of the awards stated under the secret panel; thus the retail merchants to whom respondent sells his cards are enabled to perpetrate a fraud on their customers. This practice has the capacity and tendency to induce, and it does induce, retail merchants to purchase respondent's said cards in preference to cards or devices of respondent's competitors.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

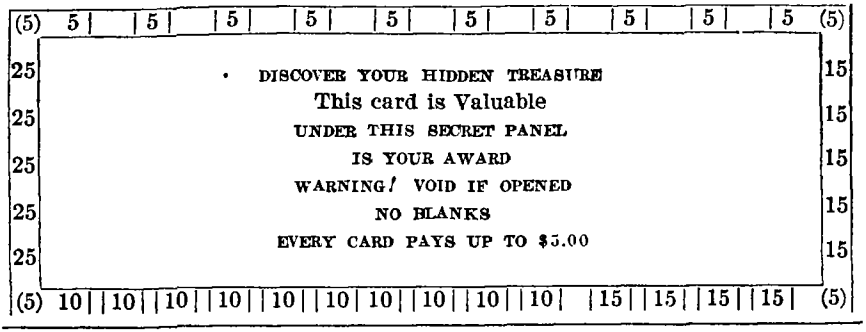
Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on August 15, 1938, issued and thereafter served its complaint in this proceeding upon respondent Joseph Saladoff, an individual, trading as Reliable Sales Service Co., charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint was introduced by P. C. Kolinski and D. C. Daniel, attorneys for the Commission (respondent having offered no proof in opposition to the allegations of the complaint) before Randolph Preston, an examiner of the Commission theretofore duly designated by it and said testimony and other evidence was duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, the answer thereto, testimony and other evidence, brief in support of the complaint (respondent having filed no 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, Joseph Saladoff, is an individual doing business under the trade name of Reliable Sales Service Co., with his principal office and place of business located at 510 Arch Street, Philadelphia, Pa. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of sales promotion cards to retail merchants located at points in the various States of the United States and in the District of Columbia, and causes, and has caused, his said products, when sold, to be transported from his principal place of business in the city of Philadelphia, State of Pennsylvania, to purchasers thereof 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 more than 1 year last past, a course of trade by said respondent in said sales promotion cards in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competition with other individuals, with partnerships and corporations engaged in the manufacture of sales promotion cards, trade cards, premium cards, coupons and trading stamps, and in the sale and distribution thereof in commerce between and among the various States of the United States 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, cards so designed and arranged as to involve the use of a lottery scheme or gift enterprise when used by retail merchants in promoting and increasing sales of their merchandise to the consuming public.

The respondent manufactures and distributes several groups of sales promotion cards, but they all involve the same lottery scheme or gift enterprise, and vary only in detail. The sales promotion cards in one such group are herein described for the purpose of showing arrangement, design, and principle involved. On the front, such cards are as follows:



Under the "secret panel" is the following:

When Properly Punched
Good for
25 Cents
in Trade

The secret panel referred to on said card is partially perforated to indicate where it may be opened and the legend under said secret panel is effectively concealed from purchasers and prospective purchasers until the panel has been opened or removed from said card. The legends under the secret panels vary in amount from 20 cents to $5.00. The amount which the individual holder of said cards will receive in trade is thus determined wholly by lot or chance. On the reverse side, or back, of the said sales promotion cards is the following language:

NO BLANKS—AWARDS UP TO $5.00

These awards are given in appreciation of your patronage. When this card is fully punched, present same to us intact. We will then open the SECRET PANEL. You will receive the award printed thereon ABSOLUTELY FREE. SHOULD YOU OPEN THIS SECRET PANEL, THIS CARD BECOMES VOID. BUY ALL YOUR NEEDS FROM US—YOU MAY BE A BIG WINNER.

—MERCHANT'S ADVERTISEMENT—

RELIABLE SALES SERVICE—510 ARCH STREET—PHILADELPHIA, PA.

Other cards manufactured and distributed by the respondent provide for recording the sale of $10 worth of merchandise by the numbers arranged around the border of said cards, and provide for the winning of amounts up to $10 by the legends under the secret panel.

Respondent furnishes the retail merchants with various display posters and advertisements to be used by said retail merchants in distributing and using said cards.

PAR. 3. The Commission finds that the retail merchants to whom respondent sells assortments of said sales promotion cards distribute the same to their customers and prospective customers, and honor the awards as shown under the secret panels of said cards as aforesaid. One method advocated, or suggested by respondent and used by a substantial number of retail merchant customers, is as follows: The cards are distributed free to customers and prospective customers of said retail merchants and when purchases are made, punches corresponding to the amount of said purchases are made around the margin of said card. When all the numbers around the margin of said card are punched, the secret panel is opened and the customer is entitled to and receives merchandise from said merchant in the

amount shown by the legend under the said secret panel without additional cost.

PAR. 4. The Commission finds that the sale and distribution of merchandise by retail merchants by means of respondent's said sales promotion cards, as herein found, constitute the sale and distribution of merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent thus supplies to, and places in the hands of, others a means of conducting lotteries in the sale and distribution of their merchandise. The sale of such cards by the respondent, as herein found, and the said use thereof by respondent's said customers are practices which are contrary to an established public policy of the Government of the United States.

PAR. 5. The Commission finds that there are in competition with respondent, as hereinabove described, many persons, firms, and corporations who make and sell various sales promotion cards, trade cards, premium cards, coupons and trading stamps for use by retail merchants in promoting or increasing the sales of the merchandise of said retail merchants and that such competitors are unwilling to offer for sale or sell their said products so designed and arranged, as above found, or otherwise designed and arranged so as to involve a game of chance, gift enterprise, or lottery scheme when used in connection with the sale or distribution of merchandise by retail dealers and such competitors refrain therefrom.

PAR. 6. The Commission finds that, because of the element of chance involved in the sale and distribution of merchandise by retail dealers by means of respondent's said cards, many members of the consuming public have been, and are being induced to deal with, or purchase merchandise from, retail merchants using respondent's said cards in preference to retail merchants using said products of respondent's said competitors. As a result thereof, many retail merchants are, and have been, induced to purchase respondent's said cards in preference to said products of respondent's said competitors who do not use such methods in designing and arranging their said products.

PAR. 7. Respondent so packs and assembles his said cards that his customers know the amount of the awards stated under the said secret panels and such customers are thus enabled to perpetrate a fraud on the members of the purchasing public in the distribution thereto of said cards.

PAR. 8. As a result of the practices of respondent as hereinabove found, substantial trade is being and has been unfairly diverted to respondent from his said competitors who do not engage in such practices.

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 Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondent having filed no brief and oral argument having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Joseph Saladoff, an individual trading as Reliable Sales Service Company, his representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of sales promotion cards, 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 sales promotion cards, or any other articles of merchandise, so designed and arranged that their use by retail merchants constitutes, or may constitute, the operation of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to, or placing in the hands of others sales promotion cards or sales promotion plans or schemes, or any other articles of merchandise, 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.

3. 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 sales promotion cards or other lottery devices are to be or may be distributed and used.

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

AMERICAN HAIR & FELT COMPANY, AND CLINTON CARPET COMPANY

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

Docket 3822. Complaint, June 16, 1939—Decision, Nov. 2, 1940

Where a corporation engaged in the manufacture, sale, and distribution of rug cushions, primary purpose of which is to prolong life of rugs under which placed and to deaden noise in rooms where used, and types of which cushions, as made by it, included those made entirely of hair except as below set forth, and others made of hair and jute with burlap base, or of approximately 95 percent hair with strands of jute with burlap center, or jute with interwoven strands of burlap; and its corporate subsidiary engaged in sale and distribution of its said products—

(*a*) Represented, in the course and conduct of their said business of selling, to purchasers in various States and in the District of Columbia, various types of rug products made by said manufacturer, by means of advertisements published and disseminated through magazines, trade journals, pamphlets, and in other printed matter distributed among prospective purchasers in the various States and in the District of Columbia, that rug cushions composed of materials other than hair would not serve the customary and ordinary purposes for which they were intended and used, and would cause rugs under which used to wear out sooner than would be the case if no cushions were used, through such statements as "Before you buy a rug cushion—ask what it's made of! And be wary of rug pads not made of ALL HAIR, because only too often these 'bargain pads' pack down in hard lumps that actually make rugs wear out sooner," and "Jute is a vegetable fibre and is no more to be compared with hair than a straw mattress with a hair mattress. Jute (often dyed to look like hair) is extensively used on so-called 'cheap' rug pads. Don't be misled—insist on getting an ALL-HAIR cushion," and others of similar tenor:

Facts being that any cushioning material, even paper, will serve some useful purpose as a rug cushion, jute and jute and hair mixed pads will prolong life of rugs under which placed and otherwise serve purposes for which intended and used, and such pads or cushions, under normal use in ordinary circumstances, will not become lumpy or cause rugs to wear out sooner than would be the case if no cushion were used; and

(*b*) Represented, for a time, that their "Ozite" cushions were composed entirely of hair, through label, later changed to disclose inclusion in cushion in question of reinforcing burlap center, reading "OZITE Rug Cushion is made of ALL HAIR," and through depiction of said label in its advertising matter:

Facts being while primary purpose of burlap or jute strip, as included by it, is to serve as necessary reinforcement to hold intact cushion composed of hair, such strip does have some cushioning effect, and to designate such a pad as "All Hair," without disclosing presence therein of said strip of burlap or jute, is not accurate description of product in question and is confusing to purchasers who do not understand technical problems involved in the manufacturing and handling of pads composed of hair;

With effect of misleading and deceiving substantial portion 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 their said "Ozite" cushions as result 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.

Before *Mr. Lewis C. Russell*, trial examiner.

Mr. DeWitt T. Puckett, for the Commission.

Mr. Leo Mann of Lines, Spooner & Quarles, of Milwaukee, Wisc., 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 American Hair & Felt Co., a corporation, and Clinton Carpet Co., 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. Respondent, American Hair & Felt Co., a corporation doing business under the laws of Delaware, with its main office in the Merchandise Mart, 222 West North Bank Drive, Chicago, Ill., is now and has been for several years last past engaged in the manufacture, sale, and distribution of various commodities made from animal hair and jute including underlays or cushions for rugs and carpets.

Respondent, Clinton Carpet Co., a corporation doing business under the laws of Delaware, with its main office in the Merchandise Mart, 222 West North Bank Drive, Chicago, Ill., is now and has been for several years last past engaged in the sale and distribution of rug and carpet underlays or cushions manufactured by respondent, American Hair & Felt Co. Respondent, Clinton Carpet Co., is a subsidiary of respondent, American Hair & Felt Co.

Respondents now cause, and for more than 1 year last past have caused, their said cushions or underlays, when sold by them, to be shipped from their said places of business in Chicago, Ill., to the purchasers thereof located in the various States of the United States other than Illinois and in the District of Columbia. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said cushions or underlays in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. The respondents manufacture and sell, as aforesaid, various types of rug underlays or cushions, among which is a product known and designated as "Ozite."

PAR. 3. In the course and conduct of their business, as described in paragraph 1 hereof, the respondents have disseminated and caused to be disseminated, false, misleading, and disparaging statements and claims relative to the qualities and characteristics of rug underlays or cushions not composed solely of hair. Said false and disparaging representations and claims have appeared in magazines, trade journals, pamphlets, booklets, and other printed matter distributed in commerce among and between the various States of the United States. Among and typical of the said claims and representations are the following:

Before you buy a rug cushion—ask what it's made of! And be wary of rug pads not made of ALL HAIR, because only too often these "bargain pads" pack down in hard lumps that actually make rugs wear out sooner.

Jute is a vegetable fibre and is no more to be compared with hair than a straw mattress with a hair mattress. Jute (often dyed to look like hair) is extensively used in so-called "cheap" rug pads. Don't be misled—insist on getting an ALL HAIR cushion.

Rug pads cheapened with jute are costly "bargains". When they pack down into hard lumps they wear out sooner]

There is no substitute * * * because nothing less than Genuine Circle Tread Ozite quality is "good enough" to do the job!

Age or dry air causes jute to disintegrate into a fine powder in a short time while moist air makes it pack into a hard mass. Thus jute pads pack down and form lumps, and actually make rugs wear out sooner!

The aforesaid statements and claims and others of similar import but not herein set out serve as representations on the part of respondents that rug cushions or underlays not composed wholly of hair will not withstand the customary and ordinary usage or treatment to which said cushions are subjected; that they will become lumpy; that they will disintegrate in dry air and are ruined by moist air; that they will cause a rug to wear out sooner than would be the case if no cushion at all were used under such rug.

PAR. 4. In truth and in fact, jute or jute mixed rug cushions satisfactorily meet the needs and uses for which they are customarily sold. They will not pack down or become lumpy enough to impair their efficiency. They will not disintegrate in dry air or become ruined by moist air. They will not cause a rug to wear out sooner than would be the case if no cushion at all were used.

PAR. 5. In addition to the dissemination of disparaging statements, the respondents have represented, in their various advertising as above described that their product known as "Ozite" is composed

entirely of hair. Typical of this representation, respondents attach to said product a label which reads as follows:

OZITE
Rug Cushion
Made of ALL HAIR

A picture of such label also appears in respondents' various advertising material.

In truth and in fact said product known and designated as "Oazite" is not composed entirely of hair but instead is composed of two layers of hair between which has been placed a layer of burlap or jute cord, a vegetable fiber. This "Ozite" product is so made that the existence of a layer of burlap, or jute cord between said layers of hair, is not readily discernible to the purchaser.

PAR. 6. The use by respondents of the false, misleading, and disparaging statements and claims set forth and referred to herein, including the representations concerning the product known as "Ozite," 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 and claims are true, and to cause them to purchase substantial quantities of said products, as a result of such erroneous belief.

PAR. 7. The aforesaid acts and practices of respondents, as herein alleged, are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on June 16, 1939, issued and subsequently served its complaint in this proceeding charging respondents, American Hair & Felt Co., a corporation, and Clinton Carpet Co., a corporation, 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, testimony and other evidence in support of the allegations of said complaint were introduced by DeWitt T. Puckett, attorney for the Commission, and in opposition to the allegations of the complaint by Leo Mann, attorney for the respondents, before Lewis C. Russell, an examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, the

proceeding regularly came on for final hearing before the Commission on the said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto (oral argument not having been requested); and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, American Hair & Felt 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 at 222 West North Bank Drive, Chicago, Ill. It is now, and has been for several years last past, engaged in the manufacture and in the sale and distribution of rug cushions.

The respondent, Clinton Carpet 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 at 222 West North Bank Drive, Chicago, Ill. It is now, and has been for several years last past, engaged in the sale and distribution or rug cushions manufactured by respondent American Hair & Felt Co. Respondent Clintion Carpet Co. is a subsidiary of respondent American Hair & Felt Co.

The respondents cause their products, when sold, to be shipped from their aforesaid places of business in Chicago, Ill., to purchasers thereof located in various States of the United States and in the District of Columbia. During all of the time mentioned herein, respondents have maintained a course of trade in said cushions in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. Respondent American Hair & Felt Co. manufactures, and both of respondents sell, four types of rug cushions, namely: (1) A cushion composed entirely of hair, except for a layer of burlap in the center which gives the cushion tensile strength and holds it together. This cushion is sold by respondents under the trade name "Ozite." (2) A combination of mixed hair and jute cushion with a burlap base. (3) A cushion consisting of approximately 95 percent hair, the balance being strands of jute. This cushion also contains a burlap center. (4) A cushion composed of jute with interwoven strands of burlap.

Jute is a vegetable fiber product and burlap is a loosely woven fabric made from jute cord.

PAR. 3. The primary purpose of rug cushions is to prolong the life of rugs under which they are placed and to deaden noise in the rooms where they are used. A cushion, being resilient, prolongs the life of a rug under which it is used by absorbing the pressure to the rug caused by footsteps or such objects as furniture. Any cushioning material that possesses resilience will serve this purpose to some extent.

PAR. 4. During the time mentioned above and in the course and conduct of their business as aforesaid, the respondents, in promoting the sale of their "Ozite" cushion, caused to be published and disseminated, through magazines, trade journals, pamphlets, and in other printed matter distributed among prospective purchasers of rug cushions located in various States of the United States and in the District of Columbia, various advertisements, of which the following are typical:

Before you buy a rug cushion—ask what it's made of! And be wary of rug pads not made of ALL HAIR, because only too often these "bargain pads" pack down in hard lumps that actually make rugs wear out sooner.

Jute is a vegetable fibre and is no more to be compared with hair than a straw mattress with a hair mattress. Jute (often dyed to look like hair) is extensevely used in so-called "cheap" rug pads. Don't be misled—insist on getting an ALL-HAIR cushion.

Rug pads cheapened with jute are costly "bargains." When they pack down into hard lumps they wear out sooner!

There is no substitute . . . because nothing less than Genuine Circle Thread Ozite quality is "good enough" to do the job!

Age or dry air causes jute to disintegrate into a fine powder in a short time while moist air makes it pack into a hard mass. Thus jute pads pack down and form lumps, and actually make rugs wear out sooner!

The labels formerly used by respondents in connection with the sale of their "Ozite" cushions read as follows:

OZITE
Rug Cushion
is made of
ALL HAIR

A picture of said label also appeared in the aforesaid advertising matter. Said labels have been changed to read:

OZITE
Rug Cushion
is made of
ALL HAIR
Reinforced with a patented
Adhesive Burlap Center

PAR. 5. By the use of the representations set out herein, respondents have represented that rug cushions composed of materials other than hair will not serve the customary and ordinary purposes for which they are intended and used, and that they will cause the rugs under which they are used to wear out sooner than would be the case if no cushion were used. They have also represented that their "Ozite" cushions are composed entirely of hair.

PAR. 6. The Commission finds that any cushioning material, even paper, will serve some useful purpose as a rug cushion and that jute and jute and hair mixed pads will prolong the life of rugs under which they are placed and otherwise serve the purposes for which they are intended and used. The Commission further finds that under normal use and ordinary circumstances jute and jute and hair mixed cushions will not become lumpy or cause rugs to wear out sooner than would be the case if no cushion were used. The Commission also finds that respondents' rug cushions sold under the trade name "Ozite" and advertised as "All Hair" cushions are not, in fact, composed entirely of hair, inasmuch as they contain a burlap or jute reinforcing center. Respondents' labels in current use in connection with the sale of their "Ozite" cushions contain a statement disclosing the presence of burlap. The purpose of the respondents in using a burlap or jute center in said "Ozite" pads is to hold together and reinforce the hair from which the pad is principally composed. The use of some such reinforcement is necessary to hold a cushion composed of hair intact, largely in handling. While the primary purpose of the burlap or jute strip is to serve as reinforcement, it does have some cushioning effect, and to designate such a pad as "All Hair" without disclosing the presence of the reinforcing strip of burlap or jute, as respondents formerly did, is not an accurate description of such pad and is confusing to purchasers who do not understand the technical problems involved in the manufacturing and handling of pads composed of hair.

PAR. 7. The use by respondents of the foregoing false and misleading statements and representations, disseminated as aforesaid, has the capacity and tendency to mislead and deceive, and has misled and deceived, a substantial portion of the purchasing public into the erroneous and mistaken belief that such representations are true and into the purchase of substantial quantities of respondents' "Ozite" cushions as a result of such erroneous and mistaken belief.

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, the answer of respondents, testimony and other evidence taken before Lewis C. Russell, 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 DeWitt T. Puckett, counsel for the Commission, and by Leo Mann, counsel for the respondents (oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, American Hair & Felt Co., a corporation, and Clinton Carpet 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 rug cushions in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that jute, or jute and hair, rug cushions will cause rugs to wear out sooner than if no cushion whatever is used; or that only cushions made of hair are useful as rug cushions; or that jute, or jute and hair, rug cushions will not serve the usual and ordinary purposes for which rug cushions are intended and used.

2. Using the term "All Hair" or any other term of similar import or meaning to designate, describe or refer to the rug cushion now sold by respondents under the name "Ozite," whether sold under that name or any other trade name, unless there appears in immediate connection or conjunction with such a term a complete and equally conspicuous statement disclosing the presence in said cushion of a reinforcing center of burlap or jute.

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

MITCHELL F. BRICE, TRADING AS PARR SALES 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 4233. Complaint, Aug. 13, 1940—Decision, Nov. 2, 1940

Where an individual who (1) was president, secretary-treasurer and director of, and owner of a large majority of the stock in a corporation engaged in a general wholesale merchandise business, and which placed orders for a substantial portion of the goods, wares, and merchandise, and particularly food stuffs, required in the ordinary conduct of its business with sellers located mostly in other States, and (2) was co-owner in a brokerage firm in the same city with another to whom, as his employee in various enterprises owned and controlled by him, he paid as compensation for services rendered a substantial amount of the brokerage fees and commissions received by said firm, through which said corporate wholesaler made its purchases aforesaid from sellers in other States mostly—

Accepted and received, through said brokerage firm, as brokerage fees or commissions, certain percentages paid by such sellers on purchases made through firm in question by corporate wholesaler aforesaid, and in which transactions said individual was agent and acted in fact for and in behalf of aforesaid corporate wholesaler:

Held, That in accepting and receiving certain percentages of the sales prices upon purchases of commodities of said corporate wholesaler, in interstate commerce as aforesaid set forth, as brokerage fees or commissions, said individual, in his individual capacity and while trading as member of such brokerage firm, violated provisions of section 2 (c) of Clayton Act, as amended by Robinson-Patman Act.

Mr. J. T. Haslett, for the Commission.

Mr. Duncan Graham, of Vidalia, Ga., 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 subsection (c) of section 2 of the Clayton Act (U. S. C., title 15, sec. 13) as amended by the Robinson-Patman Act approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Tanner-Brice Co., Inc., a corporation organized and existing under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at Vidalia, Ga., is engaged in a general wholesale merchandise business and operates

a chain of retail grocery stores under the trade name of Sims Stores, the principal ones of which are located at Vidalia, Swainsboro, Dublin, Douglas, and Baxley, Ga. Practically all the merchandise sold by the Sims Stores is purchased from the Tanner-Brice Co., Inc.

PAR. 2. The respondent, Mitchell F. Brice, an individual residing in the city of Vidalia, Ga., is now and has been since June 19, 1936, president, secretary-treasurer, director, and a major stockholder in Tanner-Brice Co., Inc. Said respondent Mitchell F. Brice owns and controls 83 percent of the outstanding capital stock, and actively manages and conducts the business of said Tanner-Brice Co., Inc.

PAR. 3. Respondent Mitchell F. Brice is a member of a firm engaged in the brokerage business under the trade name Parr Sales Co., maintaining an office and place of business in Vidalia, Ga.

The Parr Sales Co. is a firm owned by respondent Mitchell F. Brice and Francis K. Graham. Said Francis K. Graham is a former employee of the Tanner-Brice Co., Inc., and is now employed by the said Mitchell F. Brice to render services to various other enterprises owned and controlled by respondent Mitchell F. Brice.

PAR. 4. Tanner-Brice Co., Inc., places orders for a substantial portion of the goods, wares, and merchandise, particularly foodstuffs, required in the ordinary conduct of its business with sellers who are in most cases located in States of the United States other than the State in which said Tanner-Brice Co., Inc., is located, through the brokerage firm of Mitchell F. Brice and Francis K. Graham trading as Parr Sales Co. As a result of the transmission and execution of said orders, as aforesaid, goods, wares and merchandise, particularly foodstuffs, are, in the case of each such order, and in a continuous succession of such orders, sold, transported and delivered by one or more of such sellers across State lines to the Tanner-Brice Co.

PAR. 5. In the course and conduct of the buying and selling transactions hereinabove referred to resulting in the transportation and delivery of goods, wares, and merchandise, particularly foodstuffs, in interstate commerce from one or more sellers to said Tanner-Brice Co., Inc., sellers have transmitted and paid, and do transmit and pay, to the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as the Parr Sales Co., brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales prices of such purchases.

Since June 19, 1936, sellers have paid brokerage fees and commissions to, and the same have been received by, the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as Parr

Sales Co., upon the purchases of Tanner-Brice Co., Inc., in the manner hereinabove described in substantial amounts.

PAR. 6. In all of the transactions of purchase and sale hereinabove referred to, since June 19, 1936, the respondent Mitchell F. Brice has been the agent, and has acted in fact for and in behalf of the Tanner-Brice Co., Inc.

PAR. 7. A substantial amount of the brokerage fees and commissions received by the brokerage firm of Mitchell F. Brice and Francis K. Graham trading as Parr Sales Co. in the manner aforesaid since June 19, 1936, has been paid to Francis K. Graham as compensation for services rendered by Francis K. Graham in his respective capacities as an employee of the various enterprises owned and controlled by respondent Mitchell F. Brice.

PAR. 8. The transmission and payment of brokerage fees and commissions by sellers to said respondent Mitchell F. Brice as a member of the brokerage firm trading as the Parr Sales Co., and the receipt and acceptance of such brokerage fees and commissions by said respondent Mitchell F. Brice upon the purchases of the Tanner-Brice Co., Inc., in the manner and form hereinabove set forth, is in violation of the provisions of subsection (c) of section 2 of the act described in the preamble hereof.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress 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 an Act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 13th day of August 1940, issued and served its complaint in this proceeding upon respondent Mitchell F. Brice, charging the respondent with violation of the provisions of subsection (c) of section 2 of the said act.

After the issuance of said complaint and the filing of respondent's answer, the Commission, by order entered herein, granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearings as to said facts, which substitute answer was duly filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that

section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Tanner-Brice Co., Inc., a corporation, organized and existing under and by virtue of the laws of the State of Georgia, with its principal office and place of business located at Vidalia, Ga., is engaged in a general wholesale merchandise business.

PAR. 2. The respondent, Mitchell F. Brice, an individual residing in the city of Vidalia, Ga., is now and has been since June 19, 1936, president, secretary-treasurer, director, and stockholder in Tanner-Brice Co., Inc.

PAR. 3. The Parr Sales Co. is a firm engaged in the brokerage business with an office and place of business in Vidalia, Ga., and is owned by respondent Mitchell F. Brice and Francis K. Graham. Said Francis K. Graham is a former employee of the Tanner-Brice Co., Inc., and is now employed by the said Mitchell F. Brice to render services to various other enterprises owned and controlled by respondent Mitchell F. Brice.

PAR. 4. Tanner-Brice Co., Inc., places orders for a substantial portion of the goods, wares and merchandise, particularly food stuffs, required in the ordinary conduct of its business with sellers, who are in most cases located in States of the United States other than the State which said Tanner-Brice Co., Inc., is located, through the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as the Parr Sales Co. As a result of the transmission and execution of said orders as aforesaid goods, wares and merchandise, particularly food stuffs, are, in the case of each such order and in a continuous succession of such orders, sold, transported, and delivered by one or more of such sellers across State lines to the Tanner-Brice Co., Inc.

PAR. 5. In the course and conduct of the buying and selling transactions, hereinabove referred to, resulting in the transportation and delivery of goods, wares and merchandise, particularly food stuffs, in interstate commerce from one or more sellers to said Tanner-Brice Co., Inc., sellers have transmitted and paid, and do transmit and pay, to the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as the Parr Sales Co., brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales prices of such purchases.

Since June 19, 1936, and while respondent Mitchell F. Brice owned and controlled 83 percent of the outstanding capital stock and actively

managed and conducted the business of the said Tanner-Brice Co., Inc., sellers have paid brokerage fees and commissions to, and the same have been received by, the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as Parr Sales Co., upon the purchases of Tanner-Brice Co., Inc., in the manner hereinabove described in substantial amounts.

PAR. 6. In all of the transactions of purchase and sale hereinabove referred to since June 19, 1936, the respondent Mitchell F. Brice has been the agent and acted in fact for, and in behalf of, the Tanner-Brice Co., Inc.

PAR. 7. A substantial amount of the brokerage fees and commissions received by the brokerage firm of Mitchell F. Brice and Francis K. Graham, trading as Parr Sales Co., in the manner aforesaid since June 19, 1936, has been paid to Francis K. Graham as compensation for services rendered by Francis K. Graham in his respective capacities as an employee of the various enterprises owned and controlled by respondent Mitchell F. Brice.

CONCLUSION

In accepting and receiving brokerage fees or commissions, the same being a certain percentage (usually from 2½ percent to 5 percent) of the sales prices upon purchases of commodities of the Tanner-Brice Co., Inc., in interstate commerce as set forth in the foregoing findings as to the facts, the respondent Mitchell F. Brice, individually and while trading under the firm name and style of Parr Sales Co., violated the provisions of section 2 (c) 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 and substitute answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in purchasing commodities in interstate commerce the respondent, Mitchell F. Brice, individually, and trading under the firm name and style of Parr Sales Co., or any other name, his agents, employees, and representatives, directly or through any corporate or other device, do forthwith cease and desist from:

1. Accepting from sellers directly or indirectly on purchases of commodities of the Tanner-Brice Co., Inc., any brokerage fees or commissions or any allowance or discount in lieu of brokerage in whatever manner or form said brokerage fees, allowances, and discounts may be offered, allowed, granted, paid, or transmitted; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof upon purchase of commodities made for respondent's own account.

It is further ordered, That the said respondent Mitchell F. Brice 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 the order to cease and desist hereinabove set forth by the Commission.

IN THE MATTER OF

R. F. BEMPORAD & 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 4238. Complaint, Aug. 15, 1940—Decision, Nov. 2, 1940

Where a corporation engaged in importing, distributing, and selling rugs to various wholesale and retail dealer-purchasers in various other States and in the District of Columbia, in substantial competition with others likewise engaged in sale and distribution of rugs in commerce as aforesaid, and including many who do not misrepresent the nature of their product or the place or method of manufacture thereof, and do not furnish their dealer-customers with means and instrumentalities for deceiving the public—

(*a*) Made use of names of Chinese cities "Hong Kong" and "Canton," and of words connoting China, or "Kina," to describe, designate and refer to certain of its rugs in invoices and circulars addressed to dealers and in connection with sale of such rugs thereto, and in labels attached to said products and plainly discernible to members of purchasing public upon said rugs' display for resale by retailers thereof;

Notwithstanding fact said "Hong Kong" and "Canton" rugs were not made in China, but in Italy and Belgium, respectively, and of cotton and on power looms, and they did not have the structure or all the characteristics of the true Chinese Oriental rugs, and individual threads were not knotted in distinctive manner of such rugs, and they were made from different materials and were not true Chinese Oriental rugs, as long understood by substantial portion of purchasing public as meaning rugs made in China by hand in the same manner and possessing the same qualities and characteristics as the Oriental rugs, and, as such, long held in great public esteem because of their texture, beauty, durability, and other qualities;

With effect of inducing misleading and erroneous belief that said rugs, thus designated, which so closely resembled Chinese Oriental rugs in appearance that a large portion of the purchasing public was unable to distinguish such "Hong Kong" and "Canton" rugs from true Chinese Orientals, were made in China by hand and were in all respects, including materials, true Chinese Oriental rugs, and with result that said products were readily accepted as being genuine Chinese Oriental rugs, for which there is decided preference on part of many of purchasinng public;

(*b*) Made use of words "Mahah" and "Kirma," and of word "Orienta," which, respectively, simulated Oriental rug names "Mahal" and "Kirman" and word "Oriental," and of name of Oriental city "Bagdad," to describe, designate, and refer to certain of its rugs in invoices and circulars addressed to dealers, and, in connection with sale of said products thereto, and in labels attached to said rugs and plainly discernible to members of purchasing public upon said rugs' display and resale by retailers thereof;

Notwithstanding fact said "Kirma" and "Mahah" rugs were not in fact true Oriental "Kirman" and "Mahal" rugs, and said "Orienta" and "Bagdad" rugs were not made in the Orient by hand and in all respects, including materials, true Oriental rugs, but said "Mahah" and "Bagdad" products

were made in Italy, and said "Kirma" and "Orienta" rugs in Belgium, of cotton and on power looms, and aforesaid various products were not true Oriental rugs, as long understood by substantial portion of purchasing public as meaning rugs made in the Orient or, more particularly, in certain parts of southwestern Asia, and usually designated by names indicative of Oriental origin and manufacture, and made by hand, of pleasing texture and original and beautiful design, and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner, and said rugs did not have the structure or all of the characteristics of the true Orientals and were not made of the same materials;

With effect of inducing misleading and erroneous belief that said various rugs, which so closely resembled in appearance true Orientals that a large portion of purchasing public was unable to distinguish same therefrom, were in fact, in case of said "Kirma" and "Mahah" products, true Oriental "Kirman" and "Mahal" rugs, and that said "Orienta" and "Bagdad" products were made in the Orient by hand and were in all respects, including materials, true Oriental rugs, and with result, as aforesaid, that said rugs were readily accepted as being genuine Oriental rugs, for which there is a decided preference on the part of many of the purchasing public;

(*c*) Represented and implied, in circulars which it furnished to dealers and prospective dealers, that certain of its rugs were reproductions and copies of true Oriental and Chinese Oriental rugs, through such typical statements as "Faithful reproductions of exquisite Orientals," and "An Oriental reproduction that reproduces everything but the price";

Notwithstanding fact products in question were not exact copies or reproductions of true Orientals in structure, material, or method of manufacture, but merely simulated same in appearance;

(*d*) Represented, directly and by implication, as aforesaid, that certain of its said rugs were reproductions and copies, except as to material, of true Oriental rugs, through such typical statements as "Amazing cotton reproductions" and "All virgin cotton Oriental reproductions";

Notwithstanding fact products in question did not have the structure or characteristics of the true Oriental rugs, even disregarding differences in materials; and

(*e*) Described and designated certain of its hooked rugs by names "Boston" and "Old Cabin," and made use of such names to refer thereto in invoices and circulars and in labels bearing one or the other of said names and securely attached to rugs in question so as to be plainly discernible to members of the purchasing public upon said rugs' display for resale by retailers thereof;

Notwithstanding fact products in question were not hooked rugs such as made in this country since early in its colonial history, constituting one of the earliest forms of artistic expression of the early settlers, and always and still generally regarded as a distinctive American product and as definitely connoted by aforesaid names, were not made in the United States, but in Europe;

With effect, through use of such designations and representations in connection with offer and sale of its said rugs, of misleading purchasers and prospective purchasers thereof into erroneous and mistaken belief that such representations and designations were true and correct, and of inducing them to purchase said rugs by reason thereof, and with further effect of placing in hands of

retail dealers, who purchase said rugs and resell same to purchasing public, means and instrumentalities of misleading and deceiving public in aforesaid particulars, and with result that trade was unfairly diverted to it from its competitors engaged in sale in commerce, as aforesaid, of rugs of various kinds, including genuine Oriental, Chinese Oriental, and domestic rugs, and who truthfully represent their products as above set forth; to the injury of competition in commerce:

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

Mr. Randolph W. Branch, for the Commission.

Mr. David Easton, 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 R. F. Bemporad & Co., Inc., a corporation, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph 1. Respondent, R. F. Bemporad & Co., Inc., is a corporation organized and existing under the laws of the State of New York, and having an office and principal place of business at 102 Madison Avenue, city and State of New York.

Par. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of importing, distributing, and selling rugs. In the course and conduct of its business respondent sells said rugs to various wholesale and retail dealers, and causes them, when sold, to be transported from its aforesaid 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 rugs 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 at all times mentioned herein, in substantial competition with other corporations and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs in commerce among and between the various States of the United States and in the District of Columbia. Among such competitiors are many who do not misrepresent the nature of their product or the

place or method of manufacture thereof, and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understand, and for many years has understood, Oriental rugs, to be rugs made in the Orient, or more particularly in certain parts of southwestern Asia, by hand, of pleasing texture and original and beautiful design and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese Oriental rugs to be rugs made in China, by hand, in the same manner and possessing the same qualities and characteristics as the Oriental rug. Both Oriental and Chinese Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof, there is a decided preference on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the purchase of its said rugs, respondent has engaged in the practice of describing and designating certain of its rugs, which closely resemble Chinese Oriental rugs in appearance, by the names of "Hong Kong" and "Canton," which are cities in China, and by the name of "Kina" which connotes China. The use of said names has the tendency and capacity to, and does, induce the mistaken and erroneous belief that the rugs so designated are made in China, by hand, and are in all respects, including materials, true Chinese Oriental rugs.

In like manner said respondent has engaged in the practice of describing and designating certain of its rugs which closely resemble Oriental rugs in appearance by the names of "Mahah," "Kirma," "Orienta," and "Bagdad." There are true Oriental rugs known as "Mahal," and "Kirman." Bagdad is a city in the Orient, and the words "Orienta," "Mahah," and "Kirma" simulate, respectively, the words "Oriental," "Mahal," and "Kirman."

The use by respondent of the said designations has the tendency and capacity to, and does, induce the mistaken and erroneous belief that respondent's "Kirma" and "Mahah" rugs are in fact true Oriental "Kirman" and "Mahal" rugs, and that respondents "Orienta" and "Bagdad" rugs are made in the Orient, by hand, and are in all respects, including materials, true Oriental rugs.

Respondent has used said names to designate said rugs in invoices and circulars addressed to dealers, and in otherwise referring to the same in the sale thereof to dealers. To certain of said rugs are firmly attached labels upon which one or another of said names appears, which are plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers.

PAR. 6. In truth and in fact respondent's said "Hong Kong," "Mahah," and "Bagdad" rugs are made in Italy, and the "Canton," "Kirma" and "Oriental" rugs in Belgium, of cotton, and on power looms. The "Hong Kong" and "Canton" rugs do not have the structure or all the characteristics of the true Chinese Oriental rug, the individual threads are not knotted in the distinctive manner of the true Chinese rug, and they are made from different materials. Respondent's "Mahah" and "Kirma" rugs are not true Oriental "Mahal" or "Kirman" rugs and neither they nor respondent's "Bagdad" and "Orienta" rugs have the structure or all of the characteristics of the true Oriental rugs nor are they made from the same materials. A large portion of the purchasing public is unable, so close is the resemblance in appearance, to distinguish respondent's "Hong Kong" and "Canton" rugs from true Chinese Orientals or respondent's "Mahah," "Kirma," "Bagdad" and "Orienta" rugs from true Orientals, and in consequence respondent's said rugs are readily accepted as being genuine Chinese Oriental or Oriental rugs.

PAR. 7. In the course and conduct of its business, and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of furnishing to dealers and prospective dealers in its said rugs, circulars containing many misleading statements which represent and imply that certain of the said rugs are reproductions and copies of true Oriental and Chinese Oriental rugs. Among and typical of such statements are the following:

Faithful reproductions of exquisite Orientals.
An Oriental reproduction that reproduces everything but the price.

In truth and in fact said rugs are not exact copies or reproductions of true Orientals in structure, material, or method of manufacture, but merely simulate them in appearance.

In like manner respondent has represented, directly and by implication, that certain of the said rugs are reproductions and copies, except as to material, of true Oriental rugs. Among and typical of such statements are the following:

Amazing cotton reproductions.
All virgin cotton Oriental reproductions.

In truth and in fact the said rugs do not have the structure or characteristics of the true Oriental rug, even though differences in material are disregarded.

PAR. 8. The manufacture of hooked rugs has been carried on in this country since early in its colonial history, and was one of the earliest forms of artistic expression of the early settlers. Hooked rugs always have been, and still are, generally regarded as being a distinctly American product.

PAR. 9. In the course and conduct of its business, and for the purpose of inducing the purchase of certain of its rugs, respondent has engaged in the practice of describing and designating certain of its hooked rugs by the names "Boston" and "Old Cabin." Such names carry so definite an American connotation as to have the tendency and capacity to induce the mistaken and erroneous belief that the rugs so designated were made in the United States. Respondent used said names to designate said rugs in invoices and in circulars distributed to dealers and prospective dealers. Respondent also caused labels bearing one or the other of the said names to be securely attached to the said rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers.

In truth and in fact the rugs designated as "Old Cabin" and "Boston" were made in Europe.

PAR. 10. The use by respondent of the designations and representations, as set forth herein, in connection with the offering for sale and sale of its said rugs, 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 and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have the effect of placing in the hands of retail dealers, who purchase said rugs and resell the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia, of rugs of various kinds, including genuine Oriental, Chinese Oriental, and domestic rugs, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been and is now being done by respondent to competition in commerce among and between 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 August 15, 1940, issued and served its complaint in this proceeding upon the respondent, R. F. Bemporad & Co., Inc., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On September 5, 1940, the respondent filed its answer, in which answer it admitted all the material allegations of fact set forth in said complaint and waived hearing on the allegations of fact set forth in the complaint. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint and the answer thereto, and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public, and makes this its findings as to the fact and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, R. F. Bemporad & Co., Inc., is a corporation organized and existing under the laws of the State of New York, and having an office and principal place of business at 102 Madison Avenue, city and State of New York.

PAR. 2. Respondent is now, and has been for more than 1 year last past, engaged in the business of importing, distributing, and selling rugs. In the course and conduct of its business respondent sells said rugs to various wholesale and retail dealers, and causes them, when sold, to be transported from its aforesaid 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 rugs 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 at all times mentioned herein, in substantial competition with other corporations and with firms, partnerships, and individuals likewise engaged in the sale and distribution of rugs in

commerce among and between the various States of the United States and in the District of Columbia. Among such competitors are many who do not misrepresent the nature of their product or the place or method of manufacture thereof, and who do not furnish their dealer-customers with means or instrumentalities for deceiving the public.

PAR. 4. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Oriental rugs to be rugs made in the Orient, or more particularly in certain par s of southwestern Asia by hand, of pleasing texture and original and beautiful design, and having a pile of wool or silk and wool, the threads of which are individually knotted in a special manner. Such rugs are usually designated by names which are indicative of the Orient and Oriental origin and manufacture. A substantial portion of the purchasing and consuming public understands, and for many years has understood, Chinese Oriental rugs to be rugs made in China, by hand, in the same manner and possessing the same qualities and characteristics as the Oriental rug. Both Oriental and Chinese Oriental rugs have been for many years, and still are, held in great public esteem because of their texture, beauty, durability, and other qualities, and by reason thereof, there is a decided preference on the part of many of the purchasing public for such rugs.

PAR. 5. In the course and conduct of its business, and for the purpose of inducing the purchase of its said rugs, respondent has engaged in the practice of describing and designating certain of its rugs, which closely resemble Chinese Oriental rugs in appearance, by the names of "Hong Kong" and "Canton," which are cities in China, and by the name of "Kina" which connotes China. The use of said names has the tendency and capacity to, and does, induce the mistaken and erroneous belief that the rugs so designated are made in China, by hand, and are in all respects, including materials, true Chinese Oriental rugs.

In like manner said respondent has engaged in the practice of describing and designating certain of its rugs which closely resemble Oriental rugs in appearance by the names of "Mahah," "Kirma," "Orienta," and "Bagdad." There are true Oriental rugs known as "Mahal," and "Kirman." Bagdad is a city in the Orient, and the words "Orienta," "Mahah," and "Kirma" simulate respectively, the words "Oriental," "Mahal," and "Kirman."

The use by respondent of the said designations has the tendency and capacity to, and does, induce the mistaken and erroneous belief that respondent's "Kirma" and "Mahah" rugs are in fact true Oriental "Kirman" and "Mahal" rugs, and that respondent's "Orienta"

and "Bagdad" rugs are made in the Orient, by hand, and are in all respects, including materials, true Oriental rugs.

Respondent has used said names to designate said rugs in invoices and circulars addressed to dealers, and in otherwise referring to the same in the sale thereof to dealers. To certain of said rugs are firmly attached labels upon which one or another of said names appears, which are plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers.

PAR. 6. In truth and in fact respondent's said "Hong Kong," "Mahah," and "Bagdad" rugs are made in Italy, and the "Canton," "Kirma," and "Orienta" rugs in Belgium, of cotton, and on power looms. The "Hong Kong" and "Canton" rugs do not have the structure or all the characteristics of the true Chinese Oriental rug, the individual threads are not knotted in the distinctive manner of the true Chinese rug, and they are made from different materials. Respondent's "Mahah" and "Kirma" rugs are not true Oriental "Mahal" or "Kirman" rugs and neither they nor respondent's "Bagdad" and "Orienta" rugs have the structure or all of the characteristics of the true Oriental rugs nor are they made from the same materials. A large portion of the purchasing public is unable, so close is the resemblance in appearance, to distinguish respondent's "Hong Kong" and "Canton" rugs from true Chinese Orientals or respondent's "Mahah," "Kirma," "Bagdad" and "Orienta" rugs from true Orientals, and in consequence respondent's said rugs are readily accepted as being genuine Chinese Oriental or Oriental rugs.

PAR. 7. In the course and conduct of its business, and for the purpose of inducing the purchase of said rugs, respondent has engaged in the practice of furnishing to dealers and prospective dealers in its said rugs, circulars containing many misleading statements which represent and imply that certain of the said rugs are reproductions and copies of true Oriental and Chinese Oriental rugs. Among and typical of such statements are the following:

Faithful reproductions of exquisite Orientals.
An Oriental reproduction that reproduces everything but the price.

In truth and in fact said rugs are not exact copies or reproductions of true Orientals in structure, material, or method of manufacture, but merely simulate them in appearance.

In like manner respondent has represented, directly and by implication, that certain of the said rugs are reproductions and copies, except as to material, of true Oriental rugs. Among and typical of such statements are the following:

Amazing cotton reproductions.
All virgin cotton Oriental reproductions.

In truth and in fact the said rugs do not have the structure or characteristics of the true Oriental rug, even though differences in material are disregarded.

PAR. 8. The manufacture of hooked rugs has been carried on in this country since early in its colonial history, and was one of the earliest forms of artistic expression of the early settlers. Hooked rugs always have been, and still are, generally regarded as being a distinctively American product.

PAR. 9. In the course and conduct of its business, and for the purpose of inducing the purchase of certain of its rugs, respondent has engaged in the practice of describing and designating certain of its hooked rugs by the names "Boston" and "Old Cabin." Such names carry so definite an American connotation as to have the tendency and capacity to induce the mistaken and erroneous belief that the rugs so designated were made in the United States. Respondent used said names to designate said rugs in invoices and in circulars distributed to dealers and prospective dealers. Respondent also caused labels bearing one or the other of the said names to be securely attached to the said rugs so as to be plainly discernible to members of the purchasing public when such rugs are displayed for sale by retail dealers.

In truth and in fact the rugs designated as "Old Cabin" and "Boston" were made in Europe.

PAR. 10. The use by respondent of the designations and representations, as set forth herein, in connection with the offering for sale and sale of its said rugs, 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 and designations are true and correct, and to induce them to purchase said rugs on account thereof. Respondent's said acts and practices have the effect of placing in the hands of retail dealers, who purchase said rugs and resell the same to the purchasing public, means and instrumentalities of misleading and deceiving the public in the particulars aforesaid.

As a result of respondent's said acts and practices, trade has been unfairly diverted to respondent from its competitors engaged in the sale in commerce between and among the various States of the United States and in the District of Columbia, of rugs of various kinds, including genuine Oriental, Chinese Oriental, and domestic rugs, who truthfully represent their products as set forth in paragraph 3 hereof. In consequence thereof, injury has been, and is now being done by respondent to competition in commerce among and between 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 the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and waives hearing on the allegations of fact set forth in the complaint, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, R. F. Bemporad & 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 rugs and other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Hong Kong," "Canton," "Kina," or other names indicative of Chinese origin as descriptive of rugs which are not in fact made in China and which do not possess all the essential characteristics and structure of Chinese Oriental rugs.

2. Using the words "Mahah," "Kirma," "Orienta," "Bagdad," or names indicative of the Orient, as descriptive of rugs which are not in fact made in the Orient and which do not possess all the essential characteristics and structure of Oriental rugs.

3. Using the word "Reproduction," or any similar word which imports that the article to which such word is applied is a replica or duplicate of an original, as descriptive of rugs which are not in fact reproductions of the type named, to wit, true counterparts or reconstructions thereof in all respects, including material.

4. Using the words "Old Cabin," "Boston," or other distinctively American names, as descriptive of rugs which are not in fact made in the United States.

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

IN THE MATTER OF

ROSE HEIFLER AND FRED JACKSON, DOING BUSINESS AS HEIFLER & JACKSON

MODIFIED CEASE AND DESIST ORDER

Docket 3893. Order, Nov. 5, 1940

Order modifying prior order to cease and desist, made as of April 15, 1940, 30 F. T. C. 980, and which required respondent individuals, in connection with advertisement of their said "Morgan's Pomade" for scalp and hair, to cease and desist from representing the same as not a dye, or as supplying certain deficient materials to gray hair, or as having certain qualities in connection with use on hair, so as to strike from original order language thereof relating to failure to reveal, or asserted failure to reveal, possible injurious consequences of application thereof to tender, injured or broken skin, but in other respects leave in full force and effect said order, as below set forth.[1]

Mr. Clark Nichols for the Commission.

Mr. Philip Cooper, of New York City, for respondents.

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 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:

[1] Said modifying order reads as follows:

This matter coming on to be heard by the Commission upon the request of respondents that the order to cease and desist entered herein on April 15, 1940, be modified by striking a certain portion thereof, and it appearing that the modification of said order in the respects requested is in the public interest, and the Commission having duly considered said request and the record herein and being now fully advised in the premises;

It is ordered, That the cease and desist order entered herein on April 15, 1940, be modified by striking therefrom the following language appearing the last four lines thereof: "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."

It is further ordered, That except as herein modified said order to cease and desist remain in full force and effect.

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 dandruff.

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

MANCHESTER SILVER COMPANY, AND FRANK S. TRUMBULL, FRANZ S. TIDERMAN AND EDWARD B. PALMER, INDIVIDUALLY 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 4133. Complaint, May 11, 1940—Decision, Nov. 6, 1940

Where a corporation and three individuals, who were president, vice president, and secretary thereof, and directed and controlled its advertising policies and business activities and practices, engaged in manufacture and in sale and distribution of sterling silver flatware to wholesale and retail dealers, including retail department stores, and to jobbers and other purchasers in various States and in the District of Columbia, in competition with others likewise engaged in sale and distribution of such products, and including many in such commerce who do not in any manner misrepresent their goods or matters pertaining thereto, and in long issuing, in the conduct of their business, and circulating among retailers, wholesalers, and jobbers, their "Pink List," purporting to show usual and regular retail prices or values of their said silverware, and in selling to such vendees at specified discounts from said list, in accordance with prices of which many retailers had offered and sold their said silver flatware and which had, for many years, been used by retailers and, more particularly, large department stores, in conducting special sales of their said products, and to show so-called regular prices thereof as compared with those at which their said silver flatware products were being sold, and amounting, in some instances, in the case of such "Sales Prices," to as much as 33 percent off such "Pink List" prices;

In pursuance and furtherance of a plan devised by them for use by retailers to increase and promote the sale of their said products at such special sales through use of price list which they designated as the "Blue List," and which had words "Wholesale List" printed thereon, and which set forth prices which were substantially higher for identical articles than those shown on the "Pink List," long used by them in conducting their said business, and which did not represent or reflect either the wholesale or retail prices or values of products listed therein, but were wholly fictitious and greatly in excess of prices at which such products were regularly and customarily offered for sale and sold—

(*a*) Issued and supplied to retailers, for use in conducting so-called special sales of their said flat silverware products, said "Blue List" as above described, and suggested and recommended that retailers make use thereof in promoting special sales of said flatware and display and give said "Blue List" to purchasing and consuming public and cause advertisements quoting said list to be inserted in newspapers in connection with so-called half-price and comparative price sales, and that such dealers represent to purchasing and consuming public that prices shown on said list were the normal prices at which said silver flatware was regularly and customarily sold; and

(*b*) Granted to certain large retail dealers special discounts in order to induce them to become parties to and participate in their said plan of using such "Blue List" and so-called special or comparative price sales of their said silver flatware products, and induced many retailers to participate in such plan and to purchase large quantities of their said ware and to display and distribute said "Blue List" to consuming and purchasing public, and to cause advertisements setting forth prices shown therein as regular list prices to be inserted in newspapers in advertising such special or comparative price sales of products in question, and including, as typical, such newspaper advertisements, thus inserted by purchasers of said silverware for resale, as "SALE! LIMITED TIME ONLY SOLID STERLING SILVER—½ OFF LIST PRICES. Not in Years Has Manchester Sterling Been Offered in Indianapolis at Any Such Startling Reduction! * * * Just Think! You can actually own this famous solid sterling silver and pay only 50% of the maker's long established regular list prices! * * * 26-Pc. Set Sterling—Regular Factory List Price $78.60. Sales Price $38.75 * * *," etc.;

Facts being that, as aforesaid indicated, prices stated in said "Blue List" did not represent any real, list or expected prices for said silver flatware, but were wholly fictitious and fantastically exaggerated, and designed to create a false opinion on the part of the consuming and purchasing public as to true list prices and values of their said silver flatware, and prices paid by wholesalers, retailers, and purchasing and consuming public, regardless of list used, were substantially the same and they had not increased prices of their said products to extent indicated in comparing regular "Pink List" and "Blue List" of fictitious prices;

With result that said fictitious prices shown on such "Blue List" created false opinion on part of consuming and purchasing public as to true list prices and values of their said silverware and use of such prices, thus shown, enabled dealers to represent that purchasers at retail were securing up to as much as 50 percent off the regular list price of said flatware, instead of the 33 percent disclosed by use of their "Pink List" or real price list in retailers' conduct of special or comparative price sales, and with further result, through their said acts and practices in compiling and circulating and distributing said "Blue List" among retailers and other purchasers for resale, of placing in hands of such various purchasers means and instrumentality by which purchasing and consuming public was misled and deceived, and with effect, as result of their said acts and practices, of falsely representing and advertising their products as aforesaid, that substantial portion of purchasing public was misled and deceived into erroneous and mistaken belief that said representations and advertisements were true, and that prices shown in said "Blue List" represented the regular and customary prices of said products, and substantial number of members of said public, because of such erroneous and mistaken belief, were caused to purchase their said silver flatware, and trade was thereby unfairly diverted to them from their competitors in commerce as aforesaid who truthfully represent their products; to their injury and that of public:

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

Before *Mr. Lewis C. Russell*, trial examiner.
Mr. John M. Russell, for the Commission.
McLyman & Day, of Providence, R. I., 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 Manchester Silver Co., a corporation, and Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, individually and as officers of Manchester Silver Co., a corporation, hereinafter referred to as respondents, have violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Manchester Sliver Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, and respondents Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, are president, vice president, and secretary, respectively thereof. The individual respondents, both in their individual and official capacities, direct and control the advertising policies and business activities and practices 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. The principal office and place of business of all of the respondents is located at 49 Pavilion Avenue, in the city of Providence, State of Rhode Island.

Par. 2. Respondent, Manchester Silver Co., is now and has been for many years last past engaged in the business of manufacturing, selling, and distributing sterling silver flatware. Respondents sell said silver flatware to wholesale and retail dealers, including retail department stores, and to jobbers and other purchasers thereof situated in various States of the United States and in the District of Columbia, and respondents cause said silver flatware, when sold, to be transported from the aforesaid place of business in the State of Rhode Island to the purchasers thereof at their respective points of location 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 silver flatware in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business in commerce, as aforesaid, respondents are in competition with corporations, individuals, and partnerships likewise engaged in the sale and distribution of sterling silver flatware. Among said competitors in said commerce are many who do not in any manner misrepresent their products or matters pertaining thereto.

PAR. 3. For many years respondents have issued and circulated, and now issue and circulate, among retail dealers, wholesalers, and jobbers a price list known as the "Pink List." This list purports to show the usual and regular retail prices or values of respondents' said silver flatware. Sales have been and are made to retailers, wholesalers, and jobbers at specified discounts from said "Pink List." Many retail dealers have offered for sale and sold respondents' said silver flatware at the prices shown on said "Pink List," and for many years retail dealers, and more particularly large department stores, have used said "Pink List" in conducting special sales of respondents' said products, the "Pink List" being used by such retailers to show the so-called regular prices of said products were being sold. The "Sales Prices" in some instances were as much as 33 percent off the "Pink List" prices.

PAR. 4. Respondents, on or about January 1, 1939, devised a plan for use by retailers to increase and promote the sale of their said products at said special sales, pursuant to and in accordance with which they issued and supplied to retailers and wholesalers for use in conducting so-called special sales of respondents' said products, a price list referred to as the "Blue List," which has the words "Wholesale List" printed thereon. The prices shown in said "Blue List" for identical articles of silver flatware, are substantially higher than the prices shown in the "Pink List" which has long been used by the respondents in the conduct of said business. The prices shown on the "Blue List" do not represent or reflect either the wholesale or retail prices or values of the products listed therein, but are wholly fictitious and are greatly in excess of the prices at which such products are regularly and customarily offered for sale and sold. Respondents, as alleged, supply said "Blue List" to wholesalers and retailers and suggest and recommend that retail dealers use this list in promoting "Special Sales" of said silver flatware, and that they display and give said "Blue List" to the purchasing and consuming public, and cause advertisements quoting said "Blue List" to be inserted in newspapers in connection with so-called half-price and comparative price sales, and that said dealers represent to the purchasing and consuming public that the prices shown on said "Blue List" are the normal prices at which said silver flatware is regularly and customarily sold. In fur-

therance of said plan, respondents grant to certain large retail dealers special discounts in order to induce such retailers to become parties to and participate in respondents' plan of using said "Blue List" in so-called special or comparative price sales of respondents' said products. Respondents have induced many retailers to participate in said plan and to purchase large quantities of said silver flatware and to display and distribute said "Blue List" to the consuming and purchasing public, and to cause advertisements, setting forth the prices shown in said "Blue List" as regular list prices, to be inserted in newspapers in advertising said special or comparative price sales of respondents' said products. Among and typical of the advertisements and representations inserted in newspapers by purchasers of respondents' silverware for resale, is the following:

SALE! LIMITED TIME ONLY
SOLID STERLING SILVER
½ OFF LIST PRICES

Not in Years Has Manchester Sterling Been Offered in Indianapolis at Any Such Startling Reduction!

21 Beautiful Patterns

All Open Stock! Regardless of Design, All the Same Price! None Discontinued! Fill-ins May Be Had Any Time!

Just think! You can actually own this famous solid sterling silver and pay only 50% of the maker's long established regular list prices! MANCHESTER STERLING is guaranteed as advertised in Good Housekeeping. * * *

26-Pc. Set Sterling—Regular Factory List Price		$78.60
Sale Price		$38.75
34-Piece Set Sterling—Factory List Price	$99	$49.50
Open Stock Sterling—½ PRICE	List Pr.	Sales Pr.
6 H. H. Dessert Knives	21.15	10.58

The prices stated in said "Blue List" do not represent any real, list, or expected prices for said silver flatware, but are wholly fictitious and fantastically exaggerated, and are designed to and do create a false opinion on the part of the consuming and purchasing public as to the true list prices and values of respondents' silver flatware.

The use of the fictitious prices shown on the "Blue List" enable dealers to represent that purchasers at retail are securing up to as much as 50 percent off the regular list price of respondent's said silver flatware, whereas when the "Pink List," that is, the real price list of the respondents, is used, retailers in conducting special or comparatice price sales are unable to represent that the purchasers are securing discounts off the list price in excess of 33 percent. The prices paid by wholesalers, retailers, and the purchasing and consuming

public, regardless of the list that is used, are substantially the same and respondents have not increased the prices of their said products to the extent indicated in comparing the regular "Pink List" and the "Blue List" containing the fictitious prices.

PAR. 5. The acts and practices of the respondents in compiling said "Blue List" and in circulating and distributing it among retailers and other purchasers for resale place in their hands a means and instrumentality by which the purchasing and consuming public is mislead and deceived.

PAR. 6. The acts and practices of the respondents in falsely representing and advertising their products in the manner above alleged, have the tendency and capacity to and do mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and advertisements are true, and that the prices shown in said "Blue List" represent the regular and customary prices of said products, and have caused a substantial number of members of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said silver flatware, and as a result thereof trade has been and is unfairly diverted to respondents from their competitors in said commerce, who truthfully represent their products to their injury and to the injury of the public.

PAR. 7. 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 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 May 1940, issued and subsequently served its complaint in this proceeding upon respondents, Manchester Silver Co., a corporation, and Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, individually and as officers of Manchester Silver 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 May 28, 1940, 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 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 as stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon the said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the filing of a report upon the evidence by the trial examiner, 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

PARAGRAPH 1. Respondent, Manchester Silver Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Rhode Island, and respondents Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, are president, vice president, and secretary, respectively, thereof. The individual respondents, both in their individual and official capacities, direct and control the advertising policies and business activities and practices 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. The principal office and place of business of all of the respondents is located at 49 Pavilion Avenue, in the city of Providence, State of Rhode Island.

PAR. 2. Respondent, Manchester Silver Co., is now and has been for many years last past engaged in the business of manufacturing, selling, and distributing sterling silver flatware. Respondents sell said silver flatware to wholesale and retail dealers, including retail department stores, and to jobbers and other purchasers thereof situated in various States of the United States and in the District of Columbia, and respondents cause said silver flatware, when sold, to be transported from the aforesaid place of business in the State of Rhode Island to the purchasers thereof at their respective points of location 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 silver flatware in commerce between and among the various States of the United States and in the District of Columbia.

In the course and conduct of their said business in commerce, as aforesaid, respondents are in competition with corporations, individuals, and partnerships likewise engaged in the sale and distribution of sterling silver flatware. Among said competitors in said commerce are many who do not in any manner misrepresent their products or matters pertaining thereto.

PAR. 3. For many years respondents have issued and circulated, and now issue and circulate, among retail dealers, wholesalers, and jobbers a price list known as the "Pink List." This list purports to show the usual and regular retail prices or values of respondents' said silver flatware. Sales have been and are made to retailers, wholesalers, and jobbers at specified discounts from said "Pink List." Many retail dealers have offered for sale and sold respondents' said silver flatware at the prices shown on said "Pink List," and for many years retail dealers, and more particularly large department stores, have used said "Pink List" in conducting special sales of respondents' said products, the "Pink List" being used by such retailers to show the so-called regular prices of said products as compared with the prices at which said products were being sold. The "Sales Prices" in some instances were as much as 33 percent off the "Pink List" prices.

PAR. 4. Respondents, on or about January 1, 1939, devised a plan for use by retailers to increase and promote the sale of their said products at said special sales, pursuant to and in accordance with which they issued and supplied to retailers and wholesalers for use in conducting so-called special sales of respondents' said products a price list referred to as the "Blue List," which has the words "Wholesale List" printed thereon. The prices shown in said "Blue List" for identical articles of silver flatware, are substantially higher than the prices shown in the "Pink List" which has long been used by the respondents in the conduct of said business. The prices shown on the "Blue List" do not represent or reflect either the wholesale or retail prices or values of the products listed therein, but are wholly fictitious and are greatly in excess of the prices at which such products are regularly and customarily offered for sale and sold. Respondents, as alleged, supply said "Blue List" to wholesalers and retailers and suggest and recommend that retail dealers use this list in promoting "Special Sales" of said silver flatware, and that they display and give said "Blue List" to the purchasing and consuming public, and cause advertisements quoting said "Blue List" to be inserted in newspapers in connection with so-called half-price and comparative price sales, and that said dealers represent to the purchasing and consuming public that the prices shown on said "Blue List" are the normal prices at which said silver flatware is regularly

and customarily sold. In furtherance of said plan, respondents grant to certain large retail dealers special discounts in order to induce such retailers to become parties to and participate in respondents' plan of using said "Blue List" in so-called special or comparative price sales of respondents' said products. Respondents have induced many retailers to participate in said plan and to purchase large quantities of said silver flatware and to display and distribute said "Blue List" to the consuming and purchasing public, and to cause advertisements, setting forth the prices shown in said "Blue List" as regular list prices, to be inserted in newspapers in advertising said special or comparative price sales of respondents' said products. Among and typical of the advertisements and representations inserted in newspapers by purchasers of respondents' silverware for resale, is the following:

SALE! LIMITED TIME ONLY
SOLID STERLING SILVER
½ OFF LIST PRICES

Not in Years Has Manchester Sterling Been Offered in Indianapolis at Any Such Startling Reduction!

21 Beautiful Patterns

All Open Stock! Regardless of Design, All the Same Price! None Discontinued! Fill-ins May Be Had Any Time!

Just think! You can actually own this famous solid sterling silver and pay only 50% of the maker's long established regular list prices! MANCHESTER STERLING is guaranteed as advertised in Good Housekeeping. * * *

26-Pc. Set Sterling Regular Factory List Price		$78.60
Sale Price		$38.75
34-Piece Set Sterling Factory List Price	$99	$49.50

Open Stock Sterling ½ PRICE

	List Pr.	Sale Pr.
6 H. H. Dessert Knives	21.15	10.58

The prices stated in said "Blue List" do not represent any real, list, or expected prices for said silver flatware, but are wholly fictitious and fantastically exaggerated, and are designed to and do create a false opinion on the part of the consuming and purchasing public as to the true list prices and values of respondents' silver flatware.

The use of the fictitious prices shown on the "Blue List" enables dealers to represent that purchasers at retail are securing up to as much as 50 percent off the regular list price of respondents' said silver flatware, whereas when the "Pink List," that is, the real price list of the respondents, is used, retailers in conducting special or comparative price sales are unable to represent that the purchasers are securing discounts off the list price in excess of 33 percent. The

prices paid by wholesalers, retailers, and the purchasing and consuming public, regardless of the list that is used, are substantially the same and respondents have not increased the prices of their said products to the extent indicated in comparing the regular "Pink List" and the "Blue List" containing the fictitious prices.

PAR. 5. The acts and practices of the respondents in compiling said "Blue List" and in circulating and distributing it among retailers and other purchasers for resale place in their hands a means and instrumentality by which the purchasing and consuming public is misled and deceived.

PAR. 6. The acts and practices of the respondents in falsely representing and advertising their products, in the manner above set forth, have the tendency and capacity to, and do, mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said representations and advertisements are true, and that the prices shown in said "Blue List" represent the regular and customary prices of said products, and have caused a substantial number of members of the purchasing public, because of said erroneous and mistaken belief, to purchase respondents' said silver flatware, and as a result thereof trade has been and is unfairly diverted to respondents from their competitors in said commerce who truthfully represent their products to their injury and to the injury of the public.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents and a stipulation as to the facts entered into between the respondents herein and W. T. Kelley, chief counsel for the Federal Trade 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 to cease and desist disposing of the 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 the respondents, Manchester Silver Co., a corporation, its officers, representatives, agents, and employees, and Frank S. Trumbull, Franz S. Tiderman, and Edward B. Palmer, their representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of sterling silver flatware, 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 retail prices for such products prices which are in fact fictitious and in excess of the prices at which said products are regularly and customarily offered for sale and sold.

2. Using, or supplying to wholesalers, retailers, and others purchasing said silverware for resale for use, in connection with the sale of said silverware, purported wholesale, retail, or other price lists, when such lists contain fictitious prices which are in excess of the price at which said silverware is regularly and customarily offered for sale and sold.

3. Representing that the regular price of any article of said silverware is in excess of the price at which such article is customarily offered for sale and sold.

4. Using, or supplying to wholesalers, retailers, and others purchasing such silverware for resale for use, in connection with special sales of said silverware, any price list which does not correctly set forth the true price at which said silverware is customarily offered for sale and sold.

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

IN THE MATTER OF

AMERICAN LEAD PENCIL COMPANY, EAGLE PENCIL COMPANY, INC., JOSEPH DIXON CRUCIBLE COMPANY, EBERHARD FABER PENCIL COMPANY, INC., WELDON ROBERTS RUBBER COMPANY, AND A. W. FABER, INC.

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

Docket 4170. Complaint, June 24, 1940—Decision, Nov. 6, 1940

Where six corporations engaged in the manufacture of rubber typewriter erasers and, for a number of years last past, in their corporate capacity and through various agents, in sale and distribution in commerce among the various States and in the District of Columbia, to purchasers in said States and District, of such erasers which, together with many other products made, sold and distributed by them, were used extensively throughout the United States by the general public and by corporations and business concerns and by the United States and States Governments and municipalities, and purchase of which by many firms, corporations, and others, including Federal and States Governments and municipalities, or agents thereof, and because of substantial quantity used, was through invitation for bids and selection, on such basis, of industry member from whom particular purchase was made, and who, for more than 5 years last past, constituted substantially all the manufacturers of such erasers and, prior to acts and practices below set forth, were in active and substantial competition with each other and with other members of the industry—

Entered into and engaged in an agreement, combination, and understanding to suppress price competition and to eliminate competition between themselves, restrain interstate trade, drive out competitors, and monopolize such trade; and in pursuance thereof and for the purpose of carrying out said combination, etc., and in the making of public bids—

(1) Agreed to and did fix and maintain prices at which said products were sold, and uniform terms and conditions governing selling thereof; and

(2) Agreed to and did submit, directly and through certain agents, uniform and identical bids on such products when requests for such bids were made;

With result that effect of such combination, understanding and agreement, and acts and practices of said corporations as above set forth, were to monopolize business of manufacturing and selling rubber typewriter erasers in them, and to unreasonably lessen, eliminate, and restrain and hamper and suppress competition in manufacture and sale of said products in interstate commerce, and to deprive purchasing and consuming public of advantages of price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in said industry, and otherwise to operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce:

Held, That such acts and practices of said corporation, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to hinder and prevent price competition, and did actually hinder and prevent such competition between and among such corporations in sale of rubber typewriter erasers in commerce, and placed in themselves power to control and enhance prices, and created in them monopoly in the sale of such products in commerce, and unreasonably restrained such commerce in said products, and constituted unfair methods of competition in commerce.

Mr. Floyd O. Collins, for the Commission.

Riegelman, Strasser & Schwarz, of New York City, for American Lead Pencil Co.

Guggenheimer & Untermeyer, of New York City, for Eagle Pencil Co., Inc.

Wall, Haight, Carey & Hartpence, of Jersey City, N. J., for Joseph Dixon Crucible Co.

Edwards & Smith, of New York City, for Eberhard Faber Pencil Co., Inc.

Bilder, Bilder & Kaufman, of Newark, N. J., for A. W. Faber, 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 the corporations hereinafter named and described and 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 American Lead Pencil Co. is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business at 500 Willow Avenue, Hoboken, N. J.

Respondent Eagle Pencil Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 705–45 East Thirteenth Street, New York, N. Y.

Respondent Joseph Dixon Crucible Co. is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at Wayne and Monmouth Street, Jersey City, N. J.

Respondent Eberhard Faber Pencil Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State

of New York, with its home office and principal place of business at 37–49 Greenpoint Avenue, Brooklyn, N. Y.

Respondent Weldon Roberts Rubber Co. is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at 351–65 Sixth Avenue, Newark, N. J.

Respondent A. W. Faber, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its home office and principal place of business located at 41 Dickerson Street, Newark, N. J.

PAR. 2. All of the respondents herein named have been for the past several years engaged in manufacturing rubber erasers, and all of said respondents, both in their corporate capacity and through various agents, have been for more than 5 years last past 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 rubber erasers, and cause said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia to the purchasers thereof.

Among the various agents representing the respondent Eberhard Faber Pencil Co., Inc., is Charles G. Stott & Co., Inc., a District of Columbia corporation with its office located at 1310 New York Avenue NW., Washington, D. C.

Among the various agents representing the respondent A. W. Faber, Inc., are Reliance Pencil Corporation, a New York corporation with its home office located at 2224 South Sixth Avenue, Mount Vernon, N. Y., Edmond H. Weil, N. Krauskopf, and Leonard S. Schloss, copartners trading as J. H. Weil & Co., with an office and place of business located at 1315–1329 Cherry Street, Philadelphia, Pa., and Walter A. Kohn and Charles W. Speidel, copartners trading as Charles W. Speidel & Co., with offices located at 112 North Twelfth Street, Philadelphia, Pa.

Among the numerous agents representing respondent Weldon Roberts Rubber Co. is Rufus P. Clarke, trading as R. P. Clarke Co., with his place of business located at 1509 Rhode Island Avenue NW., Washington, D. C.

PAR. 3. The said respondents now constitute, and have during all of the times herein mentioned constituted, substantially all of the manufacturers of rubber erasers. Prior to the adoption of the practices herein alleged, said respondents were in active and substantial competition with each other and with other members of the industry, and, but for the facts herein alleged, said respondents would now be in

active, substantial competition with each other and with other members of the industry.

Rubber erasers, together with many of the other products manufactured, sold, and distributed by the respondents, are used extensively throughout the United States by the general public and by corporations, firms, and partnerships, and by the United States and State Governments and municipalities. Many firms and corporations, and others, including the United States and State Governments and municipalities, or some agency thereof, because of the substantial quantity used, purchase rubber erasers through invitations for bids, from which bids is selected the member of the industry from whom purchases of said products will be made for a given time or in a stated quantity.

PAR. 4. Some time prior to November 10, 1935, the respondents herein, for the purpose of suppressing price competition, restraining interstate trade, eliminating competition between themselves, suppressing competition, and monopolizing trade in rubber erasers, entered into and engaged in a wrongful agreement, combination, and understanding to suppress price competition, eliminate competition between themselves, restrain interstate trade, drive out competitors, and monopolize said trade, and pursuant to and for the purpose of carrying out said combination, understanding and agreement have done, among other things, the following:

(*a*) Agreed to fix and maintain and have fixed and maintained the prices at which said product is sold.

(*b*) Agreed to fix and maintain and have fixed and maintained uniform terms and conditions governing the sale of said product.

(*c*) Agreed to submit and have submitted, directly and through the agents named in paragraph 2 hereof, uniform and identical bids on said product when requests were made for such bids.

PAR. 5. The capacity, tendency, and effect of such combination, understanding, and agreement, and the acts and practices of respondents as set out herein and many others not specifically named, are and have been to monopolize for said respondents the business of manufacturing and selling rubber erasers and to unreasonably lessen, eliminate, and restrain, baffle, hamper, and suppress competition in the manufacture and sale of said product in interstate commerce and to deprive the purchasing and consuming public of the advantages of price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade and to obstruct the natural flow of

trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

PAR. 6. 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 rubber erasers in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have unreasonably restrained such commerce in the manufacture and sale of rubber erasers, 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 24, 1940, issued, and on June 25, 1940, served its complaint in this proceeding upon respondents, American Lead Pencil Co., a corporation, Eagle Pencil Co., Inc., a corporation, Joseph Dixon Crucible Co., a corporation, Eberhard Faber Pencil Co., Inc., a corporation, Weldon Roberts Rubber Co., a corporation, and A. W. Faber, 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, the respondents, Eagle Pencil Co., Inc., and the American Lead Pencil Co., filed answers denying the allegations of the complaint. Thereafter, the Commission, by order entered herein, granted motions of the respondents, Eagle Pencil Co., Inc., and the American Lead Pencil Co. for permission to withdraw said answers, and thereafter, all of the respondents filed answers admitting all the material allegations of facts of and concerning the acts and practices of respondents in making public bids on rubber typewriter erasers for the period between November 10, 1935, and April 10, 1938, as set forth in said complaint, and waived all intervening procedure and further hearings as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said complaint and said answers, and the Commission having duly considered the matter and being now fully advised in the premises, finds that this procedure is in the interest 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 Lead Pencil Co., is a corporation organized and existing under and by virtue of the laws of the

State of New York, with its home office and principal place of business located at 500 Willow Avenue, Hoboken, N. J.

Respondent, Eagle Pencil Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 705–45 East Thirteenth Street, New York, N. Y.

Respondent, Joseph Dixon Crucible Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business at Wayne and Monmouth Streets, Jersey City, N. J.

Respondent, Eberhard Faber Pencil Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 37–49 Greenpoint Avenue, Brooklyn, N. Y.

Respondent, Weldon Roberts Rubber Co., is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 351–65 Sixth Avenue, Newark, N. J.

Respondent, A. W. Faber, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 41 Dickerson Street, Newark, N. J.

PAR. 2. Each of the respondents has been for a number of years last past engaged in the manufacture of rubber typewriter erasers, and has been, for more than 5 years last past, both in its corporate capacity and through various agents, engaged in the sale and distribution, in commerce, among and between the various States of the United States and the District of Columbia, of rubber typewriter erasers, and caused said product, when sold, to be shipped from the respective places of business of said respondents, through and into other States of the United States and into the District of Columbia, to the purchasers thereof.

Among the various agents representing the respondent, Eberhard Faber Pencil Co., Inc., is Charles G. Stott & Co., Inc., a District of Columbia corporation, locatel at 1310 New York Avenue NW., Washington, D. C.

Among the various agents representing the respondent, A. W. Faber, Inc., are Reliance Pencil Co., a New York corporation, located at 2224 South Sixth Avenue, Mount Vernon, N. Y.; Edmond H. Weil, N. Krauskopf, and Leonard S. Schloss, copartners, trading as J. H. Weil & Co., located at 1315–1329 Cherry Street, Philadelphia, Pa.; and Walter A. Kohn and Charles W. Speidel, copartners trading as

Charles W. Speidel & Co., located at 112 North Twelfth Street, Philadelphia, Pa.

Among the numerous agents representing respondent, Weldon Roberts Rubber Co., is Rufus P. Clarke, trading as R. P. Clarke Rubber Co., located at 1509 Rhode Island Avenue NW., Washington, D. C.

PAR. 3. Respondents constitute, and have for more than 5 years last past constituted substantially all of the manufacturers of rubber typewriter erasers. Prior to the adoption of the practices herein found to exist, said respondents were in active and substantial competition with each other and with other members of said industry.

Rubber typewriter erasers, together with many of the other products manufactured, sold, and distributed by the respondents are used extensively throughout the United States by the general public and by corporations, firms and partnerships, and by the United States and State Governments and municipalities. Many firms and corporations and others, including the United States and State Governments and municipalities, or agents thereof, because of the substantial quantity used, purchase rubber typewriter erasers through invitations for bids, from which bids are selected the member of the industry from whom purchasers of said product are made for a given time, or in a stated quantity.

PAR. 4. Prior to November 10, 1935, the respondents, for the purpose of suppressing price competition, restraining interstate trade, eliminating competition between themselves, and monopolizing the trade in rubber typewriter erasers, entered into and engaged in an agreement, combination and understanding to suppress price competition, eliminate competition between themselves, restrain interstate trade, drive out competitors and monopolize said trade, and from November 10, 1935, to April 10, 1938, carried out said understanding and agreement, and pursuant to, and for the purpose of carrying out said combination, understanding and agreement, and in making public bids, did, among other things, the following:

(*a*) Agreed to fix and maintain, and fixed and maintained the prices at which said product was sold.

(*b*) Agreed to fix and maintain, and fixed and maintained uniform terms and conditions governing the sale of said product.

(*c*) Agreed to submit and submitted, directly and through the agents named in paragraph 2 hereof, uniform and identical bids on said product, when requests were made for such bids.

PAR. 5. The capacity, tendency, and effect of such combination, understanding, and agreement, and the acts and practices of the respondents, as herein found, are and have been to monopolize the business of manufacturing and selling rubber typewriter erasers in said

respondents, and to unreasonably lessen, eliminate, and restrain and hamper and suppress competition in the manufacture and sale of said products in interstate commerce, and to deprive the purchasing and consuming public of the advantages of price, service and other considerations, which they would receive and enjoy under conditions of normal and unobstructed, or free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the freedom of fair and legitimate competition in said trade, and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public, have a dangerous tendency to hinder and prevent price competition, and have actually hindered and prevented price competition between and among respondents in the sale of rubber typewriter erasers 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 respondents a monopoly in the sale of rubber typewriter erasers in such commerce; and unreasonably restrained such commerce in rubber tyepwriter erasers 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 the respondents, American Lead Pencil Co., a corporation, Eagle Pencil Co., Inc., a corporation, Joseph Dixon Crucible Co., a corporation, Eberhard Faber Pencil Co., Inc., a corporation, Weldon Roberts Rubber Co., a corporation, and A. W. Faber, Inc., a corporation, in which answers respondents admit all the material allegations of fact set forth in said complaint concerning respondents' acts and practices in making public bids on rubber typewriter erasers for the period between November 10, 1935, and April 10, 1938, 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, American Lead Pencil Co., a corporation, Eagle Pencil Co., Inc., a corporation, Joseph Dixon Crucible Co., a corporation, Eberhard Faber Pencil Co., Inc., a corporation, Weldon Roberts Rubber Co., a corporation, and A. W. Faber, Inc., a corporation, their respective officers, agents, servants and employees, or any of them, do forthwith cease and desist from entering into, continuing, carrying out or attempting to continue or carry out, by any method or means, any contracts, agreement or understanding, either written or verbal, the purpose or effect of which is to fix and maintain uniform prices at which rubber typewriter erasers are to be sold, or to fix the terms and conditions governing the sale of rubber typewriter erasers in commerce as commerce is defined in the Federal Trade Commission Act.

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

IN THE MATTER OF

JOSEPH HAGN COMPANY

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

Docket 3997. Complaint, Jan. 23, 1940—Decision, Nov. 12, 1940

Where a corporation engaged in sale and distribution of clocks, pocket knives, jewelry, wearing apparel, and various other articles of merchandise, including certain assortments thereof 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 the consumers thereof, and which included, as illustrative,—

(1) Clock, together with punchboard for use in sale and distribution of said clock under a plan, and in accordance with board's explanatory legend, by which particular purchaser securing, for 5 cents paid, certain one of various numbers concealed within such board, became entitled to and received said article of merchandise, and those who did not qualify by obtaining such particular number received nothing for their money;

(2) Number of pocket knives, together with a push card for use in sale and distribution of said articles under a plan, in accordance with which particular number secured under disc pertaining to name selected from list of girls' names set forth on card, determined amount paid by purchaser for one of said knives, retail value of each of which was greater than some of the amounts thus to be paid therefor, and which, as aforesaid indicated, were determined wholly by lot or chance; and

(3) Articles of merchandise, separately containered, and enclosed within a large cardboard carton so constructed that one end thereof constituted a pull card for use in sale and distribution of said articles of merchandise thus containered, under a plan by which purchaser received, for 10 cents paid, particular item of merchandise, as determined by correspondence of particular number secured by chance from pull card with number displayed on each of individual cartons of aforesaid articles of merchandise, many of which were worth more than amounts thus to be paid, and distribution of which to purchasing public was thus determined wholly by lot or chance;

Sold and distributed its said assortments, together with punchboards, push or pull cards and other devices furnished by it, to dealers by whom same were used in selling and distributing such merchandise in accordance with aforesaid sales plans or methods involving game of chance or sale of a chance to procure an article of merchandise at price much less than the normal retail price thereof, and thereby supplied to and placed in the hands of others means of conducting lotteries in the sale and distribution of its merchandise in accordance with sales plans or methods above set forth, 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 result that many were attracted by its said methods and by element of chance involved therein, and were thereby induced to buy and sell its said merchandise in preference to that of competitors who do not use same or equivalent method, and with result, because of said game of chance, of unfairly diverting trade to it from its said competitors who do not use same 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 constitute 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.

Complaint

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that Joseph Hagn 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, Joseph Hagn Co., is a corporation organized and doing business under the laws of the State of Illinois with its principal place of business located at 217 West Madison Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of jewelry, clocks, wearing apparel, knives, and various other articles of merchandise, to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said products 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 and in the District of Columbia, at their respective points of location. There is now and for some time last past has been a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is 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 the following manner: This assortment consists of a clock and a device commonly called a punchboard. Said board contains a number of small sealed tubes, each of which tube contains a small slip of paper with a number thereon. Sales are 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that the purchaser punching the number 100 is entitled to and receives the clock. A purchaser who does not qualify by obtaining the number calling for the clock 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 clock is thus distributed to the purchasing public wholly by lot or chance.

Another of respondent's assortments is sold and distributed to the purchasing public as follows: This assortment consists of a number of pocket knives, together with a device commonly called a push card. The push card contains a number of partially perforated discs and immediately above each of said discs there appears a feminine name. Sales are from 1 cent to 39 cents, inclusive. On the reverse side of each of said discs there appears a number. Each purchaser is entitled to one of said knives and the amount to be paid therefor is determined by the number appearing on the reverse side of the disc pushed by the purchaser. The purchaser pays in cents the amount of the number pushed. The numbers are effectively concealed from purchasers and prospective purchasers until a disc has been selected by the purchaser and such disc separated or removed from the card. Each of said knives has a retail value greater than some of the amounts to be paid therefor. The amount which a purchaser pays for one of said knives is thus determined wholly by lot or chance.

Another of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a large cardboard carton in which are contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Such pull card contains a number of partially perforated pull tabs and on the reverse side of each of

said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each, and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponded to the number appearing on the reverse side of the tab pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and prospective purchasers until a selection has been made and the tab has been separated or removed from the said card. Many of the said articles of merchandise contained in this assortment are worth more than the amounts to be paid therefor. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of its merchandise and sells and furnishes various push and pull card, punchboards and other 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 and vary only in detail.

PAR. 3. The dealers to whom respondent sells or furnishes said punchboard, push and pull cards and other 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 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 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 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 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 an equivalent method. The use of said method by the respondent because of said game of chance has the tendency and capacity to, and does, unfairly divert trade 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 the 23d day of January 1940, issued and thereafter served its complaint in this proceeding upon said respondent, Joseph Hagn Co., a corporation, charging it with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said act. On February 15, 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into by and between respondent and counsel for the Commission whereby it was stipulated and agreed that a statement of facts stipulated on the record were the facts in this case. Respondent by letters waived the filing of briefs by counsel for the Commission and respondent and also waived oral argument before the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Joseph Hagn Co., is a corporation organized and doing business under the laws of the State of Illinois with its principal place of business located at 217 West Madison Street, Chicago, Ill. Respondent is now, and for some time last past has been, engaged in the sale and distribution of jewelry, clocks,

wearing apparel, knives, and various other articles of merchandise, to dealers located in the various States of the United States and in the District of Columbia. It causes and has caused said products 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 and in the District of Columbia, at their respective points of location. There is now and for some time last past has been a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of its business, respondent is 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 the following manner: This assortment consists of a clock and a device commonly called a punch board. Said board contains a number of small sealed tubes, each of which tubes contains a small slip of paper with a number thereon. Sales are 5 cents each. The board bears statements or legends informing purchasers and prospective purchasers that the purchaser punching the number 100 is entitled to and receives the clock. A purchaser who does not qualify by obtaining the number calling for the clock 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 clock is thus distributed to the purchasing public wholly by lot or chance.

Another of respondent's assortments is sold and distributed to the purchasing public as follows: This assortment consists of a number of pocket knives, together with a device commonly called a push card. The push card contains a number of partially perforated discs and immediately above each of said dics there appears a feminine name. Sales are from 1 cent to 39 cents, inclusive. On the reverse side of each of said discs there appears a number. Each purchaser is entitled to one of said knives and the amount to be paid therefor is determined by the number appearing on the reverse

side of the disc pushed by the purchaser. The purchaser pays in cents the amount of the number pushed. The numbers are effectively concealed from purchasers and prospective purchasers until a disc has been selected by the purchaser and such disc separated or removed from the card. Each of said knives has a retail value greater than some of the amounts to be paid therefor. The amount which a purchaser pays for one of said knives is thus determined wholly by lot or chance.

Another of said assortments is sold and distributed to the purchasing public in the following manner: This assortment consists of a large cardboard carton in which are contained a number of smaller cartons, each of which smaller cartons contains an article of merchandise and on the end of each of said smaller cartons there appears a number. One end of said large carton is so constructed as to constitute a device commonly known as a pull card. Such pull card contains a number of partially perforated pull tabs and on the reverse side of each of said tabs there appears a number which corresponds to the number appearing on the end of one of said smaller cartons. Sales are 10 cents each, and each purchaser pulls one of said tabs from the pull card. The purchaser is entitled to and receives the smaller carton bearing the number which corresponded to the number appearing on the reverse side of the tab pulled by such purchaser. The numbers on the reverse sides of said tabs are effectively concealed from purchasers and prospective purchasers until a selection has been made and the tab has been separated or removed from the said card. Many of the said articles of merchandise contained in this assortment are worth more than the amounts to be paid therefor. The said articles of merchandise are thus distributed to the purchasing public wholly by lot or chance.

Respondent sells and distributes various assortments of its merchandise and sells and furnishes various push and pull cards, punchboards and other 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 punchboards, push and pull cards and other 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 and distribution 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 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 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 in the sale of said merchandise, in the manner above described, 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 an equivalent method. The use of said method by the respondent because of said game of chance has the tendency and capacity to, and does, unfairly divert trade, 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.

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 and a stipulation as to the facts entered into by and between respondent and counsel for the Commission, and the Com-

mission 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 Hagn 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 jewelry, clocks, wearing apparel, knives, 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 public are to be made or may be made by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to or placing in the hands of others assortments of any merchandise, together with push or pull cards, punchboards, or other lottery devices or separately, which said push or pull cards, punchboards, or other lottery device are to be used or may be used in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

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

IN THE MATTER

ROBERT J. THOMPSON COMPANY

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

Docket 4027. Complaint, Feb. 8, 1940—Decision, Nov. 12, 1940

Where a corporation engaged, from its principal place of business in Philadelphia, in sale and distribution of suits, overcoats and other articles of merchandise, to members of purchasing public in State of New Jersey, in competition with others engaged in sale and distribution of like or similar merchandise in commerce among the various States and in the District of Columbia—

Sold and distributed its said products to members of purchasing and consuming public by means of a sales plan or method which involved operation of game of chance, gift enterprise, or lottery scheme, and under which it solicited members of purchasing public in said State to purchase, by contract, men's clothing, thereafter to be made by it at its said place of business and shipped therefrom, and under which some of such members thus contacted, and as selected wholly by lot or chance, did not pay full contract price for such clothing thus contracted for, but paid less than contract price; and

Made use thereby, in so selling and distributing its said merchandise in accordance with aforesaid sales plan involving game of chance or sale of a chance to procure article of merchandise at price much less than normal retail price thereof, of lottery scheme or plan as above set forth, contrary to an established public policy of the United States Government and in violation of criminal laws, and in competition with many who sell and distribute merchandise and do not use said or any method involving use of a game of chance or sale of a chance to win something by chance, and refrain therefrom;

With result that trade was thereby diverted unfairly in commerce to it from its competitors aforesaid, who did not use same or equivalent methods:

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. L. P. Allen, Jr., for the Commission.

Mr. Maurice S. Levy and *Mr. David S. Malis*, of Philadelphia, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that Robert J. Thompson 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, Robert J. Thompson 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 1216 Walnut Street, Philadelphia, Pa. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of suits, overcoats and other articles of merchandise to members of the purchasing public located in the various States of the United States and in the District of Columbia. It causes and has caused said merchandise, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in 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 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 varous 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 is now and has been selling and distributing said merchandise to members of the purchasing public by means of sales plans or methods which involve the operation of a game of chance, gift enterprise, or lottery scheme. One of said sales plans or methods is substantially as follows:

Members of the purchasing public are solicited by respondent's representatives to purchase a suit of clothes or overcoat under a so-called Club plan. Respondent supplies each purchaser participating in said plan with a contract of purchase. Said contract provides for the sale by respondent, to such purchaser, of a suit of clothes or overcoat for the sum of $40., which said amount is to be paid as follows: One dollar when said contract is delivered and one dollar in advance each week thereafter until the full amount of the contract has been paid. There is space provided on said contract for the recording of the weekly payments. Each of said contracts has printed thereon a "ledger" number. Purchasers are informed by respondent's representatives that should said number correspond

with the last three figures included in the total number of shares of stock sold on the Philadelphia, Pa., Stock Exchange for the preceding week, provided all of said purchaser's weekly payments had been made up to date, then such purchaser would be entitled to and would receive a suit or overcoat without additional cost. Purchasers whose contracts do not bear numbers corresponding with the Stock Exchange number, as above alleged, prior to the payment of the full amount of their contracts, are required to pay forty dollars for their suits or overcoats. All of said suits and overcoats have normal retail values of forty dollars. The amount which the ultimate consumer pays for one of said suits or overcoats is thus determined wholly by lot or chance.

Respondent uses and has used various sales plans which involve the operation of games of chance, gift enterprises, or lottery schemes in connection with the sale and distribution of its merchandise to the consuming public, but said sales plans are similar to the one hereinabove described, varying only in detail.

PAR. 3. Respondent has sold and distributed its merchandise to members of the consuming public in accordance with the aforesaid sales plans or methods. In so selling and distributing its merchandise, respondent has conducted lotteries 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 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 at a price 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 methods involving 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 and persuaded to buy 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 the 8th day of February 1940, issued and subsequently served its complaint in this proceeding upon the respondent, Robert J. Thompson 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 26, 1940, 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 David S. Malis, counsel for the respondent, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on the 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, Robert J. Thompson Co., is a corporation organized and doing busines under the laws of the State of Penn-

sylvania, with its principal office and place of business located at 1216 Walnut Street, Philadelphia, Pa. Respondent, for some time prior to the filing of the complaint in this matter, engaged in the sale and distribution of suits, overcoats and other articles of merchandise to members of the purchasing public located in the State of New Jersey. It caused said merchandise, when sold, to be shipped or transported from its aforesaid place of business in the State of Pennsylvania to purchasers thereof in the State of New Jersey, at their respective points of location. There was, for some time prior to the filing of the complaint in this matter, a course of trade by respondent in such merchandise in commerce between the States of Pennsylvania and New Jersey. In the course and conduct of its business, respondent 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 been selling and distributing said merchandise to members of the purchasing public by means of a sales plan or method which involved the operation of a game of chance, gift enterprise or lottery scheme. The sales plan or method was substantially as follows:

Members of the purchasing public in the State of New Jersey were solicited by respondent's representatives to purchase by contract men's clothing thereafter to be manufactured by respondent at its place of business in Philadelphia, Pa. Some of the aforesaid members of the purchasing public so contacted did not pay the full contract price for the article of men's clothing contracted to be purchased but paid less than the contract price for the said articles of clothing. The persons who were entitled to receive and who did receive the articles of men's clothing for less than the full contract price were selected wholly by lot or chance. The said articles of men's clothing so sold and distributed were shipped by common carriers from respondent's aforesaid place of business in Philadelphia, Pa., to the said customers of respondent wherever located in the State of New Jersey.

PAR. 3. Respondent has sold and distributed its merchandise to members of the consuming public in accordance with the aforesaid sales plan or method. In so selling and distributing its merchandise, respondent has conducted lotteries in accordance with the sales plan or method hereinabove set forth. The use by respondent of the said sales plan or method in the sale of its merchandise and the sale of such merchandise by and through the use thereof and by the aid

of said 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 found involves a game of chance or in the sale of a chance to procure an article or 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 found, do not use said method or any method involving the use of a game of chance or the sale of a chance to win something by chance, and such competitors refrain therefrom. The use of said method by 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, to respondent from its said competitors who did not use the same or equivalent methods.

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 answer of the respondent and a stipulation as to the facts entered into between counsel for the respondent and W. T. Kelley, chief counsel for the Federal Trade 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, Robert J. Thompson 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 suits, overcoats 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 any merchandise, together with a sales plan or method involving the use of a game of chance, gift enterprise, or lottery scheme by which said merchandise is to be, or may be, sold to the purchasing public.

2. Selling or otherwise disposing of any merchandise by the use 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

JUNIOR LEAGUE LINGERIE, INC.

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

Docket 4124. Complaint, May 1, 1940—Decision, Nov. 12, 1940

Where there had existed for well over 30 years, in various cities and towns throughout the United States, organizations of young women which, known as Junior Leagues, were benevolent, nonprofit organizations devoted to charitable purposes and improvement of social conditions in their respective communities, and which sponsored various benevolent activities, including financial assistance of hospitals and other charitable enterprises and, in order to obtain funds with which to carry on their activities, frequently engaged in various money-raising functions such as operation of gift shops, rummage sales, and tearooms and the conducting of fashion shows, often in cooperation with local merchants, and where there had long been incorporated an association known as the Association of The Junior Leagues of America, Inc., purpose of which was to unite in a central organization all the Junior Leagues throughout the United States, Canada, and Mexico, and which had come to have approximately 130 local or members leagues with total membership of some 35,000, and published and sold to public, as well as to members of various local organizations, its "Junior League Magazine" with numerous articles and suggestions with respect to women's apparel and current fashions and styles therein, and name "Junior League" had come, for many years last past, to be associated in minds of substantial portion of purchasing public with aforesaid organizations to such an extent that use of such name to designate or describe articles of merchandise, particularly women's apparel, served as representation to public, and caused public to believe, that articles so designated were sponsored or approved by said Junior League; and thereafter, a corporation engaged in sale and distribution of women's apparel, including slips and other lingerie, to purchasers thereof in various other States and in the District of Columbia—

(*a*) Represented, through inclusion and use of words "Junior League" as part of its corporate name, that it had some connection with said organization, and that its said products were sponsored or approved thereby; and

(*b*) Represented that its said products were thus sponsored or approved, through tags and labels attached thereto and through invoices, letters, circulars, and other advertising material distributed among prospective purchasers and otherwise, and including, as typical of such false and misleading representations, use of legends "Junior League Distinctive Lingerie" and "Junior League Buds," which it caused to appear on labels attached to certain of its slips and other such products, and statement "This garment is unconditionally guaranteed by the makers of Junior League Lingerie," which it placed on tags attached to aforesaid slips; and

(*c*) Supplied to dealers purchasing its products, newspaper mats, and other advertising material with which to promote sale thereof, and in all of which words "Junior League" were prominently and conspicuously displayed;

Nothwithstanding fact none of its said products were sponsored or approved by Junior League, and it was not connected in any way with such organization, and had no authority therefrom to use said organization's name to designate its products, and representations aforesaid were misleading and deceptive;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that its said products were sponsored or approved by the Junior League, and with result, as consequence of such erroneous and mistaken belief, that such public was induced to and did purchase substantial quantities of its products, and with further effect of placing in hands of uninformed and unscrupulous dealers means and instrumentalities whereby they were enabled to mislead and deceive members of purchasing public:

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. Robert S. Hall*, trial examiner.

Mr. James L. Fort and *Mr. L. E. Creel, Jr.*, for the Commission.

Mr. Martin Selig, 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 Junior League Lingerie, 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, Junior League Lingerie, Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business located at 152 Madison Avenue, New York City, N. Y. Respondent is now and for more than 1 year last past has been engaged in the sale and distribution of women's apparel, including slips and other lingerie.

Respondent causes its products, when sold, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia.

Par. 2. Since the year 1901 there have existed in various cities and towns throughout the United States organizations of young women known as Junior Leagues. Such organizations are benevo-

lent, nonprofit organizations devoted to charitable purposes and the improvement of social conditions in their respective communities. They sponsor various benevolent activities, including the financial assistance of hospitals and other charitable enterprises. In order to obtain funds with which to carry on their activities the Junior Leagues frequently engage in various money-raising activities, such as the operation of gift shops, rummage sales, and tearooms. Also prominent among such activities is the conducting of fashion shows, many of which are conducted in cooperation with local merchants.

In the year 1921 there was incorporated under the laws of the State of New York an association known as the Association of the Junior Leagues of America, Inc., which had and has as its purpose the uniting in a central organization of all of the Junior Leagues throughout the United States, Canada, and Mexico. This central organization now comprises approximately 130 local or member leagues, with a total membership of approximately 27,000. As a part of its activities the said association publishes a periodical known as the "Junior League Magazine" which is sold to the public, as well as to the members of the various local organizations. This magazine contains numerous articles and suggestions with respect to women's apparel and with respect to current fashions and styles in such apparel.

The name "Junior League" is now and for many years last past has been associated in the minds of a substantial portion of the purchasing public with the aforesaid organizations to such an extent that the use of such name to designate or describe articles of merchandise, particularly women's apparel, serves as a representation to the public, and causes the public to believe, that the articles so designated are sponsored or approved by the Junior League. Such name, when associated with women's apparel, connotes to such portion of the purchasing public superior quality and distinctive and preeminent style and fashion.

PAR. 3. In the course and conduct of its business as described herein the respondent has falsely represented that its products are sponsored or approved by the Junior League, such representations being made by means of tags and labels attached to its products, by invoices, by letters, circulars, and other advertising material distributed among prospective purchasers, and by other means. Among and typical of such false and misleading representations are the legends "Junior League Distinctive Lingerie," and "Junior League Buds," which the respondent causes to appear on labels attached to certain of its slips and other lingerie, and the statement, "This gar-

ment is unconditionally guaranteed by the makers of Junior League Lingerie," which the respondent places on tags attached to such slips.

The respondent also supplies to dealers purchasing its products newspaper mats and other advertising material with which to promote the sale of such products. In all of such advertising material the words "Junior League" are prominently and conspicuously displayed.

In truth and in fact, none of the respondent's products are sponsored or approved by the Junior League. Respondent is not connected in any way with such organization and has no authority from such organization to use its name to designate respondent's products.

PAR. 4. The use by the respondent of the words "Junior League" as a part of its corporate name constitutes within itself a false and misleading representation that respondent is connected with the Junior League and that respondent's products are sponsored or approved by such organization.

PAR. 5. The use by the respondent of the acts and practices herein referred to 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 respondent's products are sponsored or approved by the Junior League, and as a result of such erroneous and mistaken belief the purchasing public has been induced to, and has, purchased substantial quantities of respondent's products.

PAR. 6. By the means herein set forth the respondent has also placed directly in the hands of uninformed or unscrupulous dealers a means and instrumentality whereby such dealers have been and are enabled to mislead and deceive members of the purchasing public.

PAR. 7. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 1st day of May 1940, issued and subsequently served its complaint in this proceeding upon Junior League Lingerie, 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 respondent's answer thereto, testimony, and other evidence in support of the allegations of said complaint were introduced by James L. Fort and L. E. Creel, attorneys for the Commission, and in opposition thereto by Martin Selig, attorney for the respondent, be-

fore 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, answer, 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. Respondent, Junior League Lingerie, Inc., is a corporation organized under the laws of the State of New York, with its principal office and place of business located at 152 Madison Avenue, New York City, State of New York. Respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of women's apparel, including slips and other lingerie.

PAR. 2. Respondent causes its products, when sold, to be transported from its place of business in the State of New York, to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained a course of trade in its said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. Since the year 1901 there have existed in various cities and towns throughout the United States organizations of young women known as Junior Leagues. Such organizations are benevolent, nonprofit organizations devoted to charitable purposes and the improvement of social conditions in their respective communities. They sponsor various benevolent activities, including the financial assistance of hospitals and other charitable enterprises. In order to obtain funds with which to carry on their activities the Junior Leagues frequently engage in various money-raising activities, such as the operation of gift shops, rummage sales, and tearooms. Also prominent among such activities is the conducting of fashion shows, many of which are conducted in cooperation with local merchants.

In the year 1921 there was incorporated under the laws of the State of New York an association known as the Association of The Junior Leagues of America, Inc., which had and has as its purpose the uniting in a central organization of all of the Junior Leagues throughout the United States, Canada and Mexico. This central

organization now comprises approximately 130 local or member leagues, with a total membership of approximately 35,000. As a part of its activities, the said association publishes a periodical known as the "Junior League Magazine" which is sold to the public, as well as to the members of the various local organizations. This magazine contains numerous articles and suggestions with respect to women's apparel and with respect to current fashions and styles in such apparel.

PAR. 4. The Commission finds that the name "Junior League" is now and for many years last past has been associated in the minds of a substantial portion of the purchasing public with the aforesaid organizations to such an extent that the use of such name to designate or describe articles of merchandise, particularly women's apparel, serves as a representation to the public, and causes the public to believe, that the articles so designated are sponsored or approved by the Junior League.

PAR. 5. In the course and conduct of its business as described herein, the respondent has represented that its products are sponsored or approved by the Junior League, such representations being made by means of tags and labels attached to its products, by invoices, by letters, circulars, and other advertising material distributed among prospective purchasers, and by other means. Among and typical of such false and misleading representations are the legends, "Junior League Distinctive Lingerie" and "Junior League Buds," which the respondent causes to appear on labels attached to certain of its slips and other lingerie, and the statement, "This garment is unconditionally guaranteed by the makers of Junior League Lingerie," which the respondent places on tags attached to such slips. The respondent also supplies to dealers purchasing its products newspaper mats and other advertising material with which to promote the sale of such products. In all of such advertising material the words "Junior League" are prominently and conspicuously displayed.

The use by the respondent of the words "Junior League" as a part of its corporate name constitutes an additional representation that respondent has some connection with the Junior League and that respondent's products are sponsored or approved by the Junior League.

PAR. 6. The Commission finds that these representations are misleading and deceptive. In truth and in fact, none of the respondent's products are sponsored or approved by the Junior League. Respondent is not connected in any way with such organization and has no authority from such organization to use its name to designate respondent's products.

PAR. 7. The Commission further finds that the use by the respondent of the acts and practices herein referred to 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 respondent's products are sponsored or approved by the Junior League, and as a result of such erroneous and mistaken belief the purchasing public has been induced to purchase, and has purchased, substantial quantities of respondent's products. The acts and practices of respondent serve also to place in the hand of uninformed and unscrupulous dealers means and instrumentalities whereby such dealers are enabled to mislead and deceive members of the purchasing public.

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 Robert S. Hall, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, brief filed herein by counsel for the Commission (no brief having been filed on behalf of the respondent, and oral argument not having been requested), and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Junior League Lingerie, 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 women's apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the words "Junior League," or any other word or words of similar import or meaning, in respondent's corporate name, or otherwise representing that respondent is connected in any way with the organization known as the Junior League.

2. Using the words "Junior League," or any other word or words of similar import or meaning, to designate, describe, or refer to re-

spondent's products, or otherwise representing that respondent's products are sponsored or approved by the organization known as the Junior League.

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

ELY & WALKER DRY GOODS COMPANY

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

Docket 4216. Complaint, Aug. 5, 1940—Decision, Nov. 12, 1940

Where a corporation engaged in sale and distribution of men's clothing in commerce among the various States—

(*a*) Advertised in two periodicals, in connection with offer, sale and distribution of certain men's robes, in commerce, as aforesaid, said products as "Camel Suede Robe," and featured said words in large display type across the top of the page, and set forth, near the bottom thereof, in comparatively small type and, except as otherwise indicated, "Constructed of North American Brushed Rayon. * * * Soft rich colors have been specially dyed for the CAMEL SUEDE ROBE, of Natural Tan, Dubonnet Wine, * * * YOU MUST SEE THE CAMEL SUEDE ROBE * * *," and displayed, between featured words "CAMEL SUEDE ROBE" and aforesaid explanatory matter, several relatively large depictions of men attired in such robes, with result of thus widely separating the two; and

(*b*) Permanently attached, during period concerned, to robes aforesaid, yellow labels reading "CAMEL SUEDE Tailored by COURTLEIGH" and bearing illustrations of a camel with a background of palm trees and pyramids;

Notwithstanding fact robes aforesaid, thus labeled and described, were not composed in any part of the hair or wool of the camel, as might be implied by designation "Camel Suede," and were not garments thus made from hair or wool of the camel, believed generally by many dealers and retailers and members of general purchasing public to be more desirable than those made from any other materials for similar uses, and for which, when thus made in whole or in predominant part, there is a preference, consequently, on part of substantial number of purchasing and consuming public, but were made of rayon, which, when so manufactured as to simulate hair or wool of camel, has appearance and feel thereof and is, by purchasing and consuming public, without rayon designation, practically indistinguishable therefrom, and, under such circumstances, may be considered and accepted by some dealers and retailers and purchasing and consuming public as being such hair or wool; and

(*c*) Attached, by means of sewing, to above described yellow label, small black cloth tabs or labels with single word "Rayon" in white, and also, to guard of belt of said robes, paper string ticket bearing words, on one side, "Brushed Rayon," and on the other, "To be dry cleaned";

With result, through method of attaching by sewing aforesaid black cloth tab or label, and of attaching by string aforesaid label and ticket to belt of said robes, of supplying means of misleading and deceiving prospective purchasers, dealers in and retailers of said robes by means of fact that such labels and paper string tickets were capable of being easily removed through cutting or tearing, leaving on garment only aforesaid illustrated label "Camel Suede, Tailored by Courtleigh," and with capacity and tendency, through its said acts and practices in using such statements in advertise-

ments and on labels in connection with offer, etc., of said robes, to mislead and deceive purchasing public into erroneous and mistaken belief that robes so advertised and labeled were in fact composed of hair or wool of the camel, and to cause substantial portion of such public to purchase said robes from it as result 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 public, and constituted unfair and deceptive acts and practices in commerce.

Mr. George W. Williams, 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 Ely & Walker Dry Goods Co., a corporation, hereinafter referred to as respondent, has violated the provisions of said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The Ely & Walker Dry Goods Co. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 1520 Washington Avenue, St. Louis, Mo. It is now, and for a number of years last past has been, engaged in the sale and distribution of men's clothing in commerce, as commerce is defined in the Federal Trade Commission Act. It causes its products, when sold, to be shipped from its said place of business in the State of Missouri to purchasers in various other 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 connection with the offering for sale, sale and distribution in commerce of certain of its men's robes, has published advertisements in trade magazines or journals, which advertisements feature the words

CAMEL SUEDE ROBE

in large display type, an inch high and running out to a foot in length, across the top of the page. Towards the bottom of the page in comparatively small type, except as otherwise exhibited, appears the following:

Constructed of North American Brushed Rayon. It has that soft velvety touch that is immediately captivating. Styled with a drop stitch stripe and piped with contrast cord trimming, it is indeed a charming picture. Soft rich colors have been specially dyed for the CAMEL SUEDE ROBE, of Natural Tan, Dubonnet Wine, Seafoam Green, Myrtle Green, Navy Blue and Teal Blue. YOU MUST SEE THE CAMEL SUEDE ROBE—it's different.

Between the featured words "Camel Suede Robe" and the above mentioned explanatory matter are several relatively large pictorial representations of men attired in said robes, which widely separate the featured words and the explanatory matter.

To said robes respondent has permanently attached yellow labels or bands reading as follows:

CAMEL SUEDE
Tailored by Courtleigh

which said labels bear illustrations of a camel with background of palm trees and pyramids. Small black tabs with a single word "Rayon" are separately attached to the above described labels or bands.

By means of such advertisements featuring the words "Camel Suede Robe", and through the use of the labels or bands marked "Camel Suede" and bearing illustrations of a camel, respondent has represented and represents that its said men's robes were and are made of camel's hair or camel's wool, or are made of predominant part of camel's hair or camel's wool.

As a matter of fact, the robes thus labeled and described were not, and are not, composed in any part of the hair of the camel, as implied by the designation "Camel Suede," but were, and are, made wholly of rayon.

PAR. 3. Garments made from camel's hair or camel's wool are generally believed by many retail dealers and members of the general purchasing public to be more desirable than garments made from any other material for similar usage. Garments made from genuine camel's hair or camel's wool are light in weight and are warm, and possess other qualities which make them more desirable than other similar garments not made from camel's hair or camel's wool. Consequently, there is a preference on the part of a substantial number of the purchasing public for garments that are made of camel's hair or camel's wool, or are made in predominant part of camel's hair or camel's wool.

Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate wool, such as camel's hair or camel's wool, and, when so manufactured, it has the appearance and feel of such hair or wool, and is by the purchasing public practically indistinguishable therefrom. By reason of these qualities, rayon, when manufactured to simulate camel's hair or camel's wool, and not designated as rayon, is readily believed and accepted by dealers and the purchasing public as being wool.

PAR. 4. The false and misleading statements set out and referred to in paragraph 2 hereof, were, and are, calculated to, have had, and have, a tendency and capacity to deceive and mislead dealers and consumers into the erroneous and mistaken belief that said robes labeled and advertised as "Camel Suede Robes" are in fact made of camel's hair or camel's wool. Through the use of the illustrative label "CAMEL SUEDE Tailored by Courtleigh," to which is attached the easily removed small tab bearing the word "Rayon," respondent places in the hands of dealers the means of misleading and deceiving the purchasing public into the erroneous and mistaken belief that said robes were, and are, composed of camel's hair or camel's wool.

PAR. 5. 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 the 5th day of August 1940, issued and served its complaint in this proceeding upon said respondent, Ely & Walker Dry Goods Co., a corporation, charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On the 22d day of August 1940, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its finding 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. The respondent, Ely & Walker Dry Goods Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its office and principal place of business at 1520 Washington Avenue, St. Louis, Mo. It is now, and for a number of years last past has been, engaged in the sale and distribution of men's clothing in commerce between and among the various States of the United States. It causes said clothing, when sold, to be transported from its said place of business in the State of Missouri to the purchasers thereof located in various other States of the United States.

PAR. 2. In the course and conduct of its business as described in paragraph 1 hereof, and within the past 3 years, respondent, in connection with the offering for sale, sale, and distribution of men's robes made of rayon in said commerce, advertised said robes in two magazines as "Camel Suede Robe," which said words were featured in large display type 1 inch in height, the legend running out to a foot in length across the top of the page. Near the bottom of the page in comparatively small type, except as otherwise indicated, appeared the following:

Constructed of North American Brushed Rayon. It has that soft velvety touch that is immediately captivating. Styled with a drop stitch stripe and piped with contrast cord trimming, it is indeed a charming picture. Soft rich colors have been specially dyed for the CAMEL SUEDE ROBE, of Natural Tan, Dubonnet Wine, Seafoam Green, Myrtle Green, Navy Blue and Teal Blue. YOU MUST SEE THE CAMEL SUEDE ROBE—it's different."

In between the featured words "CAMEL SUEDE ROBE" and the above-mentioned explanatory matter are several relatively large pictorial representations of men attired in said robes, thus widely separating the said featured words and the explanatory matter.

Also, in the course and conduct of its said business and during the time aforesaid, respondent had permanently attached to said robes yellow labels reading as follows:

CAMEL SUEDE
Tailored by COURTLEIGH

and bearing illustrations of a camel with a background of palm trees and pyramids. Small black-cloth tabs or labels with the single word "Rayon" in white were attached, by means of sewing, to the above-described yellow label.

Respondent also attached to the guard of the belt of said robes a paper string ticket bearing the words "Brushed Rayon" on one side

of the ticket and the words "To be dry cleaned" on the reverse side of said ticket. The said robes, thus labeled and described, were not composed in any part of the hair or wool of the camel, as might be implied by the designation "Camel Suede," but were made wholly of rayon. By reason of the method of attaching, which was by sewing the small black-cloth tab or label to the said yellow cloth label, and of attaching to the guard of the belt of said robes with a string said label and ticket, means of misleading and deceiving prospective purchasers were supplied to dealers in, and retailers of, said robes, for said rayon label and paper string ticket were capable of being easily removed by cutting or tearing, leaving on the garment only the illustrative label "Camel Suede, Tailored by Courtleigh."

PAR. 3. Garments made from the hair or wool of the camel are generally believed by many dealers and retailers and members of the general purchasing public to be more desirable than garments made from any other materials for similar uses. Consequently, there is a preference on the part of a substantial number of the purchasing and consuming public for garments that are in truth and in fact made of the hair or wool of the camel, or at least made up in predominant part of the hair or wool of the camel.

Rayon is a chemically manufactured fiber or fabric which may be manufactured so as to simulate wool, such as camel's hair or camel's wool, and when so manufactured it has the appearance and feel of such hair or wool, and is, by the purchasing and consuming public, practically indistinguishable from such hair or wool unless designated as rayon. By reason of these qualities, rayon, when manufactured to simulate the hair or wool of the camel, and not designated as rayon, may be considered and accepted by some dealers and retailers and the purchasing and consuming public as being such hair or wool.

PAR. 4. The acts and practices of the respondent in using the statements contained in said advertisements, and the statements on the labels attached to said robes, in connection with the offering for sale, sale and distribution of said robes, as hereinabove set out, have had, and have, a tendency and capacity to mislead and deceive the purchasing public into the erroneous and mistaken belief that the robes so advertised and labeled were, and are, in fact, composed of the hair or wool of the camel, and to cause a substantial portion of the purchasing public to purchase said robes from respondent as the result of this erroneous and mistaken belief. After the institution of the Commission's investigation of this matter and prior to the issuance of the complaint herein, respondent ceased using the type of advertising and labeling hereinabove described.

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, and a stipulation as to the facts entered into between the respondent 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 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, Ely & Walker Dry Goods Company, 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 men's robes or other garments, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that respondent's garments are composed of fabrics or materials other than those of which such garments are actually composed.

2. Advertising garments composed in whole or in part of rayon without clearly disclosing the fact that such garments are composed of rayon, and, when such garments are composed in part of rayon and in part of other fibers or material, such fibers or material including the rayon shall be named in the order of their predominance by weight, beginning with the largest single constituent.

3. Using the word "camel," or pictorial representations of a camel with a background of palm trees and pyramids, in advertisements, on labels, tags, or otherwise, or any other words or representations of like import or meaning to designate or describe any garment which is composed entirely of materials other than the hair or wool of the camel.

4. Labeling and tagging garments in such a manner as to enable dealers and retailers easily and readily to remove part of the fiber

or material identification matter, leaving matter which would inform or indicate to the purchasing public that such garments are composed of fibers or materials of which they are not in fact composed.

5. Using the term "Camel Suede Robe" or the term "Camel Suede," alone or in connection with a picturization of a camel with a background of palm trees and pyramids, or any other term, words or scene indicating or implying that the material from which such garments are made contains the hair or wool of the camel, to designate, describe or refer to robes or other garments composed of rayon and which do not contain the hair or wool of the camel.

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 FARBEN TRADING AS GOLD STAR NOVELTY HOUSE

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

Docket 3449. Complaint, May 27, 1938—Decision, Nov. 15, 1940

Where an individual engaged in sale and distribution of manicure sets, electric lamps, leather wallets, and various other articles to purchasers in the various other States and in the District of Columbia—

(*a*) Sold various of his said articles by means of a game of chance, gift enterprise or lottery scheme under which he distributed to representatives and prospective representatives sales circulars depicting a number of his said articles, together with printed matter descriptive thereof, and also listing on page in question 22 of said products and prices thereof with spaces provided for the recording of the names of each purchaser opposite name of product purchased, and including as a part of each said circular, a pull card for use in sale and distribution of such articles under a plan in accordance with which particular article to be secured by purchaser and price to be paid therefor were determined by lot or chance, by legend disclosed by removal of tab selected, and operator had alternative of retaining specified amount of total collected as compensation for his service and remitting balance or remitting entire amount thus collected for the 22 articles and receiving a premium as selected from those described in his said circular; and

Supplied thereby to and placed in the hands of others, a means of selling and distributing his said merchandise through sale thereof in accordance with the aforesaid sales plan by persons or representatives whom he furnished said sales circulars containing such pull cards, and who used same in purchasing, selling, and distributing said 22 articles in accordance with such plan or method, constituting game of chance or sale of a chance to procure an article of merchandise at price much less than normal retail price thereof, and notwithstanding notice to purchasers advising them of privilege of securing any article described at price shown thereon, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with those selling and distributing like or similar merchandise in commerce as aforesaid, and who are unwilling to and do not use said or any other sales plan or method involving game of chance or sale of a chance to win something by chance or any sales plan or method contrary to public policy and refrain therefrom;

With the result that many, because of such element of chance involved in said sales plan employed by said individual as above described, were induced to buy and sell his merchandise in preference to that offered and sold by such competitors and trade was unfairly diverted to him therefrom to their substantial injury;

(*b*) Made such false, deceptive and misleading statements and representations in its said circulars as "Gifts for all at no cost to you" and "Beautiful, useful

household gifts at absolutely no cost," facts being he did not give away any of his merchandise or premiums without cost to his said representatives who were first required to sell or prepare sale of said 22 articles before they received one of such premiums; and

(c) Made such false, deceptive, misleading statements and representations, in connection with trade name used by it, as "Registered under United States Laws," facts being his said business was not registered under the laws of the United States;

With tendency and capacity to mislead and deceive substantial number of members of purchasing public in the various States and in the District of Columbia, and to induce them mistakenly and erroneously to believe that he was giving away some of his said articles without cost to his representatives and that his business was registered under the laws of the United States, and with result that a substantial number of members of such public were misled and deceived into mistaken and erroneous belief that such statements and representations were true, and were induced to purchase substantial quantities of said merchandise as a result thereof, and trade was unfairly diverted to him from competitors who sell and distribute like or similar merchandise, but who do not make such false, deceptive, and misleading statements and representations concerning the same; to their substantial injury:

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. Randolph Preston*, trial examiner.

Mr. D. C. Daniel, *Mr. P. C. Kolinski*, and *Mr. L. P. Allen, Jr.*, for the Commission.

Mr. Jack Goldberg, 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 Farben, individually and trading as Gold Star Novelty House, 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 of Gold Star Novelty House, with his principal office and place of business located at 1140 Broadway, New York City, N. Y. He is now, and for some time last past has been, engaged in the sale and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware, and chinaware, clocks, watches, cameras, dolls, cosmetics and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of

Columbia. Respondent causes and has caused said products, when sold, to be shipped or transported from his place of business in the State of New York to purchasers thereof located in the 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 respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is in competion with other individuals and with partnerships and corporations engaged in the sale and distribution of 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 said articles of merchandise by means of a lottery scheme or game of chance. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including, among other things, a sales circular. Respondent's merchandise is distributed to the purchasers thereof in the following manner: A portion of said sales circular consists of a list on which are designated a number of items of merchandise and the respective prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that the purchasers and prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the customer for the price designated on the tab which he pulls. The apparent greater values and higher regular prices of some of said articles of merchandise as compared to the prices the customer will be required to pay in the event he secures said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise having greater values and higher regular prices than the designated prices to be paid therefor. The facts as to whether a purchaser of one of said pull card

tabs receives an article of greater value than the price designated for same on said 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 a person or representative operating a pull card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the said sums to the respondent, the said respondent thereupon ships to said representative the merchandise sold by means of said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes various assortments of said merchandise and furnishes various pull cards for use in the sale and distribution of such merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes the said pull 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 such merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of his merchandise and the sale of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and which is in violation of 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 apparent normal retail price thereof. Many persons, firms, and corporations who sell and distribute merchandise in commerce as herein defined 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 which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of said merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in pref-

erence to merchandise offered for sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to and does unfairly divert trade and custom to respondent from his said competitors and to exclude from the novelty merchandise trade all competitors who are unwilling to and who do not use the same or an equivalent method because the same is unlawful. As a result thereof substantial injury is being and has been done to said competitors of respondent.

PAR. 5. In the course and conduct of his business as hereinabove related, respondent has caused various false, deceptive, and misleading statements and representations to appear in his advertising matter as aforesaid, of which the following are examples but are not all-inclusive:

Gifts for all no cost to you.
Beautiful useful household gifts at Absolutely no cost.
Gold Star Novelty Co. Registered under U. S. Laws.

The effect of the foregoing false, deceptive and misleading statements and representations of the respondent in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the various States of the United States and in the District of Columbia, by inducing them to mistakenly believe that respondent gives away certain of his said articles of merchandise without cost to his said representatives, and that his said business has been registered with some department of the United States Government.

PAR. 6. In truth and in fact, respondent's said business is not registered with any department of the United States Government, and none of respondent's premiums or so-called gifts are given away "without cost," but said premiums or so-called gifts which are represented as being "without cost" to said representatives are either purchased with labor by them, or the price of said premiums or so-called gifts is included in the price of other articles of merchandise which the representatives must sell or procure the sale of before said premiums or so-called gifts can be procured by them.

PAR. 7. The use by respondent of the false, deceptive and misleading statements and representations set forth herein has had and now has the capacity and tendency to mislead and deceive and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as the result of such erroneous belief. There are among the

competitors of respondent as mentioned in paragraph 1 hereof, manufacturers and distributors of like or similar products who do not make such false, deceptive, and misleading statements and representations concerning the method of sale and distribution of their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 8. The aforesaid acts and practices of the respondent as herein alleged are all to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on May 27, 1938, issued and thereafter served its complaint in this proceeding upon respondent Louis Farben, individually and trading as Gold Star Novelty House, charging him with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint (respondent having filed no answer thereto), testimony and other evidence in support of the allegations of said complaint were introduced by D. C. Daniel, P. C. Kolinski, and L. P. Allen, Jr., attorneys for the Commission (respondent having offered no proof in opposition to the allegations of the complaint), 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, testimony and other evidence, brief in support of the complaint (respondent having filed no brief and oral argument having been waived); 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. Respondent is an individual who was trading under the name of Gold Star Novelty House, with his principal office and place of business located at 1140 Broadway, New York City, N. Y. He was from on or about September 1937 until on or about September

1938 engaged in the sale and distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, clocks, watches, cameras, dolls, cosmetics and other articles of novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia. During said time respondent caused said products, when sold, to be shipped or transported from his place of business in the State of New York to purchasers thereof located in the various States of the United States other than the State of New York, and in the District of Columbia. There was during the time aforesaid 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 was in competition with other concerns 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 so conducting and carrying on said business as described in paragraph 1 hereof respondent has sold various of his said articles of merchandise by means of a game of chance, gift enterprise or lottery scheme. Respondent distributed and caused to be distributed sales circulars to representatives and prospective representatives. Said articles of merchandise were sold and distributed by means of said sales circulars in substantially the following manner:

On the last page of said sales circular there appear picturizations of a number of said articles of merchandise and printed matter descriptive thereof. There also appears on said page a list of 22 articles of merchandise and the prices thereof, with space provided for the recording of the name of each purchaser opposite the name of the article of merchandise purchased. Adjacent to said list, there is a device commonly called a pull card. Said pull card consists of a number of small tabs, on the reverse side of each of which there appears the name of an article of merchandise and the price thereof. The prices of said articles of merchandise vary in amounts from 9 cents to 39 cents. Each purchaser separates or pulls one of said tabs from said device. The name of the article of merchandise and the price thereof are so concealed that purchasers and prospective purchasers are unable to ascertain which article of merchandise they are to receive or the amount of money which they are to pay until after the tabs are separated or pulled from said card. When a purchaser has separated or pulled a tab from the card and learned what article of merchandise he is to receive, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have retail values and regular prices greater than the prices so des-

ignated for them, but all of said articles of merchandise are distributed to the customers for the prices designated under the tabs selected and pulled from said card by such customers. Which article of merchandise the purchaser is to receive, and the amount of money he is to pay, are thus determined wholly by lot or chance.

The said 22 articles of merchandise retail for $7.65 and when the person or representative operating one of said pull cards has sold all of said 22 articles of merchandise and collected said amount, he may retain $3 for his services and remit the balance of the $7.65 to respondent, and the respondent will, in turn, send said 22 articles of merchandise to said person or representative, who distributes the same to the individual purchasers thereof; or said person or representative remits the $7.65 to respondent and respondent sends the said 22 articles of merchandise to said person or representative, together with a premium for said person or representative in payment for said services in so selling and distributing said 22 articles of merchandise. Such premiums are illustrated and described in respondent's said circulars and the person or representative desiring one of such premiums may make his selection from said premiums.

The respondent has distributed by mail a substantial number of said sales circulars to customers and prospective customers located in the various States of the United States and in the District of Columbia and as a result thereof has received and filled a substantial number of orders for said 22 articles of merchandise.

Immediately above the said pull card device there appears the following:

NOTICE TO PURCHASERS

On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article, pay the holder of this folder the price shown on slip. If you do not want the article you need not buy it.

The Commission finds that regardless of such notice, the said 22 articles of merchandise were, in fact, distributed by means of said sales circulars as hereinabove described.

PAR. 3. The Commission finds that the persons or representatives to whom respondent has furnished or supplied said sales circulars containing said pull cards have used the same in purchasing, selling, and distributing respondent's said 22 articles of merchandise in accordance with the sales plan or method as described in paragraph 2 hereof. Respondent has thus supplied to and placed in the hands of others a means of selling and distributing said merchandise by means of a game of chance or lottery scheme in accordance with said sales plan. The sale and distribution of said merchandise by respondent by the sales plan as aforesaid 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 Commission finds that the sale of said merchandise in the manner described in paragraph 2 hereof constitutes 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. Respondent has competitors who sell and distribute like or similar merchandise in commerce between and among the various States of the United States and the District of Columbia who are unwilling to and do not use said sales plan or method in the sale of their merchandise, or any other sales plan or method involving a game of chance or the sale of a chance to win something by chance, or any sales plan or method which is contrary to public policy, and such competitors refrain therefrom. Because of said element of chance involved in said sales plan or method employed by respondent as hereinabove described, many persons have been induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors.

PAR. 5. The Commission finds that in so conducting its business as hereinabove described, respondent has caused false, deceptive, and misleading statements and representations to appear in its said sales circulars, some of which statements and representations are as follows:

Gifts for all at no cost to you.
Beautiful, useful household gifts at absolutely no cost.
Gold Star Novelty Co., registered under U. S. laws.

The Commission finds that such statements and representations of respondent used in connection with the sale and offering for sale of respondent's said articles of merchandise, as hereinabove described, are false, deceptive, and misleading, and have a tendency and capacity to mislead and deceive a substantial number of the members of the purchasing public in the various States of the United States and in the District of Columbia and to induce them to mistakenly and erroneously believe that respondent gives away some of his said articles of merchandise without cost to his representatives and that said business is registered under the laws of the United States.

PAR. 6. The Commission finds that respondent did not give away any of his merchandise or premiums without cost to his said representatives but that such representatives were required to first sell or procure the sale of said 22 articles of merchandise before they received one of said premiums; and that respondent's said business was not registered under the laws of the United States.

PAR. 7. The Commission finds that as a result of the use of said statements and representations, a substantial number of the members of the purchasing public were misled and deceived into the mistaken and erroneous belief that said statements and representations were true, and were induced to purchase substantial quantities of respondent's said merchandise as a result thereof. Respondent has competitors as hereinabove found who sell and distribute merchandise like or similar to that sold by respondent but who do not make such false, deceptive, and misleading statements and representations concerning their said merchandise.

PAR. 8. As a result of the use of said sales plan or method described in paragraph 2 hereof and the use of said false, deceptive and misleading statements and representations by said respondent, as aforesaid, trade has been unfairly diverted to respondent from such competitors who do not engage in such practices and substantial injury has been done to said competitors by respondent 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 within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission (respondent having filed no answer thereto), 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 (respondent having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondent not having filed brief and oral argument having been waived); and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Louis Farben, individually and trading as Gold Star Novelty House, his representatives, agents and employees, directly or through any corporate or other device in connection with the offering for sale, sale or distribution of manicure sets, electric lamps, leather wallets, pictures, silverware and chinaware, cosmetics, jewelry, comb and brush sets, razor blades or any other arti-

cles of merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards, or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme,

2. Shipping, mailing, or transporting to agents or to distributors, or to members of the public push or pull cards, punchboards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme,

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

4. Using the term "no cost" or any other term or 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 said offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the term "no cost" or any other term or 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,

5. Representing that respondent's business is registered under the laws of the United States.

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

EASTERN PREMIUM HOUSE, INC.

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

Docket 3504. Complaint, July 21, 1938—Decision, Nov. 15, 1940

Where a corporation engaged in sale and distribution of clocks, watches, dolls, chinaware, and various other articles of merchandise to purchasers in the various States—

(*a*) Sold and distributed such articles by means of a game of chance, gift enterprise, or lottery scheme under which it distributed and caused to be distributed to representatives and prospective representatives certain advertising literature and sales circulars depicting a number of such products, together with printed matter descriptive thereof, and listing 22 articles and prices thereof, with space provided for the recording of the name of each purchaser opposite name of product purchased, and including, as part of said circular, pull card for use in sale and distribution of such product under a plan in accordance with which particular article to be secured by purchaser and price to be paid therefor were determined by lot or chance, by legend disclosed by removal of tab selected and pulled from card by customer and operator had alternative, as compensation for his services, of deducting from entire amount thus collected for the products in question certain amount and remitting balance, or of remitting entire amount thus secured and receiving one of premiums described in circular in question; and

Supplied thereby to and placed in the hands of others means of selling and distributing such merchandise by means of game of chance or lottery scheme in accordance with said sales plan by persons or representatives to whom he had furnished such sales circulars containing pull cards as aforesaid, and who made use of same in purchasing, selling, and distributing his said 22 articles in accordance with such plan or method as above set forth, constituting game of chance or sale of a chance to procure an article of merchandise at a price much less than normal retail price thereof, and notwithstanding notice to purchasers advising of their privilege of buying any article listed at price shown therefor, contrary to an established public policy of the United States Government and in violation of criminal laws and in competition with those who sell and distribute like or similar merchandise in commerce as aforesaid, and who are unwilling to and do not use said or any other sales plans or method in sale of their merchandise involving games of chance or sale of a chance to win something by chance or any sales plan contrary to public policy and who refrain therefrom;

With result that many persons were induced to buy and sell its said products in preference to merchandise offered and sold by such competitors and that trade was unfairly diverted to it from said competitors; to their substantial injury; and

(*b*) Made such false, deceptive, and misleading statement and representations in its said circular as "Gifts for all," "Valuable Surprise Gifts Free," "Big Value Rewards at no Cost to You," "Gifts or Cash Yours, Absolutely Yours, Without Cost," and "Select your Gift—Costs you Nothing";

Facts being it did not give away any of its merchandise or premiums without cost to its representatives who had first to sell or procure sale of articles in question before they were entitled to receive and received one of such premiums and, in connection with certain of said premiums, representatives were required to pay specified sums of money in addition to sales of articles in question;

With tendency and capacity to mislead and deceive substantial number of members of purchasing public in various States and to induce them mistakenly and erroneously to believe that it was giving away some of its said articles without cost to its representatives, and with result that substantial portion of such public was misled and deceived into mistaken and erroneous belief that such statements and representations were true, and to purchase substantial quantity of said merchandise as a result thereof, and trade was thereby unfairly diverted to it from competitors who sell and distribute products like or similar to those sold by it and do not make such false, deceptive, and misleading statements and representations concerning the same; to their substantial injury:

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 Preston*, trial examiner.

Mr. D. C. Daniel, *Mr. P. C. Kolinski*, and *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 Eastern Premium House, 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, Eastern Premium House, Inc., is a corporation organized 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 830 Broadway, New York, N. Y. Respondent is now, and for some time last past has been engaged in the sale and distribution of clocks, watches, dolls, chinaware, aluminum ware, jewelry, cosmetics, cigarette cases and lighters, flashlights, kitchenware, bedding, clothing, tableware, lamps, dresser sets, smoking stands, and other articles of merchandise, in commerce between and among the various States of the United States and in the District of Columbia. Respondent causes and has caused said products when sold to be shipped or transported from its place of business aforesaid, to purchasers thereof located in the various States of the United

States and in the District of Columbia at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business, respondent is and has been in competition with other corporations and with individuals and partnerships 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 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, said articles of merchandise by means of a game of chance, gift enterprise, or lottery scheme. The respondent distributes or causes to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondent's merchandise is and has been distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of items of merchandise and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of an article of merchandise and the price thereof. The name of the article of merchandise and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which article of merchandise they are to receive or the price which they are to pay until after the tab is separated from the card. When a purchaser has detached a tab and learned what article of merchandise he is to receive and the price thereof, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have purported and represented retail values and regular prices greater than the prices designated for them, but are distributed to the consumer for the price designated on the tab which he pulls. The apparent greater values and regular prices of some of said articles of merchandise, as compared to the price the prospective purchaser will be required to pay in the event he secures one of said articles, induces members of the purchasing public to purchase the tabs or chances in the hope that they will receive articles of merchandise of far greater value than the designated prices to be paid for same. The fact as to whether a purchaser of one of said pull card tabs receives an article which has greater value and a higher regular price than the price designated

for same on such tab, which of said articles of merchandise a purchaser is to receive, and the amount of money which a purchaser is required to pay, are determined wholly by lot or chance.

When the person or representative operating the pull card has succeeded in selling all of the tabs or chances, collected the amounts called for, and remitted the said sums to the respondent, said respondent thereupon ships to said representative the merchandise designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the merchandise to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondent sells and distributes and has sold and distributed various assortments of said merchandise and furnishes and has furnished various pull cards for use in the sale and distribution of said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Such plan or method varies in detail but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondent furnishes and has furnished the said pull cards use and have used the same in purchasing, selling, and distributing respondent's merchandise in accordance with the aforesaid sales plan. Respondent thus supplies to and places in the hands of others the means of conducting lotteries in the sale of its merchandise in accordance with the sales plan hereinabove set forth. The use by respondent of said method in the sale of its merchandise and the sales of such merchandise by and through the use thereof and by the aid of said method is a practice of the sort which is contrary to an established public policy of the Government of the United States and in violation of criminal laws.

PAR. 4. The sale of merchandise to the purchasing public in the manner above alleged involves a game of chance or the sale of a chance to procure an article of merchandise at a price much less than the apparent normal retail price thereof. Many persons, firms, and corporations who sell or distribute merchandise in competition with the respondent, as above alleged, are unwilling to adopt and use said method, or any method involving a game of chance or the sale of a chance to win something by chance, or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondent's said method and by the element of chance involved in the sale of such merchandise in the manner above described, and are thereby induced to buy and sell respondent's merchandise in preference to merchandise offered for

sale and sold by said competitors of respondent who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the capacity and tendency to, and does, unfairly divert trade and custom to respondent from 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 to appear in its advertising matter as aforesaid, of which the following are examples, but are not all-inclusive:

Gifts for all.
Valuable Surprise Gifts Free.
Big value rewards at no cost to you.
Gifts or cash yours absolutely without cost.
Select your gift—Costs you nothing.
We pay all shipping charges right to your door.

The effect of the foregoing false, deceptive, and misleading statements and representations of the respondent in selling and offering for sale such articles of merchandise as hereinabove referred to, is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and in the District of Columbia by inducing them to mistakenly believe that respondent gives away certain of its said articles of merchandise without cost to its representatives, and that said respondent prepays all shipping charges on all of its said articles of merchandise.

PAR. 6. In truth and in fact, none of respondent's so-called premiums or gifts are given away "free" or "without cost," but said so-called premiums or gifts which are represented as being "free" or "without cost" to said representatives are either purchased with labor by said representatives or the prices thereof are included in the prices of other articles of merchandise which said representatives must sell or procure the sale of before said so-called premiums or gifts can be procured by them. For a number of so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondent does not pay the shipping charges on all of its said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondent's said articles of merchandise.

PAR. 7. The use by respondent of the false, deceptive and misleading statements and representations aforesaid, has had and now has the capacity and tendency to mislead and deceive and has misled a substantial portion of the purchasing public into the erroneous belief

that such statements and representations are true, and into the purchase of substantial quantities of said respondent's products as a result of such erroneous belief. There are, among the competitors of respondent, as mentioned in paragraph 1 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements and representations concerning their products. By the statements and representations aforesaid, trade is unfairly diverted to respondent from such competitors, and as a result thereof substantial injury is being done, and has been done by respondent to competition in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 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 within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on July 21, 1938, issued and thereafter served its complaint in this proceeding upon respondent, Eastern Premium House, 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 D. C. Daniel, P. C. Kolinski, and L. P. Allen, Jr., attorneys for the Commission (respondent having offered no proof in opposition to the allegations of the complaint), 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, brief in support of the complaint (respondent having filed no brief and oral argument having been waived); and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Eastern Premium House, Inc., is a corporation organized and doing business under and by virtue of

the laws of the State of New York, with its principal office and place of business located in New York, N. Y. Respondent is now, and for more than 4 years last past has been, engaged in the sale and distribution of clocks, watches, dolls, chinaware, aluminum ware, jewelry, cosmetics, cigarette cases and lighters, flashlights, kitchenware, bedding, clothing, tableware, lamps, dresser sets, smoking stands, knives, watches, binoculars, and other articles of merchandise, in commerce between and among the various States of the United States. Respondent causes and has caused said products when sold to be shipped or transported from its place of business aforesaid to purchasers thereof at their respective points of location in the various States of the United States. There is now, and has been for more than 4 years last past, a course of trade by said respondent in such merchandise in commerce between and among the various States of the United States. In the course and conduct of said business, respondent is and has been in competition with other corporations and with individuals and partnerships 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 so conducting its business as described in paragraph 1 hereof, respondent has sold and distributed articles of its said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondent has distributed and caused to be distributed certain advertising literature, including sales circulars, to representatives and prospective representatives located in the various States of the United States. The plan used in the sale and distribution of respondent's merchandise to the purchasing public by means of said sales circulars is substantially as follows:

On the last page of said sales circular there appear picturizations of a number of said articles of merchandise and printed matter descriptive thereof. There also appears on said page a list of 22 articles of merchandise and the prices thereof, with space provided for the recording of the name of each purchaser opposite the name of the article of merchandise purchased. Adjacent to said list, there is a device commonly called a "pull card." Said pull card consists of a number of small tabs, on the reverse side of each of which there appears the name of an article of merchandise and the price thereof. The prices of said articles of merchandise vary in amounts from 9 cents to 39 cents. Each purchaser separates or pulls one of said tabs from said device. The name of the article of merchandise and the price thereof are so concealed that purchasers and prospective purchasers are unable to ascertain which article of merchandise they are to receive or the amount of money which they are to pay until

after the tabs are separated or pulled from said card. When a purchaser has separated or pulled a tab from the card and learned what article of merchandise he is to receive, his name is written on the list opposite the named article of merchandise. Some of said articles of merchandise have retail values and regular prices greater than the prices so designated for them, but all of said articles of merchandise are distributed to the customers for the prices designated under the tabs selected and pulled from said card by such customers. Which article of merchandise the purchaser is to receive, and the amount of money he is to pay, are thus determined wholly by lot or chance.

The said 22 articles of merchandise retail for $7.65 and when the person or representative operating one of said pull cards has sold all of said 22 articles of merchandise and collected said amount, he may retain $3 for his services and remit the balance of the $7.65 to respondent, and the respondent will, in turn, send said 22 articles of merchandise to said person or representative, who distributes the same to the individual purchasers thereof; or said person or representative remits the $7.65 to respondent and respondent sends the said 22 articles of merchandise to said person or representative, together with a premium for said person or representative in payment for said services in so selling and distributing said 22 articles of merchandise. Such premiums are illustrated and described in respondent's said circulars and the person or representative desiring one of such premiums may make his selection from said premiums.

The respondent has distributed by mail a substantial number of said sales circulars to customers and prospective customers located in the various States of the United States and as a result thereof has received and filled a substantial number of orders for said 22 articles of merchandise.

Immediately above the said pull card device there appears the following:

NOTICE TO PURCHASERS—

On the back of each slip is printed the price of an article. If after deliberation you decide that you want to buy the article, pay the holder of this folder the price shown on slip. If you do not want the article you need not buy it.

The Commission finds that regardless of such notice, the said 22 articles of merchandise were, in fact, distributed by means of said sales circulars as hereinabove described.

PAR. 3. The Commission finds that the persons or representatives to whom respondent has furnished or supplied said sales circulars containing said pull cards have used the same in purchasing, selling, and distributing respondent's said 22 articles of merchandise in ac-

cordance with the sales plan or method as described in paragraph 2 hereof. Respondent has thus supplied to and placed in the hands of others a means of selling and distributing said merchandise by means of a game of chance or lottery scheme in accordance with said sales plan. The sale and distribution of said merchandise by respondent by the sales plan as aforesaid 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 Commission finds that the sale of said merchandise in the manner described in paragraph 2 hereof constitutes 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. Respondent has competitors who sell and distribute like or similar merchandise in commerce between and among the various States of the United States who are unwilling to and do not use said sales plan or method in the sale of their merchandise, or any other sales plan or method involving a game of chance or the sale of a chance to win something by chance, or any sales plan or method which is contrary to public policy, and such competitors refrain therefrom. Because of said element of chance involved in said sales plan or method employed by respondent as hereinabove described, many persons have been induced to buy and sell respondent's merchandise in preference to merchandise offered for sale and sold by said competitors.

PAR. 5. The Commission finds that in so conducting its business as hereinabove described, respondent has caused false, deceptive, and misleading statements and representations to appear in its said sales circulars, some of which said statements and representations are as follows:

Gifts for all.
Valuable Surprise Gifts Free.
Big value rewards at no cost to you.
Gifts or cash yours absolutely without cost.
Select your gift—Costs you nothing.

The Commission finds that such statements and representations of respondent used in connection with the sale and offering for sale of respondent's said articles of merchandise, as hereinabove described, are false, deceptive, and misleading, and have a tendency and capacity to mislead and deceive a substantial number of the members of the purchasing public in the various States of the United States and to induce them to mistakenly and erroneously believe that respondent gives away some of its said articles of merchandise without cost to its representatives.

PAR. 6. The Commission finds that in truth and in fact, the respondent does not give away any of its merchandise or premiums without cost to its representatives, but that such representatives must first sell or procure the sale of said 22 articles of merchandise before they are entitled to, and receive, one of said premiums. In connection with some of said premiums the representative must pay certain sums of money in addition to the selling of said 22 articles of merchandise.

PAR. 7. The Commission finds that the use of such false, deceptive, and misleading statements and representations by respondent has misled and deceived a substantial portion of the purchasing public into the mistaken and erroneous belief that such statements and representations were true and into the purchase of substantial quantities of respondent's said merchandise as a result thereof. Respondent has competitors as mentioned in paragraph 1 hereof who sell and distribute products like or similar to these sold by respondent, but who do not make such false, deceptive, and misleading statements and representations concerning their products.

PAR. 8. As a result of the use of said sales plan or method described in paragraph 2 hereof and the use of said false, deceptive, and misleading statements and representations by respondent, as aforesaid, trade is being, and has been, unfairly diverted to respondent from such competitors and substantial injury is being, and has been, done to said competitors by respondent 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 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 Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondent having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondent not having filed brief and oral argument having been waived), and the Commission having made its

findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, Eastern Premium House, 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 clocks, watches, dolls, chinaware, aluminum ware, jewelry, cosmetics, cigarette cases and lighters, flashlights, kitchenware, bedding, clothing, tableware, lamps, dresser sets, smoking stands, knives, watches, binoculars, 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 devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

2. Shipping, mailing, or transporting to agents or to distributors, or to members of the public push or pull cards, punchboards or other devices which are to be used or may be used in the sale or distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

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

4. 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.

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

JOSEPH SALADOFF AND SARA SALADOFF, INDIVIDUALLY, AND TRADING AS NOVELTY PREMIUM COMPANY

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

Docket 3505. Complaint, July 21, 1938—Decision, Nov. 18, 1940

Where two individuals engaged as owner and as general manager and sales manager of business in sale of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, and 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 and similar articles of merchandise—

(*a*) Sold and distributed their said merchandise by means of a game of chance, gift enterprise, or lottery scheme, pursuant to which they distributed and caused to be distributed to representatives, advertising or sales circulars, catalogues, and other advertising literature, and including (1) pull card upon one of such circulars for use in sale and distribution of 22 boxes of candy, ranging from 9 cents to 39 cents, under a plan by which particular box of candy and price to be paid therefor were determined by lot or chance by particular tab of card selected, and (2) other circulars with pull cards involving sales plans similar to that described and varying therefrom in detail only, and under which various plans operator was compensated by choice of remitting merchandise thus sold and receiving premiums selected by him from advertising literature of said individuals, or of deducting from amount thus received, and prior to remission thereof, designated cash premium; and

Supplied thereby to and placed in hands of others means of selling and distributing their said candy through game of chance or lottery scheme, in accordance with sales plan as aforesaid, by persons or representatives to whom they furnished and supplied said pull card devices and who made use thereof by purchasing, selling, and distributing such candy in accordance with such sales plan or method, as above described, involving game of chance or sale of chance to procure box of candy at price much less than usual retail price, and notwithstanding "Notice to Purchasers" on or above said card advising reader that it was his privilege to buy box of chocolates at price therefor printed on back of each slip by paying holder such price, and which notice, when called to attention of purchasers, did not result in refusal to take candy purchased by them in manner above indicated, contrary to an established public policy of the United States Government and in violation of criminal law, and in competition with many who are unwilling to adopt and use said or any other sales plan or method in the sale of their merchandise involving any game of chance or sale of a chance to win something of value by chance, or any sales plan or method contrary to public policy, and refrain therefrom:

With result that many persons, because of such element of chance involved in said sales plan or method as employed by such individuals, as above described, were induced to buy and sell their said candy in preference to that offered and sold by their competitors aforesaid, and trade, as result of use of such sales plan or method, was unfairly diverted to them from their competitors aforesaid, to their substantial injury in commerce; and

(*b*) Made use of such false, deceptive, and misleading statements and representations in their said sales circulars and other advertising matter as "Free Gifts For All" and "Beautiful household gifts at absolutely no cost" and "We pay all shipping charges";

Facts being that none of their said articles, advertised as being free or without cost, were thus given away to their said operators or representatives, but said persons, before they received articles or premiums in question, had to sell or procure sale of aforesaid designated boxes of candy and remit amount procured by sale thereof, as above set forth, and, in case of selection of certain of said individuals' so-called premiums, were required to pay designated sum of money therefor, and said individuals did not pay all shipping charges, but operator or representative in certain instances was required to remit extra dollar to cover such charges in case of certain premiums;

With tendency and capacity to deceive and mislead substantial portion of purchasing public into mistaken and erroneous belief that such statements and representations were true and thereby cause public to purchase substantial quantity of their said merchandise as result thereof, and with result, through use of such statements and representations by said individuals, that trade was diverted unfairly to them from their competitors, many of whom, engaged in sale and distribution of candy or merchandise similar to that sold by said individuals, do not use such false, misleading, and deceptive statements and representations in connection with sale and distribution of their products; to their substantial injury 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 comerce.

Before *Mr. Randolph Preston*, trial examiner.

Mr. D. C. Daniel, *Mr. P. C. Kolinski*, and *Mr. L. P. Allen, Jr.*, for the Commission.

Mr. Joseph Keough of Levi, Mandel & Miller, of Philadelphia, Pa., 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 Joseph Saladof and S. Saladof, individually, and trading as Novelty Premium Co., hereinafter referred to as respondents, have violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondents, Joseph Saladof and S. Saladof, are copartners trading under the name of Novelty Premium Co., with their principal office and place of business located at 510 Arch Street, Philadelphia, Pa. Respondents are now, and for some time last past have been, engaged in the sale and distribution of watches, clocks, guns, bedspreads, chinaware, silverware, dresser sets, cosmetics, baby buggies, quilts, aluminum ware, dolls, candy, and other articles of merchandise in commerce between and among the various States of the United States and in the District of Columbia.

Respondents cause and have caused said products when sold to be shipped or transported from their place of business aforesaid to purchasers thereof in the various States of the United States and in the District of Columbia, at their respective points of location. There is now, and has been for some time last past, a course of trade by said respondents in such merchandise in commerce between and among the various States of the United States and in the District of Columbia. In the course and conduct of said business respondents are and have been in competition with other individuals and with partnerships and corporations engaged in the sale and distribution of candy and novelty merchandise in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of their business as described in paragraph 1 hereof, respondents sell and distribute and have sold and distributed said candy by means of a game of chance, gift enterprise, or lottery scheme. Respondents advertise in newspapers of general circulation and distribute or cause to be distributed to representatives and prospective representatives certain advertising literature including a sales circular. Respondents' merchandise is distributed to the purchasing public in the following manner:

A portion of said sales circular consists of a list on which there are designated a number of boxes of candy and the prices thereof. Adjacent to the list is printed and set out a device commonly called a pull card. Said pull card consists of a number of tabs, under each of which is concealed the name of a box of candy and the price thereof. The name of the box of candy and the price thereof are so concealed that purchasers or prospective purchasers of the tabs or chances are unable to ascertain which box of candy 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 box of candy he is to receive and the price thereof, his name is written on the list opposite the named box of candy. Some of said boxes of candy 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 buys. The apparent greater values and regular prices of some of said articles of merchandise as compared to the price the prospective purchase would be required to pay in the event he secures one of said boxes of candy induces the members of the purchasing public to purchase the tabs or chances in the hope that they will receive boxes of candy of far greater values than the designated prices to be paid for same. The facts as to whether a purchaser of one of said pull card tabs receives a box of candy which has greater value and a higher regular price than the price designated for same on such tab, which of said boxes of candy a purchaser is to receive and the amount of money which a purchaser is required to pay are determined wholly by lot or chance.

When the person or representative operating the above card has succeeded in selling all of the tabs or chances, collected the amounts called for and remitted the said sums to the respondents, the said respondents thereupon ship to said representative the boxes of candy designated on said card, together with a premium for the representative as compensation for operating the pull card and selling the said merchandise. Said operator delivers the boxes of candy to the purchasers of tabs from said pull card in accordance with the list filled out when the tabs were detached from the pull card.

Respondents sell and distribute and have sold and distributed various assortments of boxes of candy and furnish and have furnished various pull cards for use in the sale and distribution of such boxes of candy by means of a game of chance, gift enterprise, or lottery scheme. Respondents' sales plan or method varies in detail, but the above described plan or method is illustrative of the principle involved.

PAR. 3. The persons to whom respondents furnish and have furnished the said pull cards use and have used 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 candy in accordance with the sales plan hereinabove set forth. The use by respondents of said method in the sale of their candy and the sale of such candy 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 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 apparent normal retail price thereof. Many persons, firms, and corporations

who sell and distribute candy in competition with the respondents as above alleged are unwilling to adopt and use said method or any other method involving a game of chance or the sale of a chance to win something by chance or any method which is contrary to public policy, and such competitors refrain therefrom. Many persons are attracted by respondents' said method and by the element of chance involved in the sale of such candy in the manner above described and are thereby induced to buy and sell respondents' candy in preference to candy offered for sale and sold by competitors of respondents who do not use the same or an equivalent method. The use of said method by respondent, because of said game of chance, has the tendency and capacity to and does unfairly divert trade and custom to respondents from their said competitors who do not use the same or an equivalent method.

PAR. 5. In the course and conduct of their business as hereinabove related, respondents cause and have caused various false, deceptive, and misleading statements or representations to appear in their advertising matter as aforesaid, of which the following are examples, but are not all-inclusive:

Free gifts for all.

How to get your free gifts.

Beautiful, useful household gifts at absolutely no cost.

How to get your gifts without cost to you.

Amazingly high values in guaranteed premiums and assorted chocolates, also cash at absolutely no cost.

All shipping charges are paid by us.

The effect of the foregoing false, deceptive, and misleading statements or representations of the respondents in selling and offering for sale such items of merchandise as hereinabove referred to is to mislead and deceive a substantial part of the purchasing public in the several States of the United States and the District of Columbia by inducing them to mistakenly believe that respondents give away certain of their said articles of merchandise without cost to their said representatives; that respondents' so-called premiums and candy are of high grade and superior quality; and that respondents prepay all charges on all of their said articles of merchandise.

PAR. 6. In truth and in fact, none of respondents' so-called premiums or gifts are given away "free" or "without cost," but said so-called premiums or gifts which are represented as being "free" or "without cost" to said representatives are either purchased with labor by them or the prices of said so-called premiums or gifts are included in the prices of other articles of merchandise which representatives must sell or procure the sale of before said so-called premiums or gifts

can be procured by them. For a number of said so-called premiums or gifts certain sums of money must be paid by said representatives in addition to the labor performed or services rendered. Respondents' so-called premiums and candy are not of a high grade and superior quality, but on the contrary are of a very cheap, low grade, and inferior quality. Respondents do not pay all shipping charges on their said products, but said representatives are required to pay certain specified sums of money as shipping charges on a number of respondents' said articles of merchandise.

PAR. 7. The use by respondents of the false, deceptive, and misleading statements or representations set forth herein has had and now has the tendency and capacity to mislead and deceive, and has misled and deceived a substantial portion of the purchasing public into the erroneous belief that such statements or representations are true, and into the purchase of substantial quantities of said respondents' products as a result of such erroneous belief. There are among the competitors of respondents, as mentioned in paragraph 2 hereof, manufacturers and distributors of like and similar products who do not make such false, deceptive, and misleading statements or representations concerning their products. By the statements or representations aforesaid, trade is unfairly diverted to respondents from such competitors and as a result thereof substantial injury is being, and has been, done by respondents to competition in commerce between and among 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 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 21st day of July 1938, issued and thereafter served its complaint in this proceeding upon respondents Joseph Saladoff and Sara Saladoff (named in the complaint as Joseph Saladof and S. Saladof), individually, and trading as the Novelty Premium Co., charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of the allegations of the complaint were introduced by D. C. Daniel, P. C.

Kolinski, and L. P. Allen, Jr., attorneys for the Commission, before Randolph Preston, a trial examiner of the Commission, theretofore duly designated by it. Joseph Keough appeared as counsel for the respondents. Said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding came on for final hearing before the Commission on said complaint, the answer thereto, testimony in support thereof, and brief in support of the complaint (respondents having filed no brief), and oral argument having been waived, and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Joseph Saladoff and his wife Sara Saladoff (named in the complaint as Joseph Saladof and S. Saladof), are individuals doing business under the name of the Novelty Premium Co. with their principal place of business located at 510 Arch Street, Philadelphia, Pa. Said business is owned by respondent Sara Saladoff and is operated and conducted by Joseph Saladoff, who is general manager and sales manager thereof. Respondents are now, and for 10 years last past have been, engaged in the sale of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, and other articles of merchandise in commerce between and among various States of the United States and in the District of Columbia. Respondents cause, and have caused, said products, when sold, to be shipped or transported from their place of business aforesaid to purchasers thereof located in various States of the United States other than the State of Pennsylvania and in the District of Columbia at their respective points of location. There is now, and has been for more than 10 years last past, a course of trade by said respondents in such merchandise in commerce between and among various States of the United States and in the District of Columbia. In so conducting said business respondents were, and are, in competition with other individuals and with partnerships, firms, and corporations engaged in the sale and distribution of like and similar articles of merchandise as those sold by respondents, in commerce between and among various States of the United States and in the District of Columbia.

PAR. 2. In so conducting their said business as described in paragraph 1 hereof, respondents sell and distribute, and have sold and distributed, said merchandise by means of a game of chance, gift enterprise, or lottery scheme. Respondents' said business is, and has been,

conducted in substantially the following manner: Respondents distribute, and have distributed, and cause, and have caused, to be distributed to representatives advertising or sales circulars, catalogs, and other advertising literature. One of the said circulars has been used in the sale and distribution of articles of said merchandise in substantially the following manner: Upon said circular there is a device commonly known as a pull card. Said pull card contains a number of partially perforated tabs, on the reverse side of each of which there appears the name of the box of candy the purchaser is to receive and the price thereof. The prices of said boxes of candy range from 9 cents to 39 cents each. The total amount collected from the sale of said 22 boxes of candy is $7.67. Each purchaser separates or pulls one of the said tabs from said device. The prices and the names of the boxes of candy are so concealed that the purchasers and prospective purchasers are unable to ascertain which boxes of candy they are to receive or the amounts they are to pay until after said tabs are separated or pulled from said card. After a tab is pulled the name of the purchaser is written in a blank space reserved therefor opposite said device. Many of said boxes of candy have greater retail values than the amounts to be paid therefor. Which of said boxes of candy a purchaser is to receive and the sum of money to be paid by him are thus determined wholly by chance. On another of respondents' said sales circulars the prices of the boxes of candy sold thereby vary from 9 cents to 44 cents, but the sale plan used in connection therewith is the same as the one hereinabove described, varying only in detail.

When the person or representative operating the said card or device has sold all of the said boxes of candy in the manner described and collected the amounts charged therefor, he may either remit the whole amount to respondents who thereupon will ship to him the boxes of candy thus sold together with the premium he has selected from the advertising literature of the respondents as compensation for his services, or said representative may first deduct a designated cash premium as compensation for selling said boxes of candy in lieu of such premium and remit the balance to respondents. Said person or representative, in turn, distributes said boxes of candy to the individual purchasers thereof. The premiums heretofore referred to are illustrated and described in respondents' said circulars or catalogs, and the person or representative desiring such premium may make his selection therefrom.

Immediately above the pull card there is printed the following:

NOTICE TO PURCHASERS

On the back of each slip is printed the price of a box of chocolates. If after deliberation you decide that you want to buy the box of chocolates pay the

holder of this folder the price shown on the slip. If you do not want the box of chocolates you need not buy.

The Commission finds that such notice was not always called to the attention of the purchasers and that when called to their attention none of them refused to take the candy purchased by them in the manner aforesaid on account of said notice.

PAR. 3. The Commission finds that the persons or representatives to whom respondents have furnished and supplied said pull card devices have used same in purchasing, selling, and distributing respondents' candy in accordance with sales plan or method as described in paragraph 2 hereof. Respondents have thus supplied to, and placed in the hands of, other persons a means of selling and distributing said candy by means of a game of chance or lottery scheme in accordance with said sales plan as aforesaid. The use of said sales plan by respondents in the sale and distribution of their merchandise 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 law.

PAR. 4. The Commission finds that the sale of said candy in the manner described in paragraph 2 hereof involves a game of chance or sale of chance to procure a box of candy at a price much less than the usual retail price. Respondents have many competitors who sell and distribute like or similar merchandise in commerce between and among various States of the United States and the District of Columbia who are, and have been, unwilling to adopt and use said sales plan or method in the sale of their merchandise or any other sales plan or method involving any game of chance or the sale of a chance to win something of value by chance or any sales plan or method which is contrary to public policy and such competitors refrain therefrom. Because of said element of chance involved in the said sales plan or method as employed by respondents, as hereinbefore described, many persons have been induced to buy and sell respondents' candy in preference to that offered for sale and sold by respondents' said competitors.

PAR. 5. The Commission finds that in conducting their said business, as hereinabove described, respondents cause, and have caused, various false, deceptive, and misleading statements and representations to appear in their said sales circulars and other advertising matter which said statements and representations are in part as follows:

Free gifts for all.
How to get your gifts free.
We pay all shipping charges.
Everything for your home.

Beautiful household gifts at absolutely no cost.

Amazingly high values in guaranteed premiums and assorted chocolates—also cash—at absolutely no cost.

All shipping charges are paid by us.

By such statements and representations the respondents in offering for sale and selling said articles of merchandise mislead, and have misled, deceive, and have deceived, a substantial number of the members of the purchasing public into the mistaken belief that respondents give away certain of their said articles of merchandise without cost to the operators of said pull cards or devices and, further, that the said respondents pay all shipping charges on all of their said articles of merchandise thus advertised as being free.

PAR. 6. The Commission finds that, in truth and in fact, none of the respondent's said articles so advertised as being free or without cost are given away without cost to said operators or representatives but that the said operators or representatives, before they receive such articles of merchandise or premiums, must sell or procure the sale of the aforesaid designated boxes of candy and remit the amount procured by the sale thereof as aforesaid, and in addition thereto persons selecting some of respondents' so-called premiums are also required to pay a designated sum of money therefor. Respondents do not pay all shipping charges, for in certain instances the said operator or representative must remit an extra dollar to cover shipping charges of certain premiums.

PAR. 7. The Commission finds that said statements and representations are false, deceptive, and misleading and have had, and now have, the tendency and capacity to deceive and mislead a substantial portion of the purchasing public into the mistaken and erroneous belief that said statements and representations are true, and to cause the public thereby to purchase a substantial quantity of respondents' merchandise as the result thereof. There are, and have been, many of respondents' competitors who are, and have been, engaged in the sale and distribution of candy or merchandise similar to that sold by respondents who do not use such false and misleading and deceptive statements and representations in connection with the sale and distribution of their products.

PAR. 8. As a result of the use of said sales plan or method hereinbefore described, and of said statements and representations made by respondents, trade is being, and has been, unfairly diverted to respondents from their said competitors and substantial injury is being, and has been, done to said competitors by respondents in commerce between and among various States of the United States and in the District of Columbia.

CONCLUSION

The acts and practices of the respondents, 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 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 Randolph Preston, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint (respondents having offered no proof in opposition thereto), brief filed herein by counsel for the Commission (respondents not having filed brief and oral argument having been waived), and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Joseph Saladoff and Sara Saladoff, individually and trading as Novelty Premium 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, and distribution of candy, watches, clocks, guns, baby buggies, quilts, aluminum ware, or any other articles of merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Supplying to or placing in the hands of others push or pull cards, punchboards or other devices which are to be used, or may be used, in the sale and distribution of said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme;

2. Shipping, mailing, or transporting to agents or to distributors or to members of the public, push or pull cards, punchboards, or other devices which are to be used, or may be used, in the sale and distribution of said merchandise to the public by means of a game of by means of a game of chance, gift enterprise, or lottery scheme.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme.

4. Using the terms "free" or "at absolutely no cost" or any other terms of similar import or meaning to describe or refer to merchandise offered as compensation for distributing respondents' merchan-

dise 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 "at absolutely no 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 or sums of money to be paid in connection with obtaining such merchandise.

5. Representing that respondents pay shipping charges on their merchandise, when in fact they do not pay such charges.

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

AVERY SALT COMPANY

MODIFIED CEASE AND DESIST ORDER

Docket 2248. Order, Nov. 19, 1940

Modified order, pursuant to provisions of section 5 (i) of Federal Trade Commission Act, in proceeding in question, in which prior order of October 17, 1939, 29 F. T. C. 1132, required respondent, its officers, etc. (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—

Requiring respondent, its officers, etc., in connection with offer, etc., in interstate commerce, of salt, to cease and desist from using word "smoke" or other words signifying smoke or implying use thereof, to designate or describe salt offered, etc., for curing, preserving, smoking or flavoring meats, unless such salt has been subjected to action and effect of smoke from burning wood, as in such modified order set forth, and subject to added provision permitting use of terms "condensed smoke" or "liquid smoke" in enumeration or statement of ingredients of such salt, in the event of the addition thereto of a refined concentrate resulting from destructive distillation of wood, and in sufficient quantity to impart to such salt flavor of smoke, as below set forth in detail.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding coming on for further hearing before the Federal Trade Commission and it appearing that on November 28, 1936, 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 on October 17, 1939, issued and subsequently served its order to cease and desist; and it further appearing that on March 23, 1940, the United States Circuit Court of Appeals for the Fourth Circuit rendered its decree modifying the aforesaid order of the Commission in certain particulars and affirming said order in other particulars and directed

the Commission to modify its said order to cease and desist in accordance with said decree.

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 said Court decree:

It is ordered, That respondent Avery Salt Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of salt in interstate commerce as "commerce" is defined in the Federal Trade Commission Act, 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 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;

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

IN THE MATTER OF

W. R. CASE & SONS CUTLERY COMPANY

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

Docket 4119. Complaint, Apr. 26, 1940—Decision, Nov. 19, 1940

Where a corporation engaged in manufacture, offer and sale of various articles of cutlery to purchasers in various other States and in the District of Columbia—

Labeled, marked, and designated as "CASE SCOUT" one of its aforesaid products, notwithstanding fact knife in question was not one of those long made or distributed under supervision of the Boy Scouts of America, nor approved, indorsed or sponsored by that organization, and uniformly referred to as "Scout Knife" and marked in some form or manner with words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America, and as such, uniformly referred to by use of such words as "Boy Scout," "Scout" and "Scouting," and thus long understood as identifying and referring to such equipment and activities of organization in question;

With capacity and tendency to mislead and deceive purchasing public into belief that its said knife had been approved, indorsed or sponsored by said organization and was a part of the standard equipment thereof, for the purchase of which, as products sponsored or approved by such organization, there is a marked preference on the part of substantial portion of purchasing public, over products which are not thus sponsored or approved, and with tendency and capacity to cause said public, as result of such belief, to purchase 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. Joseph C. Fehr, for the Commission.

Nash & Mutzabaugh, of Bradford, Pa., for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that W. R. Case & Sons Cutlery 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, W. R. Case & Sons Cutlery Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in the city of Bradford, in the State of Pennsylvania.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in manufacturing, offering for sale, and selling various articles of cutlery, among other things, a pocket knife designated and marked as a "CASE SCOUT" knife. Respondent causes its said products, when sold to be transported from its place of business in the State of Pennsylvania to the purchasers thereof located in States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In 1910 an organization known as the Boy Scouts of America was incorporated under the laws governing the District of Columbia, and later was reincorporated by special Act of Congress. Its purpose was, in general, to organize the boys of the United States and teach them dicipline, patriotism, courage, habits of observation, self-control, and ability to care for themselves in all exigencies of life.

In furtherance of this purpose and both to attract the boys of the Nation to the movement and to insure safe, adequate, and adaptable equipment, the organization adopted, and has since maintained, the policy of devising and planning a great many articles of equipment and supervising their manufacture and distribution through licensing and otherwise authorizing those with whom it would enter into arrangements for such manufacture and distribution.

From the beginning the equipment so approved and sponsored has been designated and marked, and the activities of the boy members of the organization have been uniformly referred to, by use of the words "Boy Scouts," "Scout," and "Scouting," so that these words have long ago acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America.

Among the articles of equipment so devised and whose production and distribution is so supervised is a pocket knife of a design and of material and workmanship suitable for the outdoor activities of the boy members of the organization. This knife has been uniformly referred to as a "Scout Knife," has been marked in some form or manner with the words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America.

PAR. 4. The knife manufactured and sold by respondent, as alleged and described in paragraph 2 hereof, has been and is of such general design and appearance as, when marked or labeled by the use of the words "CASE SCOUT" or "Boy Scout" or any other marks or insignia characteristic of, or identifying it with, the Boy Scouts of America, would have, has had and has, the capacity and tendency to induce the purchasing public to believe that respondent's said knife has been and is approved, endorsed or sponsored by the Boy Scouts of America and is a part of the standard equipment of that organization; and to cause, and has caused, a substantial part of the public to purchase respondent's said knife because of such belief.

PAR. 5. In truth and in fact, respondent's said knife has not been and is not manufactured or distributed under the supervision of the Boy Scouts of America, has not been and is not approved, endorsed or sponsored by that organization, nor is it a part of its standard equipment.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for products which are sponsored or approved by the Boy Scouts of America over products which are not so sponsored or approved.

PAR. 7. The aforesaid acts and practices of respondent as herein alleged are all to the prejudice and inquiry 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 26th day of April 1940, issued and subsequently served its complaint in this proceeding upon respondent, W. R. Case & Sons Cutlery 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 May 18, 1940, 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 for the respondent by its counsel, F. M. Nash, and by W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as to the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon 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, such 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, W. R. Case & Sons Cutlery Co., is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal office and place of business located in the city of Bradford, in the State of Pennsylvania.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged in manufacturing, offering for sale, and selling various articles of cutlery, including, among other things, a pocket knife designated and marked as a "CASE SCOUT" knife. Respondent causes its said products, when sold, to be transported from its place of business in the State of Pennsylvania to the purchasers thereof located in States of the United States other than the State of Pennsylvania and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In 1910 an organization known as the Boy Scouts of America was incorporated under the laws governing the District of Columbia, and later was reincorporated by special act of Congress. Its purpose was in general, to organize the boys of the United States and teach them discipline, patriotism, courage, habits of observation, self-control, and ability to care for themselves in all exigencies of life.

In furtherance of this purpose and both to attract the boys of the Nation to the movement and to insure safe, adequate, and adaptable equipment, the organization adopted, and has since maintained, the policy of devising and planning a great many articles of equipment and supervising their manufacture and distribution through licensing and otherwise authorizing those with whom it would enter into arrangements for such manufacture and distribution.

From the beginning the equipment so approved and sponsored has been designated and marked, and the activities of the boy members of the organization have been uniformly referred to, by use of the words "Boy Scout," "Scout," and "Scouting," so that these words have long ago acquired a secondary meaning as referring to the equipment and activities of the Boy Scouts of America.

Among the articles of equipment so devised and whose production and distribution is so supervised is a pocket knife of a design and of material and workmanship suitable for the outdoor activities of the boy members of the organization. This knife has been uniformly referred to as a "Scout Knife," has been marked in some form or manner with the words "Scout" or "Boy Scout," with or without other marks and insignia identifying it as a part of the standard equipment of the Boy Scouts of America.

PAR. 4. The knife manufactured and sold by respondent, described in paragraph 2 hereof, and marked or labeled by the use of the words "CASE SCOUT," has not been so designated since on or about January 1, 1940. Although heretofore not aware of it, respondent now admits, and the Commission finds, that the labeling, marking, and designating of said knife by the use of the words "CASE SCOUT" has had the capacity and tendency to mislead and deceive the purchasing public into the belief that such knife has been and is approved, endorsed, or sponsored by the Boy Scouts of America and is a part of the standard equipment of that organization. The Commission further finds that such practice on the part of respondent has the tendency and capacity to cause the purchasing public to purchase substantial quantities of respondent's product as a result of such belief.

PAR. 5. In truth and in fact, respondent's said knife has not been and is not manufactured or distributed under the supervision of the Boy Scouts of America, has not been and is not approved, endorsed or sponsored by that organization, nor is it a part of its standard equipment.

PAR. 6. There is a marked preference on the part of a substantial portion of the purchasing public for products which are sponsored or approved by the Boy Scouts of America over products which are not so sponsored or approved.

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, the answer of the respondent, and a stipulation as to the facts entered into by 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, W. R. Case & Sons Cutlery 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 knives in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Using the words "CASE SCOUT" or "SCOUT" or any other word or words of similar import or meaning, to designate, describe, or refer to respondent's knives, or otherwise representing that said knives are sponsored, endorsed, or approved by the organization known as the Boy Scouts of America, or that said knives form a part of the equipment of the members of said organization.

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. RALPH WEINSTOCK, TRADING AS THYROLE 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 4160. Complaint, June 13, 1940—Decision, Nov. 19, 1940

Where an individual engaged in sale and distribution of certain medicinal preparation by it designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, to purchasers in other States and in the District of Columbia; in advertisements of said preparation which he disseminated and caused to be disseminated through the mails and through advertisements in newspapers and by circulars, leaflets, pamphlets, and other advertising literature, and through various means in commerce and otherwise, and which were intended and likely to induce purchase of his said product—

(*a*) Represented that his said medicinal preparation, designated and known as aforesaid, constituted a cure or remedy for obesity and a safe, competent, and effective treatment therefor, through such statements, among others, as "DON'T BE FAT. Get rid of excess weight without strict diet or strenuous exercise. If you are overweight due to glandular deficiency, but normally healthy otherwise, you may be reasonably sure of satisfactory results by taking O. B. C. Capsules," and "Slenderize this modern easy way without strict diet or exercise. Thousands of grateful users everywhere since 1923," and "Lose fat like magic. Youth restored. Health preserved. O. B. C. is the sure—safe—pleasant—easy—modern method of slenderizing without exercise";

Facts being preparation in question was not a cure or remedy for obesity, and did not constitute a competent or effective treatment therefor, nor a safe one, by virtue of inclusion of powdered strychnine alkaloid, powdered extract belladonna, aloin, thyroid, and 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 use of such product might produce headaches, muscular and articular pains, nausea, and various other conditions and result, among other things, in permanent injury to tissues and organic functions, and irreparable injury to heart muscle; and

(*b*) Failed to reveal in his said advertisements that use of said preparation, or O. B. C. Capsules, under conditions prescribed in said advertisements or under such conditions as are customary or usual might result in serious and irreparable injury to health;

With effect 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 his said 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.

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

Mr. William L. Taggart, 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 I. Ralph Weinstock, an individual, trading as Thyrole 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, I. Ralph Weinstock, is an individual trading as Thyrole Products Co., with his office and principal place of business at Thirty-fourth and Chestnut Streets, Philadelphia, Pa., from which address he transacts business under the above trade name.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation, designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules.

In the course and conduct of his business the respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, respondent has maintained a course of trade in said medicinal preparation sold and distributed by him 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 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 the United States mails and by various 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 product; and respondent has also 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, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by United States mails and by advertisements in newspapers, and by circulars, leaflets, pamphlets and other advertising literature, are the following:

DON'T BE FAT

Get rid of excess weight without strict diet or strenuous exercise. If you are overweight due to glandular deficiency, but normally healthy otherwise, you may be reasonably sure of satisfactory results by taking O. B. C. Capsules.

O. B. C. REDUCING CAPSULES

Slenderize this modern easy way without strict diet or exercise. Thousands of grateful users everywhere since 1923.

O. B. C. REDUCING CAPSULES

Lose fat like magic. Youth restored. Health preserved. O. B. C. is the sure—safe—pleasant—easy—modern method of slenderizing without exercise.

O. B. C. Capsules promote the combustion of fats, thereby reduce the weight of the body. They are mildly laxative and are taken one before each meal. In this manner gradual and appreciable loss is acquired. The action of O. B. C. can be accelerated by the user eating sparingly of the following foods: Bread, potatoes, milk, butter and sweets. However, this step in diet is not strictly necessary and is recommended for only those persons who are very much overweight. It is the purpose of O. B. C. Capsules to reduce gradually. Gradual reduction as produced by O. B. C. restores vim, vigor, mental alertness and efficiency. Sudden reduction due to extreme diet and exercise is disastrous, causing loss of vitality and weakness. O. B. C. Capsules owe their ever increasing popularity and recommendation to mildness and efficiency of action. They should be taken for six to twelve weeks for best results.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparation, designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, is a cure or remedy for obesity, and a safe, competent, and effective treatment therefor.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the medicinal preparation sold and distributed by the respondent as aforesaid, designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, is not a cure or remedy for obesity and does not constitute a competent or effective treatment therefor. Moreover, said preparation is not safe, in that said preparation contains powdered strychnine alkaloid, powdered extract belladonna, aloin, phenolphthalein, and thyroid, U. S. P.

The aforesaid drugs are present in the said medicinal preparation in quantities sufficient to cause serious and irreparable injury to health if used under the conditions as prescribed in said advertisements or under such conditions as are customary or usual.

Such use of said medicinal preparation may produce headaches, muscular and articular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor, and tachycardia. The use of said preparation, as aforesaid, may also result in thyroid toxicosis, permanent injury to tissues, organic functions, and the entire body mechanism and irreparable injury to the heart muscle with auricular fibrillation.

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 O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his 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 such erroneous and mistaken belief, to purchase respondent's medicinal preparation.

PAR. 7. The foregoing 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 June 13, 1940, issued and on June 15, 1940, served its complaint in this proceeding upon respondent, I. Ralph Weinstock, an individual, trading as Thyrole 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 October 29, 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 fully advised in the premises, finds that this proceeding is in the interest 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. Ralph Weinstock, is an individual trading as Thyrole Products Co., with his office and principal place of business at Thirty-fourth and Chestnut Streets, Philadelphia, Pa., from which address he transacts business under the above trade name.

PAR. 2. The respondent is now, and for more than 1 year last past has been, engaged in the sale and distribution of a certain medicinal preparation, designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules.

In the course and conduct of his business the respondent causes said medicinal preparation when sold to be transported from his place of business in the State of Pennsylvania to purchasers thereof located in other States of the United States and in the District of Columbia.

At all times mentioned herein, respondent has maintained a course of trade in said medicinal preparation sold and distributed by him 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 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 the United States mails and by various 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 product; and respondent has also 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, misleading and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated, as hereinabove set forth, by United States mails and by advertisements in newspapers, and by circulars, leaflets, pamphlets, and other advertising literature, are the following:

DON'T BE FAT

Get rid of excess weight without strict diet or strenuous exercise. If you are overweight due to glandular deficiency, but normally healthy otherwise, you may be reasonably sure of satisfactory results by taking O. B. C. Capsules.

O. B. C. REDUCING CAPSULES

Slenderize this modern easy way without strict diet or exercise. Thousands of grateful users everywhere since 1923.

O. B. C. REDUCING CAPSULES

Lose fat like magic. Youth restored. Health preserved. O. B. C. is the sure—safe—pleasant—easy—modern method of slenderizing without exercise. O. B. C. Capsules promote the combustion of fats, thereby reduce the weight of the body. They are mildly laxative and are taken one before each meal. In this manner gradual and appreciable loss is acquired. The action of O. B. C. can be accelerated by the user eating sparingly of the following foods: Bread, potatoes, milk, butter and sweets. However, this step in diet is not strictly necessary and is recommended for only those persons who are very much overweight. It is the purpose of O. B. C. Capsules to reduce gradually. Gradual reduction as produced by O. B. C. restores vim, vigor, mental alertness and efficiency. Sudden reduction due to extreme diet and exercise is disastrous, causing loss of vitality and weakness. O. B. C. Capsules owe their ever increasing popularity and recommendation to mildness and efficiency of action. They should be taken for six to twelve weeks for best results.

PAR. 4. By the use of the representations hereinabove set forth and other representations similar thereto not specifically set out herein, the respondent represents that his medicinal preparation, designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, is a cure or remedy for obesity, and a safe, competent, and effective treatment therefor.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, the medicinal preparation sold and distributed by the respondent as aforesaid, designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, is not a cure or remedy for obesity and does not constitute a competent or effective treatment therefor. Moreover, said preparation is not safe, in that said preparation contains powdered strychnine alkaloid, powdered extract belladonna, aloin, phenolphthalein, and thyroid, U. S. P.

The aforesaid drugs are present in the 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 headaches, muscular and articular pains, nausea, vomiting, vertigo, insomnia, physical exhaustion, tremor, and tachycardia. The use of said preparation, as aforesaid, may also result in thyroid toxicosis, permanent injury to tissues, organic functions, and the entire body mechanism and irreparable injury to the heart muscle with auricular fibrillation.

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 O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in serious and irreparable injury to health.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations with respect to his 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 such erroneous and mistaken belief, to purchase respondent's medicinal preparation.

CONCLUSION

The foregoing 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 by the respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearings as to the said facts, and the Commission having made its findings as to the facts and its conclusion that the said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, I. Ralph Weinstock, individually and trading as the Thyrole Products Co., 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 or distribution of his medicinal preparation designated as O. B. C. Reducing Capsules, otherwise known as O. B. C. Capsules, or any other medicinal preparation composed of substantially similar ingredients or possessing substantially similar properties, whether sold under the same names or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as commerce is defined in the Federal Trade Commission Act,

which advertisement represents, directly or through inference, that said medicinal preparation is a cure or remedy or a competent or effective treatment for obesity; that said preparation is safe; or which advertisement fails to reveal that the use of said preparation may cause permanent injury to the heart, thyroid gland, and other vital organs.

2. 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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which fails to reveal that the use of said preparation may cause permanent injury to the heart, thyroid gland, and other vital organs.

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

IN THE MATTER OF

HOME DIATHERMY 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 3653. Complaint, Nov. 23, 1938—Decision, Nov. 20, 1940

Where a corporation engaged in sale and distribution of its "Home Diathermy" device for treatment of various diseases, ailments and afflictions, to purchasers in various other States and in the District of Columbia, in substantial competition with others engaged in manufacture, sale, and distribution in commerce among the various States and in said District of similar devices and other products intended for similar usage and treatment of various diseases and conditions for which it recommended its said device; in advertisements thereof which it disseminated and caused to be disseminated through the mails, and in circulars, pamphlets, and other printed or written matter distributed in commerce among the various States and in said District, and through radio broadcasts of extra-State audience, and by other means in commerce and otherwise, and which were intended and likely to induce purchase thereof, and in which it made statements purporting to be descriptive of its said product and effectiveness thereof in safely treating and curing many of the diseases, ailments, afflictions, and disordered conditions of the body and cause of such conditions—

(*a*) Represented that use of said device, in and of itself, had substantial therapeutic value in treatment of, and constituted a competent and adequate cure or remedy for, arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high and low blood pressure, rheumatism, and many other diseases, ailments, afflictions, and disordered conditions, and that use thereof would alleviate most discouraging, painful, and chronic conditions caused by ailments referred to, and increased oxidation, elimination of waste and toxic poisons, and nutrition, and that a person suffering from any of such ailments and conditions might be restored to health and vigor by such use alone, and that said device constituted up-to-date method which alleviated such diseases, ailments, afflictions, and disordered conditions without employment of any other means of treatment;

Facts being that use of its said device, whether of long wave type or of short wave type, more recently sold by it exclusively except on special orders for other, does not constitute a cure or remedy for arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high or low blood pressure, or rheumatism, nor have any therapeutic value in the treatment of any of said ailments or of any other disease or condition where acute inflammation, infection, pus formation, arteriosclerosis or conditions in which there is a tendency to hemmorhage, are present; and

(*b*) Represented that the method of using said device was so simple that it might be used safely in the home by persons without knowledge and training with respect to the diagnosis, analysis, and treatment of diseases, ailments, afflictions, and disordered conditions of the body, and with respect to the technique and methods of the application of diathermy;

Facts being development of diathermy, discovered in 1891, has been conservative in many respects and as to many effects, and, while generally used as an aid in the treatment of many diseases, when used by those with technical and medical training, it is still subject of considerable research work, acute pains may be symptoms of several diseases, and before such device may be safely or effectively used there must be a competent diagnosis determining the nature of the ailment, analysis to determine the stage of the disease, and knowledge whether diathermy is indicated in that ailment or at that stage, person not skilled in application thereof and without ability to diagnose disease or condition existing cannot safely apply different sizes of electrodes on different sized individuals by virtue of danger of electro surgery and burning of the tissues, among other things and even after competent diagnosis and analysis and where there is accurate knowledge of the favorable results which ordinarily follow application of a definite amount of heat, use of said device is dangerous unless user has also proper technique and thorough knowledge of methods of application, and use thereof, if technique is not good, may cause burns or be otherwise detrimental to patient, and it is impracticable and dangerous to apply heat by means of device in question in treatment of any disease or ailment unless, as aforesaid indicated, user is skilled in diagnosis, analysis and methods of treatment of disease, and unsupervised use of device in question in the home, by reason of such use in situations where contra-indicated, or by manner of such use in other cases, or otherwise, may result in serious and irreparable injury to health and even prove fatal;

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 causing substantial portion of such public, because of such erroneous and mistaken belief, to purchase its device in preference to devices, remedies and preparations of competitors, designed and offered for same or similar purposes, and of diverting trade to it unfairly from competitors likewise engaged in sale and distribution of such products in commerce, and who truthfully advertise the effectiveness and therapeutic value of their respective preparations:

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

Before *Mr. John P. Bramhall* and *Mr. Arthur F. Thomas*, trial examiners.

Mr. R. A. McOuat, for the Commission.

Mr. Saul L. Harris, of Brooklyn, 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 the Home Diathermy Co., Inc., a corporation, hereinafter referred to as the respondent, has vio-

lated 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, Home Diathermy Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and having its office and principal place of business at 1776 Broadway, in the city of New York, State of New York. The respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a device designated as "Home Diathermy," which is attached to the human body for the purpose of applying heat to afflicted parts thereof. Respondent sells said device to members of the purchasing public situated in various States of the United States and in the District of Columbia and causes the said device, 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 in the United States other than the State of New York and in the District of Columbia. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said device in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. Respondent is now, and at all times mentioned herein has been, in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the sale and distribution of similar products or other products designed and intended for similar usages in the treatment of various diseases and ill conditions of the human body 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 the efficacy of their products in treating diseases and ailments of the human body.

PAR. 3. In the course and conduct of its aforesaid business and for the purpose of inducing, directly or indirectly, the purchase of said device, respondent has disseminated and caused to be disseminated false advertisements by the United States mails, by the use of circulars, folders, and other advertising matter disseminated in commerce between and among the various States of the United States and in the District of Columbia, and also by use of radio continuities broadcast from radio stations which have power to, and do, convey the programs emanating therefrom to the listeners thereto located in various States of the United States other than the State from which said broadcast originates and in the District of Columbia. Respondent has also dis-

seminated other false advertisements for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase in commerce among and between the various States of the United States and in the District of Columbia of said device. Among and typical of the representations thus made by the respondent are the following:

It is no longer necessary to continue living a life of pain and agony. When with a Home Diathermy one can have lasting relief, relaxation and peace. By means of Diathermy, a modern scientific discovery, YOU can make your life enjoyable.

What is Diathermy and how does it work? Diathermy is one of the miracles of modern science. The secret is *heat*. That is what diathermy means, *heating through*. By means of a gently electric current, diathermy produces a penetrating heat *deep* down in the blood stream, just as nature does. This equalizes and stimulates the circulation of the blood and lymph, flushing away the waste and toxic poisons that are the direct cause of their pain and agony. The faster the blood moves through the system, so fast are the poisons carried away. Almost immediately after the heat begins to penetrate, the sufferer feels that soothing, healing action deep in the joints, muscles, and tissues. The instant action is so great and wonderful the the sufferers say it is miraculous!

It is so easy to apply the diathermy electrodes to any part of the body and to localize the beneficial effects on any organ or set of muscles. The Home Diathermy has been used successfully by sufferers of asthma, hay fever, arthritis, neuritis, bursitis, lumbago, neuralgia, pneumonia, sciatica, bronchitis, rheumatism, and high or low blood pressure.

The role of Diathermy in the field of thermo-electro-therapy is self-evident. By no other means can one penetrate deeper than the skin of mucous membrane; by means of diathermy alone, is it possible to heat internal organs at any depth; to any degree desired.

And this can be done right in your own home—by you, as easily as you can turn on your radio.

Through the use of the statements and representations hereinabove set forth, and others similar thereto not herein set out and picturizations appearing in respondent's advertising, all of which purport to be descriptive of respondent's device and its effectiveness in the treatment of ailments and conditions of the human body and the cause of such ailments and conditions, respondent has represented, directly and by implication, among other things, that the use of such device is a competent and adequate cure or remedy for and has substantial therapeutic value in the treatment of arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high and low blood pressure, and rheumatism; that the use of such device will thoroughly alleviate the most discouraging, painful and chronic conditions caused by the aforesaid ailments; that the use of such device dilates the blood vessels, stimulates the blood supply, increases oxidation, increases the elimination of waste and toxic poisons, increases nutrition; that a person suffering from any of the aforesaid ailments and conditions may be restored to health and vigor by the use of such

device; and that such device is an up-to-date method which definitely and miraculously alleviates the aforesaid ailments and conditions of the human body.

PAR. 4. The aforesaid representations, used and disseminated by the respondent in the manner above described, are grossly exaggerated, misleading, and untrue and constitute false advertisements, and induce, or are likely to induce, directly or indirectly, the purchase of respondent's device. The use of such device is not a competent and adequate cure or remedy for, nor does it have substantial therapeutic value in the treatment of, arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high and low blood pressure, and rheumatism; the use of such device will not thoroughly alleviate the most discouraging, painful, and chronic conditions caused by the aforesaid ailments of the human body. The use of such device does not dilate or stimulate blood vessels. The use of such device does not stimulate the blood supply and increase oxidation. The use of such device does not eliminate waste and toxic poisons and increase nutrition. A person suffering from the aforesaid ailments and conditions of the human body will not be restored to health and vigor by the use of such device. The therapeutic value of the use of such device is limited to provide temporary relief from certain of the symptoms of distress of some of the aforesaid ailments and conditions of the human body in some cases. In truth and in fact, the use of any diathermy apparatus requires a competent diagnosis and a highly developed technique and a thorough knowledge of the methods of application. The use of respondent's device in the home is impracticable and may be dangerous to persons using such device without the services of persons skilled in the application of electrical currents to the human body.

PAR. 5. The use by respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements, disseminated as aforesaid, with respect to said device, has had, and now has, the capacity and tendency to, and does, mislead, and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such false statements, representations, and advertisements are true and that respondent's device will accomplish the results indicated, and causes a substantial portion of the purchasing public, because of said erroneous and mistaken belief, to purchase a substantial number of respondent's devices. As a result, trade has been diverted unfairly to respondent from its competitors in said commerce who truthfully advertise the effectiveness in use of their respective products. In consequence thereof injury has been, and is now being, done by respondent to competition in commerce among

and between the various States of the United States and in the District of Columbia.

PAR. 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 November 23, 1938, issued, and on November 25, 1938, served, its complaint in this proceeding upon respondent, Home Diathermy Co., Inc., a corporation, charging it with the use of unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer thereto, 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 the allegations of the complaint by Saul L. Harris, attorney for the respondent, before John P. Bramhall and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on said complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel aforesaid; and the Commission having duly considered the matter, and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Home Diathermy Co., Inc., is now and has been at all times herein mentioned 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 1780 Broadway, New York, N. Y.

Respondent is now, and for several years last past has been, engaged in the sale and distribution of a device under the name of "Home Diathermy" recommended by respondent for use in the treatment of various diseases, afflictions, ailments, and disordered conditions of the

human body, in commerce between and among the various States of the United States and in the District of Columbia. Respondent sells said device to members of the purchasing public situated in the various States of the United States and in the District of Columbia, and causes said device, when sold by it, to be transported from its place of business in the State of New York to the purchasers thereof located in various other States of the United States and in the District of Columbia. Respondent maintains and at all times mentioned herein has maintained, a course of trade, in said device, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent is now and at all times mentioned in the complaint has been in substantial competition with other corporations and with individuals, firms, and partnerships engaged in the manufacture, sale, and distribution in commerce between and among the various States of the United States and in the District of Columbia of similar devices, and other products, intended for similar usage in the treatment of various diseases and conditions of the human body for which respondent recommends its said device.

PAR. 3. In the course and conduct of its aforesaid business, and for the purpose of inducing, directly or indirectly, the purchase of its said device, respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said device by the United States mails, and in circulars, pamphlets, and other printed or written matter, all of which are distributed in commerce among and between the various States of the United States and in the District of Columbia and by the use of radio continuities broadcast from radio stations in the State of New York, which have 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 of New York, and by other means in commerce, as commerce is defined in the Federal Trade Commission Act, for the purpose of inducing and which are likely to induce, directly or indirectly, the purchase of its said device; and has disseminated and is now disseminating, and has caused and is now causing the dissemination of false advertisements concerning its said device by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of its said device in commerce, as commerce is defined in the Federal Trade Commission Act.

Among and typical of the statements made in said false advertisements, disseminated and caused to be disseminated as aforesaid, with

reference to the device sold under the name "Home Diathermy" are the following:

It is no longer necessary to continue living a life of pain and agony. When with a Home Diathermy one can have lasting relief, relaxation and peace. By means of Diathermy, a modern scientific discovery, you can make your life enjoyable.

By means of a gentle electric current, diathermy produces a penetrating heat deep down in the blood stream, just as nature does. This equalizes and stimulates the circulation of the blood and lymph, flushing away the waste and toxic poisons that are the direct cause of their pain and agony. The faster the blood moves through the system, so fast are the poisons carried away. Almost immediately after the heat begins to penetrate, the sufferer feels that soothing, healing action deep in the joints, muscles, and tissues. The instant action is so great and wonderful the sufferers say it is miraculous!

It is so easy to apply the diathermy electrodes to any part of the body and to localize the beneficial effects on any organ or set of muscles. The Home Diathermy has been used successfully by sufferers of asthma, hay fever, arthritis, neuritis, bursitis, lumbago, neuralgia, pneumonia, sciatica, bronchitis, rheumatism, and high or low blood pressure.

And this can be done right in your own home—by you, as easily as you can turn on your radio.

Diathermy has proven to be the most successful in eliminating the stubborn pain and agony of arthritis, high or low blood pressure, sciatica, lumbago, rheumatism, neuritis or asthma. Be logical, do what countless other sufferers did when they heard of Home Diathermy. * * * Do a good deed to your friends and relatives or anyone that you know that is suffering and tell them about this marvelous modern scientific discovery that ends pain without pills, powders or medicines.

As I stand before you telling you these things I can see many, many homes where Home Diathermy has come in and converted a home of pain and agony into a home of health, happiness and laughter. Where Home Diathermy has changed ailing mothers and bedridden fathers—yes, and even sons and daughters into active, joyous, healthy men and women.

Be modern. Why be one of the incurables? Let the Home Diathermy Company show you the right way. * * * And by the way, Diathermy is also effectively used for high and low blood pressure.

And with Home Diathermy you can positively alleviate arthritis, or rheumatism, sciatica, lumbago, neuritis, or bursitis.

With the wonderful new Home Short Wave Diathermy, you can alleviate these painful conditions yourself by applying two rubber pads that are so made that they can throw a very deep internal heat into those sore and aching parts in your afflicted body.

Some application and technique. The new features of this Home Short Wave Diathermy is that it is compact and portable and meets the usual requirements in a most simple and easy manner, making it possible for any one to take these treatments on any part of the body that is afflicted by placing the rubber pads above and below the part to be treated. Especially designed for the practical and convenient use in the home. It is adaptable to home use. The remarkable simplicity of operation and the automatic timing device, gives real efficiency. All one need to do is set the time clock and adjust the dial with the heat controlled to a degree of heat that is comfortable. If you are suffering from painful conditions in your

tissues, nerves, muscles or joints on any part of the body, as shown in the enclosed photographs use the simplified Home Short Wave Diathermy.

(There are several picturizations of applications of the device to various parts of the body inserted between the last and next quotations from respondent's advertisement.

Instructively Displayed—

The purpose of these enlarged photographs is for your convenience to show you how simple it is to take these treatments through your wearing apparel or undergarments. When taking a Short Wave, a cloth is applied on the bare skin first, then rubber electrodes are applied. This cloth acts as a spacer.

Instructions—

To take a treatment properly with Short Wave on any particular part of the body, be sure that any metal that is on that particular part of the body is removed. Then place a cloth which will act as a spacer on the bare skin before applying the electrodes. This above method has a two-fold purpose. One is that spacing is necessary. In other words, there must be clothing between the body and the rubber pads. The other is to show how simple it is to apply these rubber pads directly through the clothing, avoiding the necessity of disrobing.

Method—

This method is so simple that it can be used by anyone.

Increases oxidation. Increases elimination of waste and toxic poisons. Increases nutrition.

All of said statements, together with many similar statements appearing in said advertisements disseminated as aforesaid, purport to be descriptive of respondent's device and its effectiveness in safely treating and curing many of the diseases, ailments, afflictions, and disordered conditions of the human body and the cause of such conditions. In its advertisements, respondent represents through the statements herein set out, and other statements of similar import and effect, that the use of such device, in and of itself, has substantial therapeutic value in the treatment of, and is a competent and adequate cure or remedy for, arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high and low blood pressure, rheumatism, and many other diseases, ailments, afflictions, and disordered conditions in the human body; that the method of using such device is so simple that it may be used safely in the home, by persons without knowledge and training with respect to the diagnosis, analysis, and treatment of diseases, ailments, afflictions, and disordered conditions of the human body, and with respect to the technique and methods of the application of diathermy; that the use of such device will alleviate the most discouraging, painful, and chronic conditions caused by said ailments; that the use of said device increases oxidations, increases the elimination of waste and toxic poisons, and increased nutrition; that a person suffering from any of the aforesaid ailments and conditions may be restored to health and vigor by the use of the device alone; and that such device is an up-to-date method which alleviates the aforesaid

diseases, ailments, afflictions, and disordered conditions of the human body without employment of any other means of treatment.

PAR. 4. The aforesaid statements and representations made by the respondent are false, deceptive, and misleading.

The purpose in diathermy is to relieve certain maladies and certain stages of other maladies known to be benefited by introduction of heat into, or the creation of heat in, the tissues. Respondent's device is designed and intended for that purpose and it is capable of introducing heat into the tissues.

Although diathermy was discovered in 1891, development of its use has been conservative and in many respects and as to many effects, considerable research work is still being done. It has been generally used as an aid in the treatment of many diseases when used by those with technical and medical training.

There are two types of diathermy machines or devices—long wave and short wave. In 1935, respondent began the sale and distribution of a long wave type diathermy machine but since 1937 respondent has sold the short wave type exclusively with the exception of a few long wave machines made to order. In both types, the electric current is oscillated and frequent reversal of polarity occurs. The resistance to change of polarity has the effect of transmitting heat to the body without the shock which ordinarily accompanies an uninterrupted electrical current. In the long wave type the current changes its positive and negative status at approximately 1 million times per second. In the short wave type a reversal of polarity occurs 21 million times per second. With the use of this high frequency, short wave device, the electrical contact does not have to be made with the body as in the case of the long wave machines, since heat can be produced in the tissues without the necessity of making such contact. The size of the electrode makes a difference in the amount of the heat transmitted to the user. The size of the person using the device and the size of the part contacting the electrode also make a difference in the amount of heat transmitted. In the treatment of disease by heat applications it is essential to know how much heat should be administered, and how much is being administered, to each particular part afflicted.

The long wave type has a spark gap which throws a spark between metal fins, capable of igniting inflammable gases, and the metal fins become heated enough to burn flesh coming in contact with them. These metal fins are near the bakelite knob, which is used to regulate the amount of heat. There is danger of touching the fins while manipulating the machine and potential danger in the application of the metal electrodes. If not properly applied, there might be coagulation of the tissues, leaving an ugly scar at the contact point. Covered rub-

ber pads are used on the short wave machine instead of metal electrodes, thus lessening the danger of producing burns.

Respondent's long wave device is incapable of transmitting sufficient heat to be effective in the treatment of some of the aforesaid diseases where diathermy is indicated, but it is capable of producing sufficient heat to coagulate tissue cells.

In the treatment of diathermy of any disease, ailment, affliction, or condition, by either the short or long wave type of device, it is necessary to determine the nature of the malady, the stage to which it has progressed, and to consider the effects of the application of heat in each case or at a particular stage. Some diseases and conditions respond to heat treatment; in others heat causes or may cause an aggravation of pain and serious injury to health. Further, the condition of the afflicted person may change from time to time, and a continuation of the heat treatment may prove ineffective or even dangerous. Diathermy alone is not an effective treatment or cure for any disease, affliction, ailment, or disordered condition.

A person not skilled in the application of diathermy and not having the ability to diagnose the disease or condition existing cannot safely apply the different sizes of electrodes on different-sized individuals. In such case there is a danger of electro surgery, of coagulation, of desiccation or of burning, of the tissue. Even after a competent diagnosis and analysis and where there is accurate knowledge of the favorable results which ordinarily follow application of a definite amount of heat, it is dangerous to use said device unless the user has also the proper technique and a thorough knowledge of the methods of application. If the technique is not good, the use of the device may cause a burn or be otherwise detrimental to the patient.

Diseases are classified with respect to whether acute or chronic. Where there is no sharp line of distinction, it is difficult to determine the exact condition. Acute conditions of some diseases are sometimes present in chronic cases of other diseases. Acute pains may be symptoms of several diseases. In certain cases acute pains may be alleviated by the application, yet it may have harmful effects because of other existing conditions.

Before respondent's device may be safely or effectively used, there must be a competent diagnosis determining the nature of the ailment, an analysis to determine the stage of the disease, and knowledge whether diathermy is indicated in that ailment or at that stage.

Arthritis is an inflammation of the joints. It may be aggravated by diathermy either because of improper technique or lack of knowledge of proper methods of application or because diathermy is not

indicated in the particular type or under the particular conditions. In cases where the joint is destroyed, the results of diathermy treatments are nil. More cases of chronic arthritis are treated without diathermy than with it.

Bursitis is an inflammation of the sac between the joints. Its symptoms and treatment follow closely those of neuritis. Neuritis and neuralgia are inflammations of the nerves. If the pain is due to vitamin deficiency, beriberi, alcoholism, angina pectoris, gall bladder disease or ulcers, heat application my result in harm. If neuralgia is caused by an infection, even mild heat will cause considerable aggravation of pain. In some neuralgia and neuritis cases, superficial applications of moist heat are preferred to diathermy.

Sciatica is a pain in the sciatic nerve or in the sciatic area and a type of neuritis. When the sciatic pain is caused by an ulcer or abscess, heat increases the amount of pus and may cause dangerous complications. In certain cases the sciatic nerve is affected by a tumor in the cervix or uterus, by flatfeet, or from other causes. In some of these cases heat treatments are futile. In sciatic neuritis diathermy may often cause definite increase in pain.

Lumbago is a pain in the lumbar region commonly called backache and may be symptomatic of different conditions. It may be due to an abscessed kidney. Heat would increase pus production in the abscess and would aggravate the pain and might cause considerable harm. In cases of pains in the lumbar region caused by a blow, either with or without a fracture of the transverse process, diathermy will aggravate the pain.

Hay fever is an allergic disease and heat treatments are ineffective.

Medical authorities do not agree upon the use of diathermy in the treatment of many of the forms of asthma. Diathermy may be slightly beneficial in a few cases, neutral in some cases, and very dangerous in cardiac cases.

In low blood pressure cases diathermy is ineffective in most instances, and may react very badly in others. In high blood pressure cases it is frequently effective, when no other disease exists; in other cases, it is neutral, and in cardiac cases dangerous.

What to the layman is rheumatism may be arthritis, neuritis, or neuralgia or other nerve disease. Diathermy will not in all cases alleviate the painful chronic conditions caused by the three diseases named above. Diathermy is not used in acute articular rheumatism; it would aggravate the pain.

There are certain forms of disease in which there is a shrinking of the tissues of the arteries, and if coupled with arteriosclerosis

and swelling in the foot or inflammation or ulcers on the toe, the application of heat throws more blood into the foot, which may be sufficient to cause the tissues to break down and cause an aggravation of the infection. In cases of this nature even death has resulted from the application of diathermy.

If a person is afflicted with an ailment where otherwise diathermy would be indicated, but also has ulcers of the stomach, diathermy is dangerous. In certain cases an increased motility of the stomach is desired; in others, it has a harmful effect. It is known that diathermy reduces the motility of the stomach and may, under certain circumstances, increase bleeding from stomach ulcers. There is, therefore, potential danger in the effect of diathermy in dilating the blood vessels, increasing the circulation, increasing the bleeding and decreasing the rate at which waste matters are carried off.

Little is known about oxidation. It is not known whether or not increase in circulation of the blood has any appreciable effect on oxidation. Oxidation depends upon salt metabolism. It is probable that diathermy treatments increase the metabolic rate. There are many diseases in which it is undesirable and harmful to increase metabolism. In some cases disease is caused by a high rate of metabolism. The use of diathermy, therefore may be harmful if the user's rate of metabolism is already too high.

Nutrition and the elimination of waste depends mostly upon proper functioning of the intestines. There is a slight elimination through the kidneys and from sweating. When the liver functions properly, poisons are detoxicated. The value of diathermy in cases where an increased elimination of waste and poison and increased nutrition are desirable, is limited to the slight increase in perspiration caused by the heat. Diathermy does not increase sweating more than hot baths or any other application of heat. Its effect on the elimination of wastes and poisons and on nutrition is very slight, if any.

The use of diathermy to create even mild heat will increase pain and aggravate conditions in any case coupled with an inflammatory process due to an infection in the tonsils, nose, teeth, stomach, heart, back, legs, joint and feet. The danger in the use of diathermy devices is greater than in such devices as electric pads, lamps, hot-water bags or mustard plasters, because the heat transmitted to the body in these devices is only superficial. Electric pads penetrate one-tenth to a quarter of an inch. Hot-water bags and other devices have no penetrating power. A mustard plaster dilates superficial blood vessels and draws blood to the surface. Respondent's device, on the other hand, is capable of producing heat within the tissues which may cause certain destructive effects.

To a person not skilled in the treatment of ailments, a certain symptom, such as a pain, may suggest erroneously an ailment in which heat treatments are not desirable. The pain may, in fact, arise from an ailment in which the application would aggravate the ailment and thus prove dangerous.

Circulation varies with individuals. Respondent's device is designed to and does increase circulation. In a normally healthy person, diathermy frequently gives relief from a painful condition caused by decreased circulation. On the other hand, when the circulation is completely or partially stopped in a certain area due to sclerosis of certain of the blood vessels, or when passage of the blood through the hardened portion is difficult, diathermy tremendously aggravates the pain, and creates a dangerous condition. In certain cases of nerve conditions which go with anesthesia, heart disease, gangrene of the leg or foot, necrosis, ulcers, or a bluish leg, injury or death may result from the application of diathermy.

PAR. 5. The Commission further finds that the use of respondent's device of either the long wave type or short wave type, does not constitute a cure or remedy for arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high or low blood pressure, rheumatism. The Commission further finds that the use of said device does not have any therapeutic value in the treatment of any of said ailments or any other disease or condition where acute inflammation, infection, pus formations, arteriosclerosis or conditions in which there is a tendency to hemorrhage are present. Furthermore, it is impracticable and dangerous to apply heat by means of respondent's device in the treatment of any disease or ailment unless the user is skilled in the diagnosis, analysis and methods of treatment of disease, and the unsupervised use of this device in the home may result in serious and irreparable injury to the health and may even prove fatal.

PAR. 6. The use by the respondent of the foregoing false, deceptive, and misleading statements, representations, and advertisements with respect to the therapeutic value and effectiveness of its device known as "Home Diathermy" 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 to cause, and it does cause, a substantial portion of the purchasing public, because of such erroneous and mistaken belief, to purchase respondent's device in preference to devices, remedies, and preparations of competitors, designed and offered for the same or similar purposes, which competitors are likewise engaged in the sale and distribution of the same in commerce between and among

the various States of the United States and in the District of Columbia, who truthfully advertise the effectiveness and therapeutic value of their respective preparations and devices, and thus unfairly to divert, and it has diverted, trade to respondent from its said competitors.

CONCLUSION

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

ORDER TO CEASE AND DESIST [1]

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 P. Bramhall and Arthur F. Thomas, examiners of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein and oral arguments by R. A. McOuat, counsel for the Commission, and by Saul L. Harris, 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, Home Diathermy 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 or distribution of a certain device designated as "Home Diathermy" whether of the long wave or short wave type, or any other device of substantially similar construction or possessing substantially similar qualities, whether sold under that name or any other name or names, do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing to be disseminated any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which

[1] By order dated January 18, 1941, that part of the order set forth below beginning with the words "or which advertisement fails to reveal", etc., was changed to read as follows, namely:
"or which advertisement fails to conspicuously reveal that the device may be safely used only after a competent medical authority has determined, as a result of diagnosis, that diathermy is indicated and has prescribed the frequency and amount of application of such diathermy treatments and the user has been adequately instructed in the method of operating such device by a trained technician."

advertisement represents, directly or through inference that said device may be easily and safely used in the home, or that the use of said device constitutes a cure or remedy for arthritis, neuritis, bursitis, sciatica, neuralgia, lumbago, hay fever, asthma, high or low blood pressure, or rheumatism or that said device has any therapeutic value in the treatment of any of such diseases and conditions, or has any therapeutic value in the treatment of any other ailment unless such advertisement is specifically limited to those cases of such disorders and ailments where acute inflammation, infection, pus formations, arteriosclerosis, or conditions in which there is a tendency to hemorrhage are not present; or which advertisement fails to reveal that the unsupervised use of this device by persons not skilled in the diagnosis, analysis, and methods of treatment of disease may result in serious and irreparable injury to health.

2. Disseminating or causing to be disseminated any advertisement by any means for the purpose of inducing or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said device, which advertisement contains any of the representations prohibited in paragraph 1 hereof; or which advertisement fails to reveal that the unsupervised use of the device by persons not skilled in the diagnosis, analysis and methods of treatment of disease may result in serious and irreparable injury to health.

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

IN THE MATTER OF

THE PRIMFIT TEXTILE COMPANY

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

Docket 4199. Complaint, July 26, 1940—Decision, Nov. 20, 1940

Where a corporation engaged in advertising, selling and distributing men's hosiery to purchasers in various other States and in the District of Columbia; in advertising in periodicals of general circulation and in circulars and other printed or written matter distributed in commerce throughout the various States, and through other means, certain of its said hosiery, known and described as "Jerks," and sold, as aforesaid, to department stores and retailers for resale to purchasing public, and in referring in such advertising to nature of its business—

(*a*) Represented that its "Jerks" hosiery was the original garterless sock, facts being such was not the case; and

(*b*) Represented that it was the manufacturer of the hosiery sold by it, and that it owned, operated, or controlled a plant, factory or mill in which such hosiery was made, facts being that, while it did have a contract with a factory or mill under which certain machines were utilized by said factory exclusively for manufacture of its said "Jerks" hose and no other purpose, it did not own, operate, or control any such plant, factory or mill, but was a jobber or distributor of hosiery sold by it;

With capacity and tendency to lead prospective purchasers of its said product into mistaken and erroneous belief that its said "Jerks" hosiery was the original garterless hose, and that it was the manufacturer, as well as seller, of such hose, and owned, operated, or controlled a plant, factory, or mill for manufacture thereof, and, as aforesaid, was a manufacturer, for the purchase of the products of which directly, there is a preference on the part of a substantial portion of the purchasing public as securing them, in their belief, better prices, superior quality and other advantages not ordinarily obtainable when such products are purchased through jobbers or other middlemen:

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. Charles S. Cox, for the Commission.

Dinsmore, Shohl, Sawyer & Dinsmore, of Cincinnati, Ohio, for respondent.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that The Primfit Textile Co., a corporation, has violated the provisions of said act, and it

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

PARAGRAPH 1. Respondent, The Primfit Textile 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 place of business at 128–130 West Fourth Street, Cincinnati, Ohio.

PAR. 2. Respondent is now and for more than two years last past has been engaged in advertising, selling and distributing men's hosiery. Respondent causes said hosiery when sold by it to be transported from its place of business located in the State of Ohio to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia.

PAR. 3. Respondent's said hosiery is sold to department stores and retailers who in turn resell the same to the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said men's hosiery 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, and for the purpose of inducing the purchase of said product, respondent, through advertisements inserted 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 through other means, has made misleading statements and representations to the purchasing public concerning certain of its said hosiery known and described as "Jerks" and also concerning the nature of its business. Among and typical of such misleading statements and representations so disseminated, are the following:

"Jerks"—the original garterless sock—.

"Jerks" are manufactured exclusively by The Primfit Textile Company 128–130 West Fourth Street, Cincinnati, Ohio.

Respondent in the conduct of said business, in the manner aforesaid, makes various other misleading statements and representations of similar meaning concerning its business status and the said hosiery sold by it.

PAR. 5. In the manner aforesaid, respondent represents that its "Jerks" hose is the original garterless sock; that it is the manufacturer of the hose it sells and that it owns and operates or controls a factory or mill in which its said hose are manufactured.

PAR. 6. In truth and in fact respondent's "Jerks" hose is not the original garterless sock nor is respondent a manufacturer of hosiery. Respondent neither owns, operates or controls any factory, plant or mill for the manufacture of hosiery. Respondent is a jobber and distributor of the hosiery which it sells as aforesaid.

PAR. 7. There is a substantial portion of the purchasing public which prefers to purchase direct from the manufacturer believing that in so doing they secure better prices, superior quality and other advantages not ordinarily obtainable when such products are purchased through jobbers or other middlemen.

PAR. 8. The aforesaid acts and practices of the respondent in connection with the advertising, offering for sale, sale and distribution of its said hosiery, as aforesaid, have had, and now have, the capacity and tendency to and do mislead and deceive purchasers and prospective purchasers thereof into the erroneous and mistaken belief that the aforesaid misleading and deceptive representations are true, and cause a substantial number of the purchasing public, because of said mistaken and erroneous belief so engendered, to purchase a substantial amount of respondent's said hosiery.

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

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on the 26th day of July 1940 issued and subsequently served its complaint in this proceeding upon said respondent, The Primfit Textile Co., charging it with the use of unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On August 16, 1940, 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, Dinsmore, Shohl, Sawyer and Dinsmore, and W. T. Kelley, chief counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs, respondent having

therein expressly waived the filing of a report upon the evidence by the Trial Examiner. 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 fact and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, The Primfit Textile 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 place of business at 128–130 West Fourth Street, Cincinnati, Ohio.

PAR. 2. Respondent is now and for more than two years last past has been engaged in advertising, selling, and distributing men's hosiery. Respondent causes said hosiery when sold by it to be transported from its place of business located in the State of Ohio to purchasers thereof at their respective points of location in the various States of the United States other than the State of Ohio, and in the District of Columbia.

PAR. 3. Respondent's said hosiery is sold to department stores and retailers who in turn resell the same to the purchasing public. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said men's hosiery 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, and for the purpose of inducing the purchase of said product, respondent, through advertisements inserted in periodicals having a general circulation and also in circulars and other printed or written matter, all of which were distributed in commerce among and between the various States of the United States, and through other means has made certain misleading statements and representations to the purchasing public concerning certain of its said hosiery known and described as "Jerks" and also concerning the nature of its business. Among and typical of such statements and representations so disseminated are the following:

"Jerks"—the original garterless socks—.

"Jerks" are manufactured exclusively by The Primfit Textile Company, 128–130 West Fourth Street, Cincinnati, Ohio.

Respondent has not made said statements in advertising from April 1940, to September 11, 1940, the date of said stipulation filed herein.

PAR. 5. In the manner aforesaid, respondent represents that its "Jerks" hosiery is the original garterless sock; that it is the manu-

facturer of the hosiery it sells; and that it owns, operates or controls a plant, factory or mill in which its said hosiery is manufactured.

PAR. 6. Respondent's "Jerks" hose is not the original garterless sock. Respondent does not own or operate any plant, factory or mill for the manufacture of hosiery and does not control any such plant, factory or mill. Respondent does have a contract with a factory or mill under which certain machines are utilized by said factory exclusively for the manufacture of respondent's "Jerks" hose and for no other purpose. Respondent is a jobber and distributor of the hosiery which it sells.

PAR. 7. There is a substantial portion of the purchasing public which prefers to purchase directly from the manufacturer believing that in so doing they secure better prices, superior quality, and other advantages not ordinarily obtainable when such products are purchased through jobbers or other middlemen.

PAR. 8. Said aforesaid acts and practices of the respondent in connection with the advertising and sale of its said hosiery as above referred to had the capacity and tendency to lead prospective purchasers thereof into the mistaken and erroneous belief that the said "Jerks" hose was the original garterless hose, and that the respondent was the manufacturer as well as seller of the "Jerks" hose and owned, operated, or controlled a plant, factory or mill for manufacturing said hose.

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 the respondent, and a stipulation as to the facts entered into between the respondent herein and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and conclusion based thereon, and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent, The Primfit Textile 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 hosiery, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist:

1. From representing, directly or indirectly, that its hosiery designated as "Jerks," or the same or similar hosiery designated by any other name, is the original garterless sock.

2. From representing, directly or indirectly, that it is the manufacturer of the hosiery it sells unless and until it actually owns and operates or directly and absolutely controls a manufacturing plant, factory or mill wherein such hosiery is manufactured.

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

IN THE MATTER OF

PHIL J. BLIFFERT, WALTER J. MANHARDT, TRADING AS CAPITOL BUILDING SUPPLY COMPANY, WAUWATOSA FUEL & SUPPLY COMPANY, ALSO TRADING AS WISCONSIN FACE BRICK & SUPPLY COMPANY, ETC., ET AL.

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

Docket 3631. Complaint, Oct. 18, 1938—Decision, Nov. 23, 1940

Where an individual, since deceased, ostensibly engaged in business in the city of Milwaukee as a so-called building supply dealers' consultant and adviser, and a number of Milwaukee dealers in building supplies, such as, among others, cement, laths, plaster, clay products, pipe, and sand and gravel, and who (1) did 90 percent of the building supply business in county involved, and in which county 60 percent of such supplies therein, and including, more particularly, plaster, cement, lime, and metal lath, were purchased by said dealers and others engaged in similar business and transported from producers and manufacturers and sellers thereof located outside of the State, and, as a group or class, engaged in manufacture and sale of such supplies, including lime, cement, and other building materials, and in selling and shipping large quantities thereof to purchasers in State of Wisconsin from other States, in substantial competition with one another in such manufacture and sale to dealers in question and to competitors of such dealers, and who (2) engaged in business of buying commodities in question, as above noted, and in selling same to various governmental, State, county, and city purchasing agencies and the general trade, and, except to the extent competition in purchase and sale of such products had been restrained, lessened, injured, and suppressed by plans, understandings, agreements, combinations, and conspiracies below set forth, in substantial competition, in purchase and sale involved, with each other and with other dealers in building material supplies—

With intent of fixing prices, discounts, and conditions of sale for building supplies in county in question, and including sale of such supplies made under city, county and State bids—

(*a*) Entered into uniform contracts under which dealers employed said individual as consultant in and about the conduct of their respective businesses, relating to sales and trade practices, so that dealer might "be assured of selling its commodities at fair and reasonable prices," and under which dealers agreed to file in writing with such individual all of their respective selling prices for building materials for delivery in county in question, and individual undertook to audit and check all selling prices filed with him as to various costs, and to advise dealer as to correctness thereof, so that it might be assured that its sales should not be made for less than cost, and dealer further undertook to advise such individual of any changes in costs and of advances or reductions in prices of its commodities and to file same with individual not less than 48 hours before quoting such changes in prices to trade, and to sell its commodities only at prices thus filed

by it, and to pay such individual certain percentage of gross sales of all its commodities made in county during period of contract; and

Where said individual, acting under and in pursuance of combination and conspiracy in question and aforesaid contracts, which he devised with intent of lessening, restraining, injuring, suppressing, and destroying competition in purchase and sale of building supplies in county in question and other counties in State involved, and of developing in dealers in question monopoly in purchase and sale of material in aforesaid territory—

(*b*) Mailed back to each of the various dealers involved under such contracts with him, and who filed their respective prices thereunder on various items for building material, prices to each dealer, together with discounts and conditions of sale to which each agreed, and mailed to other dealers in said city, not under contract with him, prices;

(*c*) Closely watched and investigated sales and bids of all dealers concerned and, in event of dealer refusal to abide by prices thus distributed, contacted out-of-state manufacturer-seller sources of such dealer in effort to prevent latter from obtaining further any requirements of building supplies; and

(*d*) Claimed to be adviser of various dealers involved and received, as compensation for his activities, one-half of 1 percent of such dealers' monthly gross sales of numerous items of supplies in question; and

Where various dealers involved as aforesaid, in pursuance and in furtherance of contracts and agreements above described, and into which they entered as above set forth—

(*e*) Established and maintained uniform and minimum prices at which various items of building supplies were sold by them, and uniform terms and conditions attaching to their sales of various items of such supplies;

(*f*) Interfered with their competitors in said competitors' efforts to purchase and maintain such supplies, and prevented their competitors from purchasing or obtaining same; and

(*g*) Boycotted and threatened to boycott manufacturers and sellers of building supplies who sold or shipped same either to their competitors or directly to consumers thereof, and, through promises, threats, coercion, intimidations, and otherwise, caused and induced manufacturers and sellers of supplies in question not to sell or ship same to their competitors or directly to consumers, and to boycott such competitors and consumers, and to confine to them, dealers involved, said manufacturers' and sellers' sales and shipments of supplies in question intended for use, consumption, or resale in aforesaid counties, and, through said promises, etc., procured such acts on part of manufacturers and sellers in question;

With result that their competitors were prevented from obtaining building supplies through acts and practices of said individual and dealers involved, prices, discounts and conditions of sale of building materials in county in question, from year involved until recent date, were generally uniform, and bids submitted by dealers concerned to procurement officers of the Federal Government and to purchasing agents for said city were generally uniform, and there was an undue tendency, as a consequence of aforesaid conspiracy, to restrain and suppress competition in sale of building material, and to enhance the prices that would otherwise prevail, and tendency to create in them a monopoly in sale of building material supplies in county involved:

Held, That contract aforesaid, entered into by above individual with dealers concerned, and understandings, agreements, combinations, and conspiracies, and acts and practices engaged in and performed pursuant thereto and in furtherance thereof, were all to the prejudice of the public and constituted unfair methods of competition.

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

Mr. Daniel J. Murphy, for the Commission.

Mr. Maurice A. McCabe and *Mr. Walter H. Bender*, of Milwaukee, Wis., for all respondents, other than W. H. Pipkorn Co., which was represented by *Mr. James T. Drought*, of Milwaukee, Wis.

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 Phil J. Bliffert, Walter J. Manhardt, Wauwatosa Fuel & Supply Co., Tews Lime & Cement Co., W. H. Pipkorn Co., Berthelet Fuel & Supply Co., Henry Cook Co., The Froemming Corporation, Schneider Fuel & Supply Co., Heider & Bott Co., Otto Ladwig & Sons, Inc., J. Druecker Sons' Co., respondents herein, 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 its complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent Phil J. Bliffert is a citizen of the State of Wisconsin ostensibly engaged in business as a so-called building supply dealers' consultant and adviser, and having an office and place of business at Room 511, Bankers Building, 2200 North Third Avenue, Milwaukee, Wis.

Respondent Walter J. Manhardt is a citizen of the State of Wisconsin engaged in business as a dealer in building supplies under the trade name Capitol Building Supply Co., and having an office and place of business at 3522 North Fratney Street, Milwaukee, Wis.

Respondent Wauwatosa Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business under its own name, and under the trade names Wisconsin Face Brick & Supply Co. and Wisconsin Face & Fire Brick Co., as a dealer in building supplies, having its principal office and place of business at 7700 Harwood Avenue, Wauwatosa, Milwaukee, Wis.

Respondent Tews Lime & Cement Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1136 East North Avenue, Milwaukee, Wis.

Respondent W. H. Pipkorn Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1548 West Bruce Street, Milwaukee, Wis.

Respondent Berthelet Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 820 West Montana Street, Milwaukee, Wis.

Respondent Henry Cook Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 3029 West Concordia Avenue, Milwaukee, Wis.

Respondent The Froemming Corporation is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 4380 North Green Bay Avenue, Milwaukee, Wis.

Respondent Schneider Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 3438 West Forest Home Avenue, Milwaukee, Wis.

Respondent Heider & Bott Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 274 East Keefe Avenue, Milwaukee, Wis.

Respondent Otto Ladwig & Sons, Inc. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 4541 North Green Bay Avenue, Milwaukee, Wis.

Respondent J. Druecker Sons' Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1325 East Capitol Drive, Milwaukee, Wis.

Respondents Walter J. Manhardt, Wauwatosa Fuel & Supply Co., Tews Lime & Cement Co., W. H. Pipkorn Co., Berthelet Fuel & Supply Co., Henry Cook Co., The Froemming Corporation, Schneider Fuel & Supply Co., Heider & Bott Co., Otto Ladwig & Sons, Inc., and J. Druecker Sons' Co. will hereinafter be referred to as respondent dealers.

The said respondent dealers are typical and representative members of a large group of dealers in building supplies engaged in the busi-

ness of selling building supplies to consumers thereof in Milwaukee County and other counties in the State of Wisconsin. Each and every member of said group of dealers participated in devising, entered into and participated in the execution of, and does now participate in the execution of, the sundry plans, understandings, agreements, combinations, and conspiracies hereinafter referred to, and each and every member of said group of dealers, in concert with one or more other members of said group of dealers and in concert with the respondent Phil J. Bliffert, has engaged in and performed, and does now engage in and perform, the practices and acts hereinafter referred to, but all members of said group of dealers are not known to the Federal Trade Commission and cannot be joined as parties respondent in this proceeding without manifest inconvenience and delay prejudicial to the public interest. Respondent dealers are therefore made parties respondent hereto individually and as representatives of each and every member of said group of dealers.

PAR. 2. For several years prior to the month of November 1935, and ever since that time, the respondent dealers have been, and are now, engaged in the business of buying and selling commodities commonly known as building supplies, such as, among other commodities, cement, laths, plaster, clay products, pipe, sand, and gravel, and in the course and conduct of their respective businesses the said respondent dealers have purchased, and are now purchasing, many building supplies which they have caused, and are now causing, to be shipped and transported to them in commerce into the State of Wisconsin from States other than the State of Wisconsin.

Since November 1, 1935, or thereabout, the respondent Phil J. Bliffert has been, and is now, ostensibly engaged in business as a so-called consultant and adviser to each of the respondent dealers in matters concerning the purchase and sale of building supplies; and since said date, or thereabout, each of the respondent dealers has employed, and does now employ, the respondent Phil J. Bliffert as a so-called consultant and adviser in matters concerning the purchase and sale of building supplies, and each of the said respondent dealers has paid, and now pays, to the respondent Phil J. Bliffert one-half of 1 percent of the said respondent dealers' respective monthly gross sales of numerous items of building supplies as compensation for the said respondent Phil J. Bliffert's activities and so-called services in connection with each respondent dealer's respective business.

PAR. 3. In truth and in fact the respondent Phil J. Bliffert at no time since November 1, 1935, has been, and he is not now, a bona fide consultant or adviser to the respondent dealers, or to any of them, in matters concerning the purchase and sale of building sup-

plies, nor has he been, and he is not now, employed by the respondent dealers, or by any of them, as a bona fide consultant or adviser in such matters. In truth and in fact since November 1, 1935, the business in which the respondent Phil J. Bliffert has been, and is now, engaged, and the purpose for which the respondent dealers have employed and compensated, and do now employ and compensate, him is that of aiding, assisting, abetting, and participating in the promotion and execution of the plans, understandings, agreements, combinations, and conspiracies hereinafter referred to.

PAR. 4. In the course and conduct of their respective businesses, as aforesaid, except to the extent to which competition in the purchase and sale of building supplies has been restrained, lessened, injured, and suppressed by the plans, understandings, agreements, combinations, and conspiracies hereinafter referred to, the respondent dealers have been, and are now, in active and substantial competition with each other, and with other dealers in building supplies, in the purchase and sale of building supplies.

PAR. 5. For many years prior to November 1, 1935, and ever since that date, there were and have been, and there are now, many manufacturers and sellers of building supplies whose respective places of business were, and are now, located outside the State of Wisconsin, who have been, and are now, engaged in the business of manufacturing and selling building supplies which they have been, and are now, shipping in commerce between and among the several States of the United States, and who have been, and are now, selling large quantities of building supplies to purchasers thereof located in the State of Wisconsin and shipping said building supplies in commerce to said purchasers into the State of Wisconsin from States other than the State of Wisconsin. Except to the extent to which competition between said manufacturers and sellers in the manufacture and sale of building supplies and in the sale thereof for shipment in commerce into the State of Wisconsin from States other than the State of Wisconsin has been restrained, lessened, injured, and suppressed by the plans, understandings, agreements, combinations, and conspiracies hereinafter referred to, the said manufacturers and sellers, in the course and conduct of their respective businesses as aforesaid, have been, and are now, engaged in active and substantial competition with each other in the manufacture and sale of building supplies, in the sale thereof for shipment into the State of Wisconsin from States other than the State of Wisconsin and in the sale thereof to the respondent dealers and to competitors of respondent dealers for shipment to said respondent dealers and competitors of respondent dealers in commerce into the State of Wisconsin from States other than the State of Wisconsin.

PAR. 6. On or about November 1, 1935, for the purpose and with the intention of restraining, lessening, injuring, suppressing, and destroying competition in the purchase and sale of building supplies in Milwaukee County and other counties in the State of Wisconsin, and for the purpose and with the intention of developing in the respondent dealers have engaged in and performed, and are now supplies in Milwaukee County and other counties in the State of Wisconsin, the respondent dealers and the respondent Phil J. Bliffert devised and entered into, and thereafter executed and are now executing, sundry plans, understandings, agreements, combinations, and conspiracies, pursuant to and in furtherance of which the said respondent dealers have engaged in and performed, and are now engaging in and performing, the following practices and acts, to wit:

(*a*) Establishing and maintaining uniform prices at which various items of building supplies are sold by the respondent dealers.

(*b*) Establishing and maintaining minimum prices at which various items of building supplies are sold by the respondent dealers.

(*c*) Establishing and maintaining uniform terms and conditions attaching to the sale by the respondent dealers of various items of building supplies.

(*d*) Interfering with competitors of respondent dealers in the said competitors' efforts to purchase and obtain building supplies.

(*e*) Preventing competitors of respondent dealers from purchasing or obtaining building supplies.

(*f*) Boycotting and threatening to boycott manufacturers and sellers of building supplies who sell or ship building supplies either to competitors of respondent dealers or directly to consumers of building supplies.

(*g*) Causing, inducing and procuring, by promises, threats, coercion, intimidation and otherwise, manufacturers and sellers of building supplies:

1. Not to sell or ship building supplies to competitors of respondent dealers or directly to consumers of building supplies.

2. To boycott competitors of respondent dealers and consumers of building supplies.

3. To confine to the respondent dealers the said manufacturers' and sellers' sales and shipments of building supplies intended for use, consumption or resale in Milwaukee County and other counties in the State of Wisconsin.

4. To pay to one or more of the respondent dealers commissions upon said manufacturers' and sellers' sales of building supplies made directly to consumers for use upon construction projects upon

which the respondent dealers bid, for which said commissions the recipients thereof render to said manufacturers and sellers no services whatsoever.

PAR. 7. Since November 1, 1935, or thereabout, the respondent Phil J. Bliffert has solicited, and is now soliciting, the respondent dealers and others to enter into and perform the sundry plans, understandings, agreements, combinations, and conspiracies referred to in paragraph 6 hereof, and the respondent Phil J. Bliffert, since November 1, 1935, or thereabout, has encouraged, aided, assisted, abetted, and participated in, and does now encourage, aid, assist, abet, and participate in, the performance of the practices and acts referred to in said paragraph 6.

PAR. 8. Each of the respondent dealers acted, and now acts, in concert with one or more of the other respondent dealers and in concert with the respondent Phil J. Bliffert in engaging in and performing the aforesaid acts and practices, which said acts and practices the respondent dealers and the respondent Phil J. Bliffert concertedly engaged in and performed, and do now concertedly engage in and perform, for the purpose of furthering and consummating the abovementioned sundry plans, understandings, agreements, combinations, and conspiracies devised and entered into as aforesaid.

PAR. 9. The aforesaid plans, understandings, agreements, combinations, and conspiracies, and the practices and acts engaged in and performed pursuant thereto and in furtherance thereof have had, and do now have, the effect of:

(*a*) Unduly and unlawfully restraining, lessening, injuring, and suppressing competition in the sale of building supplies which are sold to the purchasers thereof for shipment into the State of Wisconsin from States other than the State of Wisconsin.

(*b*) Unduly and unlawfully hampering, impeding, hindering, and preventing certain manufacturers and sellers of building supplies from selling building supplies for shipment into the State of Wisconsin from States other than the State of Wisconsin.

(*c*) Extorting unearned commissions from certain manufacturers and sellers of building supplies upon certain of said manufacturers' and sellers' sales of building supplies, which said building supplies the said manufacturers and sellers shipped to the purchasers thereof in commerce into Milwaukee County and other counties in the State of Wisconsin from States other than the State of Wisconsin.

(*d*) Unduly and unlawfully restraining, lessening, injuring, and suppressing competition in the sale, purchase, and resale of building supplies which are shipped in commerce into the State of Wisconsin from States other than the State of Wisconsin.

(*e*) Unduly and unlawfully hampering, impeding, hindering, and preventing dealers in building supplies who are engaged in competition with the respondent dealers from purchasing building supplies for shipment to them in commerce into the State of Wisconsin from States other than the State of Wisconsin.

(*f*) Unduly and unlawfully restraining, lessening, injuring, and suppressing competition in the sale, purchase, and resale of building supplies in Milwaukee County and other counties in the State of Wisconsin.

(*g*) Tending to create in certain manufacturers and sellers of building supplies a monopoly in the sale of building supplies which are sold to the purchasers thereof for shipment into Milwaukee County and other counties in the State of Wisconsin from States other than the State of Wisconsin and a monopoly in the sale of building supplies in Milwaukee County and other counties in the State of Wisconsin.

(*h*) Tending to create in the respondent dealers a monopoly in the building supply business in Milwaukee County and other counties in the State of Wisconsin.

(*i*) Unlawfully and coercively conditioning the right of persons to engage in business as dealers in building supplies in Milwaukee County and other counties in the State of Wisconsin upon such persons becoming parties to, and cooperating with the respondent dealers and the respondent Phil J. Bliffert in executing, the plans, understandings, agreements, combinations, and conspiracies above mentioned and the payment by such persons to the respondent Phil J. Bliffert of one-half of 1 percent of their respective monthly gross sales of numerous items of building supplies.

(*j*) Substantially and artificially increasing and maintaining the prices at which building supplies are sold to purchasers and consumers thereof in Milwaukee County and other counties in the State of Wisconsin and depriving said purchasers and consumers of the benefits of fair, free, and normal competition in the sale of building supplies.

(*k*) Unduly and unlawfully restraining, lessening, injuring, and suppressing trade and commerce in building supplies between and among the State of Wisconsin and the several other States of the United States.

PAR. 10. The above-mentioned plans, understandings, agreements, combinations, and conspiracies and the practices and acts engaged in and performed pursuant thereto and in furtherance thereof, with the effect aforesaid, are all to the prejudice 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 October 18, 1938, issued and thereafter served its complaint upon respondents herein, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. On November 3, 1938, the respondents filed their answer. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by Maurice A. McCabe, Walter H. Bender, and James T. Drought, counsel for the respondents, and Daniel J. Murphy, counsel for the Commission, subject to the approval of the Commission, may be taken as some of the facts in this proceeding and in lieu of testimony in support of some of the charges stated in the complaint. It was further stipulated that the Commission might proceed to hold hearings for the presentation of testimony and other evidence in support of other charges stated in the complaint and the respondents would not introduce any testimony or other evidence in opposition thereto, that the Commission might proceed upon said statement of facts and upon said testimony and other evidence presented at said hearings in support of other allegations of the complaint and make its report stating its findings as to the facts and its conclusion based thereon, and its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, testimony and other evidence in support of the allegations of the complaint were introduced by Daniel J. Murphy, attorney for the Commission, before W. W. Sheppard, a trial examiner of the Commission, theretofore duly designated by it, and said testimony and other evidence was duly recorded and filed in the office of the Commission. No testimony was offered on behalf of the respondents and no attorney for the respondents appeared of record at the hearings.

Thereafter, the proceeding regularly came on for final hearing before the Commission on said complaint, answer, testimony, and other evidence and the stipulation entered into between counsel for the Commission and counsel representing the respondents, said stipulation having been approved, accepted, and filed, and brief in support of the allegations of the complaint, no brief having been filed by 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 its findings as to the facts and its conclusions drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Phil J. Bliffert (who died in or about April 1939) was a citizen of the State of Wisconsin, ostensibly engaged in business as a so-called building supply dealers' consultant and adviser, and having had an office and place of business at Room 511, Bankers Building, 2200 North Third Avenue, Milwaukee, Wis.

Respondent Walter J. Manhardt is a citizen of the State of Wisconsin engaged in business as a dealer in building supplies under the trade name Capitol Building Supply Co., and having an office and place of business at 3522 North Fratney Street, Milwaukee, Wis.

Respondent Wauwatosa Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business under its own name, and under the trade names Wisconsin Face Brick & Supply Co. and Wisconsin Face & Fire Brick Co., as a dealer in building supplies, having its principal office and place of business at 7700 Harwood Avenue, Wauwatosa, Milwaukee, Wis.

Respondent Tews Lime & Cement Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1136 East North Avenue, Milwaukee, Wis.

Respondent W. H. Pipkorn Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1548 West Bruce Street, Milwaukee, Wis.

Respondent Berthelet Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 820 West Montana Street, Milwaukee, Wis.

Respondent Henry Cook Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 3029 West Concordia Avenue, Milwaukee, Wis.

Respondent The Froemming Corporation is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 4380 North Green Bay Avenue, Milwaukee, Wis.

Respondent Schneider Fuel & Supply Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 3438 West Forest Home Avenue, Milwaukee, Wis.

Respondent Heider & Bott Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 274 East Keefe Avenue, Milwaukee, Wis.

Respondent Otto Ladwig & Sons, Inc., is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 4541 North Green Bay Avenue, Milwaukee, Wis.

Respondent J. Druecker Sons' Co. is a corporation organized and existing under the laws of the State of Wisconsin and engaged in business as a dealer in building supplies, having its principal office and place of business at 1325 East Capitol Drive, Milwaukee, Wis.

Respondents Walter J. Manhardt, Wauwatosa Fuel & Supply Co., Tews Lime & Cement Co., W. H. Pipkorn Co., Berthelet Fuel & Supply Co., Henry Cook Co., The Froemming Corporation, Schneider Fuel & Supply Co., Heider & Bott Co., Otto Ladwig & Sons, Inc., and J. Druecker Sons' Co. will hereinafter be referred to as respondent dealers.

PAR. 2. For several years prior to the month of January 1936, and ever since that time, the respondent dealers have been, and are now, engaged in the business of buying and selling commodities commonly known as building supplies, such as, among other commodities, cement, laths, plaster, clay products, pipe, sand, and gravel, and in the course and conduct of their respective businesses, the said respondent dealers have purchased, and are now purchasing, many building supplies which they have caused, and are now causing, to be shipped and transported to them in commerce into the State of Wisconsin from States other than the State of Wisconsin. In the course and conduct of their respective businesses, except to the extent competition in the purchase and sale of building supplies has been restrained, lessened, injured, and suppressed by the plans, understandings, agreements, combinations, and conspiracies hereinafter referred to, respondent dealers have been, and are now, in substantial competition with each other, and with other dealers in building material supplies, in the purchase and sale thereof.

PAR. 3. For many years prior to January 1, 1936, and ever since that date, there were and have been, and there are now, many manufacturers and sellers of building material supplies whose respective places of business were, and are now, located outside the State of Wisconsin, and who have been, and are now, engaged in the business of manufacturing and selling building supplies, including lime, cement, and other such building supplies, which they have been, and are now, shipping in commerce between and among the several States of the United

States, and who have been, and are now, selling large quantities of such building supplies to purchasers thereof located in the State of Wisconsin, and shipping said building supplies in commerce to such purchasers into the State of Wisconsin from States other than the State of Wisconsin. Said manufacturers and sellers of building supplies in the ordinary and usual course and conduct of their respective businesses are in substantial competition with each other in the manufacture and sale of building material, in the sale thereof for shipment into the State of Wisconsin from States other than the State of Wisconsin, and in the sale thereof to the respondent dealers and to the competitors of respondent dealers for shipment to said respondent dealers and competitors of respondent dealers in commerce into the State of Wisconsin from States other than the State of Wisconsin.

PAR. 4. Respondent dealers, herein, did approximately 90 to 100 percent of the building supplies business in Milwaukee County, State of Wisconsin, which total business averaged approximately $5,000,000 annually. Approximately 60 percent of the building supplies sold in Milwaukee County are purchased by respondent dealers and others engaged in similar business and transported from producers and manufacturers thereof located outside of the State of Wisconsin, particularly plaster, cement, lime, and metal laths.

PAR. 5. During the early months of 1936, there was a meeting of some 18 dealers in building supplies material in the city of Milwaukee, State of Wisconsin, held in the Association of Commerce Building, Milwaukee, Wis., where talks were made by William Mass and respondent Phil J. Bliffert. At this meeting there were present, either in person or by their representatives, the respondent dealers named in the complaint. Subsequent to said meeting said respondent dealers entered into a contract with respondent Phil J. Bliffert, the contract in substance, providing as follows:

That first party (dealer) hereby employs second party (Bliffert) as consultant in and about the conduct of its business that relates to sales and trade practices so that said first party may be assured of selling its commodities at fair and reasonable prices. That said first party hereby agrees to file in writing with said second party all of its selling prices for building materials for delivery in the County of Milwaukee, Wisconsin. Within 10 days from the date this agreement becomes effective said second party hereby agrees to audit and check all selling prices filed from time to time with him by said first party as to manufacturer's costs, costs of deliveries, selling costs, and overhead, and to advise said first party as to the correctness of such costs so that said first party may be assured that the sales of its commodities shall not be made for less than cost. Said first party further agrees to advise said second party in writing of any changes in manufacturer's costs and other costs and of advances or reductions in the selling prices of its commodities and file

same with said second party not less than 48 hours before quoting said changes in selling prices to its trade.

Said first party further agrees to sell its commodities only at the prices filed with it by said second party,

Said first party agrees to pay said second party one-half of 1 percent of the gross sales of all of its commodities made in Milwaukee County during the period of this contract.

During the life of said contracts building materials were sold by the respondents to the various Governmental, State, county, and city purchasing agencies and the general trade, excepting certain supplies which were specifically exempted. There were approximately 25 dealers in the Milwaukee area, who originally entered into said contracts with the respondent Phil J. Bliffert. The business of said dealers constituted the great majority of the total volume of business, in building supplies, transacted in the Milwaukee area. Two of said dealers, to wit, N. J. Pipkorn Co. and the Wm. F. Luebke Co., subsequently canceled their contracts.

PAR. 6. Respondents Wauwatosa Fuel & Supply Co., W. H. Pipkorn Co., Tews Lime & Cement Co., and the Capitol Building & Supply Co. are the four largest members of the industry in the Milwaukee area.

PAR. 7. The evidence is uncontradicted that the purpose of the said contract entered into between respondent Bliffert and other respondent dealers in building material in Milwaukee, Wis., was to fix the prices, discounts, and conditions of sale of building supplies in Milwaukee County, including sales of such supplies made under city, county, and State bids. Each respondent dealer under contract with said respondent Bliffert filed his price on various items of building material with respondent Bliffert, and Bliffert then mailed prices back to each respondent dealer, together with discounts and conditions of sale; each respondent dealer agreed to adhere to the prices, discounts, and terms mailed by the said Bliffert; respondent Bliffert further mailed prices to other dealers in Milwaukee who were not under contract with him. Respondent Bliffert closely watched and investigated the sales and bids of all the respondent dealers; if a dealer refused to abide by the prices distributed by the said Bliffert, the evidence is uncontradicted that manufacturers located outside the State of Wisconsin, from whom such dealer purchased his requirements were contacted by Bliffert in an endeavor to prevent such dealer from further obtaining any requirements of building supplies. Respondent Bliffert claims to be the adviser of the various respondent dealers, and received as compensation one-half of 1 percent of the said respondent dealer's monthly gross sales of numerous items of building supplies for the said respondent Phil J. Bliffert's activities.

PAR. 8. Several of respondent dealers after conducting their business in association and under contract with respondent Bliffert for several months, acting on the advice of counsel canceled their contracts with Bliffert and refused further to abide by the agreed prices distributed by Bliffert. These respondent dealers, prior to the cancelation of their said contract with respondent Bliffert, never had any difficulty in obtaining their requirements of building supplies from the manufacturers thereof. After the cancelation of said contract, manufacturers of said building material refused further to sell and ship their products to said respondent dealers. The record discloses that respondent Bliffert informed said manufacturers they had better not ship building material to said respondent dealers. The Wm. F. Luebke Co., one of the dealers who was under contract with respondent Bliffert, because of its inability to obtain its building material requirements for its business, was forced out of business in the spring of 1939. The Pipkorn Co., another respondent dealer, never experienced any difficulty in obtaining its building supplies requirements while under contract with respondent Bliffert, but when said company canceled its contract with Bliffert, then it was that several manufacturers, located both inside and outside of Wisconsin, from whom the company had purchased its material for many years, refused further to fill orders received from said company, Frank A. Pipkorn, an individual engaged in the building material business under the firm name of "Frank A. Pipkorn Co.," and doing an average annual business of between $30,000 and $40,000, entered into a contract with respondent Bliffert at the same time as the respondent dealers. This contract was subsequently canceled and several manufacturers located outside and inside of the State of Wisconsin, refused further to sell the company its requirements because of interference by respondents.

The record contains abundant uncontradicted evidence, both oral and documentary that as a result of the contract and agreement entered into between respondent Bliffert and respondent dealers, prices, discounts, and conditions of sale of building material in Milwaukee County, Wis., from 1936 to a recent date, have been generally uniform; that bids of respondent dealers submitted to procurement officers of the Federal Government, and to purchasing agents for the City of Milwaukee, Wis., were generally uniform.

PAR. 9. The Commission finds that on or about November 1, 1935, respondent Phil J. Bliffert, with the intention of restraining, lessening, injuring, suppressing and destroying competition in the purchase and sale of building supplies in Milwaukee County, and other counties in the State of Wisconsin, and for the purpose, and with the intention of

developing in the respondent dealers a monopoly in the purchase and sale of building material in Milwaukee County, and other counties in the State of Wisconsin, devised and entered into, and executed, together with the respondent dealers, the contract and agreement herein set forth, pursuant to and in furtherance of which the said respondent dealers have engaged in and have performed, and are now engaging in and performing the following acts and practices:

(*a*) Establishing and maintaining uniform prices at which various items of building supplies are sold by the respondent dealers.

(*b*) Establishing and maintaining minimum prices at which various items of building supplies are sold by the respondent dealers.

(*c*) Establishing and maintaining uniform terms and conditions attaching to the sale by the respondent dealers of various items of building supplies.

(*d*) Interfering with competitors of respondent dealers in the said competitors' efforts to purchase and obtain building supplies.

(*e*) Preventing competitors of respondent dealers from purchasing or obtaining building supplies.

(*f*) Boycotting and threatening to boycott manufacturers and sellers of building supplies who sell or ship building supplies either to competitors of respondent dealers or directly to consumers of building supplies.

(*g*) Causing, inducing and procuring by promises, threats, coercion, intimidation and otherwise, manufacturers and sellers of building supplies:

1. Not to sell or ship building supplies to competitors of respondent dealers or directly to consumers of building supplies.

2. To boycott competitors of respondent dealers and consumers of building supplies.

3. To confine to the respondent dealers the said manufacturers' and sellers' sales and shipments of building supplies intended for use, consumption or resale in Milwaukee County and other counties in the State of Wisconsin.

The Commission further finds that respondent Bliffert by and through the contract made and entered into by the said Bliffert with the other respondent dealers, (1) combined and conspired to restrain and suppress competition in the sale of building supplies by agreeing upon uniform prices, discounts and conditions of sale; (2) that competitors of respondent dealers were prevented from obtaining building supplies by the acts and practices of said respondent Bliffert and respondent dealers; and (3) that the result of said conspiracy tended to unduly restrain and suppress competition in the sale of building mate-

rial and to enhance the prices that would otherwise prevail under normal competition, and tended to create in respondent dealers a monopoly in the sale of building supplies in Milwaukee County, Wis.

CONCLUSION

The above mentioned contract, entered into by respondent Bliffert with the said respondent dealers, and the understandings, agreements, combinations and conspiracies, and the acts and practices engaged in and performed pursuant thereto, and in furtherance thereof, are all to the prejudice of the public and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, testimony, and evidence taken before W. W. Sheppard, an examiner of the Commission heretofore duly designated by it, in support of the allegations of said complaint, a brief filed herein also in support thereof, briefs in behalf of respondents, and oral argument having been waived, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That respondents Wauwatosa Fuel & Supply Co., Tews Lime & Cement Co., W. H. Pipkorn Co., Berthelet Fuel & Supply Co., Henry Cook Co., The Froemming Corporation, Schneider Fuel & Supply Co., Heider & Bott Co., Otto Ladwig & Sons, Inc., and J. Druecker Sons' Co., all corporations, respectively, and Walter J. Manhardt, an individual doing business under the trade name Capitol Building Supply Co., their officers, representatives, agents, and employees, directly or through any corporate or other device in connection with the purchase and offering for sale, sale, and distribution of building supplies, in commerce, as defined in the Federal Trade Commission Act, do forthwith cease and desist from doing and performing by understanding, agreement, or combination between themselves or with others the following acts and things:

1. Establishing and maintaining uniform prices at which the respondent dealers should sell building supplies.

2. Establishing and maintaining minimum prices at which the respondent dealers should sell building supplies.

3. Establishing and maintaining uniform terms and conditions attaching to the sale by the respondent dealers of building supplies.

4. Interfering with competitors of respondent dealers in the said competitors' efforts to purchase and obtain building supplies.

5. Preventing competitors of respondent dealers from purchasing or obtaining building supplies.

6. Boycotting and threatening to boycott manufacturers and sellers of building supplies who sell or ship building supplies to competitors of respondent dealers.

7. Causing, inducing and procuring, by promises, threats, coercion, intimidation, and otherwise, manufacturers and sellers of building supplies:

(*a*) Not to sell or ship building supplies to competitors of respondent dealers or directly to consumers of building supplies.

(*b*) To boycott competitors of respondent dealers and consumers of building supplies.

(*c*) To confine to the respondent dealers the said manufacturers' and sellers' sales and shipments of building supplies intended for use, consumption, or resale in Milwaukee County and other counties in the State of Wisconsin.

It is further ordered, That this proceeding be, and the same hereby is, dismissed as to the respondent, Phil J. Bliffert.

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

IN THE MATTER OF

JOHN DRUCQUER, TRADING AS DRUCQUER & SONS

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

Docket 4125. Complaint, May 4, 1940—Decision, Nov. 23, 1940

Where an individual engaged in sale and distribution of blended tobaccos and other tobacco products from his place of business in California to purchasers in other States and in the District of Columbia; in statements and representations relative to source and origin of his products and place of manufacture or blending thereof, which he caused to be printed on labels, wrappers, or coverings of packages in which his products were wrapped when shipped, and which he otherwise published and circulated among purchasers and prospective purchasers in various States—

Represented, directly and by implication, that his tobaccos and tobacco products were made or blended in London, England, and imported into the United States from England, through such statements as "Tobacco manufacturers * * * manufactured by Drucquer & Sons of London, England," and "Drucquer & Sons, late of the Strand and Regent Street, London, England," notwithstanding the fact he did not maintain a factory or place of business in London, and his said products were not such products there made and blended, or tobacco products manufactured and blended in England, such as preferred by many members of the purchasing public, and he did not import his said products from England into the United States, but manufactured or blended same at his place of business in California;

With result that many members of purchasing public were led into erroneous and mistaken belief that he had place of business in London, as above set forth, where he made and blended tobacco products which he imported and sold and distributed in the United States, and substantial number of said public were led to purchase his said products because of such erroneous and mistaken belief, and with capacity and tendency to mislead and deceive substantial portion of such public into the erroneous and mistaken belief that said representations were true, and that he operated place of business in London where such products were manufactured, etc., as above set forth, and with result, as consequence of such belief, that number of members of said public purchased substantial volume of his 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. Edward A. Martin, of Berkeley, 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 John Drucquer, an

individual, trading as Drucquer and Sons, 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 Drucquer, is an individual, with his principal office and place of business located at 2201 Shattuck Avenue, Berkeley, Calif.

PAR. 2. Respondent is now, and for more than 1 year last past has been, engaged at Berkeley, Calif., in blending tobaccos and in manufacturing cigarettes made of blended tobacco, and in advertising, selling, and distributing said products. Respondent packages said products in cartons, wrappers and containers upon which are placed various pictorial representations, scrolls, words and phrases descriptive of the source, origin, character, and quality of his said products, the blend of tobacco of which they are made and the name and designation of the maker or manufacturer thereof.

Said respondent now sells and ships, and for more than 1 year last past has sold and shipped, his said products, so packaged and marked, directly by mail, parcel post, express, and otherwise, from his principal place of business in Berkeley, Calif., to purchasers thereof at their several points of location in the State of California and in the various other States of the United States, and in the District of Columbia.

There is now, and has been for more than 1 year last past, a course of trade in said products so sold by respondent in commerce between and among the various States of the United States, and in the District of Columbia.

PAR. 3. In the course and conduct of the business set out and described in paragraph 2 hereof, the respondent, for the purpose of inducing the purchase of his said cigarettes, tobaccos, and other products offered for sale and sold by him, has caused and now causes his said products to be packed in cartons, wrappers, and containers bearing pictorial representations, words, phrases, and statements concerning the composition, workmanship, and blend of tobacco from which they are made and the origin and place of manufacture of said products so sold by him, principal of which pictorial representations is a picture of a lion rampant holding the cross of St. George in its right forepaw, accompanied by a scroll, upon which is printed, "Per Ardua." Typical of the statements and representations are the following, in large type, easily discernible:

* * * * * * *

Tobacco Manufacturers

* * * * * * *

Manufactured by Drucquer and Sons of London, England

* * * * * * *

Drucquer and Sons

and in small type, hardly discernible, is printed:

Late of The Strand and Regent Street, London

PAR. 4. In truth and in fact, respondent's business is not located in London, England, and never was at any time during the period in question here, and the tobacco products and tobacco designated, described, and represented as in paragraph 3 hereof set out, were manufactured, blended, and otherwise processed by respondent at his place of business in Berkeley, Calif.

PAR. 5. A substantial part of the American public have a preference for tobacco products manufactured, and tobaccos blended and otherwise processed in England, by English concerns, over domestically manufactured tobacco products and domestically blended and processed tobacco.

PAR. 6. Such use of the lion and the cross of St. George suggests and simulates the use made of the British Royal Coat of Arms, in which a lion rampant appears, by manufacturers and traders who have been granted such privilege by the British Government or some member of the British Royal Family as a reward for long, faithful or distinguished service to the British Government, or to the Royal Family or some member thereof, which grant gives a prestige to the holder and his products not enjoyed by others.

PAR. 7. The said designations, descriptions, and representations as hereinabove set out and described and the said pictorial representation of a lion rampant, with the cross of St. George so used by respondent, imply and suggest to the purchasing and consuming public, especially to persons of English blood or origin, and to other purchasers having a preference for tobacco blended in England, and cigarettes and like products made of English blended tobacco, that said tobacco and products made therefrom were blended, manufactured or made in England, by Drucquer and Sons of London, England, and imported from England, when such is not the fact; and have had and now have the capacity and tendency to induce, and have induced, a substantial number of the purchasing public to buy respondent's said product, because of said erroneous beliefs.

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 May 4, 1940, issued and on May 8, 1940, served its complaint in this proceeding upon the respondent, John Drucquer, an individual, trading as Drucquer & Sons, charging him with unfair and deceptive acts and practices in commerce in violation of the provisions of said act. On May 27, 1940, the respondent filed his answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, Edward A. Martin, 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, together with the facts admitted by the answer, 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, John Drucquer, is an individual trading and doing business under the name Drucquer & Sons, with his office and principal place of business located in Berkeley, Calif.

Par. 2. Respondent is now, and for more than 1 year last past has been, engaged in the business of selling and distributing blended tobaccos and other tobacco products. Respondent causes said products, when sold, to be transported from his place of business in Berkeley, Calif., 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 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, and for the purpose of inducing the purchase of his products, respondent has caused statements and representations relative to the source and origin of

his products and the place of manufacture or blending of his tobaccos to be printed on labels placed on the wrappers or covering of packages in which his tobaccos and tobacco products were wrapped when shipped, and has otherwise published and circulated such statements and representations among purchasers and prospective purchasers of such products situated in the various States in the United States and in the District of Columbia. Among and typical of the statements and representations circulated and distributed by respondent are the following:

Tobacco manufacturers * * * manufactured by Drucquer & Sons of London, England.

Drucquer & Sons, late of the Strand and Regent Street, London, England.

The aforesaid statements and representations by respondent, as above set out, purport to be descriptive of the source and origin of respondent's tobaccos and tobacco products and the place of manufacturing and blending same. In the manner and by the means aforesaid, respondent has represented, directly and by implication, that his tobaccos and tobacco products are manufactured or blended in London, England, and imported into the United States from England.

PAR. 4. The aforesaid statements and representations by respondent with respect to the source and origin of his said products and the place of manufacture or blending thereof are false, misleading, and deceptive. In truth and in fact, respondent does not maintain a factory or place of business in London, England, where his tobaccos and tobacco products are made and blended, and he does not import such products from England into the United States. The tobaccos and tobacco products sold by respondent are manufactured or blended by him at his place of business in Berkeley, Calif.

Many members of the purchasing public prefer tobacco products manufactured and blended in England, and the statements and representations used by respondent, as hereinabove set forth, have led many members of the purchasing public into the erroneous and mistaken belief that respondent has a place of business in London, England, where he manufactures and blends tobacco products, which he imports and sells and distributes in the United States, and have led a substantial number of the purchasing public to purchase respondent's said products because of this erroneous and mistaken belief

PAR. 5. The use by the respondent of the statements and representations above set forth, in offering for sale and selling his products, had, and now has, the tendency and capacity to mislead and deceive a substantial portion of the punrchasing public into the

erroneous and mistaken belief that said representations are true, and that respondent operates a place of business in London, England, where said tobacco products are manufactured or blended and that said tobaccos are imported from England. As a direct result of this erroneous and mistaken belief, a number of members of the purchasing public have purchased a substantial volume of respondent's products.

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, the answer of the respondent and stipulation as to the facts entered into by 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, John Drucquer, his representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of tobaccos and tobacco products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the statement "Drucquer & Sons of London, England," or any other statement indicating that respondent owns or operates a place of business in London, England.

2. Representing, through the use of the statement "Manufactured by Drucquer & Sons of London, England," or any statement indicating English origin, that tobaccos and tobacco products made, manufactured, or blended in the United States are imported from England.

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

WHOLESALE LIQUOR DISTRIBUTORS' ASSOCIATION OF NORTHERN CALIFORNIA, INC., LIQUOR TRADES' STABILIZATION BUREAU, 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 4093. Complaint, Apr. 18, 1940—Decision, Nov. 28, 1940

Where numerous individuals and concerns interested and engaged in sale of liquor at wholesale in territory comprising northern part of California and western part of Nevada, and including various corporations engaged, in course and conduct of their respective businesses, in competition with other distillers, importers, and wholesale liquor dealers who were located outside of said States and who, upon sale of their products, shipped and transported same from their places of business located outside such States into States in question to purchasers thereof, and embracing—

I. Individuals and concerns which were members of a wholesale liquor distributors' association (and through which they and those associated with them in industry operated as herein below indicated), with membership of some 69 northern California wholesale liquor dealers operating in aforesaid territory, or so-called "Northern California Territory," and engaged in purchasing, in the course and conduct of their businesses, for sale to local retail liquor dealers and resale by latter to general public, wines, whiskies, and other alcoholic beverages from distillers, importers, and jobbers of such beverages, whose places of business were located outside State of California, and in causing wines and beverages to be shipped and transported from such other States to the places of business of said wholesale liquor dealers in said State, in which there had been, for a number of years last past, number of cooperative buying organizations, small jobbers and wholesale liquor dealers referred to by concerns, individuals, and organizations herein as "irregular" distributors, and engaged in business of buying and selling such beverages at wholesale and, in course and conduct of their said businesses, in purchasing such beverages from distillers, importers, and wholesalers, great majority of whom were located in other States, and products of which, when thus purchased, were shipped from seller's place of business into State of California to aforesaid purchasers, or "irregular" distributors, by whom said beverages, when received, were sold and distributed to retail liquor dealers in State in question and to purchasing public;

II. Certain corporations engaged in distilling and importing alcoholic beverages, which constituted large and important part of the distillers and importers in the United States and in said northern California territory, and a group so large and influential in the trade as to be able to control and influence flow of trade and commerce in said beverages in the United States and within, to and from said trade area, and which had been, and would have still been, in free and active competition with each other and with other distillers and importers of such beverages in said territory, but for unlawful conspiracy, combination, understanding, and agreement herein described; and

III. Certain corporations engaged in sale and distribution of alcoholic beverages at wholesale, which constituted large and important part of the wholesale liquor dealers in said trade area and, as such, a group so large and influential in the trade as to be able to control and influence flow of trade in commerce in such beverages within, to, and from said trade area, and which had been, and would have still been, in free and active competition with each other and with other distillers and importers of such beverages in said territory, but for unlawful conspiracy, combination, understanding, and agreement herein described—

(*a*) Combined, agreed, and conspired with one another to hinder and prevent aforesaid "irregular" distributors from obtaining such beverages from any source, with intent and effect of hampering, stifling, or suppressing competition in sale thereof at wholesale in aforesaid territory, and acting collectively and through the agency of aforesaid "Wholesale Liquor Distributors" association, and through the agency of their "Liquor Trades' Stabilization Bureau," corporate instrumentality, membership of which was composed of distillers, importers, distributors, and retailers of alcoholic beverages, and including various concerns herein involved, and which was engaged, under direct supervision of its officers and directors, as an enforcing agency for maintenance of wholesale and retail prices, discounts, and mark-ups on alcoholic beverages in territory in question, to effectuate their aforesaid purpose—

(1) Refused, and continued to refuse, to sell alcoholic beverages to cooperative buying associations and to small jobbers and wholesale liquor dealers and others, considered by them to be "irregular" distributors;

(2) Boycotted and threatened to boycott the products of distillers, importers, and wholesale liquor dealers, who sell to cooperative buying associations and to small jobbers and wholesale liquor dealers, and others considered by them to be "irregular" distributors; and

(3) Solicited and obtained in formation with respect to distillers, importers, and wholesale liquor dealers selling to cooperative buying associations, small jobbers, and wholesale liquor dealers and others, considered by them to be "irregular" distributors, and disseminated and threatened to disseminate such information to distillers, importers, and wholesale liquor dealers; and

Where various individuals, members, officers, and directors of said wholesale liquor association, and aforesaid various concerns, including those engaged in sale and distribution of alcoholic beverages at wholesale, the various members of said association, concerns engaged in distilling such beverages, and those engaged in importation thereof, and, as respects those engaged in such distillation and those engaged in such importation, in competition as to price with one another in sale of said beverages between and among various States and its territories, prior to unlawful agreement, combination and conspiracy herein described, and as respects those engaged in sale and distribution of such beverages at wholesale and each and every member of association in question, in competition as to price with one another in sale and distribution of alcoholic beverages in said northern California territory—

(*b*) Adopted, established, and maintained a system or policy of merchandising whereby they, through agreements and understanding between and among one another, fixed specified standard and uniform prices, discounts, and

mark-ups at which said products should be sold, both at wholesale and retail, with intent and effect of eliminating price competition among themselves and in order to stabilize and make uniform prices of products sold by such distillers and importers to wholesale liquor dealers and discounts allowed thereon, and prices of products sold by wholesale liquor dealers and discounts allowed thereon, and to stabilize and make uniform the resale prices of such products by them, and by each of them, sold; and

Where said various concerns engaged in sale of alcoholic beverages at wholesale, and each and every member of association in question, concerns engaged in distilling alcoholic beverages, those engaged in importation thereof, and various individuals, as hereinbefore described—

(c) Endeavored and continued to endeavor to enforce, and enforced and continued to enforce, said merchandising policies pursuant to aforesaid policy, agreements, and understandings, and, acting directly and through the agency of said association and for said purpose, among other things—

(1) Notified and continued to notify distillers, importers, and wholesale liquor dealers and retail liquor dealers of the said fixed wholesale and retail prices, discounts, and mark-ups, and of changes therein;

(2) Solicited and obtained information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who did not maintain the fixed resale prices, discounts, and mark-ups and who did not adhere to said merchandising policy, and disseminated and threatened to disseminate such information to distillers, importers, wholesale liquor dealers, and retail liquor dealers who sell alcoholic beverages in said Northern California Territory;

(3) Coerced and intimidated distillers and importers into the adoption of contracts and agreements, designed and intended to maintain the prices, discounts and mark-ups so fixed, and boycotted and threatened to boycott the products of distillers, importers, wholesale liquor dealers and retail liquor dealers who failed to maintain the prices, discounts, and mark-ups so fixed, and who failed and refused to cooperate in said merchandising policy; and

(4) Organized and maintained aforesaid Liquor Trades' Stabilization Bureau, as above described, with intent of policing the trade and obtaining information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who failed to maintain the prices, discounts, and mark-ups so fixed, and who failed and refused to cooperate in the merchandising policy adopted, and who violated the terms of the price maintenance contracts entered into with retail liquor dealers as herein described;

With result that the capacity, tendency, and effect of said agreement, combination and conspiracy, and acts and practices of said concerns and individuals as above set forth, were to close and curtail various and sundry outlets within the aforesaid Northern California Territory trade area, and other related and connected territory, in the States of California and Nevada, to the direct and immediate sale and shipment of alcoholic beverages by distillers, importers and wholesale liquor dealers located in other States of the United States; and

With further result that capacity, tendency and effect of said combination, agreement and conspiracy was to monopolize in said concerns and individuals business of dealing in and distributing alcoholic beverages in aforesaid territory, to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress

competition in said products in the States of California and Nevada, to deprive the purchasing and consuming public of advantages in price and service which they would receive and enjoy under conditions of normal, unobstructed or free and fair competition of said trade and industry, and to otherwise operate as a restraint upon and detriment to the freedom of fair and legitimate competition in such trade and industry, to obstruct the natural flow of commerce in the channels of interstate trade, and to place an undue burden upon such commerce, and to prejudice and injure the public and other distillers, importers, jobbers, wholesale liquor dealers and buying associations, who were not parties to aforesaid agreement, combination and conspiracy, and who took no part therein:

Held, That such acts and practices of said concerns and individuals, under the circumstances set forth, were all to the prejudice of the public, had a tendency to and actually did hinder and prevent price competition between and among them in sale of alcoholic beverages in commerce, and placed in themselves power to control and enhance prices, and created in themselves a monopoly in the sale of alcoholic beverages in commerce aforesaid, and unreasonably restrained, hampered, and burdened such commerce in alcoholic beverages, and constituted unfair methods of competition.

Mr. Floyd O. Collins and *Mr. DeWitt T. Puckett*, for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., for Gooderham & Worts, Ltd., and Hiram Walker, Inc., and, together with—

Mr. Seibert L. Sefton, of San Francisco, Calif., for Wholesale Liquor Distributors' Ass'n of Northern California, Inc., and various officers, members, and directors thereof, Liquor Trades' Stabilization Bureau, Inc., and Rathjen Bros., Inc.; and for R. F. Jose (who was also further represented by *Mr. Robert J. McGahie*, of San Francisco, Calif.);

Mr. John J. Burns, of New York City, for Somerset Importers, Ltd.;

Lovell & Richardson, of San Francisco, Calif., for Parrott & Co.;

Mr. Richard O'Connor, of San Francisco, Calif., for McKesson & Robbins, Inc.;

Mr. David N. Popik, of Newark, N. J., for Browne Vintners Co., Inc.;

White & Case, of New York City, for Seagram-Distillers Corporation;

Mr. Richard L. Fruchterman, of New York City, for The Fleischmann Distilling Corporation;

Breed, Abbott & Morgan, of New York City, for National Distillers' Products Corporation;

Carroll, McElwain & Ballantine, of Louisville, Ky., for Frankfort Distilleries, Inc.;

Thomas, Beedy & Paramore, of San Francisco, Calif., for Coffin-Redington Co. and Sherwood Coffin, and along with *Mr. Seibert L. Sefton*, of San Fransisco, Calif., for Haas Bros. and Max Sobel; and

Mr. Samuel Hauser, of San Francisco, Calif., for Tonkin Distributing Co. and J. M. Tonkin.

Cooke, Beneman & Morrison, of Washington, D. C., for Brown-Forman Distillers Corporation and Schenley Distilleries, Inc.,; and

Mr. Richard O'Connor, of San Francisco, Calif., for H. L. Hanson.

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

PARAGRAPH 1. Respondent Wholesale Liquor Distributors' Association of Northern California, Inc., hereinafter referred to as respondent Association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and has its home office in the Sharon Building, 55 New Montgomery Street, San Francisco, Calif. Respondent Association was organized in August 1935, and has a membership of 69 northern California wholesale liquor dealers, who are operating in territory comprising the northern part of California and the western part of Nevada and hereinafter referred to as "Northern California Territory." Of its members, the following now constitute, and for a long time last past have constituted, its board of directors, and its officers, to wit:

J. M. Tonkin, president, 440 Ninth Street, San Francisco, Calif.
J. F. Ferrari, vice president, 1414 Chester Avenue, Bakersfield, Calif.
Max Sobel, secretary-treasurer, Third and Berry Streets, San Francisco.
Sante Quattrin, executive secretary, 55 New Montgomery Street, San Francisco.
A. M. Berberian, director, 202 Broadway, Fresno, Calif.
Chas. Bigley, director, 256 North First Street, San Jose, Calif.
H. L. Hanson, director, 919 Front Street, Sacramento, Calif.
J. J. Bottaro, director, 521 I Street, Sacramento, Calif.
Thomas Lenehan, director, 434 Ellis Street, San Francisco, Calif.
R. F. Jose, director, 314 Front Street, San Francisco, Calif.
Floyd Trombetta, director, 24 Fourth Street, Santa Rosa, Calif.
Andrew Rosaia, director, 142 West Fourth Street, Eureka, Calif.
C. L. Sauer, director, 350 Townsend Street, San Francisco, Calif.

John Pingree, director, 253 Fourth Street, Oakland, Calif.
Sherwood Coffin, director, 311 Folsom Street, San Francisco, Calif.

Among its members are respondents McKesson & Robbins, Inc., Haas Bros., Rathjen Bros., Inc., Tonkin Distributing Co., and Coffin-Redington Co. The said respondent members, above named, of respondent association do not constitute its entire membership, but are representative members thereof. The members of said respondent association constitute a class so numerous as to make it impractical to name all of them as parties respondent herein. All members of respondent association are made parties herein as a class, of which those specifically named are representative of the whole.

Respondent association, acting under the direction and direct supervision of its officers and directors, among other things, is now, and has been for more than 1 year last past, engaged in attempting to procure legislation, deemed by it to be beneficial to its members, enforcing observance by its members and others of price maintenance policies, as hereinafter described, with respect to the sale 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.

Respondent Liquor Trades' Stabilization Bureau, Inc., hereinafter referred to as respondent Bureau, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business in the Sharon Building, 55 New Montgomery Street, San Francisco, Calif. It was organized in 1936, and its membership is comprised of distillers, importers, distributors, and retailers of alcoholic beverages, among whom are all of the respondents herein named. The said respondent members, herein named, of respondent bureau do not constitute its entire membership, but are representative members thereof. The members of said respondent bureau constitute a class so numerous as to make it impractical to name all of them as parties respondent herein. All members of respondent bureau are made parties herein as a class, of which those named herein are representative of the whole.

Respondent bureau, under the direct supervision of its officers and directors, is now, and has been for more than 1 year last past, engaged as an enforcing agency for the maintenance of wholesale and retail prices, discounts and mark-ups on alcoholic beverages in the said Northern California Territory.

Respondent Rathjen Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business

located at 135 Berry Street, San Francisco, Calif. Respondent Rathjen Bros., Inc., is now, and has been for more than 1 year last past, engaged in the purchase in various States of the United States and in the importation from foreign countries of alcoholic beverages, and in the sale and distribution thereof at wholesale in the said Northern California Territory, and in commerce among and between the various States of the United States.

Respondent Gooderham & Worts, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware with its home office and principal place of business located at 2070 Penobscot Building, Detroit, Mich., and maintains a branch office at 650 Second Street, San Francisco, Calif. Respondent Gooderham & Worts, Ltd., is now, and has been for more than 1 year last past, engaged in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale among and between the various States of the United States and in the District of Columbia.

Respondent Somerset Importers, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 9 Rockefeller Plaza, New York, N. Y., and maintains a branch office at 615 Second Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation from foreign countries of alcoholic beverages and in the sale and distribution thereof at wholesale among and between the various States of the United States and in the District of Columbia.

Respondent Parrott & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 320 California Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation from foreign countries of alcoholic beverages and in the sale and distribution thereof at wholesale among and between the various States of the United States.

Respondent McKesson & Robbins, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its home office and principal place of business located at 155 East 44th Street, New York, N. Y., and operates a branch office under the name of Langley-Michaels Division of McKesson & Robbins, Inc., at 50 First Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation from foreign countries of alcoholic beverages and in the sale and distribution thereof at wholesale, among and between the various States of the United States and in the District of Columbia.

Respondent Browne Vintners Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at 50 Rockefeller Plaza, New York, N. Y., and maintains a branch office at 625 Second Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Seagram-Distillers Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 405 Lexington Avenue, New York, N. Y. It maintains a branch office at 520 Montgomery Street, San Francisco, Calif. It is a wholly owned subsidiary of Distillers' Corporation—Seagrams, Ltd., a Canadian corporation, and acts as a general sales outlet for all of the producing subsidiaries of said company, with the exception of the Calvert-Maryland Distributing Co., Inc. It is now, and has been for more than 1 year last past, engaged in distilling of alcoholic beverages and in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Brown-Forman Distillers Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its home office and principal place of business located at 1908 Howard Street, Louisville, Ky., and maintains and operates a branch office at 224 Spear Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the business of distilling alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Fleischmann Distilling Corporation is a wholly owned subsidiary of Standard Brands, Inc., and is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and has its home office and principal place of business located at 595 Madison Avenue, New York, N. Y., and maintains and operates a branch office at 351 California Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages and in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the

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

Respondent National Distillers' Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, with its home office and principal place of business located at 120 Broadway, New York, N. Y., and maintains and operates a branch office at 625 Second Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages, and in the importation from foreign countries of alcoholic beverages, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Schenley Distillers, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at 900 Battery Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the distilling, rectifying, blending, and bottling of alcoholic beverages, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Frankfort Distilleries, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of West Virginia with its home office and principal place of business located at 401 West Main Street, Louisville, Ky. It maintains and operates a branch office located at 524 Second Street, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Hiram Walker & Sons, Inc.,[1] is a corporation organized. existing, and doing business under and by virtue of the laws of the State of Delaware with its general office at 4450 Penobscot Building, Detroit, Mich. Respondent operates a branch office at 650 Second Street, San Francisco, Calif. It is now, and has been for more than

[1] By order dated Nov. 1, 1940, Commission granted motion of Hiram Walker Incorporated, showing that complaint in proceeding improperly named Hiram Walker & Sons, Inc., as respondent in place of Hiram Walker Incorporated, and moving—

"(1) That Hiram Walker Incorporated be named as the respondent herein in the place and stead of Hiram Walker & Sons, Inc.; and

"(2) That the answer of Hiram Walker & Sons, Inc., be withdrawn and that the answer of Hiram Walker Incorporated, annexed hereto, be filed in lieu of the answer filed in this proceeding by Hiram Walker & Sons, Inc., on July 10, 1940."

1 year last past, engaged in the distilling and the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Respondent Haas Bros. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at Third and Channel Streets, San Francisco, Calif. It is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States.

Respondent Tonkin Distributing Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 440 Ninth Street, in the city of San Francisco, State of California. It is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages from foreign countries, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States.

Respondent Coffin-Redington Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its home office and principal place of business located at 311 Folsom Street, in the city of San Francisco, State of California. It is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States.

Respondent J. M. Tonkin of 440 Ninth Street, San Francisco, Calif., is an individual, and is president and a member of the board of directors of respondent association and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes an active part, individually, and as president and as a director of said association, in all the activities herein alleged.

Respondent J. F. Ferrari, of 1414 Chester Avenue, Bakersfield, Calif., is an individual and is vice president and a member of the board of directors of respondent association, and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes an active part individually and as vice president and director of said association in all of the activities herein alleged.

Respondent Max Sobel of Third & Barry Streets, San Francisco, Calif., is an individual and is secretary-treasurer and a member of the board of directors of respondent association, and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes an active part individually and as secretary-treasurer and director of said association in all of the activities herein alleged.

Respondent Sante Quattrin of 55 New Montgomery Street, San Francisco, Calif., is an individual and as executive secretary of respondent association has taken an active part in the control and management of said association and in all of the activities herein alleged.

Respondents, A. M. Berberian, 202 Broadway, Fresno, Calif.; Charles Bigley, 256 North First Street, San Jose, Calif.; J. J. Bottaro, 521 I Street, Sacramento, Calif.; H. L. Hanson, 919 Front Street, Sacramento, Calif.; Thomas Lenehan, 434 Ellis Street, San Francisco, Calif.; R. F. Jose, 314 Front Street, San Francisco, Calif.; Floyd Trombetta, 24 Fourth Street, Santa Rosa, Calif.; Andrew Rosaia, 142 West Fourth Street, Eureka, Calif.; C. L. Sauer, 350 Townsend Street, San Francisco, Calif.; John Pingree, 253 Fourth Street, Oakland, Calif.; and Sherwood Coffin, 311 Folsom Street, San Francisco, Calif.; are individuals, and are members and directors of said association, and have at all times herein mentioned taken an active part in the control and management of said association, and have engaged individually and as directors of said association in all of the activities herein alleged.

PAR. 2. Respondent corporations engaged in distilling and importing alcoholic beverages constitute a large and important part of the distillers and importers in the United States and in said northern California territory and constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in alcoholic beverages in the United States and within, to, and from the said northern California territory trade area. Said respondents have been and would now be in free and active competition with each other and with other distillers and importers of alcoholic beverages in said territory but for the wrongful and unlawful conspiracy, combination, understanding, and agreement, and unlawful acts and practices herein set out.

PAR. 3. Respondent corporations, named herein, engaged in the sale and distribution of alcoholic beverages at wholesale, constitute a large and important part of the wholesale liquor dealers in the said northern California territory trade area, and as such wholesalers, constitute a group so large and influential in the trade as to be able to control

and influence the flow of trade and commerce in alcoholic beverages within, to, and from said trade area. Said respondents have been and would now be in free and active competition with one another and with other wholesale liquor dealers in said trade area but for the wrongful and unlawful conspiracy, combination, understanding, and agreement, and unlawful acts and practices herein set out.

PAR. 4. In the course and conduct of their said businesses, as aforesaid, the respondent corporations named herein have been and are now in competition with other distillers, importers, and wholesale liquor dealers who are located outside of the States of California and Nevada, and who, upon the sale of their products, ship and transport such products from their places of business located outside of the States of California and Nevada into the States of California and Nevada to the purchasers thereof.

PAR. 5. The respondent wholesale liquor dealer members of respondent association, in the course and conduct of their businesses, purchase wines, whiskies, and other alcoholic beverages from distillers, importers, and jobbers of alcoholic beverages whose places of business are located outside of the State of California, and cause such wines, whiskies, and other alcoholic beverages to be shipped and transported from such other States of the United States to the places of business in California of said wholesale liquor dealers, when said products are sold to local retail liquor dealers, who, in turn, sell to the general public.

PAR. 6. There are now in California, and have been for a number of years last past, a number of cooperative buying organizations, small jobbers and wholesale liquor dealers, referred to by respondents as "irregular" distributors, engaged in the business of buying and selling alcoholic beverages at wholesale and who, in the course and conduct of their said businesses, purchase alcoholic beverages from distillers, importers, and wholesale liquor dealers, a great majority of whom are located in States of the United States other than the State of California, and when said products are purchased they are shipped from the seller's place of business into the State of California to the purchasers thereof. These so-called "irregular" distributors, when said alcoholic beverages are received by them, sell and distribute the same to retail liquor dealers located in California and to the purchasing public.

PAR. 7. The respondents, with the purpose, intent and effect of hampering, stifling, and suppressing competition in the sale of alcoholic beverages at wholesale in the territory aforesaid, have combined, agreed, and conspired with one another to hinder and prevent the aforementioned "irregular" distributors from obtaining alcoholic beverages from any source; the said respondents have acted collectively and through the agency of said respondent association and through the

agency of respondent bureau, to effectuate their said purpose. In carrying out said combination, agreement, and conspiracy, respondents collectively, and through the agencies of said association and bureau, have done, and are now doing, among other things, the following:

(*a*) Have refused, and now refuse, to sell alcoholic beverages to cooperative buying associations and to small jobbers and wholesale liquor dealers and others, considered by respondents to be "irregular" distributors.

(*b*) Have boycotted and have threatened to boycott the products of distillers, importers, and wholesale liquor dealers, who sell to cooperative buying associations and to small jobbers and wholesale liquor dealers, and others considered by respondents to be "irregular" distributors.

(*c*) Have solicited and obtained information with respect to distillers, importers, and wholesale liquor dealers selling to cooperative buying associations, small jobbers and wholesale liquor dealers and others, considered by respondents to be "irregular" distributors, and have disseminated and threatened to disseminate such information to distillers, importers, and wholesale liquor dealers.

PAR. 8. The respondents engaged in distilling alcoholic beverages and those engaged in the importation of alcoholic beverages were, before the unlawful agreement, combination, and conspiracy herein set out, in competition as to price with one another in the sale of alcoholic beverages between and among the various States of the United States and its territories, and would now be in competition with one another but for said combination, agreement, and conspiracy.

The respondents engaged in the sale and distribution of alcoholic beverages at wholesale, and each and every member of respondent association, were, before the unlawful agreement, combination, and conspiracy herein set out, in competition as to price with one another in the sale and distribution of alcoholic beverages in the said northern California territory.

PAR. 9. Some time prior to December 1938, the respondents, engaged in the sale and distribution of alcoholic beverages at wholesale, each and every member of respondent association, respondents engaged in distilling alcoholic beverages and the respondents engaged in the importation of alcoholic beverages, for the purpose and with the effect of eliminating price competition among themselves, and in order to stabilize and make uniform the prices of the products sold by said distillers and importers to the wholesale liquor dealers, and the discounts allowed thereon, and the prices of the products

sold by wholesale liquor dealers, and the discounts allowed thereon, and to stabilize and make uniform the resale prices of the products, by them and each of them sold, have adopted, established, and maintained a system or policy of merchandising whereby they, through agreements and understandings between and among one another, fixed and now fix specified standard and uniform prices, discounts and mark-ups at which said products should be sold, both at wholesale and retail.

Pursuant to such policy, agreements, and understandings, while acting directly and through the agency of the respondent association, the respondents engaged in the sale of alcoholic beverages at wholesale, each and every member of respondent association, respondents engaged in distilling alcoholic beverages, the respondents engaged in the importation of alcoholic beverages and each and every individual respondent named herein, have endeavored and now endeavor to enforce and have enforced and are now enforcing said merchandising policy, and to this end, among other things, have done and are now doing the following:

(*a*) Have notified, and are now notifying, distillers, importers, and wholesale liquor dealers and retail liquor dealers of the said fixed wholesale and retail prices, discounts, and mark-ups.

(*b*) Have notified, and are now notifying, distillers, importers, wholesale liquor dealers, and retail liquor dealers of changes in the said prices, discounts, and mark-ups.

(*c*) Have solicited and obtained information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who do not maintain the fixed resale prices, discounts, and mark-ups and who do not adhere to said merchandising policy; and have disseminated and have threatened to disseminate such information to distillers, importers, wholesale liquor dealers, and retail liquor dealers who sell alcoholic beverages in the said northern California territory.

(*d*) Have coerced and intimidated distillers and importers into the adoption of contracts and agreements, designed and intended to maintain the prices, discounts, and mark-ups so fixed.

(*e*) Have boycotted and threaten to boycott the products of distillers, importers, wholesale liquor dealers, and retail liquor dealers who have failed to maintain the prices, discounts, and mark-ups so fixed, and who fail and refuse to cooperate in said merchandising policy.

(*f*) Have organized and maintained the respondent Liquor Trades' Stabilization Bureau, Inc., for the purpose of policing the trade and of obtaining information with respect to distillers, importers, whole-

sale liquor dealers, and retail liquor dealers who fail to maintain the prices, discounts, and mark-ups so fixed, and who fail and refuse to cooperate in the merchandising policy adopted, and who violate the terms of the price maintenance contracts entered into with retail liquor dealers.

PAR. 10. The capacity, tendency, and effect of said agreement, combination, and conspiracy, and the acts and practices of the respondents, as herein set out, are, and have been, to close and curtail various and sundry outlets, within the aforesaid northern California territory trade area, and other related and connected territory, in the States of California and Nevada, to the direct and immediate sale and shipment of alcoholic beverages by distillers, importers, and wholesale liquor dealers, located in other States of the United States. Said combination, agreement, and conspiracy had, and now have the capacity, tendency, and effect to monopolize, in said respondents, the business of dealing in and distributing alcoholic beverages in the aforesaid territory; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said products in the States of California and Nevada; to deprive the purchasing and consuming public of advantages in price and service, which they would receive and enjoy under conditions of normal, unobstructed, or free and fair competition of said trade and industry, and to otherwise operate as a restraint upon and detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade, and to place an undue burden upon such commerce; to prejudice and injure the public and other distillers, importers, jobbers, wholesale liquor dealers, and buying associations, who were not parties to the aforesaid agreement, combination, and conspiracy, and who have taken no part therein.

PAR. 11. The acts and practices of the respondents, as herein alleged, are all to the prejudice of the public, have a tendency to and have actually hindered and prevented price competition between and among respondents, in the sale of alcoholic beverages in commerce, within the intent and meaning of the Federal Trade Commission Act, and placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of alcoholic beverages in such commerce; have unreasonably restrained, hampered, and burdened such commerce in alcoholic beverages, 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 18, 1940, issued and subsequently 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. After the issuance of said complaint and the filing of respondents' answers, the Commission, by order entered herein, granted respondents' motion 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 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 Wholesale Liquor Distributors' Association of Northern California, Inc., hereinafter referred to as respondent association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and has its home office in the Sharon Building, 55 New Montgomery Street, San Francisco, Calif. Respondent association was organized in August 1935, and has a membership of approximately 69 northern California wholesale liquor dealers who are operating in territory comprising the northern part of California and the western part of Nevada and hereinafter referred to as "Northern California Territory." The following are now and have been for several months last past its board of directors and its officers:

Joseph M. Tonkin, president (named in complaint as J. M. Tonkin), 440 Ninth Street, San Francisco, Calif.;

J. F. Ferrari, vice president, 1414 Chester Avenue, Bakersfield, Calif.;

Max Sobel, secretary-treasurer, Third and Berry Streets, San Francisco, Calif.;

Sante Quattrin, executive secretary, 55 New Montgomery Street, San Francisco, Calif.;

A. M. Berberian, director, 202 Broadway, Fresno, Calif.;

Charles Bigley, director, 256 North First Street, San Jose, Calif.;

H. L. Hanson, director, 919 Front Street, Sacramento, Calif.;

J. J. Bottaro, director, 521 I Street, Sacramento, Calif.;

Thomas Lenehan, director, 434 Ellis Street, San Francisco, Calif.;

R. F. Jose, director, 314 Front Street, San Francisco, Calif.;
Floyd Trombetta, director, 24 Fourth Street, Santa Rosa, Calif.;
Andrew Rosaia, director, 142 West Fourth Street, Eureka, Calif.;
C. L. Sauer, director, 350 Townsend Street, San Francisco, Calif.
John Pingree, director, 253 Fourth Street, Oakland, Calif.

Sherwood Coffin of 311 Folsom Street, San Francisco, Calif., became a director of respondent association on March 1, 1940.

Respondents McKesson & Robbins, Inc., Haas Bros., Rathjen Bros., Inc., Tonkin Distributing Co., and Coffin-Reddington Co. are all members of said association.

Respondent association, acting under the direction and direct supervision of its officers and directors, among other things, is now, and has been for more than 1 year last past, engaged in attempting to procure legislation deemed by it to be beneficial to its members, enforcing observance by its members and others of price maintenance policies, hereinafter described with respect to the sale 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.

The respondent Liquor Trades' Stabilization Bureau, Inc., hereinafter referred to as respondent bureau, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business in the Sharon Building, 55 New Montgomery Street, San Francisco, Calif. Its membership is composed of distillers, importers, distributors, and retailers of alcoholic beverages, among whom are all of the parties herein named.

The said bureau, under the direct supervision of its officers and directors, is now, and has been for more than 1 year last past, engaged as an enforcing agency for the maintenance of wholesale and retail prices, discounts, and mark-ups on alcoholic beverages in the said northern California territory.

Rathjen Bros., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and its home office and principal place of business are located at 135 Berry Street, San Francisco, Calif. Rathjen Bros., Inc., is now, and has been for more than 1 year last past, engaged in the purchase in various States of the United States and in the importation from foreign countries of alcoholic beverages, and in the sale and distribution thereof at wholesale in the said northern California territory, and in commerce among and between the various States of the United States.

Gooderham & Worts Ltd. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware and its home office and principal place of business are located at 2070 Penobscot Building, Detroit, Mich. Said corporation has a branch office at 650 Second Street, San Francisco, Calif. Said corporation is now, and for more than 1 year last past has been, the exclusive sales agency for Gooderham & Worts Ltd. brands of whiskies and other alcoholic beverages distilled by affiliated corporations, selling said products to wholesalers located throughout the several States of the United States and in the District of Columbia, and causing said products when sold, to be transported in commerce from the distilleries located in the State of Illinois in the United States and in the Dominion of Canada to the purchasers thereof, some of whom are located in the said northern California territory.

Somerset Importers, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its home office and principal place of business are located at 9 Rockefeller Plaza, New York, N. Y. Said corporation maintains a branch office at 615 Second Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the importation from foreign countries of alcoholic beverages and in the sale and distribution thereof at wholesale among and between the various States of the United States and in the District of Columbia.

Parrott & Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and its home office and principal place of business are located at 320 California Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern California territory and among and between the various States of the United States.

McKesson & Robbins, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, and its home office and principal place of business are located at 155 East Forty-fourth Street, New York, N. Y., and it operates a branch office under the name of Langley-Michaels Division of McKesson & Robbins, Inc., at 50 First Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern

California territory and among and between the various States of the United States and in the District of Columbia.

Browne Vintners Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and its home office and principal place of business are located at 50 Rockefeller Plaza, New York, N. Y., and it maintains a branch office at 625 Second Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the importation of alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Seagram-Distillers Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its home office and principal place of business are located at 405 Lexington Avenue, New York, N. Y. Said corporation maintains a branch office at 520 Montgomery Street, San Francisco, Calif. Said corporation is a wholly owned subsidiary of Distillers' Corporation-Seagrams, Ltd., a Canadian corporation, and acts as a general sales outlet for all of the producing subsidiaries of said company, with the exception of the Calvert-Maryland Distributing Co., Inc. Said corporation is now, and has been for more than 1 year last past, engaged in distilling of alcoholic beverages and in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Brown-Forman Distillers Corporation (named in the complaint as Brown-Forman Distillers Company, Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, and its home office and principal place of business are located at 1908 Howard Street, Louisville, Ky., and it maintains and operates a branch office at 224 Spear Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the business of distilling alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Fleischmann Distilling Corporation is a wholly owned subsidiary of Standard Brands, Inc., and is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, and its home office and principal place of business are located at 595 Madison Avenue, New York, N. Y., and it maintains and operates a branch office at 351 California Street, San Francisco, Calif.

Said corporation is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages and in the importation of alcoholic beverages from foreign countries and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

National Distillers' Products Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Virginia, and its home office and principal place of business are located at 120 Broadway, New York, N. Y., and it maintains and operates a branch office at 625 Second Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages, and in the importation from foreign countries of alcoholic beverages, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Schenley Distilleries, Inc. (named in the complaint as Schenley Distillers, Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and its home office and principal place of business are located at 900 Battery Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the distilling, rectifying, blending, and bottling of alcoholic beverages, and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Frankfort Distilleries, Incorporated, is a corporation organized, existing and doing business under and by virtue of the laws of the State of West Virginia, and its home office and principal place of business are located at 401 West Main Street, Louisville, Ky. Said corporation maintains and operates a branch office located at 524 Second Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in distilling alcoholic beverages and in the sale and distribution thereof at wholesale in commerce among and between the various States of the United States and in the District of Columbia.

Hiram Walker, Incorporated (named in the complaint as Hiram Walker & Sons, Inc.), is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and has a general office at 4450 Penobscot Building, Detroit, Mich. Said corporation operates a branch office at 650 Second Street, San Francisco, Calif. Said corporation is now, and for more than 1 year last past has been, the exclusive sales agency for Hiram Walker, Inc., brands of whiskies and other alcoholic beverages distilled by affiliated corporations, selling said products to wholesalers located throughout

the several States of the United States and in the District of Columbia, and causing said products, when sold, to be transported in commerce from the distilleries located in the State of Illinois in the United States, in the Dominion of Canada, and in other foreign countries to the purchasers thereof, some of whom are located in said northern California territory.

Haas Bros. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and its home office and principal place of business are located at Third and Channel Street, San Francisco, Calif. Said corporation is now, and has been for more than 1 year last past, engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern California territory and in commerce among and between the various States of the United States.

Tonkin Distributing Co. (described in the complaint as a corporation), is a copartnership composed of Joseph M. Tonkin and Sidney Modlin, and its home office and principal place of business are located at 440 Ninth Street, in the city of San Francisco, State of California. Said partnership is now, and has been for more than 1 year last past, engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern California territory and in commerce among and between the various States of the United States.

Coffin-Redington Co. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, and its home office and principal place of business are located at 311 Folsom Street, in the city of San Francisco, State of California. Said corporation is now, and has been for more than 1 year last past, engaged in the importation from foreign countries and in the purchase in various States of the United States of alcoholic beverages and in the sale and distribution thereof at wholesale in the said northern California territory and in commerce among and between the various States of the United States.

Joseph M. Tonkin (named in complaint as J. M. Tonkin), of 440 Ninth Street, San Francisco, Calif., is an individual, and is president and a member of the board of directors of respondent association and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes part, individually and as president and as a director of said association, in all the activities herein found.

J. F. Ferrari, of 1414 Chester Avenue, Bakersfield, Calif., is an individual and is vice president and a member of the board of directors of respondent association, and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes part individually and as vice president and director of said association in all of the activities herein found.

Max Sobel of Third and Barry Streets, San Francisco, Calif., is an individual and is secretary-treasurer and a member of the board of directors of respondent association and as such officer and director and as a member thereof, assists in directing and controlling the activities of said association and takes part individually and as secretary-treasurer and director of said association in all of the activities herein found.

Sante Quattrin of 55 New Montgomery Street, San Francisco, Calif., is an individual and as executive secretary of respondent association has taken part in the control and management of said association and in all of the activities herein found.

A. M. Berberian, 202 Broadway, Fresno, Calif.; Charles Bigley, 256 North First Street, San Jose, Calif.; J. J. Bottaro, 521 I Street, Sacramento, Calif.; H. L. Hanson, 919 Front Street, Sacramento, Calif.; Thomas Lenehan, 434 Ellis Street, San Francisco, Calif.; R. F. Jose, 314 Front Street, San Francisco, Calif.; Floyd Trombetta, 24 Fourth Street, Santa Rosa, Calif.; Andrew Rosaia, 142 West Fourth Street, Eureka, Calif.; C. L. Sauer, 350 Townsend Street, San Francisco, Calif.; John Pingree, 253 Fourth Street, Oakland, Calif.; and Sherwood Coffin, 311 Folsom Street, San Francisco, Calif., are individuals and are members and directors of said association and, excepting only respondent Sherwood Coffin, have at all times herein mentioned taken active part in the control and management of said association, and have engaged individually and as directors of said association in all of the activities herein found.

PAR. 2. The corporations hereinbefore named who are engaged in distilling and importing alcoholic beverages constitute a large and important part of the distillers and importers in the United States, and in the said northern California territory and constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in alcoholic beverages in the United States and within, to, and from the said northern California territory trade area. Said corporations have been and would now be in free and active competition with each other and with other distillers and importers of alcoholic beverages in said territory but for an unlawful conspiracy, combination, understanding, and agreement herein described.

PAR. 3. The corporations named herein, engaged in the sale and distribution of alcoholic beverages at wholesale, constitute a large and important part of the wholesale liquor dealers in the said northern California territory trade area, and as such wholesalers, constitute a group so large and influential in the trade as to be able to control and influence the flow of trade and commerce in alcoholic beverages within, to, and from said trade area. Said corporations have been and would now be in free and active competition with each other and with other distillers and importers of alcoholic beverages in said territory but for an unlawful conspiracy, combination, understanding, and agreement herein described.

PAR. 4. In the course and conduct of their said businesses, as aforesaid the corporations named herein have been and are now in competition with other distillers, importers, and wholesale liquor dealers who are located outside of the States of California and Nevada, and who, upon the sale of their products, ship and transport such products from their places of business located outside of the States of California and Nevada into the States of California and Nevada to the purchasers thereof.

PAR. 5. The respondent wholesale liquor dealer members of respondent association, in the course and conduct of their businesses, purchase wines, whiskies, and other alcoholic beverages from distillers, importers, and jobbers of alcoholic beverages whose places of business are located outside of the State of California, and cause such wines, whiskies, and other alcoholic beverages to be shipped and transported from such other States of the United States to the places of business in California of said wholesale liquor dealers, when said products are sold to local retail liquor dealers who, in turn, sell to the general public.

PAR. 6. There are now in California, and have been for a number of years last past, a number of cooperative buying organizations, small jobbers, and wholesale liquor dealers, referred to by respondents as "irregular" distributors, engaged in the business of buying and selling alcoholic beverages at wholesale and who, in the course and conduct of their said businesses, purchase alcoholic beverages from distillers, importers, and wholesale liquor dealers, a great majority of whom are located in States of the United States other than the State of California and when said products are purchased they are shipped from the seller's place of business into the State of California to the purchasers thereof. These so-called "irregular" distributors, when said alcoholic beverages are received by them, sell and distribute the same to retail liquor dealers located in California and to the purchasing public.

PAR. 7. The respondents Gooderham & Worts Ltd.; Brown-Forman Distillers Corporation; Fleishmann Distilling Corporation; National Distillers' Products Corporation; Schenley Distilleries, Inc.; Frankfort Distilleries, Inc.; Hiram Walker, Inc.; Browne Vintners Co., Inc.; Rathjen Bros., Inc.; McKesson & Robbins, Inc.; Parrott & Co.; Haas Bros.; Tonkin Distributing Co.; Coffin-Redington Co.; Joseph M. Tonkin (named in complaint as J. M. Tonkin); Max Sobel; J. F. Ferrari; Sante Quattrin; A. M. Berberian; Charles Bigley; J. J. Bottaro; H. L. Hanson; Thomas Lenehan; R. F. Jose; Floyd Trombetta; Andrew Rosaia; C. L. Sauer; John Pingree and all the other members of respondent association, with the purpose, intent, and effect of hampering, stifling, and suppressing competition in the sale of alcoholic beverages at wholesale in the territory aforesaid, combined, agreed, and conspired with one another to hinder and prevent the aforementioned "irregular" distributors from obtaining alcoholic beverages from any source; the said respondents acted collectively and through the agency of said respondent association and through the agency of respondent bureau, to effectuate their said purpose. In carrying out said combination, agreement, and conspiracy, respondents collectively, and through the agencies of said association and bureau, have done, and are now doing, among other things, the following:

(*a*) Refused, and do now refuse, to sell alcoholic beverages to cooperative buying associations and to small jobbers and wholesale liquor dealers and others, considered by respondents to be "irregular" distributors.

(*b*) Boycotted and have threatened to boycott the products of distillers, importers, and wholesale liquor dealers, who sell to cooperative buying associations and to small jobbers and wholesale liquor dealers, and others considered by respondents to be "irregular" distributors.

(*c*) Solicited and obtained information with respect to distillers, importers, and wholesale liquor dealers selling to cooperative buying associations, small jobbers, and wholesale liquor dealers and others, considered by respondents to be "irregular" distributors, and have disseminated and threatened to disseminate such information to distillers, importers, and wholesale liquor dealers.

PAR. 8. The respondents engaged in distilling alcoholic beverages and those engaged in the importation of alcoholic beverages were, before the unlawful agreement, combination, and conspiracy herein described, in competition as to price with one another in the sale of alcoholic beverages between and among the various States of the United States and its Territories.

The respondents engaged in the sale and distribution of alcoholic beverages at wholesale, and each and every member of respondent

association, were, before the unlawful agreement, combination, and conspiracy herein described, in competition as to price with one another in the sale and distribution of alcoholic beverages in the said northern California territory.

PAR. 9. Some time prior to December 1938, the respondents, engaged in the sale and distribution of alcoholic beverages at wholesale, each and every member of respondent association, respondents engaged in distilling alcoholic beverages and the respondents engaged in the importation of alcoholic beverages, for the purpose and with the effect of eliminating price competition among themselves, and in order to stabilize and make uniform the prices of the products sold by said distillers and importers to the wholesale liquor dealers, and the discounts allowed thereon, and the prices of the products sold by wholesale liquor dealers, and the discounts allowed thereon, and to stabilize and make uniform the resale prices of the products, by them and each of them sold, adopted, established, and maintained a system or policy of merchandising whereby they, through agreements and understandings between and among one another, fixed specified standard and uniform prices, discounts, and mark-ups at which said products should be sold, both at wholesale and retail.

Pursuant to such policy, agreements, and understandings, while acting directly and through the agency of the respondent association, the respondents engaged in the sale of alcoholic beverages at wholesale, each and every member of respondent association, respondents engaged in distilling alcoholic beverages, the respondents engaged in the importation of alcoholic beverages and each and every individual respondent named herein, excepting only Sherwood Coffin, have endeavored and now endeavor to enforce and have enforced and are now enforcing said merchandising policy, and to this end, among other things, have done and are now doing the following:

(*a*) Have notified, and are now notifying, distillers, importers, and wholesale liquor dealers and retail liquor dealers of the said fixed wholesale and retail prices, discounts, and mark-ups.

(*b*) Have notified, and are now notifying, distillers, importers, wholesale liquor dealers, and retail liquor dealers of changes in the said prices, discounts, and mark-ups.

(*c*) Solicited and obtained information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who do not maintain the fixed resale prices, discounts, and mark-ups and who do not adhere to said merchandising policy; disseminated and threatened to disseminate such information to distillers, importers, wholesale liquor dealers, and retail liquor dealers who sell alcoholic beverages in the said northern California territory.

(*d*) Coerced and intimidated distillers and importers into the adoption of contracts and agreements, designed and intended to maintain the prices, discounts, and mark-ups so fixed.

(*e*) Boycotted and threatened to boycott the products of distillers, importers, wholesale liquor dealers, and retail liquor dealers who failed to maintain the prices, discounts, and mark-ups so fixed, and who failed and refused to cooperate in said merchandising policy.

(*f*) Organized and maintained the respondent Liquor Trades' Stabilization Bureau, Inc., for the purpose of policing the trade and of obtaining information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers, who fail to maintain the prices, discounts, and mark-ups so fixed, and who failed and refused to cooperate in the merchandising policy adopted, and who violated the terms of the price maintenance contracts entered into with retail liquor dealers as herein described.

PAR. 10. The capacity, tendency, and effect of said agreement, combination, and conspiracy, and the acts and practices of the respondents, as herein found, are, and have been, to close and curtail various and sundry outlets, within the aforesaid northern California territory trade area, and other related and connected territory, in the States of California and Nevada, to the direct and immediate sale and shipment of alcoholic beverages by distillers, importers, and wholesale liquor dealers, located in other States of the United States. Said combination, agreement, and conspiracy had, and now have the capacity, tendency, and effect to monopolize, in said respondents, the business of dealing in and distributing alcoholic beverages in the aforesaid territory; to unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in said products in the States of California and Nevada; to deprive the purchasing and consuming public of advantages in price and service, which they would receive and enjoy under conditions of normal, unobstructed or free and fair competition of said trade and industry, and to otherwise operate as a restraint upon and detriment to the freedom of fair and legitimate competition in such trade and industry; to obstruct the natural flow of commerce in the channels of interstate trade, and to place an undue burden upon such commerce; to prejudice and injure the public and other distillers, importers, jobbers, wholesale liquor dealers, and buying associations, who were not parties to the aforesaid agreement, combination, and conspiracy, and who took no part therein.

CONCLUSION

The acts and practices of the respondents, as herein found, are all to the prejudice of the public, have a tendency to and have actually

hindered and prevented price competition between and among respondents, in the sale of alcoholic beverages in commerce, within the intent and meaning of the Federal Trade Commission Act, and placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of alcoholic beverages in such commerce; have unreasonably restrained, hampered, and burdened such commerce in alcoholic beverages, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission 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 hearings as to said facts, and the Commission having made its findings as to the facts and the conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

I. *It is ordered*, That the respondents Gooderham & Worts Ltd., a corporation; Brown-Forman Distillers Corporation, a corporation; Fleischmann Distilling Corporation, a corporation; National Distillers Products Corporation, a corporation; Schenley Distilleries, Inc., a corporation; Frankfort Distilleries, Inc., a corporation; and Hiram Walker Inc., a corporation, as distillers; and Browne Vintners Co., Inc., a corporation; Rathjen Bros., Inc., a corporation; and McKesson & Robbins, Inc., a corporation, as importers; their respective officers, agents, and employees, or any of them, in connection with the sale and distribution of alcoholic beverages in interstate commerce, do forthwith cease and desist from:

1. Entering into any agreement, contract, or understanding, either verbal or written, one with another, for the purpose or with the effect of preventing or hindering any wholesalers, jobber, or dealer, or any class of wholesalers, jobbers, or dealers from obtaining alcoholic beverages from the sellers thereof; or enforcing or attempting to enforce any such agreement, contract, or understanding by any of the following methods or means.

(*a*) Refusing to sell or threatening to refuse to sell any alcoholic beverage to a cooperative buying association or any jobber or dealer or any class of jobbers or dealers.

(*b*) Boycotting or threatening to boycott the product or products of any distiller or any importer, or blacklisting any liquor dealer who

sells to a cooperative buying association or a jobber or jobbers, or dealer or dealers not coming within the approved class.

(*c*) Soliciting information directly or through the agency of the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., or respondent Liquor Trades' Stabilization Bureau, Inc., or through any other agency, regarding distillers, importers, or wholesale liquor dealers who sell alcoholic beverages to a cooperative buying association or to dealers not within the approved class; disseminating or threatening to disseminate such information to distillers, importers, wholesale liquor dealers, or other distributors.

II. *It is further ordered*, That the respondents Rathjen Bros., Inc., a corporation; Parrott & Co., a corporation; McKesson & Robbins, Inc., a corporation; Haas Bros., a corporation; Tonkin Distributing Co., a copartnership composed of Joseph M. Tonkin and Sidney Modlin; Coffin-Redington Co., a corporation; their respective officers, agents, and employees, or any of them; and Joseph M. Tonkin (named in complaint as J. M. Tonkin), Max Sobel, J. F. Ferrari, Sante Quattrin, A. M. Berberian, Charles Bigley, J. J. Bottaro, H. L. Hanson, Thomas Lenehan, R. F. Jose, Floyd Trombetta, Andrew Rosaia, C. L. Sauer, and John Pingree, or any of them, in connection with the purchase and transporation or the sale and distribution of alcoholic beverages in interstate commerce, do forthwith cease and desist from:

1. Entering into any agreement, contract, or understanding, either verbal or written, one with another, or with any two or more distillers or importers or with a distiller and another importer of alcoholic beverages for the purpose or with the effect of preventing or hindering any wholesaler, jobber, or dealer, or any class of wholesalers, jobbers, or dealers from obtaining alcoholic beverages from the sellers thereof; or enforcing or attempting to enforce any such agreement, contract, or understanding by any of the following methods or means.

(*a*) Refusing to sell or threatening to refuse to sell any alcoholic beverages to a cooperative buying association or any jobber or dealer or any class of jobbers or dealers.

(*b*) Boycotting or threatening to boycott the product or products of any distiller or any importer, or blacklisting any liquor dealer who sells to a cooperative buying association or a jobber or jobbers, or dealer or dealers not coming within the approved class.

(*c*) Soliciting information directly or through the agency of the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., or respondent Liquor Trades' Stabilization Bureau, Inc., or through any other agency, regarding distillers, importers, or wholesale liquor dealers who sell alcoholic beverages to a cooperative buying association or to dealers not within the approved class; dis-

seminating or threatening to disseminate such information to distillers, importers, wholesale liquor dealers, or other distributors.

III. *It is further ordered*, That the respondents Gooderham & Worts, Ltd., a corporation; Brown-Forman Distillers Corporation, a corporation; The Fleischmann Distilling Corporation, a corporation; National Distillers' Products Corporation, a corporation; Schenley Distilleries, Inc., a corporation; Frankfort Distilleries, Inc., a corporation; Hiram Walker, Inc., a corporation; Seagram-Distillers Corporation, a corporation, as distillers; and Somerset Importers, Ltd., a corporation; Browne Vintners Co., Inc., a corporation; Rathjen Bros., Inc., a corporation; and McKesson & Robbins, Inc., a corporation, as importers; their respective officers, agents, servants, and employees, or any of them, in connection with the sale and distribution of alcoholic beverages in interstate commerce, do forthwith cease and desist from entering into, continuing, or carrying out any contract, agreement, or understanding with one another, the purpose or effect of which is to maintain specified standard or minimum resale prices, discounts, or mark-ups at which alcoholic beverages are to be sold by distillers, importers, wholesalers, or other distributors, or from enforcing or attempting to enforce any such contract, agreement, or understanding by any of the following methods or means:

(*a*) Soliciting directly or through the agency of the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., or the respondent Liquor Trades' Stabilization Bureau, Inc., or any other common agency information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who do not maintain fixed resale prices, discounts, and mark-ups and who do not adhere to such a merchandising policy, disseminating or threatening to disseminate such information to distillers, importers, wholesale or retail liquor dealers.

(*b*) Notifying distillers, importers, or wholesale liquor dealers or retail liquor dealers of said fixed wholesale or retail prices, discounts, and mark-ups.

(*c*) Notifying distillers, importers, wholesale liquor dealers or retail liquor dealers of changes in said prices, discounts, and mark-ups.

IV. *It is further ordered*, That the respondent wholesalers, Wholesale Liquor Distributors' Association of Northern California, Inc., a corporation; Liquor Trades' Stabilization Bureau, Inc., a corporation; Rathjen Bros., Inc., a corporation; Parrott & Co., a corporation; McKesson & Robbins, Inc., a corporation; Haas Bros., a corporation; Tonkin Distributing Co., a copartnership composed of Joseph M. Tonkin and Sidney Modlin; Coffin-Redington Co., a corporation;

their respective officers, agents, servants, and employees, or any of them; and the individual respondents, Joseph M. Tonkin, Max Sobel, J. F. Ferrari, Sante Quattrin, A. M. Berberian, Charles Bigley, J. J. Bottaro, H. L. Hanson, Thomas Lenehan, R. F. Jose, Floyd Trombetta, Andrew Rosaia, C. L. Sauer, and John Pingree, or any of them, in connection with the sale and distribution of alcoholic beverages in interstate commerce, do forthwith cease and desist from entering into, continuing, or carrying out any contract, agreement, or understanding with one another, the purpose or effect of which is to maintain specified standard or minimum resale prices, discounts, or mark-ups, at which alcoholic beverages are to be sold by distillers, importers, wholesalers, or other distributors, or from enforcing or attempting to enforce any such contract, agreement, or understanding by any of the following methods or means:

(*a*) Soliciting directly or through the agency of the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., or the respondent Liquor Trades' Stabilization Bureau, Inc., or any other common agency information with respect to distillers, importers, wholesale liquor dealers, and retail liquor dealers who do not maintain fixed resale prices, discounts, and mark-ups and who do not adhere to such a merchandising policy; disseminating or threatening to disseminate such information to distillers, importers, wholesale or retail liquor dealers.

(*b*) Notifying distillers, importers, or wholesale liquor dealers or retail liquor dealers of said fixed wholesale or retail prices, discounts, and mark-ups.

(*c*) Notifying distillers, importers, wholesale liquor dealers, or retail liquor dealers of changes in said prices, discounts and mark-ups.

(*d*) Coercing or intimidating or attempting to coerce or intimidate any distillers or importer into the adoption of contracts and agreements designed and intended to maintain the prices, discounts, and mark-ups so fixed;

(*e*) Boycotting or threatening to boycott the products of distillers, importers, or wholesale liquor dealers who fail to maintain the prices, discounts, and mark-ups so fixed and who fail or refuse to cooperate in said merchandising policy.

V. *It is further ordered*, That the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., and the respondent Liquor Trades' Stabilization Bureau, Inc., their respective officers, agents, servants, and employees, or any of them, do forthwith cease and desist from enforcing or attempting to enforce by any method or means, any contract, agreement, or understanding which in

effect classifies wholesalers, jobbers, or dealers in alcoholic beverages for the purpose and with the effect of preventing or hindering any wholesaler, jobber, or dealer or any class of wholesalers, jobbers, or dealers from obtaining alcoholic beverages for resale, as set forth in paragraphs I and II hereof.

VI. *It is further ordered*, That the respondent Wholesale Liquor Distributors' Association of Northern California, Inc., and the respondent Liquor Trades' Stabilization Bureau, Inc., their respective officers, agents, servants, and employees, or any of them, do forthwith cease and desist from enforcing or attempting to enforce by any method or means any contract, agreement, or understanding, either verbal or written, among distillers or among importers or among wholesalers, or between one or more distiller and one or more importer, or between one or more distiller and one or more wholesaler, or between one or more importer and one or more wholesaler, or between one or more distiller and one or more importer and one or more wholesaler, the purpose or effect of which is to maintain specified standard or minimum resale prices, discounts, or mark-ups at which alcoholic beverages are to be sold by any distiller or any importer or any wholesaler or any other distributor of alcoholic beverages, as set forth in paragraphs III and IV hereof.

VII. *It is further ordered*, That nothing in this order is to be construed as prohibiting the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of the Sherman Anti-Trust Act, as amended.

VIII. *It is further ordered*, That the complaint herein be, and the same hereby is, dismissed as to the respondent Sherwood Coffin.

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

IN THE MATTER OF

KENDALL COMPANY, TRADING AS BAUER & BLACK

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

Docket 3320. Complaint, Feb. 1, 1938—Decision, Nov. 29, 1940

Where a corporation engaged, among other things, in the manufacture, sale, and distribution of its "Blue Jay" corn plasters, bunion and callus plasters, and liquid corn remover, which, when used in accordance with its directions, embodied substantially same form of treatment and consisted, in case of said plasters, of felt rings attached to adhesive strips and containing disc of medicament with from 41 to 43 percent of salicylic acid in rubber base, and, in case of said liquid, of 13.4 percent solution of said acid, and which were designed, through use of said rings, to surround and protect the growth from outside pressure, with said acid acting upon the cornified tissue and softening same and facilitating eventual removal, and, as thus engaged, in substantial competition with others also engaged in sale and distribution of like and similar products in commerce among the various States and in the District of Columbia; in advertising, at a cost in excess of $100,000 annually, its said "Blue Jay" line of preparations, in which its business ranked with that of the country's largest, in price lists, advertising circulars, and in newspapers and periodicals of general circulation, and through use of the radio, billboards, window displays, and inside-the-store displays—

(*a*) Represented, directly and by inference, that its said plasters would remove corns completely without danger of infection, and scientifically and easily, in 3 days, and would stop pain immediately, and would cure corn cripples within 3 days, enabling such a person to walk within said period; and constituted new treatment;

(*b*) Represented that its said liquid would rid the feet of corns and was a safe, scientific treatment therefor, and would permit user, after a period of time, to lift corns out, and would relieve pain immediately, and that corns had roots and its said remedies enabled user to remove them forever, roots and all, and that corn would not grow back; and

(*c*) Represented that its said bunion and callus plasters would remove calluses without danger of infection, and that its remedies in question were safe and painless and eliminated aforesaid danger;

Facts being its said products do not constitute a cure for growths in question, since such growths will return after temporary removal unless pressure and irritation which caused them in the first instance is eliminated, and corns of long standing will return after temporary removal without further irritation and pressure, growths referred to do not have a root in the ordinary sense of the term, but cone-like apex thereof, thus referred to by it, is actually part of corn formed last, treatment with its said products cannot always be relied upon to remove entirely such cone-like portions projected into the dermis, nor can use of such products be relied upon to stop instantly pain of corns or calluses, since some time is required for pain caused by pressure of growth on sensory nerves of the skin to subside, following application of shield to relieve outside pressure thereon, preparations containing salicylic acid for treating corns have been in use for about 100 years and are recog-

nized as standard method of destroying tissue, and its said products do not constitute new treatment for such growths;

With effect of misleading and deceiving members of purchasing public into erroneous and mistaken belief that aforesaid statements and representations were true, and of inducing, on account of such mistaken and erroneous beliefs, substantial portion of such public to purchase its said "Blue Jay" products, and with effect of diverting trade unfairly to it from competitors who truthfully represent the quality and character of their products; to the injury of competition in commerce:

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

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. George Foulkes and *Mr. S. Brogdyne Teu, II*, for the Commission.

Rogers, Woodson & Rogers, 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 Kendall Co., a corporation, trading as Bauer & Black, 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, The Kendall Co., trading as Bauer & Black, is a corporation organized, existing, and doing business under the laws of the State of Massachusetts with its principal office and place of business located at 80 Federal Street, Boston, Mass. Respondent is now, and has been for some time, engaged in the business of manufacturing, distributing, and selling in commerce, as herein set out, a line of products designated "Blue-Jay Bunion and Callus Plasters," "Blue-Jay Corn Plasters," and "Blue-Jay Liquid Corn Removers."

Par. 2. Said respondent, being engaged in business as aforesaid, causes said products, when sold, to be transported from its plant, which is located at 2500 South Dearborn Street, Chicago, Ill., to purchasers thereof located at various points in States of the United States other than the State from which said shipments were made. Respondent now maintains a course of trade and commerce in said

products 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 has been, in substantial competition with other corporations and with individuals, and firms likewise engaged in the business of distributing and selling 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.

In the course and operation of its business and for the purpose of inducing individuals to purchase its line of products, respondent has caused advertisements to be inserted in newspapers and magazines of general circulation throughout the United States, and has printed and circulated throughout the various States to customers and prospective customers advertising folders and other literature. Respondent also advertises its products by means of radio broadcasts. Examples of its aforesaid advertising with respect to its products are herein set out as illustrative of said representations but are not all inclusive.

BLUE-JAY STOPS PAIN INSTANTLY—REMOVES CORN COMPLETELY IN 3 DAYS WITHOUT DANGER OF INFECTION.

To 30,000,000 former corn sufferers the name "Blue-Jay" means foot comfort. It brought them a blessed new sense of relief—added zest for work and play—because it removed their corns safely and scientifically.

Here's how it works: The safe Blue-Jay medication gently undermines the corn. In 3 days the corn lifts out easily—completely. Soft felt pad lifts shoe pressure, stops pain instantly. Pad is held firmly by exclusive Wet-Pruf adhesive tape (waterproof) won't cling to stocking.

A CORN CRIPPLE FOR MONTHS WALKS IN 3 DAYS.

* * * * * * *

(Visitor): "An operation for a corn? Why, Mrs. Buckley—certainly you've heard of Blue-Jay. It's not an ordinary corn cure—but a scientific remedy that's quick, safe and works wonders."

* * * * * * *

Three days later:

(Mother): "Now Billy, all we do is take the pad off, soak your foot and out comes Mister Corn, simple as that".

(Billy): "Boy, oh Boy, that was easy. Blue-Jay certainly is my best friend."

"We tried just about every kind of a corn cure, but it took Blue-Jay to do the work. Now I can run and play all I want to".

Of course this is a unique case.

* * * * * * *

A CORN MUST COME OUT—ROOT AND ALL.

* * * * * * *

Your corn is like a tack in your toe! If you just pare the head off, you leave the rest of the corn to grow again—larger, uglier, more painful. Draw it out—swiftly, safely, gently,—with Blue-Jay! For Blue-Jay removes ROOT AND ALL.

There is no danger of infection.

Blue-Jay gently loosens the entire corn—draws it all out.

Get rid of it for good.

No growing back of the same corn over and over again.

Corns keep coming back bigger, uglier unless removed root and all. Wonderful new ROOT-AND-ALL METHOD ENDS CORN FOREVER.

Soak foot ten minutes in hot water. Then the dead callus layer may be lifted off. * * * Very obstinate bunions sometimes require several plasters for complete removal of the callus.

Blue-Jay Plasters offer safe and effective treatment for bunions and Calluses.

35 years ago a famous chemist perfected the formula which makes Blue-Jay Corn Remover safe and scientific.

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

1. Blue-Jay Corn Plasters:

(*a*) Remove corns completely without danger of infection.

(*b*) Stop pain immediately.

(*c*) Remove corns safely and scientifically and easily in 3 days.

(*d*) Cure corns forever and remove completely the roots of corns.

(*e*) Are a new way to remove corns.

(*f*) Are safe and painless.

(*g*) Are effective as a remedy or cure for corns.

(*h*) Will cure corn cripples within three days thus enabling one crippled by severe corns to walk within 3 days.

2. Blue-Jay Liquid Corn Remover:

(*a*) "Rids" feet of corns.

(*b*) Eliminates pain. Is a new and improved liquid treatment for removing corns.

(*c*) Is a safe scientific treatment.

(*d*) Permits the user, after a period of time, to *lift out* corns.

3. Blue-Jay Bunion and Callus Pads:

(*a*) Relieve pain and remove calluses.

(*b*) Are a safe and effective treatment for bunions and calluses.

PAR. 4. The aforesaid representations by respondent with respect to the therapeutic properties of its products, and the results obtained by the use thereof, are grossly exaggerated, false, misleading, and untrue. In truth and in fact, Blue-Jay Corn Plasters will not, in all cases, remove corns completely without danger of infection. Said plasters will not stop pain immediately and will not cause the easy removal of all corns within 3 days' time. Blue-Jay Corn Plasters will not cure corns forever. Corns do not have roots, consequently

plasters cannot remove completely the roots of corns. The Blue-Jay Corn Plaster method of removing corns is not a new or recent method. The use of Blue-Jay Corn Plasters is not, in all cases, safe and painless, and is not effective as a cure or remedy for the removal of corns. The use of Blue-Jay plasters will not cure corn cripples within 3 days and will not enable one crippled by severe corns to walk within 3 days.

Blue-Jay Liquid Corn Remover will not "rid" feet of corns and will not in all cases eliminate the pain incident to corns. Blue-Jay Liquid Corn Remover is not a new and improved liquid treatment for removing corns, the same having been in use for a great number of years. It is not always a safe treatment to use. The user of said preparation cannot, after the expiration of a short period of time, lift out corns on which said preparation has been used. Blue-Jay Bunion and Callus Pads will not relieve pain in all cases. Blue-Jay Bunion and Callus Pads are not in all cases a safe and effective treatment for bunions and calluses.

PAR. 5. Each and all of the false and misleading statements and representations made by respondent as hereinabove set forth in its advertising in newspapers, magazines, pamphlets, testimonials, and over radio broadcasts in offering for sale and selling its products had, and now has, a tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous belief that all of said representations are true, and into the purchase of a substantial volume of respondent's products on account of such beliefs. As a result, trade is unfairly diverted to respondent from corporations, firms, and individuals 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 respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. The above and foregoing acts, practices, and representations of respondent have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been, and are, unfair methods of competition within the meaning and the 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 February 1, 1938, issued and on February 2, 1938, served its complaint in this proceeding upon the respondent Kendall Co., a corporation trading as Bauer & Black, charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On February 17, 1938, the respondent filed its answer in this proceeding. After the issuance of said complaint and filing of respondent's answer thereto, testimony and other evidence in support of the allegations of said complaint were introduced by George F. Foulkes, attorney for the Commission, and in opposition to the allegations of the complaint by James H. Rogers of Rogers, Woodson and Rogers, attorneys for respondent, before A. F. Thomas, an 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 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 argument of counsel for the Commission and 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, Kendall Co., is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts. Its principal office and place of business is located in Boston, Mass., at which point respondent is engaged in the manufacture of surgical dressings, textiles, and allied products. Respondent Kendall Co. operates a manufacturing division located in Chicago, Ill., under the trade name Bauer & Black, where it is engaged in the manufacture, sale, and distribution of a number of products for use in the treatment of corns, bunions, and calluses. These products are sold generally under the brand name "Blue Jay" and consist of: (1) Blue Jay Corn Plaster; (2) Blue Jay Bunion and Callus Plasters; and (3) Blue Jay Liquid Corn Remover.

In the conduct of its business, the respondent offers for sale and sells its Blue Jay line of products under the trade name of Bauer

& Black in commerce between and among the several States of the United States and in the District of Columbia to retail dealers located at various points throughout the United States, who purchase said products for resale. When said products are sold, respondent causes them to be transported from its place of business in the State of Illinois to the purchasers thereof located at various points in the several States of the United States and in the District of Columbia. There has been for some time past and there still is a course of trade in respondent's products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 2. In the conduct of its business, respondent is and has been for some time engaged in substantial competition with other corporations, and with partnerships, firms, and individuals, engaged in the sale and distribution of like and similar products in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business and for the purpose of inducing the purchase of its said Blue Jay line of preparations, respondent has caused various false and misleading statements and representations relative to the character thereof, their therapeutic value, and as to their effectiveness in use, to be made in price lists, advertising circulars, and in advertisements in newspapers and magazines having general circulation in the United States. Respondent also advertises its said products by the use of radio, billboards, window displays, and inside-the-store displays. Respondent spends in excess of $100,000 annually in advertising its Blue Jay products and its business in this line of products ranks with that of the country's largest.

All of said statements, appearing in respondent's advertising material and literature, purport to be descriptive of respondent's preparations for use in the treatment of corns, bunions, and calluses and of the effectiveness of such preparations when so used. Through such false and misleading statements and representations, respondent has represented directly and by inference that its Blue Jay Corn Plasters will remove corns completely without danger of infection; will stop pain immediately; will remove corns scientifically and easily in three days; that said plasters comprise a new way to remove corns, and will cure corn cripples within three days, enabling one crippled with corns to walk within three days; that its Blue Jay Liquid Corn Remover will rid the feet of corns; is a safe scientific treatment for corns; and will permit the user after a period of time to lift corns out; and relieves pain immediately; that corns have roots and that respondent's aforementioned Blue Jay corn remedies enable the

user thereof to remove corns forever, to remove the corn completely, roots and all; that the same corn will not grow back; that respondent's "Root-out-All" method ends corns forever; that its Blue Jay Bunion and Callus Plasters will remove calluses without danger of infection; and that respondent's said remedies are safe, painless, and eliminate the danger of infection.

PAR. 4. The skin is composed of several layers. The outer layer or epidermis is composed of a substance called keratin. The keratinized layer is made up of dead cells which the body, in the course of its normal function, casts off daily. The next is known as the inner or transitional layer of the skin. The third and deepest layer of the skin is the dermis, in which are embodied the nerves, blood vessels, and glands of the skin.

The primary cause of corns, bunions, and calluses is irritation from either pressure or friction on the germinating layer of the skin. This irritation causes an enlargement of the blood vessels and an increased supply of blood. This causes, in turn, a proliferation or multiplication of skin cells. Keratin is thus formed in the epidermis faster than it can be sloughed off, resulting in an unusual mass at the point of irritation. When such masses build up on the toes in cone-like forms they are known as corns. Similar masses, flat in shape and occurring principally on the soles of the feet, are known as calluses. Bunions are larger masses of keratin formed usually over the joints of the feet.

PAR. 5. The respondent's three products, when used in accordance with directions, embody substantially the same form of treatment. The corn and the bunion and callus plasters consist of felt rings attached to adhesive strips. In the center of the ring is a disc of medicament, containing from 41 to 43 percent of salicylic acid in a rubber base. The user is advised to attach the plasters by means of the adhesive strips so that the corn, callus, or bunion is within the ring.

Respondent's Blue Jay Liquid Corn Remover is a solution containing 13.4 percent of salicylic acid, and with it are supplied felt rings attached to adhesive strips. The user is advised to apply the solution directly to the corn, and to cover the area with the felt ring.

The felt rings are designed to surround the growth and protect it from outside pressure. The salicylic acid is designed to act upon the cornified tissue, softening it and facilitating eventual removal.

PAR. 6. Respondent's products do not constitute a cure for corns, calluses, and bunions, since such growths will return again after temporary removal unless the pressure and irritation which caused

them in the first instance is eliminated. Corns of long standing usually result in a chronic enlargement of the underlying blood vessels of the skin, and will return again after temporary removal without further irritation and pressure.

Respondent refers to the cone-like apex of corns as a "root," and represents that its products will remove corns, "roots and all." In fact this part of the corn is not a "root" in the ordinary meaning of that term, and is actually the part of the corn which is formed last. Furthermore, treatment with respondent's products cannot always be relied upon to remove entirely the cone-like portions of corns which project into the dermis.

Use of respondent's products cannot be relied upon to stop instantly the pain of corns or calluses. Such pain is caused by the pressure of the growth on the sensory nerves of the skin, and some time is required for pain to subside following application of a shield to relieve outside pressure on the corn.

PAR. 7. The respondent has further falsely and misleadingly represented that its products which contain salicylic acid constitute a new way to treat corns, calluses, and bunions. In truth and in fact, the respondent's products do not constitute a new treatment for corns, calluses, and bunions. Preparations containing salicylic acid for treating corns have been in use since as early as 1840, and are recognized as a standard method of destroying or macerating tissue.

PAR. 8. The use by the respondent of the above false, misleading, and deceptive statements and representations has the capacity and tendency to, and does, mislead and deceive members of the purchasing public into the erroneous and mistaken belief that such statements and representations are true. On account of such mistaken and erroneous beliefs, a substantial portion of the purchasing public has been induced to purchase said "Blue Jay" products from respondent, and thereby trade has been unfairly diverted to respondent from competitors who truthfully represent the quality and character of their products. In consequence thereof, injury has been done, and is being done, by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

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 Arthur F. Thomas, an examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint and in opposition thereto, briefs filed herein, and oral arguments by S. Brogdyne Teu II, counsel for the Commission, and by James H. Rogers, 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, Kendall Co., a corporation, trading as Bauer & Black or trading under any other name, 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 products designated as Blue Jay Corn Plasters, Blue Jay Bunion and Callus Plasters, and Blue Jay Liquid Corn Remover, or any other products of substantially the same composition and intended for the same use and purposes, sold under any other name or designation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing that corns have a root or roots.
2. Representing that respondent's products will prevent the formation or recurrence of corns or calluses.
3. Representing that any of respondent's products constitute a new treatment for corns, calluses or bunions.
4. Representing that respondent's products will instantly stop the pain caused by corns or calluses.

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

PENICK & FORD, LTD., 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 3802. Complaint, June 1, 1939—Decision, Nov. 29, 1940

Where a corporation engaged in manufacture of glucose or corn syrup unmixed, and in distribution and sale thereof to, mostly, candy manufacturer purchasers in other States, competitively engaged in sale to various customers, including chain stores, wholesalers, and retailers in various States and in the District of Columbia, of said product, in many kinds of which, made by each of such manufacturers, said syrup is one of major raw materials used in production thereof, and in which such syrup accounted for as much as 90 percent, or most of the weight, of some varieties, and for a substantial part of the total cost of manufacturing such candies—

Sold its said syrup at higher delivered prices per hundred pounds to purchasers located in cities other than Chicago than those at which it concurrently sold such product of like grade and quality to purchasers located therein, and at prices which were not uniformly higher than those at which product was being concurrently sold to Chicago purchasers, but which varied with geographical location of other cities in which such purchasers were located;

With result that through said varying prices, differences between which, not justified by it, made more than due allowance for differences in cost of delivery, it discriminated in price between such purchasers who paid such higher and varying prices for said product, and costs of which unfavored purchasers were increased over those of favored purchasers directly as the amount of the discrimination between them and as the syrup content of the candy increased, necessitating substantially lower profits to such purchasers and reduction in margin of profit, and of total profit in event of continued sale by them of their product at prices competitive with those of favored purchasers, and absorption, in such event, of higher syrup costs, and in reduction in total profit at least, through lost profit on diminished sales, in event of increase in price to cover higher syrup cost, with increased overhead from unused plant capacity following higher price and decreased sales volume; and

With result that, by reason of diminished ability of unfavored candy manufacturers paying such higher prices for syrup to compete in any event in sale of their candy with those paying lower prices for their said syrup, effect of such discrimination might be substantially to lessen competition between the favored and unfavored purchasers, to tend to create a monopoly in such favored purchasers, and to injure, destroy, and prevent competition with them:

Held, that in discriminating in price between different purchasers of glucose, under the circumstances set forth, said corporation violated provisions of section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. Frank Hier and *Mr. Philip R. Layton*, for the Commission.
Breed, Abbott & Morgan, of New York City, for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe that the 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. Respondent, Penick & Ford, Ltd., Inc., is a corporation organized and existing under the laws of Delaware with its principal office and place of business at 420 Lexington Avenue in the city of New York and State of New York.

PAR. 2. Respondent owns and operates a plant at Cedar Rapids, Iowa. This plant has a corn grinding capacity in excess of 34,000 bushels per day, with complete facilities for the finished fabrication of all known corn products, both for household and industrial use.

PAR. 3. For many years respondent has been and is now engaged in the business of manufacturing, selling, and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) starch, both for food and other purposes; (2) glucose or corn syrup; and (3) corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting syrup being glucose. Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like, as well as in the mixing of syrups.

The principal byproducts of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake, and corn-oil meal.

Respondent, in addition to bulk products, produces branded products.

PAR. 4. For many years in the course and conduct of its business, the respondent has been and is now manufacturing the aforesaid commodities at said plant and has sold and shipped and does now sell and ship such commodities in commerce between and among the various States of the United States from the State in which its factory is located across State lines to purchasers thereof located in States other than the State in which respondent's said plant is located in competition with other persons, firms, and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondent has been and is now, in the

course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption, or resale within the several States of the United States and the District of Columbia in that the respondent has been and is now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondent to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by the respondent, as set forth in paragraph 5 herein, may be substantially to lessen competition in the sale and distribution of corn products between the respondent and its competitors; tend to create a monopoly in the line of commerce in which the respondent is engaged; and to injure, destroy, and prevent competition in the sale and distribution of corn products between the respondent and its competitors.

PAR. 7. The effect of said discriminations in price made by the respondent, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondent receiving said lower discriminatory price and other buyers from respondent competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a monopoly in the lines of commerce in which buyers from the respondent are engaged; and to injure, destroy, and prevent competition in the lines of commerce in which those who purchase from the respondent are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficical prices.

PAR. 8. The aforesaid acts of respondent constitute a violation of 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).

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 (U. S. C., title 15, sec. 13), the Federal Trade Commission on June 1, 1939, issued and served its complaint in this proceeding upon the respondent Penick & Ford, Ltd., Inc., a corporation, charging it with discriminating in price between different purchasers of respondent's various products, in violation of subsection (a) of section 2 of said act, as amended.

Thereafter, on July 11, 1939, and pursuant to an extension of time granted by the Commission, an answer was filed by respondent. Thereafter on September 13, 1940, respondent by its counsel, entered into a stipulation as to the facts with W. T. Kelley, chief counsel of the Commission, which stipulation provided that the facts therein set forth were to be made part of the record herein and were to be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint or in opposition thereto, and that the 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 all of which appears of record herein.

Thereafter this proceeding regularly came on for final disposition by the Commission on said complaint and answer and the aforesaid stipulation of facts, 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 conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Penick & Ford, Ltd., Inc., is a corporation organized and existing under the laws of the State of Delaware and has its principal office and place of business at 420 Lexington Avenue in the city of New York and the State of New York.

PAR. 2. Respondent has for many years been and is now engaged in the business of manufacturing, distributing, and selling glucose or corn syrup unmixed, which is one of the principal products derived from the refining of corn. For the manufacture of such product, respondent owns and operates a corn refining plant located at Cedar Rapids, Iowa, which has a corn grinding capacity in excess of 34,000 bushels a day with complete facilities for the manufacture of such product.

PAR. 3. For many years respondent has been, and is now, manufacturing such glucose or corn syrup unmixed at said plant, and has sold and shipped and does now sell and ship such glucose or corn syrup unmixed in commerce between and among the various States of the United States from the State in which its said factory is located across State lines to purchasers thereof located in States other than the State of manufacture, in competition with other corporations engaged in similar lines of commerce.

PAR. 4. Most of such purchasers so located purchase such syrup which is of like grade and quality for use in the manufacture of

candy. Such purchasers are competitively engaged in the sale of such candy to various customers including chain stores, wholesalers, and retailers, all located in the several States of the United States and in the District of Columbia.

PAR. 5. At all times since June 19, 1936, respondent has sold such syrup at higher delivered prices per hundred pounds to purchasers located in certain cities other than Chicago, Ill., than it has sold such syrup to purchasers located in Chicago, Ill.

The prices at which such syrup was sold by respondent to purchasers located in cities other than Chicago, Ill., were not uniformly higher than the prices at which such syrup was concurrently sold to purchasers located in Chicago, Ill., but such higher prices varied with the geographical location of the cities in which such purchasers were located.

Thus, on the following dates, respondent sold such syrup to such purchasers located respectively in each of the following cities at the delivered prices per hundred pounds which are shown opposite said cities for such syrup (43° Baumé):

Location of purchasers	June 23, 1936	June 23, 1937	June 23, 1938	June 23, 1939
Chicago, Ill	2.44	3.59	2.29	2.24
Ottumwa, Iowa	2.73	3.86	2.59	2.54
Sioux City, Iowa	2.82	3.95	2.69	2.64
St. Louis, Mo	2.61	3.75	2.47	2.42
Springfield, Mo	2.82	3.95	2.69	2.64
Lincoln, Nebr	2.87	4.00	2.74	2.69
Hutchinson, Kans	3.03	4.15	2.90	2.85
Denver, Colo	3.29	4.19	2.95	2.90
San Antonio, Tex	3.29	4.39	3.17	3.12
Paris, Tex	3.15	4.26	3.02	2.97

At all times between the dates above set forth, substantially the same differences in and relationship between and among said prices above illustrated have existed as to such purchasers so located.

PAR. 6. By selling such syrup at said different prices as found in paragraph 5 above, the differences between which prices have not been justified by respondent and which differences make more than due allowance for differences in the cost of delivery, it has discriminated in price between such purchasers who have paid the various different prices for such syrup.

PAR. 7. Such syrup is one of the major raw materials used in the production of many kinds of candy manufactured by each of such candy manufacturers, accounting for as much as 90 percent or more of the weight of some varieties and for a substantial part of the total cost of manufacturing such candies; and said discriminations in the price of such syrup increase the costs of the unfavored purchaser over the costs of the favored purchasers directly as the amount

of the discrimination between them and as the syrup content of the candy increases. By reason of such higher costs, the profits of the unfavored purchasers would be substantially lower than they would be if it were not for the discriminations.

Such effect on profits would result where unfavored purchasers sold candy manufactured by them at prices competitive with the prices of candy manufactured by the favored purchasers. Under such circumstances the volume of sales by the unfavored purchasers would not be affected, but, due to their absorption of the higher syrup costs, their respective margins of profit, as well as total profits, would be reduced below what they would be if it were not for the discrimination.

Similarly, where, in an effort to recover such higher syrup costs, unfavored purchasers sold such candy at prices higher than those charged by favored purchasers, their respective volume of sales would undoubtedly decline commensurate in some degree to the amount by which prices were increased. With such decline in volume of sales would come unused plant capacity and increased per unit overhead costs; and the price of the candy would have to be increased sufficiently, therefore, to cover both the higher syrup costs and higher overhead costs, if the margin of profit available in the absence of discrimination was to be preserved. Even though such margin of profit was not impaired it would not be realized on the lost sales, and total profit would be diminished to the extent that volume of sales was reduced.

The loss of profits either by absorption of the higher syrup costs or from loss of sales resulting from increasing prices to recover such higher syrup costs would generally diminish the ability of those candy manufacturers paying the higher prices for such syrup to compete in the sale of their products with candy manufacturers paying the lower prices for such syrup.

Therefore, the Commission finds that the discriminations found in paragraphs 5 and 6 may substantially lessen competition between the favored and unfavored purchasers, tend to create a monopoly in such favored purchasers, and injure, destroy, and prevent competition with such favored purchasers.

CONCLUSION

The Commission concludes that in discriminating in price between different purchasers of glucose as set forth in the above findings of fact, the respondent, Penick & Ford, Ltd., Inc., has violated the provisions of section 2 (a) 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 answer filed herein by the respondent, Penick & Ford, Ltd., Inc., and the stipulation of facts entered into between the chief counsel for the Commission and counsel for the respondent and filed herein, wherein counsel for respondent states his desire to waive hearings on the charges set forth in the complaint and not to contest the proceeding, and the Commission having made its findings as to the facts and its conclusion based upon the stipulation of facts wherein respondent admitted the facts solely for the purpose of this proceeding, which findings and conclusion are hereby made a part hereof, that said respondent 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, section 13).

It is ordered, That respondent, Penick & Ford, Ltd., Inc., a corporation, its officers, directors, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of glucose or corn syrup unmixed in interstate commerce to purchasers described in said stipulation of facts, do forthwith cease and desist:

1. From discriminating in price between different purchasers of glucose or corn syrup unmixed of like grade or quality, either directly or indirectly, in the manner and degree as found in paragraph 5 of the Commission's findings as to the facts and conclusion; from continuing or resuming such discriminations in prices as so found by the Commission, and from otherwise discriminating in price in manner and degree substantially similar to such discriminatons as so found by the Commission.

2. From otherwise selling said products to some of the aforesaid purchasers thereof at a different price than to other purchasers, the effect whereof may be substantially to lessen competition or tend to create a monopoly in the line of commerce in which customers of the respondent are engaged, or to injure, destroy, or prevent competition with any person who either grants or receives the benefit of such discrimination, provided that nothing shall prevent price differences which make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered; and provided, further, that nothing shall prevent respondent from showing that its lower price to any pur-

chaser or purchasers was made in good faith to meet an equally low price of a competitor.

It is further ordered, That the said respondent, Penick & Ford, Ltd., Inc., shall, within 60 days after service upon its of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which its has complied with this order.

IN THE MATTER OF

MONTAGUE L. MERRICK AND EDNA H. MERRICK, TRADING AS MERRICK NATIONAL COMPANY AND CHOCOLATE CONFECTIONS COMPANY

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

Docket 4097. Complaint, Apr. 23, 1940—Decision, Nov. 29, 1940

Where two individuals engaged in sale and distribution of candy, including certain assortments which were so packed and assembled as to involve use of a game of chance, gift enterprise, or lottery scheme when sold or distributed to consumers thereof, and which included (1) number of small penny pieces of candy of uniform size and shape, together with number of candy bars to be given as prizes and without additional cost to those securing by chance aforesaid pieces, concealed colored centers of which differed from those of the majority, and also together with a giant candy loaf to be given without additional charge to purchaser of last one of said pieces, (2) number of small penny pieces of candy, number of candy bars, retail value of which exceeded 1 cent, and a larger bar, together with a push card for use in sale and distribution of said candy under a plan, and in accordance with card's explanatory legend, by which those purchasers securing from card's various discs certain numbers received, in addition to one of small penny pieces, one of said candy bars, and purchaser of last small piece was entitled to and received larger bar without additional cost, and (3) various assortments involving lot or chance features in sale and distribution thereof to consuming public similar to methods of sale and distribution above described, and varying therefrom in detail only—

Sold to dealers such assortments and boards, for sale and distribution to consuming public in accordance with aforesaid sales plan or method, involving game of chance or sale of a chance to procure bars of candy 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 law, and in competition with many who are unwilling to offer and sell candy so packed and assembled, as above described, or otherwise arranged and packed, for sale to purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and refrain therefrom;

With result that many dealers in and ultimate purchasers of candy were attracted by their said method and manner of packing same and by element of chance involved in sale thereof as above set forth, and were thereby induced to purchase such candy, thus packed and sold by them, in preference to that offered and sold by their said competitors who do not use same or equivalent method, and with tendency and capacity, through use of said methods and because of said game of chance, to divert unfairly to themselves substantial trade from their said competitors, exclude from candy trade all competitors who are unwilling to and do not use same or equivalent methods as unlawful, lessen competition in trade in question and create monopoly thereof in themselves and such other distributors of

said product as use same or equivalent methods, and deprive purchasing public of benefit of free competition in trade in question, and to eliminate from such trade all actual, and exclude therefrom all potential, competitors who do not use such or equivalent methods, and with result, through use of methods aforesaid, that substantial trade had been and was being unfairly diverted to them from their competitors aforesaid, who refrain from use 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. Miles J. Furnas*, trial examiner.

Mr. D. C. Daniel, for the Commission.

Mr. Jerome Jackman and *Mr. Donald O. Wright*, of Minneapolis, 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 Montague L. Merrick and Edna H. Merrick, individually, and as copartners trading under the names of Merrick National Co. and Chocolate Confections 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 Montague L. Merrick and Edna H. Merrick are individuals trading as copartners under the names of Merrick National Company and Chocolate Confections Co., with their principal office and place of business located at 617 Washington Avenue North, Minneapolis, Minn. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of candy to dealers. Respondents cause and have caused said candy, when sold, to be shipped or transported from their aforesaid principal place of business in the State of Minnesota 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 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 their business respondents are and have been in competition with other individuals and partnerships and with 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 described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of said candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy 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 number of small pieces of candy of uniform size and shape, a number of bars of candy and a giant loaf of candy. The said bars of candy and said loaf of candy are to be given as prizes to purchasers of certain of said pieces of candy as follows: The majority of said pieces of candy of uniform size and shape in said assortment have centers of a certain color but the minority of said pieces of candy of uniform size and shape have centers of a different color. The said pieces of candy retail at 1 cent each. Purchasers procuring said minority pieces of candy are entitled to and receive, without additional charge, said bars of candy as prizes. The purchaser of the last one of said pieces of candy is entitled to and receives, without additional charge, the said giant loaf of candy. The colors of the centers of said pieces of candy are effectively concealed from purchasers and prospective purchasers until a purchase is made and the said pieces of candy are broken open. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Another of respondents' said assortments of candy consists of a number of small pieces of candy, a number of bars of candy and a larger bar of candy, together with what is commonly known as a push card. This assortment of candy is sold and distributed to the purchasing public in substantially the following manner: Said push card contains a number of partially perforated discs. Printed within each of said discs is a number. Sales are 1 cent each, and each purchaser is entitled to and receives one of said pieces of candy. Each purchaser selects and removes one of said discs from said card. The card bears statements or legends informing purchasers and prospective purchasers that persons selecting certain designated numbers each receive one of the said bars of candy, and the purchaser of the last piece of said small pieces of candy is entitled to and receives the said larger bar of candy without additional cost. The said numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the selected disc separated or removed from said card. Each of said bars of candy has a retail value greater than 1 cent. The said bars of candy are thus distrib-

uted to the purchasing public by means of said push cards wholly by lot or chance.

The respondents sell and distribute various assortments of candy involving lot or chance features when said assortments are sold and distributed to the consuming public but such assortments, and the methods of sale and distribution thereof, are similar to the ones hereinabove described, varying only in detail.

PAR. 3. 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 bars of candy at prices much less that the normal retail prices thereof. The use by respondents of said methods in the sale of their candy and the sale of such candy 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 law. The use by respondents of said methods has a tendency and capacity to hinder competition or to create a monopoly in this, to wit: That the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same or equivalent methods involving the same, equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who sell candy in competition with the respondents as above alleged are unwilling to offer for sale and sell candy so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 4. Many dealers in, and ultimate purchasers of, candy are attracted by respondents' said method and manner of packing said candy and by the element of chance involved in the sale thereof, in the manner above described, and are thereby induced to purchase said candy so packed and sold by respondents in preference to candy offered for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said methods by respondents has a tendency and capacity, because of said game of chance, to unfairly divert to respondents trade from their said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or equivalent methods because the same are unlawful; to lessen competition in said candy trade; to create a monopoly of said candy trade in respondents and such other distributors of candy as use the same or equivalent methods and to deprive the purchasing public of the benefit of free com-

petition in said candy trade. The use of said methods by respondents has a tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not use said methods or equivalent methods.

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 April 23, 1940, issued and thereafter served its complaint in this proceeding upon respondents Montague L. Merrick and Edna H. Merrick, individually and as copartners trading under the names of Merrick National Co. and Chocolate Confections Co., charging them with the use of unfair methods of competition and unfair and deceptive acts and practices in violation of the provisions of said act. On May 15, 1940, the respondents filed their answer in this proceeding. Thereafter a stipulation was entered into by and between counsel for the Commission and counsel for the respondents whereby it was stipulated and agreed that a statement of facts stipulated on the record were the facts in this case. Brief was filed by counsel for the Commission (respondents having waived filing of brief and oral argument before the Commission). Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, and the Commission having duly considered the same and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Montague L. Merrick and Edna H. Merrick are individuals trading as copartners under the names of Merrick National Co. and Chocolate Confections Co., with their principal office and place of business located at 617 Washington Avenue North, Minneapolis, Minn. Respondents are now, and for more than 1 year last past have been, engaged in the sale and distribution of candy to dealers. Respondents cause and have caused said candy, when sold, to be shipped or transported from their aforesaid prin-

cipal place of business in the State of Minnesota 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 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 their business respondents are and have been in competition with other individuals and partnerships and with 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 described in paragraph 1 hereof, respondents sell and have sold to dealers certain assortments of saidy candy so packed and assembled as to involve the use of a game of chance, gift enterprise, or lottery scheme when said candy 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 number of small pieces of candy of uniform size and shape, a number of bars of candy and a giant loaf of candy. The said bars of candy and said loaf of candy are to be given as prizes to purchasers of certain of said pieces of candy as follows: The majority of said pieces of candy of uniform size and shape in said assortment have centers of a certain color but the minority of said pieces of candy of uniform size and shape have centers of a different color. The said pieces of candy retail at 1 cent each. Purchasers procuring said minority pieces of candy are entitled to and receive, without additional charge, said bars of candy as prizes. The purchaser of the last one of said pieces of candy is entitled to and receives, without additional charge, the said giant loaf of candy. The colors of the centers of said pieces of candy are effectively concealed from purchasers and prospective purchasers until a purchase is made and the said pieces of candy are broken open. The said bars of candy are thus distributed to the purchasing public wholly by lot or chance.

Another of respondents' said assortments of candy consists of a number of small pieces of candy, a number of bars of candy and a larger bar of candy, together with what is commonly known as a push card. This assortment of candy is sold and distributed to the purchasing public in substantially the following manner: Said push card contains a number of partially perforated discs. Printed within each of said discs is a number. Sales are 1 cent each, and each purchaser is entitled to and receives one of said pieces of candy. Each purchaser selects and removes one of said discs from said

card. The card bears statements or legends informing purchasers and prospective purchasers that persons selecting certain designated numbers each receive one of the said bars of candy, and the purchaser of the last piece of said small pieces of candy is entitled to and receives the said larger bar of candy without additional cost. The said numbers are effectively concealed from purchasers and prospective purchasers until a selection has been made and the selected disc separated or removed from said card. Each of said bars of candy has a retail value greater than 1 cent. The said bars of candy are thus distributed to the purchasing public by means of said push cards wholly by lot or chance.

The respondents sell and distribute, and have sold and distributed, various assortments of candy involving lot or chance features when said assortments are sold and distributed to the consuming public, but such assortments, and the methods of sale and distribution thereof, are similar to the ones hereinabove described, varying only in detail.

PAR. 3. The sale of said candy to the purchasing public in the manner above described involves a game of chance or the sale of a chance to procure bars of candy at prices much less than the normal retail prices thereof. The use by respondents of said methods in the sale of their candy and the sale of such candy by and through the use thereof and by the aid of said 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 criminal law. The use by respondents of said methods has a tendency and capacity to hinder competition or to create a monopoly in this, to-wit: That the use thereof has a tendency and capacity to exclude from the candy trade competitors who do not adopt and use the same or equivalent methods involving the same, equivalent or similar element of chance or lottery scheme. Many persons, firms, and corporations who sell candy in competition with the respondents as above described are unwilling to offer for sale and sell candy so packed and assembled as above described or otherwise arranged and packed for sale to the purchasing public so as to involve a game of chance or any other method of sale that is contrary to public policy, and such competitors refrain therefrom.

PAR. 4. Many dealers in, and ultimate purchasers of, candy are attracted by respondents' said method and manner of packing said candy and by the element of chance involved in the sale thereof, in the manner above found, and are thereby induced to purchase said candy so packed and sold by respondents in preference to candy offerred for sale and sold by said competitors of respondents who do not use the same or equivalent methods. The use of said methods by

respondents has a tendency and capacity, because of said game of chance, to unfairly divert to respondents substantial trade from their said competitors who do not use the same or equivalent methods; to exclude from said candy trade all competitors who are unwilling to, and who do not, use the same or equivalent methods because the same are unlawful; to lessen competition in said candy trade; to create a monopoly of said candy trade in respondents and such other distributors of candy as use the same or equivalent methods and to deprive the purchasing public of the benefit of free competition in said candy trade. The use of said methods by respondents has a tendency and capacity to eliminate from said candy trade all actual competitors and to exclude therefrom all potential competitors who do not use said methods or equivalent methods.

As a result of the use of said methods in the sale of their candy by respondents substantial trade has been and is being unfairly diverted to respondents from their said competitors who refrain from the use of said 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, the answer of respondents, and the stipulation as to the facts entered into by and between counsel for the Commission and counsel for the respondents, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents Montague L. Merrick, and Edna H. Merrick, individually and as copartners trading under the names of Merrick National Co. and Chocolate Confections 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 and distribution of candy or any other merchandise in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Selling and distributing any merchandise so packed and assembled that sales of such merchandise to the public are to be made, or may be made, by means of a game of chance, gift enterprise, or lottery scheme.

2. Supplying to, or placing in the hands of others, assortments of any merchandise together with push or pull cards, punchboards, or other devices, or separately, which said push or pull cards, punchboards, or other devices, are to be used, or may be used, in selling or distributing said merchandise to the public by means of a game of chance, gift enterprise, or lottery scheme.

3. Supplying to, or placing in the hands of others, packages or assortments of candy containing pieces of candy of uniform size and shape having centers of different colors, together with larger pieces of candy, or other merchandise, or separately, which said larger pieces of candy or other merchandise are to be given, or may be given, as prizes to purchasers procuring pieces of candy having centers of a particular color.

4. Supplying to, or placing in the hands of others, assortments of candy composed of individually wrapped pieces of candy of uniform size and shape and of different colors together with other articles of merchandise, or separately, which said other articles of merchandise are to be given or may be given as prizes to the purchasers procuring pieces of said candy of a particular color.

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.

IN THE MATTER OF

KUHN REMEDY COMPANY

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

Docket 4264. Complaint, Oct. 17, 1940 [1]*—Decision, Nov. 29, 1940*

Where a corporation engaged in sale and distribution of its "Kuhn's Rheumatic Fever Remedy" or, as more recently described, "Kuhn's Remedy," medicinal preparation, 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, radio continuities, advertisements in newspapers and periodicals, and through circulars, leaflets, and other advertising literature, and through various other means in commerce and otherwise, and in which were included testimonial or purported testimonial statements, and which were intended and likely to induce purchase of its said product—

(*a*) Represented, directly or by implication, that its said preparation constituted a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, and lumbago, and for muscular and joint aches and pains generally, and possessed substantial therapeutic value in the treatment of such ailments and conditions and was entirely safe and harmless and might be used without danger of ill effect upon health of the user;

Facts being it was not a cure or remedy for aforesaid ailments and conditions, possessed no therapeutic value in the treatment of rheumatism, rheumatic fever, gout, neuralgia, or lumbago in excess of affording, in some cases, temporary symptomatic relief from the aches and pains associated with such disorders, and was not, by virtue of its potassium iodide content in quantities sufficient to cause, in some instances, injury to health if taken under conditions prescribed in advertisements in question or under such conditions as are usual or customary, in all cases safe or harmless and might be harmful to those having healed lesions of arrested tuberculosis or goiter; and

(*b*) Failed to reveal, in said advertisements, facts material in the light of the representations contained therein, and that use of preparation in question, under conditions prescribed in said advertisements or under such conditions as are customary or usual, might result in injury to health, in that said advertisements did not contain any cautionary statement to effect that said preparation should be used only as directed on label thereof; and

(*c*) Represented, falsely and misleadingly, through use of word "Remedy" in its corporate name and in designation and description of its said preparation, that same constituted a cure or remedy for ailments and conditions above set forth;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false statements and representations were true, and into purchase of substantial quantities of its said preparation:

[1] Amended and supplemental.

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

Mr. John M. Russell, 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 Kuhn Remedy 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 amended and supplemental complaint, stating its charges in that respect as follows:

Paragraph 1. Respondent, Kuhn Remedy Co., 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 1855 North Milwaukee Avenue, Chicago, Ill.

Par. 2. Respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a medicinal preparation, formerly described as "Kuhn's Rheumatic Fever Remedy," now known as "Kuhn's Remedy" and intended as a treatment for various ailments of the human body.

Respondent causes its said preparation, when sold, to be transported from its aforesaid 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 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 aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails and by various other means in commerce, as commerce is defined in the Federal Trade Commission Act; and respondent has also 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, misleading, and deceptive statements and representations

contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by radio continuities, by advertisements in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

Kuhn's Remedy * * * You should try to alleviate the pain which causes you so much suffering in joints, muscles and tissues, and avoid the cause if possible, in order to prevent a recurrence of the symptoms. * * * It would be wrong to stop the treatment when a few more bottles of Kuhn's Remedy would have brought complete relief and satisfaction.

B. Anderson of Cuba, N. Y., writes:

It is now 9 years since I got Kuhn's Remedy after being in bed about 9 months * * * After taking the treatment the pains left me and that alone is worth more than every dollar in this world * * *

That is just what Kuhn's Remedy is intended to do, and that is why it should relieve Rheumatic aches and pains or neuralgia. The aches and pains have to go if you want to be free from suffering, so you can work, play and enjoy life. * * *

I WANT TO PROVE THIS TO YOU * * * I don't care how long you have been suffering from these painful conditions.

Kuhn's Remedy is compounded of ingredients that are recognized as being of value in the treatment of Acute Rheumatic-Fever and Gout, * * * for Aches and Pains of Rheumatism and Gout. It is also an aid in reducing temperature, caused by Rheumatic Fever.

Many people have had the pains of rheumatism, neuralgia, gout and lumbago for a long time. This might necessitate taking the medicine for a longer period of time—perhaps several weeks. When you have taken a few bottles of Kuhn's Remedy regularly, we feel confident that you will be happy and satisfied and be able to enjoy the privileges that go with good health.

NO DISEASE is more pitiless in the misery and distress it brings to the waning years of life than the various forms of Muscular Aches and Pains. * * * Those still young and middle-aged who are experiencing the touch of this tyrant disease, should lose no time in seeking its relief.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondent represents directly or by implication that its said preparation is a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, and lumbago, and that said preparation possesses substantial therapeutic value in the treatment of such ailments and conditions; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

The use by the respondent of the word "Remedy" in its corporate name and in the designation and description of its said preparation constitutes within itself the false and misleading representation that

said preparation is a cure or remedy for the ailments and conditions hereinabove mentioned.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact respondent's preparation is not a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, or lumbago. Said preparation is not a cure for muscular or joint aches and pains generally. Said preparation does not possess any therapeutic value in the treatment of rheumatism, rheumatic fever, gout, neuralgia, or lumbago in excess of affording, in some cases, temporary symptomatic relief from the aches and pains associated with such disorders. Said preparation is not in all cases safe or harmless, as it contains the drug potassium iodide in quantities sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis, or goiter. In arrested cases of tuberculosis the tendency of potassium iodide is to dissolve the conditions prescribed in said advertisements or under such the tuberculous process. The hazard in cases of goiter is the tendency to convert a benign adenoma to a toxic adenoma.

PAR. 6. Further, the advertisements disseminated by the respondent as aforesaid constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in injury to health, in that said advertisements do not contain any cautionary statement to the effect that said preparation should be used only as directed on the label thereof.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, 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 and representations are true and into the purchase of substantial quantities of respondent's preparation.

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 August 23, 1940, issued and thereafter served its complaint in this proceeding upon the respondent, Kuhn Remedy 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 17, 1940, the Commission issued and on October 18, 1940, served its amended and supplemental complaint herein, on said respondent. On the 9th day of November 1940, the respondent filed its answer to the amended and supplemental complaint, admitting all of the material allegations of fact set forth in said amended and supplemental complaint and waiving all intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended and supplemental 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, Kuhn Remedy Co., 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 1855 North Milwaukee Avenue, Chicago, Ill.

Par. 2. Respondent is now and has been for more than 2 years last past engaged in the business of selling and distributing a medicinal preparation, formerly described as "Kuhn's Rheumatic Fever Remedy," now known as "Kuhn's Remedy" and intended as a treatment for various ailments of the human body.

Respondent causes its said preparation, when sold, to be transported from its aforesaid 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 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 aforesaid business, the respondent has disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said product by the United States mails and by various

other means in commerce, as "commerce" is defined in the Federal Trade Commission Act; and respondent has also 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, misleading, and deceptive statements and representations contained in said false advertisements, disseminated and caused to be disseminated as hereinabove set forth, by the United States mails, by radio continuities, by advertisements in newspapers and periodicals, and by circulars, leaflets, and other advertising literature, are the following:

Kuhn's Remedy * * *

You should try to alleviate the pain which causes you so much suffering in joints, muscles and tissues, and avoid the cause if possible, in order to prevent a recurrence of the symptoms. * * * it would be wrong to stop the treatment when a few more bottles of Kuhn's Remedy would have brought complete relief and satisfaction.

B. Anderson of Cuba, N. Y., writes:

It is now 9 years since I got Kuhn's Remedy after being in bed about 9 months * * * After taking the treatment the pains left me and that alone is worth more than every dollar in this world * * *

That is just what Kuhn's Remedy is intended to do, and that is why it should relieve Rheumatic aches and pains or neuralgia. The aches and pains have to go if you want to be free from suffering, so you can work, play and enjoy life. * * *

I WANT TO PROVE THIS TO YOU * * * I don't care how long you have been suffering from these painful conditions.

Kuhn's Remedy is compounded of ingredients that are recognized as being of value in the treatment of Acute Rheumatic-fever and Gout, * * * for Aches and Pains of Rheumatism and Gout. It is also an aid in reducing temperature, caused by Rheumatic Fever.

Many people have had the pains of rheumatism, neuralgia, gout and lumbago for a long time. This might necessitate taking the medicine for a longer period of time—perhaps several weeks. When you have taken a few bottles of Kuhn's Remedy regularly, we feel confident that you will be happy and satisfied and be able to enjoy the privileges that go with good health.

NO DISEASE is more pitiless in the misery and distress it brings to the waning years of life than the various forms of Muscular Aches and Pains. * * * Those still young and middle-aged who are experiencing the touch of this tyrant disease, should lose no time in seeking its relief.

PAR. 4. Through the use of the statements and representations hereinabove set forth and other statements and representations not specifically set out herein, all of which purport to be descriptive of the therapeutic properties of said preparation, respondent represents directly or by implication that its said preparation is a cure

or remedy for rheumatism, rheumatic fever, gout, neuralgia, and lumbago, and for muscular and joint aches and pains generally, and that said preparation possesses substantial therapeutic value in the treatment of such ailments and conditions; that said preparation is entirely safe and harmless and may be used without danger of ill effects upon the health of the user.

The use by the respondent of the word "Remedy" in its corporate name and in the designation and description of its said preparation constitutes within itself the false and misleading representation that said preparation is a cure or remedy for the ailments and conditions hereinabove mentioned.

PAR. 5. The foregoing representations are grossly exaggerated, false, and misleading. In truth and in fact, respondent's preparation is not a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, or lumbago. Said preparation is not a cure for muscular or joint aches and pains generally. Said preparation does not possess any therapeutic value in the treatment of rheumatism, rheumatic fever, gout, neuralgia, or lumbago in excess of affording, in some cases, temporary symptomatic relief from the aches and pains associated with such disorders. Said preparation is not in all cases safe or harmless, as it contains the drug potassium iodide in quantities sufficient to cause in some instances injury to health if taken under the conditions prescribed in said advertisements or under such conditions as are customary or usual.

The use of said preparation as aforesaid may be harmful to those having healed lesions of arrested tuberculosis, or goiter. In arrested cases of tuberculosis, the tendency of potassium iodide is to dissolve the fibrous tissues about the healed lesions and thereby to reactivate the tuberculous process. The hazard in cases of goiter is the tendency to convert a benign adenoma to a toxic adenoma.

PAR. 6. Further, the advertisements disseminated by the respondent as aforesaid constitute false advertisements for the reason that they fail to reveal facts material in the light of the representations contained therein, and fail to reveal that the use of said preparation under the conditions prescribed in said advertisements or under such conditions as are customary or usual may result in injury to health, in that said advertisements do not contain any cautionary statement to the effect that said preparation should be used only as directed on the label thereof.

PAR. 7. The use by the respondent of the foregoing false, deceptive, and misleading statements and representations, 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 and representations are true and into the purchase of substantial quantities of respondent's 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 amended and supplemental 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 amended and supplemental 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, Kuhn Remedy 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 or distribution of its medicinal preparation, formerly designated "Kuhn's Rheumatic Fever Remedy" and now known as "Kuhn's Remedy," 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, do forthwith cease and desist from directly or indirectly;

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said preparation is a cure or remedy for rheumatism, rheumatic fever, gout, neuralgia, or lumbago; that said preparation is a cure or remedy for muscular or joint aches or pains generally; that said preparation possesses any therapeutic value in the treatment of rheumatism, rheumatic fever, gout, neuralgia, or lumbago, in excess of affording temporary symptomatic relief from the aches and pains associated with such disorders; that said preparation is in all cases safe or harmless; or

which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goiter (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof, when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goiter).

2. 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 advertisement contains any of the representations prohibited in paragraph 1 hereof, or which advertisement fails to reveal that said preparation should not be used by those having tuberculosis or goiter (provided, however, that such advertisement need contain only a statement that said preparation should be used only as directed on the label thereof, when such label contains a warning to the effect that the preparation should not be used by those having tuberculosis or goiter).

3. Using the word "Remedy" or any other word of similar import or meaning, as part of respondent's corporate or trade name, or to designate, describe, or in any way refer to, such preparation in connection with the offering for sale, sale or distribution of such preparation in commerce as "commerce" is defined in the Federal Trade Commission Act.

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

IN THE MATTER OF

BECKER CLOAK 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 4295. Complaint, Aug. 30, 1940—Decision, Nov. 29, 1940

Where a corporation engaged in manufacturing, among other things, women's textile fabric coats and other garments, and in selling and distributing said products to purchasers in various other States and in the District of Columbia—

(*a*) Represented that its said textile fabric garments were made from the peltries of "Persian" lambs, young of Karakul breed of sheep, or were made from wool taken from the young of said breed of sheep, through referring to and designating its said textile fabric women's coats and other garments by name "Duro-Persian" and making use of and displaying said name on tags and labels attached to said garments, and through depiction, along with said words, of sheep or lambs upon some of such tags and labels (upon reverse of which were instructions for care of garment in question, outstanding feature of which was set forth as "beauty and likeness to a fur coat of the same type" with "wearing quality of the fabric * * * not GUARANTEED"), and through use of said designation in advertisements of its said garments in trade journals of interstate circulation, window display cards and other advertising matter, and further describing therein garments in question by use of words "Imported Persian" and by other words and phrases of like import and meaning, including pictorial designs of sheep or lamb, and through use in its said advertisements of large pictorial representations of garments in question which served further to emphasize resemblance thereof to Persian lamb fur;

Facts being textile fabric garments, thus labeled and advertised, were made of rayon and cotton, presence of which was not disclosed, through the twisting of former into a pile about a core of all cotton yarn, with appearance of silky, tightly curled fur, and thus close resemblance to Persian lamb fur, and products in question were not imported either from Persia or elsewhere, but were of domestic manufacture, and, as aforesaid, were not made of the wool of any animal, nor from the fur of Persian lambs obtained from the young of the Karakul breed of sheep, as long indicated to consuming public from words "Persian" and "Persian Lamb" in association with coats, cloaks or similar garments for women, and accepted as meaning or indicating peltries of the young of the Karakul breed of sheep originally found in Asia and marketed through Persian traders, and noted for their silky, tightly curled fur, and commanding high prices in the world's marts of trade and commerce, and preferred in coats, capes, or other garments made therefrom among discriminating women throughout the world;

With capacity and tendency, through use of such labels, tags, and advertising matter, to create impression in minds of purchasers and prospective purchasers of such textile fabric garments that same were made in whole or in part from the peltries of the young of the Karakul breed of sheep, or from the wool taken from such young, and that the materials from which they

were made were imported from Persia, and with effect of confusing, misleading, and deceiving substantial portion of purchasing public into belief that such representations were true, and, because of such erroneous and mistaken belief, thus engendered, of causing and inducing purchase by consuming public of substantial quantities of its said products; and

(*b*) Placed in the hands of unscrupulous retailers, through furnishing such labels, tags, and advertising material to customers and causing same to be placed upon its said fabric garments for resale to members of purchasing public, means whereby such retailers might deceive and mislead members of purchasing public into erroneous belief that said textile fabric garments, made from rayon and cotton, were made in fact from peltries of the young of the Karakul breed of sheep or from wool taken from such young:

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. Joseph C. Fehr, for the Commission.

Mr. Moses T. Barrows, 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 Becker Cloak 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, Becker Cloak Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 247 West Thirty-seventh Street, in the city of New York, State of New York.

Par. 2. The respondent is now, and for more than 2 years last past has been, engaged in the business of manufacturing, selling, and distributing among other things, women's textile fabric coats and other garments, in commerce between and among the various States of the United States and in the District of Columbia. In the conduct of its said business the 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 such fabric coats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The words "Persian" and "Persian Lamb" when applied to, or used in association with, coats, cloaks, or similar garments for women, indicate to the consuming public, and are accepted as meaning or indicating, peltries of the young of the Karakul breed of sheep originally found in Russia and marketed through traders of Persia. Peltries truthfully designated as "Persian" or "Persian Lamb" are noted for their silky, tightly curled fur, and bring high prices in the world's marts of trade and commerce. There is a preference among discriminating women throughout the world for coats, cloaks, capes, or other garments made of "Persian Lamb."

PAR. 4. In the course and conduct of its business as aforesaid, respondent, in connection with the offering for sale and the sale of its textile fabric garments to wholesalers, jobbers, and retail dealers, and to the consuming public, refers to and designates its said textile fabric women's coats and other garments by the name "Duro-Persian." Respondent attaches to said textile fabric garments certain tags and labels, some of which bear upon their face pictorial designs of sheep or lambs and the aforesaid words "Duro-Persian." Respondent also advertises its said textile fabric garments by means of trade journals having interstate circulation, by window display cards and other advertising matter which describe, designate, and refer to said textile fabric garments as "Duro-Persian." Such advertising literature also describes such garments by the use of the words "Imported Persian" and other words and phrases of like import and meaning, including pictorial designs of sheep or lambs.

PAR. 5. In addition to the designation above set forth, the aforesaid textile fabric garments as manufactured and sold by respondent are so constructed as to have the appearance of the silky tightly curled and highly prized fur of the young of the Karakul breed of sheep, and from their appearance convey the impression and induce the belief among prospective purchasers that they are in fact made from, or are composed of, the peltries of "Persian" lambs, the young of such Karakul sheep or from the wool coming from such lambs. Respondent further employs in connection with the advertising and sale of its said textile fabric garments, large pictorial representations thereof, which serve further to emphasize the resemblance of said textile fabric garments to Persian lamb fur.

PAR. 6. In said ways and by said means, as set forth in paragraphs 4 and 5 hereof, the respondent represents, by the use of the words "Duro-Persian" independently and with the words "Imported Persian" or other words of like import and meaning, and by the use of pictorial designs of sheep or lambs and illustrations of said textile fabric garments, that said textile fabric garments so sold and distributed by it

are made from the peltries of "Persian" lambs, the young of the Karakul breed of sheep, or are made from the wool taken from the young of the Karakul breed of sheep.

Respondent, by the use of such labels or tags, as aforesaid, and other advertising matter published and disseminated as hereinabove described, has created and creates the impression in the minds of the purchasers and prospective purchasers of said textile fabric garments thus sold and distributed by respondent that said textile fabric garments are made in whole or in part from the peltries of the young of the Karakul breed of sheep or from the wool taken from the young of the Karakul breed of sheep, and that the materials of which they are made are imported from Persia.

PAR. 7. In truth and in fact, the textile fabric garments so labeled and advertised by respondent, as aforesaid, are not made from the fur of Persian lambs or any other fur, nor are they made of a genuine fur fabric composed of wool obtained from the young of the Karakul breed of sheep, or the wool of any animal. Respondent's said fabric garments are, on the contrary, made of a textile material composed of rayon twisted into a pile about a core of all-cotton yarns having the appearance of silky, tightly curled fur, thus closely resembling Persian lamb fur. Said textile fabric garments, further, are not imported either from Persia or elsewhere, but are of domestic manufacture. Further, the labels, tags, and advertising material employed by respondents, as aforesaid, to describe, designate, or refer to its said products, do not disclose or indicate the presence of rayon and cotton in said textile fabric garments.

PAR. 8. The use by respondent of the aforesaid representations employed in the sale of its said products in commerce as hereinabove described has the capacity and tendency to, and does, confuse, mislead, and deceive a substantial portion of the purchasing public into the belief that said representations are true, and because of such erroneous and mistaken belief so engendered, has caused and induced, and causes and induces, the purchase by the consuming public of substantial quantities of respondent's said products.

PAR. 9. Respondent further, by furnishing said false and misleading labels and tags and advertising material to customers and causing said labels and tags to be placed upon its said fabric garments for resale to members of the purchasing public, places and has placed in the hands of uninformed or unscrupulous retail dealers a means and instrumentality whereby they may deceive and mislead members of the purchasing public into the erroneous belief that said textile fabric garments, made from rayon and cotton are made, in fact, from the

peltries of the young of the Karakul breed of sheep or from the wool taken from the young of the Karakul breed of sheep.

PAR. 10. 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 30th day of August 1940, issued and served its complaint in this proceeding upon respondent, Becker Cloak Co., 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 September 18, 1940, 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 for the respondent by its president, Morris Becker, and by W. T. Kelley, chief counsel, for the Federal Trade Commission, subject to the approval of the Commission, may be taken as to the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon 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, such 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, Becker Cloak Co., Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 247 West 37th Street, in the city of New York, State of New York.

PAR. 2. The respondent is now, and for more than two years last past has been, engaged in the business of manufacturing, selling, and distributing among other things, women's textile fabric coats and other garments, in commerce between and among the various States of the United States and in the District of Columbia. In the conduct

of its said business the 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 such fabric coats in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. The words "Persian" and "Persian Lamb" when applied to, or used in association with, coats, cloaks, or similar garments for women, indicate to the consuming public, and are accepted as meaning or indicating, peltries of the young of the Karakul breed of sheep originally found in Russia and marketed through traders of Persia. Peltries truthfully designated as "Persian" or "Persian Lamb" are noted for their silky, tightly curled fur, and bring high prices in the world's marts of trade and commerce. There is a preference among discriminating women throughout the world for coats, cloaks, capes, or other garments made of "Persian Lamb."

PAR. 4. In the course and conduct of its business, as aforesaid, respondent, in connection with the offering for sale and the sale of its textile fabric garments to wholesalers, jobbers, and retail dealers, and to the consuming public, refers to and designates its said textile fabric women's coats and other garments by the name "Duro-Persian." Respondent attaches to said textile fabric garments certain tags and labels, some of which bear upon their face pictorial designs of sheep or lambs and the aforesaid words "Duro-Persian." Respondent also advertises its said textile fabric garments by means of trade journals having interstate circulation, by window display cards and other advertising matter which describe, designate, and refer to said textile fabric garments as "Duro-Persian." Such advertising literature also describes such garments by the use of the words "Imported Persian" and other words and phrases of like import and meaning, including pictorial designs of sheep or lambs.

PAR. 5. On the face of the tags referred to in Paragraph Four hereof appears the following printed matter:

ORIGINAL QUALITY
Exclusive DURO-PERSIAN Fashions
U. S. Pat. No. 354097
INSTRUCTIONS ON
REVERSE SIDE

On the reverse side of the tags referred to in paragraph 4 hereof appears the following printed matter:

The outstanding feature of this garment is the beauty and likeness to a fur coat of the same type. The wearing quality of the fabric in this coat is not

GUARANTEED. In order that it may render the maximum of service, the following rules should be observed.

DON'T crush or fold when wet.

DON'T place on radiator or near heat.

RAISE coat when sitting down, as constant crushing may mark this material.

PAR. 6. The material which goes into the textile fabric garments made by respondent is not made by respondent but is purchased by it from another concern. The garments made from said textile fabric and sold by respondent are so constructed as to have the appearance of silky, tightly curled and highly priced fur of the young of the Karakul breed of sheep. By reason of their aforesaid appearance, said textile fabric garments have the capacity and tendency to convey the impression and induce the belief among prospective purchasers that they are in fact made from, or are composed of, the peltries of "Persian" lambs, the young of such Karakul sheep, or from the wool coming from such lambs. Respondent further employs in connection with the advertising and sale of its said textile fabric garments, large pictorial representations thereof, which serve further to emphasize the resemblance of said textile fabric garments to Persian lamb fur.

PAR. 7. In said ways and by said means, as set forth in the three preceding paragraphs hereof, the respondent represents, by the use of the words "Duro-Persian" independently and with the words "Imported Persian" or other words of like import and meaning, and by the use of pictorial designs of sheep or lambs and illustrations of said textile fabric garments, that said textile fabric garments so sold and distributed by it are made from the peltries of "Persian" lambs, the young of the Karakul breed of sheep, or are made from the wool taken from the young of the Karakul breed of sheep.

The use by respondent of the labels and tags, as aforesaid, and other advertising matter published and disseminated as hereinabove described, has the capacity and tendency to create the impression in the minds of purchasers and prospective purchasers of said textile fabric garments thus sold and distributed by respondent that said textile fabric garments are made in whole or in part from the peltries of the young of the Karakul breed of sheep or from the wool taken from the young of the Karakul breed of sheep, and that the materials of which they are made are imported from Persia.

PAR. 8. In truth and in fact, the textile fabric garments so labeled and advertised by respondent, as aforesaid, are not made from the fur of Persian lambs or any other fur, nor are they made of a genuine fur fabric composed of wool obtained from the young of the Karakul breed of sheep, or the wool of any animal. Respondent's said fabric garments are, on the contrary, made of a textile material composed

of rayon twisted into a pile about a core of all-cotton yarns having the appearance of silky, tightly curled fur, thus closely resembling Persian lamb fur. Said textile fabric garments are not imported either from Persia or elsewhere, but are of domestic manufacture. Further, the labels, tags, and advertising material employed by respondent, as aforesaid, to describe, designate or refer to its said products, do not disclose or indicate the presence of rayon and cotton in said textile fabric garments.

PAR. 9. The use by respondent of the aforesaid representations employed in the sale of its said products in commerce as hereinabove described, has the capacity and tendency to, and does, confuse, mislead, and deceive a substantial portion of the purchasing public into the belief that said representations are true, and because of such erroneous and mistaken belief so engendered, has caused and induced, and causes and induces, the purchase by the consuming public of substantial quantities of respondent's said products.

PAR. 10. Although not heretofore aware of it, respondent now admits that by furnishing the aforesaid labels and tags and advertising material to customers and causing said labels and tags to be placed upon it said fabric garments for resale to members of the purchasing public, it has placed in the hands of unscrupulous retail dealers a means and instrumentality whereby they may deceive and mislead members of the purchasing public into the erroneous belief that said textile fabric garments, made from rayon and cotton are made, in fact, from the peltries of the young of the Karakul breed of sheep or from the wool taken from the young of the Karakul breed of sheep.

CONCLUSION

The aforesaid acts and practices of respondent, Becker Cloak Co., Inc., a corporation, 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 provisions of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of the respondent, and a stipulation as to the facts entered into by 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, Becker Cloak 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 women's textile fabric garments in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "Persian," or any term containing the word "Persian" to designate, describe or in any way refer to, textile fabric garments which simulate Persian lamb peltries in appearance.

2. Representing or implying in any manner that textile fabric garments are made from the peltries of Persian lambs, the young of the Karakul breed of sheep; or representing that such garments are made from wool taken from such lambs, when they are not made from such wool.

3. Representing in any manner that such garments are imported from Persia, or any other foreign country, or are made from imported materials, when they are not in fact so imported or made from imported materials.

4. Using any pictorial design of a sheep or lamb, or of any other wool-bearing animal, in connection with any description of, or reference to, textile fabric garments which are not made from the wool of the animal so depicted.

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

JAMES R. KAYE, TRADING AS THE LO-WELL PENCIL COMPANY AND THE LO-WELL COMPANY

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

Docket 4318. Complaint, Sept. 17, 1940—Decision, Nov. 29, 1940

Where an individual engaged in sale of pencils, carbon paper, and other merchandise, to purchasers in other States, and in also giving or selling premiums to his customers as an inducement for purchasing his products, and including among such premiums, which varied from time to time, various types of merchandise, including, among other things, novelty merchandise, fountain pens, pencil sharpeners, cameras, and electric razors; in offering such different premiums at different periods of time and in engaging in the practice of representing falsely, to induce purchase of pencils and carbon paper or other merchandise sold and distributed by him, quality, material, construction, durability and other characteristics of the various premiums offered to purchasers of his regular merchandise—

(*a*) Represented, as typical of false statements and representations disseminated by circulars and other printed matter distributed and circulated by him among prospective customers in various States and in the District of Columbia, that certain fountain pens given or sold by him as premiums had points or nibs made of or covered with substance known as "iridium" and were of high quality, and that certain of them had pen points made or covered with substance known as "durium," through such statements or representations as "Genuine Iridium Nibs," "Fine Quality," and "Durium Pointed," facts being points of said pens were not tipped or covered with, or made of, some special alloy or special substance of unusual quality, giving them special writing quality and durability, as implied through use, as aforesaid, of word "Durium," nor tipped or covered with "Iridium," there is no metal or substance known to science or industry as "Durium," and pens in question were not of fine quality but, on the contrary, of a very low, cheap grade; and

(*b*) Made a practice, as further typical of his methods in connection with operation of his business, of placing in circulars above described pictorial representations purporting to illustrate cameras offered as premiums, facts being cameras sent by him to customers were not of grade and quality pictured in said circulars, but were of inferior grade and quality to, and different from, those illustrated therein, both from standpoint of materials used and workmanship; and

Where said individual, in conducting his said business and in offering pencils or one of his regular items of merchandise—

(*c*) Made such representations, as further typical of his methods and practices in conducting his said business, in describing such items in circulars above set forth, as "100% first quality in every respect," "New," "Better," "Outwears ordinary pencils," and "New record-breaking price reduction," facts being his said pencils were not in any respect comparable to those of

first quality or grade, selling generally at retail for 5 cents each, but were either second or third grade and of type which ordinarily sells at retail at price of 2½ cents each, his said products, represented as new and better than ordinary pencils, were not new in sense of being a different product from those which had been sold by him and others theretofore, and were no better than others of a similar grade, and would not outwear such other pencils, and his said product, represented as being sold at a new record-breaking price, was in fact being sold at a price higher than that of similar pencils theretofore sold by him;

With effect of misleading and deceiving members of purchasing public in the various States into the mistaken and erroneous belief that his said false, misleading, and deceptive statements and representations were true, and of inducing members of such public, because of said erroneous belief engendered as above set forth, to purchase substantial quantities of his said products, and with result of diverting unfairly trade to him from his competitors engaged in sale of similar products in commerce, and who do not misrepresent their products but advertise same truthfully and honestly:

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

Mr. James W. Bevans, 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 James R. Kaye, an individual trading as The Lo-Well Pencil Co. and The Lo-Well 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 James R. Kaye is an individual trading as The Lo-Well Pencil Co. and The Lo-Well Co. with his principal place of business located in the city of New York in the State of New York. Respondent is now and for more than 1 year last past has been engaged in the business of selling pencils, carbon paper, and other merchandise in commerce among and between the various States of the United States. He causes, and has caused, said merchandise when sold to be shipped from his place of business in the State of New York to purchasers thereof located in States other than New York. In the course and conduct of his business respondent has been at all times herein referred to in competition with other individuals and with firms, partnerships, and corporations likewise engaged in the sale and distribution in commerce of similar products.

PAR. 2. In the course and conduct of his business the respondent gives or sells premiums to his customers as an inducement for their purchasing his products. At different periods of time, in promoting the sale of his products, respondent offers as premiums in connection therewith various types of merchandise, including among other novelty merchandise, fountain pens, pencil sharpeners, cameras, and electric razors. Although respondent offers different premiums at different periods of time, he continues to use the same general method in connection with said offering and with respect to the other practices hereinafter described.

PAR. 3. In the course of the operation of his business and for the purpose of inducing the purchase of pencils and carbon paper or other merchandise which he sells and distributes, respondent has engaged in the practice of falsely representing the quality, material, construction, durability, and other characteristics of the various premiums he offers to purchasers of his regular merchandise. Such false statements and representations are disseminated by means of circulars and other printed matter distributed and circulated among prospective customers located in various States of the United States and in the District of Columbia.

Among and typical of respondent's false representations as to the quality and material of his said premiums are the following relating to fountain pens appearing in various advertisements disseminated as aforesaid:

Genuine Iridium Nibs

Fine Quality

Durium pointed

By means of the above representations and others similar thereto not specifically set out herein, the respondent represents that certain fountain pens given or sold by him as premiums have points or nibs made of or covered with the substance known as Iridium and are of high quality, and that certain of them have pen points made or covered with a substance known as "Durium."

In truth and in fact, said points of respondent's fountain pens are not tipped or covered with substances known as Iridium or Durium. Said fountain pens are not of fine quality, but on the contrary are of a very low, cheap grade. The use of the word "Durium" in the representations purporting to describe the points of certain of respondent's fountain pens, as hereinbefore set out, creates the impression or belief that said pen points are made of some special alloy or are tipped with some special substance of unusual quality, giving said points a special writing quality and durability. In truth

and in fact, there is no metal or substance known to science or industry as "Durium."

PAR. 4. Further typical of respondent's methods in connection with the operation of his business is his practice of placing in the circulars hereinabove described pictorial representations purporting to illustrate cameras which are offered as premiums. The cameras which are, in fact, sent to customers by respondent are not of the grade and quality pictured in said circulars but are of inferior grade and quality to, and different from, those illustrated in the circulars, both from the standpoint of materials used and workmanship.

PAR. 5. Further typical of respondent's methods and practices in conducting his said business is his practice of falsely representing to propsective purchasers, in the circulars hereinabove described, the quality of one of his regular items of merchandise, namely, pencils. In describing said product, respondent has made the following representations:

100% first quality in every respect

New

Better

Outwears ordinary pencils

New record-breaking price reduction

In truth and in fact, respondent's pencils are not 100 percent first quality, being either second or third grade, and not in any respect comparable to pencils of first quality. Respondent's said pencils are of the type which ordinarily sells at retail at a price of 2½ cents each, while first grade pencils generally sell at retail for 5 cents each. Respondent's said pencils represented to be "new" and "better" than ordinary pencils are not new in the sense of their being a different product from those which had been sold by respondent and others before said representation was made; they are no better than others of a similar grade and will not outwear other pencils of similar grade. Respondent's further representation that certain of his said pencils are being sold at a new record-breaking price is likewise untrue, said pencils in fact being sold at a higher price than that of similar pencils theretofore sold by the respondent.

PAR. 6. The use by respondent of the aforesaid false, misleading and deceptive statements and representations has the tendency and capacity to and does mislead and deceive members of the purchasing public situated in various States of the United States into the mistaken and erroneous belief that such statements and representations are true. Because of said erroneous belief engendered as aforesaid,

members of the purchasing public have been induced to purchase substantial quantities of respondent's said products, As a further result of said false and misleading representations, trade has been unfairly diverted to the respondent from his competitors engaged in the sale of similar products in commerce between and among the various States of the United States and in the District of Columbia, and who do not misrepresent their products but advertise the same truthfully and honestly.

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 17, 1940, issued, and on September 18, 1940, served its complaint in this proceeding upon respondent James R. Kaye charging him with the use of unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondent's answer the Commission by order entered herein granted respondent's motion for permission to withdraw said answer and to substitute therefor an answer admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts, which substitute answer was duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint and substitute answer and the Commission having duly considered the matter and being now fully advised in the premises finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent James R. Kaye is an individual trading as The Lo-Well Pencil Co. and The Lo-Well Co., with his principal place of business located in the city of New York in the State of New York. Respondent is now and for more than 1 year last past has been engaged in the business of selling pencils, carbon paper, and other merchandise in commerce among and between the various

States of the United States. He causes, and has caused, said merchandise, when sold, to be shipped from his place of business in the State of New York to purchasers thereof located in States other than New York. In the course and conduct of his business respondent has been at all times herein referred to in competition with other individuals and with firms, partnerships, and corporations likewise engaged in the sale and distribution of similar products in commerce among and between the several States of the United States.

PAR. 2. In the course and conduct of his business the respondent gives or sells premiums to his customers as an inducement for their purchasing his products. At different periods of time, in promoting the sale of his products, respondent offers as premiums in connection therewith various types of merchandise including, among other novelty merchandise, fountain pens, pencil sharpeners, cameras and electric razors. Although respondent offers different premiums at different periods of time, he continues to use the same general method in connection with said offering and with respect to the other practices hereinafter described.

PAR. 3. In the course of the operation of his business and for the purpose of inducing the purchase of pencils and carbon paper or other merchandise which he sells and distributes, respondent has engaged in the practice of falsely representing the quality, material, construction, durability and other characteristics of the various premiums he offers to purchasers of his regular merchandise. Such false statements and representations are disseminated by means of circulars and other printed matter distributed and circulated among prospective customers located in various States of the United States and in the District of Columbia.

Among and typical of respondent's false representations as to the quality and material of his said premiums are the following relating to fountain pens appearing in various advertisements disseminated as aforesaid:

Genuine Iridium Nibs

Fine Quality

Durium pointed

By means of the above representations and others similar thereto not specifically set out herein, the respondent represents that certain fountain pens given or sold by him as premiums have points or nibs made of or covered with the substance known as Iridium and are of high quality, and that certain of them have pen points made or covered with a substance known as "Durium."

In truth and in fact, said points of respondent's fountain pens are not tipped or covered with substances known as Iridium or Durium. Said fountain pens are not of fine quality, but on the contrary are of a very low, cheap grade. The use of the word "Durium" in the representations purporting to describe the points of certain of respondent's fountain pens, as hereinbefore set out, creates the impression or belief that said pen points are made of some special alloy or are tipped with some special substance of unusual quality, giving said points a special writing quality and durability. In truth and in fact, there is no metal or substance known to science or industry as "Durium."

PAR. 4. Further typical of respondent's methods in connection with the operation of his business is his practice of placing in the circulars hereinabove described pictorial representations purporting to illustrate cameras which are offered as premiums. The cameras which are, in fact, sent to customers by respondent are not of the grade and quality pictured in said circulars but are of inferior grade and quality to, and different from, those illustrated in the circulars, both from the standpoint of materials used and workmanship.

PAR. 5. Further typical of respondents' methods and practices in conducting his said business is his practice of falsely representing to prospective purchasers, in the circulars hereinabove described, the quality of one of his regular items of merchandise, namely, pencils. In describing said product, respondent has made the following representations:

100% first quality in every respect

New

Better

Outwears ordinary pencils

New record-breaking price reduction.

In truth and in fact, respondent's pencils are not 100 percent first quality, being either second or third grade, and not in any respect comparable to pencils of first quality. Respondent's said pencils are of the type which ordinarily sells at retail at a price of 2½ cents each, while first grade pencils generally sell at retail for 5 cents each. Respondent's said pencils represented to be "new" and "better" than ordinary pencils are not new in the sense of their being a different product from those which had been sold by respondent and others before said representation was made; they are no better than others of a similar grade and will not outwear other pencils of similar grade. Respondent's further representation that certain of his said

pencils are being sold at a new record-breaking price is likewise untrue, said pencils in fact being sold at a higher price than that of similar pencils theretofore sold by the respondent.

PAR. 6. The use by respondent of the aforesaid false, misleading, and deceptive statements and representations has the tendency and capacity to and does mislead and deceive members of the purchasing public situated in various States of the United States into the mistaken and erroneous belief that such statements and representations are true. Because of said erroneous belief engendered as aforesaid, members of the purchasing public have been induced to purchase substantial quantities of respondent's said products. As a further result of said false and misleading representations, trade has been unfairly diverted to the respondent from his competitors engaged in the sale of similar products in commerce between and among the various States of the United States and in the District of Columbia, and who do not misrepresent their products but advertise the same truthfully and honestly.

CONCLUSION

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

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of respondent, in which answer respondent admits all the material allegations of fact set forth in said complaint and states that he waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondent James R. Kaye, individually and trading as The Lo-Well Pencil Co. and The Lo-Well 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 pencils, carbon paper and various types of premiums in commerce as "commerce" is defined in the Federal Trade Commission Act do forthwith cease and desist from representing in any manner or by any means:

1. That pencils are of first quality unless such pencils are in fact of the kind and quality usually sold at retail as and known as 5-cent pencils.

2. That a line of pencils is new unless there are features about such pencils which distinguish them from pencils which have theretofore been sold by respondent.

3. That a line of pencils is "better" unless such pencils are of a higher quality than those which have theretofore been sold by respondent.

4. That respondent's pencils will outwear ordinary pencils unless such pencils possess wearing qualities greater than those of pencils usually sold at retail as 5-cent pencils.

5. That pencils are being sold at reduced prices unless in fact such pencils are being offered for sale at a price lower than the prices at which they are usually and customarily sold by respondent.

6. That the quality, grade, or material of his products or of the various premiums offered by him are superior to or different from the actual quality, grade, or material of such products or premiums.

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

H. STANLEY JONES, H. EDWIN JONES AND MAURICE C. BERKELEY, DOING BUSINESS AS HOWARD E. JONES & CO., KING FOODS COMPANY, BALTIMORE SALES SERVICE COMPANY, BALTIMORE MACARONI COMPANY, AND OCONO 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 4215. Complaint, Aug. 2, 1940—Decision, Nov. 30, 1940

Where three individuals engaged as partners and under various trade names, in business of acting as brokers in sale of food products, and particularly canned fruits and vegetables, and also engaged in buying and selling such products for their own account, and in buying, selling, and distributing, in the course of their said businesses, such food products in commerce among the various States, and in causing products purchased by them for their own account to be shipped and transported to them from sellers' various places of business, including, in case of many, those located and doing business in other States, and in causing products sold for their own account to be shipped and transported to their customers located and doing business, in case of many, also in other States—

Received, in course and conduct of their aforesaid business of buying food products for their own account, as above set forth, and trading under various firm names and styles, from numerous sellers, brokerage fees or allowances or discounts in lieu thereof on many of their said own account purchases:

Held, That said individuals, in receiving and accepting brokerage fees or allowances or discounts in lieu thereof from sellers upon their purchases of commodities as above set forth, violated provisions of section 2 (c) of Clayton Act, as amended by the Robinson-Patman Act.

Mr. S. G. Churchill, for the Commission.

Allers & Cochran, of Baltimore, Md., for respondents.

COMPLAINT

Pursuant to the provisions of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act (U. S. C., title 15, sec. 13), as amended by an act of Congress, approved June 19, 1936, commonly known as the Robinson-Patman Act, the Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, have been and are now violating

the provisions of subsection (c) of section 2 of said act as amended, issues its complaint against said respondents and states it charges with respect thereto as follows, to wit:

PARAGRAPH 1. Respondents, H. Stanley Jones, H. Edwin Jones, and Maurice C. Berkeley, are copartners doing business, principally under the firm name and style of Howard E. Jones & Co., but also under the firm names and styles of King Foods Co., Baltimore Sales Service Co., Baltimore Macaroni Co., and Ocono Co. The respondents have their principal office and place of business at 206 South Broadway Street, Baltimore, Md.

PAR. 2. Respondents are now engaged and for many years prior hereto have been engaged in the business of acting as brokers in the sale of food products, particularly canned fruits and vegetables, said business having been carried on by them, principally under the firm name and style of Howard E. Jones & Co.

Respondents are also now engaged and for many years prior hereto have been engaged in the business of buying and selling for their own account food products, particularly canned fruits and vegetables, said business having been carried on by them principally under the firm name and style of King Foods Co., but also under the firm names and styles of Howard E. Jones & Co., Baltimore Sales Service Co., Baltimore Macaroni Co., and Ocono Co.

Respondents buy, sell, and distribute said food products aforementioned in commerce between and among the various States of the United States. Respondents cause the products which they purchase for their own account to be shipped and transported to them from the various places of business of those sellers from whom respondents purchase said products, many of such sellers being located and doing business in States other than the State of Maryland. Respondents cause the products which they have sold for their own account to be shipped and transported, pursuant to said sales, to their customers, many of such customers being located and doing business in States other than the State of Maryland.

PAR. 3. In the course and conduct of their business of buying food products for their own account in commerce, as aforesaid, the respondents, trading under the firm names and styles aforesaid, have been and are now receiving and accepting from numerous sellers brokerage fees, or allowances or discounts in lieu thereof, on many of said purchases for their own account.

PAR. 4. The aforesaid acts of respondents constitute a violation of subsection (c) of section 2 of the Clayton Act, as amended by Robinson-Patman Act, approved June 19, 1936.

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 an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C., title 15, sec. 13), the Federal Trade Commission on the 2d day of August 1940, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of section 2 of the said act.

Said respondents duly filed their answer to said complaint, which answer admits all the material allegations of fact set forth in said complaint. Said answer further waives all intervening procedure herein and further hearing as to said facts and also waives the filing of briefs and the presentation of any oral argument. Thereafter, the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, and the Commission, having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondents, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

Paragraph 1. Respondents, H. Stanley Jones, H. Edwin Jones, and Maurice C. Berkeley, are copartners doing business, principally under the firm name and style of Howard E. Jones & Co., but also under the firm names and styles of King Foods Company, Baltimore Sales Service Company, Baltimore Macaroni Company, and Ocono Company. The respondents have their principal office and place of business at 206 South Broadway Street, Baltimore, Md.

Par. 2. Respondents are now engaged and for many years prior hereto have been engaged in the business of acting as brokers in the sale of food products, particularly canned fruits and vegetables, said business having been carried on by them, principally under the firm name and style of Howard E. Jones & Co.

Respondents are also now engaged and for many years prior hereto have been engaged in the business of buying and selling for their own account food products, particularly canned fruits and vegetables, said business having been carried on by them principally under the firm name and style of King Foods Company, but also under the firm

names and styles of Howard E. Jones & Co., Baltimore Sales Service Co., Baltimore Macaroni Co., and Ocono Co.

PAR. 3. Respondents buy, sell, and distribute said food products mentioned in paragraph 2 hereof in commerce between and among the various States of the United States. Respondents cause the products which they purchase for their own account to be shipped and transported to them from the various places of business of those sellers from whom respondents purchase said products, many of such sellers being located and doing business in States other than the State of Maryland. Respondents cause the products which they have sold for their own account to be shipped and transported, pursuant to said sales, to their customers, many of such customers being located and doing business in States other than the State of Maryland.

PAR 4. In the course and conduct of their business of buying food products for their own account in commerce, as aforesaid, the respondents, trading under the firm names and styles aforesaid, have since June 19, 1936, received from numerous sellers brokerage fees, or allowances or discounts in lieu thereof, on many of said purchases for their own account.

CONCLUSION

In receiving and accepting brokerage fees or allowances and discounts in lieu thereof from sellers upon their purchases of commodities as set forth in paragraph 4 hereof, the respondents have violated the provisions of section 2 (c) 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, and the answer of the respondents, in which answer said respondents admit all of the material allegations of facts set forth in said complaint, and 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 the respondents have violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

It is ordered That in the course and conduct of their business of buying food products for their own account in commerce, the respondents, H. Stanley Jones, H. Edwin Jones, and Maurice C. Berkeley, copartners doing business under the firm names and styles of Howard E. Jones & Co., King Foods Co., Baltimore Sales Service

Co., Baltimore Macaroni Co., and Ocono Co., or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondents' own account at a price or on a basis which reflects a deduction, or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof, or any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondents' own account.

It is further ordered, That the respondents named in the caption hereof shall, within 30 days after service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

A. FLETCHER SISK, THEODORE E. FLETCHER, AND HAROLD E. STARK, TRADING AS ALBERT W. SISK & SON

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 4275. Complaint, Aug. 28, 1940—Decision, Nov. 30, 1940

Where three individuals engaged in Maryland as field brokers, in acting as agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers, and as thus engaged in effecting, in some instances, sales of such commodities for sellers through corresponding or local brokers whom they employed to assist them in making such sales, and in effecting, in other instances, sales of such commodities directly to purchasers, and in effecting sales as aforesaid, in either event, to purchasers in States other than that in which respective sellers were located, and in compensating, in those cases in which sales were effected through corresponding or local brokers employed by them, such corresponding or local brokers through a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to them, and amounting to, usually 4 percent of purchase price paid by purchaser for commodities in question—

(*a*) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts to purchasers in those cases in which they effected, as above set forth, sale of commodities in question directly to purchasers, rather than through the medium of said corresponding or local brokers, as above described:

Held, That said individuals, in granting and allowing brokerage fees and commissions, or allowances and discounts in lieu thereof, to purchasers in connection with their respective purchases of commodities from sellers, as above set forth, violated section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act; and

Where said individuals, engaged in the business of purchasing for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers, such canned fruits and vegetables, from sellers in other States, pursuant to which purchases commodities were shipped and transported by sellers from respective States in which located across State lines, either to them or, pursuant to their instructions and directions, to respective purchasers to whom they had resold such commodities, and from, in many instances, sellers, located in State of Maryland, and who, pursuant to their instructions and directions, caused commodities thus purchased by them to be shipped and transported from said State across State lines to respective purchasers to whom they had resold such commodities—

(*b*) Received and accepted from sellers, in connection with purchases of such commodities by them for their own account in interstate commerce, as aforesaid set forth, brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts; and

(c) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, to purchasers in other States of such commodities purchased by them for their own account, and to which purchasers they had resold, as above set forth, said commodities:

Held, That said individuals, in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon their purchases of commodities, and in granting and allowing brokerage fees and commissions, or allowances and discounts in lieu thereof, to purchasers upon the resale of commodities, as respectively above set forth, violated section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

Complaint

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) 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. Respondents, A. Fletcher Sisk, Theodore E. Fletcher, and Harold E. Stark, are individuals, trading as Albert W. Sisk & Son, with their principal office and place of business located in Preston, Md. Respondents are engaged in the business of field brokers, acting as agents of sellers in transactions of sale and purchase of canned vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities are effected for sellers by respondents through brokers, commonly known as corresponding or local brokers, who are employed by respondents to assist them in making such sales. In other instances sales of such commodities are effected for sellers by respondents to purchasers directly.

Par. 2. For services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondents receive from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities are effected for sellers by respondents through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to respondents for services in connection with such sales is granted and allowed by respondents to such corresponding or local brokers for brokerage services rendered to respondents in connection with such sales.

In the instances where sales of such commodities are effected for sellers by respondents to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to respondents for services in connection with such sales, or an allowance or discount in lieu thereof, is granted and allowed by respondents to such purchasers.

PAR. 3. In the course and conduct of their said business since June 19, 1936, respondents have effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodies in interstate commerce as aforesaid, which sales were effected for sellers by respondents to purchasers directly as set forth in paragraph 2 hereof, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondents are also engaged in the business of purchasing canned vegetables for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Maryland pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Maryland, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of Maryland across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce as set forth in paragraph 5 hereof, respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, respondents have resold such commodities purchased for their own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Maryland, pursuant to which sales respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by the respondents as set forth in paragraph 6 hereof; and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers upon the resale of commodities by respondents as set forth in paragraph 7 hereof are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, the Clayton Act, as amended by an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 28th day of August 1940, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of section 2 of the 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, waiving all intervening procedure and further hearings as to said facts and waiving the filing of briefs and presentation of oral argument, which substitute answer was duly filed in the office of the Commission on October 7, 1940. Thereafter the proceeding regularly came on for final hearing before the Commission

on the complaint and answer as aforesaid, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondents named in the caption hereof, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, A. Fletcher Sisk, Theodore E. Fletcher, and Harold E. Stark are individuals trading as Albert W. Sisk & Son, with their principal office and place of business located in Preston, Md. Respondents for a number of years have been engaged in the business of field brokers, acting as the agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities have been effected for sellers by the respondents through brokers, commonly known as corresponding or local brokers, who have been employed by the respondents to assist them in making such sales. In other instances sales of such commodities have been effected for sellers by respondents to purchasers directly.

PAR. 2. For the services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondents have received from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities have been effected for sellers by the respondents through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to the respondents for services in connection with such sales has been granted and allowed by the respondents to such corresponding or local brokers for brokerage services rendered to the respondents in connection with such sales.

In the instances where sales of such commodities have been effected for sellers by respondents to purchasers directly, a certain percentage usually 50 percent of the brokerage fee or commission paid by the sellers to the respondents for services in connection with such sales, or an allowance or discount in lieu thereof, has been granted and allowed by the respondents to such direct purchasers.

PAR. 3. In the course and conduct of their said business since June 19, 1936, the respondents have effected sales of such commodities for

sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by the respondents to purchasers directly as set forth in paragraph 2 hereof, the respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondents for a number of years have also been engaged in the business of purchasing canned fruits and vegetables for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Maryland, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondents or, pursuant to instructions and directions from the respondents, to the respective purchasers to whom such commoditines have been resold by the respondents.

Since June 19, 1936, the respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Maryland, which sellers, pursuant to instructions and directions from the respondents, have caused the commodities so purchased by the respondents to be shipped and transported from the State of Maryland across State lines to the respective purchasers to whom such commodities have been resold by the respondents.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by the respondents for their own account in interstate commerce as set forth in paragraph 5 hereof, the respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, the respondents have resold such commodities purchased for their own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Maryland, pursuant to which sales the respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

CONCLUSION

In granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon their purchases of commodities as set forth in paragraph 6 hereof; and in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as set forth in paragraph 7 hereof, the respondents have violated the provisions of section 2 (c) 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 and the answer of the respondents named in the caption hereof, in which answer said respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further 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 section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in connection with sales of commodities in interstate commerce effected for sellers by respondents in the capacities of field brokers, and in connection with the resale in interstate commerce of commodities purchased by respondents, the respondents A. Fletcher Sisk, Theodore E. Fletcher, and Harold E. Stark, trading under the name Albert W. Sisk & Son, or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodities to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being

effected by respondents to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondents to corresponding or local brokers for brokerage services or sales assistance rendered to respondents in effecting sales of such commodities to other purchasers thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That in purchasing commodities in interstate commerce the respondents A. Fletcher Sisk, Theodore E. Fletcher, and Harold E. Stark, trading under the name Albert W. Sisk & Son, or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondents' own account at a price or on a basis which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondents' own account.

It is further ordered, That the respondents named in the caption hereof shall, within 30 days after service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

WALTER W. THRASHER, WILLOUGHBY J. ROTHROCK, LINTON A. THRASHER AND WAINWRIGHT CHURCHILL, TRADING AS THOMAS ROBERTS & 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 4282. Complaint, Aug. 28, 1940—Decision, Nov. 30, 1940

Where three individuals, engaged in Pennsylvania in purchasing canned fruits and vegetables for their own account, and in reselling same to jobbers, wholesalers, retail chain stores, and other purchasers and, as thus engaged, in making many purchases of such commodities for their own account, for resale as aforesaid, from sellers in other States and pursuant to which such commodities were shipped and transported by such sellers from the respective States in which they were located across State lines either to said individuals, or, pursuant to their instructions and directions to the respective purchasers to whom such commodities had been resold by said individuals, and also in making many purchases of such commodities for their own account as above set forth from sellers located in said State of Pennsylvania by which sellers, pursuant to instructions and directions from said individuals, commodities thus purchased were shipped and transported from said State across State lines to the respective purchasers to whom such commodities had been resold by said individuals—

(*a*) Received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amount, through usually purchasing commodities in question at prices lower than those at which such commodities were being sold to other purchasers thereof by an amount which reflected all or a portion of the brokerage which was currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers; and

(*b*) Granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to the purchasers of such commodities bought by said individuals for their own account as above set forth, and resold to such purchasers and shipped, pursuant to such resale, to purchasers in question across State lines:

Held, That in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon their purchases of commodities, and that in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities, as respectively above set forth, said individuals violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

Montgomery & McCracken, of Philadelphia, Pa., for respondents.

COMPLAINT

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) 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. Respondents Walter W. Thrasher, Willoughby J. Rothrock, Linton A. Thrasher, and Wainwright Churchill are individuals, trading as Thomas Roberts & Co., with their principal office and place of business located at 135 South Second Street, Philadelphia, Pa. Respondents are engaged in the business of purchasing canned fruits and vegetables for their own account and of reselling the same to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Pennsylvania, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Pennsylvania, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of Pennsylvania across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 2. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce as set forth in paragraph 1 hereof, respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage is accomplished by respondents by purchasing commodities at prices lower than the prices at which such commodities are sold to other purchasers thereof by an amount which reflects all or a portion of the brokerage currently being paid

by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

PAR. 3. Since June 19, 1936, respondents have resold such commodities purchased for their own account as set forth in paragraph 1 hereof to purchasers located in States other than the State of Pennsylvania, pursuant to which sales respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 4. The receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by the respondents as set forth in paragraph 2 hereof, and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers upon the resale of commodities by respondents as set forth in paragraph 3 hereof, are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, the Clayton Act, as amended by an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C., title 15, sec. 13), the Federal Trade Commission on the 28th day of August 1940, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of section 2 of the said act.

On October 8, 1940, the respondents filed their answer, admitting all the material allegations of fact set forth in said complaint, waiving all intervening procedure and further hearings as to said facts and waiving the filing of briefs and presentation of oral argument. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, and the Commission, having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been

violated by the respondents named in the caption hereof, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Walter W. Thrasher, Willoughby J. Rothrock, Linton A. Thrasher, and Wainwright Churchill are individuals trading as Thomas Roberts & Co., with their principal office and place of business located at 135 South Second Street, Philadelphia, Pa. Respondents for a number of years have been engaged in the business of purchasing canned fruits and vegetables for their own account and of reselling the same to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Pennsylvania, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondents or, pursuant to instructions and directions from the respondents, to the respective purchasers to whom such commodities have been resold by the respondents.

Since June 19, 1936, the respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Pennsylvania, which sellers, pursuant to instructions and directions from the respondents, have caused the commodities so purchased by the respondents to be shipped and transported from the State of Pennsylvania across State lines to the respective purchasers to whom such commodities have been resold by the respondents.

PAR. 2. Since June 19, 1936, in connection with the purchases of such commodities by the respondents for their own account in interstate commerce as set forth in paragraph 1 hereof, the respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

Usually, the receipt and acceptance of the aforesaid allowances and discounts in lieu of brokerage has been accomplished by respondents by purchasing commodities at prices lower than the prices at which such commodities were being sold to other purchasers thereof by an amount which reflected all or a portion of the brokerage which was currently being paid by the sellers of such commodities to their respective brokers for effecting sales of such commodities to other purchasers.

PAR. 3. Since June 19, 1936, the respondents have resold such commodities purchased for their own account as set forth in paragraph 1 hereof to purchasers located in States other than the State of Pennsylvania, pursuant to which sales the respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

CONCLUSION

In receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon their purchases of commodities as set forth in paragraph 2 hereof, and in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof, to purchasers upon the resale of commodities as set forth in paragraph 3 hereof, the respondents have violated the provisions of section 2 (c) 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 and the answer of the respondents named in the caption hereof, in which answer said respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13).

It is ordered, That in purchasing commodities in interstate commerce the respondents Walter W. Thrasher, Willoughby J. Rothrock, Linton A. Thrasher, and Wainwright Churchill, trading under the name Thomas Roberts & Co., or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondents' own account at a price or on a basis which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers

thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondents' own account.

It is further ordered, That in connection with the resale in interstate commerce of commodities purchased by respondents, the respondents Walter W. Thrasher, Willoughby J. Rothrock, Linton A. Thrasher, and Wainwright Churchill, trading under the name Thomas Roberts & Co., or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodities to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being effected by respondents to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondents to local brokers for brokerage services rendered to respondents in effecting sales of such commodities to other purchasers thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That the respondents named in the caption hereof shall, within 30 days after service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CHARLES F. UNRUH AND ROBERT A. HARRIS, JR., TRADING AS C. F. UNRUH BROKERAGE 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 4283. Complaint, Aug. 29, 1940—Decision, Nov. 30, 1940

Where two individuals engaged in Virginia, as field brokers, in acting as agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers and in effecting, in some instances as thus engaged, sales of such commodities for sellers through corresponding or local brokers employed by them to assist them in making such sales, and in other instances in effecting sales of such commodities for sellers to purchasers directly, and pursuant to which sales, whether effected by said individuals through aid of such corresponding or local brokers, or directly, commodities thus sold were shipped and transported by sellers thereof across State lines to respective purchasers, and as thus engaged, in compensating such corresponding or local brokers in former cases through payments to such brokers of certain percentage, usually 50 percent of the brokerage fee or commission paid by sellers to them for services in connection with such sales and usually amounting to 4 percent of the purchase price paid by the purchaser for such commodities—

(*a*) Granted and allowed, in connection with the sales of such commodities in interstate commerce effected by them for sellers to purchasers directly, brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to such purchasers and amounting, usually, to 50 percent of the brokerage fee or commission paid by the sellers to them for services in connection with such sales, or allowance or discount in lieu thereof:

Held, That in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as above set forth, said individuals violated provisions of Section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

Where said individuals, engaged in business of purchasing canned fruit and vegetables for their own account for resale to jobbers, wholesalers, retail chain stores and other purchasers, and as thus engaged in making many purchases of such commodities from sellers located in other States and pursuant to which purchases said commodities were shipped and transported by sellers from the respective States in which they were located across State lines, either to said individuals or, pursuant to instructions and directions from them, to the respective purchasers to whom such commodities had been resold by said individuals, and in also making many purchases of such commodities for their own account as aforesaid from sellers located in State of Virginia, by which sellers, pursuant to instructions and directions from said individuals, commodities thus purchased were caused to be shipped

and transported from said State across State lines to the respective purchasers to whom said commodities had been resold by them;

(*b*) Received and accepted from sellers brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, in connection with the purchases of such commodities by said individuals for their own account in interstate commerce as above set forth; and

(*c*) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, to the purchasers of such commodities bought by said individuals for their own account and resold, as aforesaid, to purchasers located in other States and pursuant to which sales they caused such commodities to be shipped and transported across State lines to such purchasers:

Held, That in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon their purchases of commodities, and that in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as respectively above set forth, said individuals violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

Complaint

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) 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. Respondents Charles F. Unruh and Robert A. Harris, Jr., are individuals trading as C. F. Unruh Brokerage Co. with their principal office and place of business located in Kinsale, Va. Respondents are engaged in the business of field brokers, acting as agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities are effected for sellers by respondents through brokers, commonly known as corresponding or local brokers, who are employed by respondents to assist them in making such sales. In other instances sales of such commodities are effected for sellers by respondents to purchasers directly.

Par. 2. For services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondents receive from sellers a brokerage fee or com-

mission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities are effected for sellers by respondents through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to respondents for services in connection with such sales is granted and allowed by respondents to such corresponding or local brokers for brokerage services rendered to respondents in connection with such sales.

In the instances where sales of such commodities are effected for sellers by respondents to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to respondents for services in connection with such sales, or an allowance or discount in lieu thereof, is granted and allowed by respondents to such purchasers.

PAR. 3. In the course and conduct of their said business since June 19, 1936, respondents have effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by respondents to purchasers directly as set forth in paragraph 2 hereof, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondents are also engaged in the business of purchasing canned fruits and vegetables for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Virginia pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Virginia, which sellers, pursuant to instructions and directions from respondents, have caused the commodities

so purchased by respondents to be shipped and transported from the State of Virginia across State lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce as set forth in paragraph 5 hereof, respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, respondents have resold such commodities purchased for their own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Virginia, pursuant to which sales respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by the respondents as set forth in paragraph 6 hereof; and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers upon the resale of commodities by respondents as set forth in paragraph 7 hereof are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes" approved October 15, 1914, the Clayton Act, as amended by an Act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 29th day of August 1940, issued and served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with violation of the provisions of subsection (c) of section 2 of the said act.

On October 8, 1940, the respondents filed their answer, admitting all the material allegations of fact set forth in said complaint, waiving all intervening procedure and further hearings as to said facts and waiving the filing of briefs and presentation of oral argument. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act, has been violated by the said respondents, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents Charles F. Unruh and Robert A. Harris, Jr., are individuals trading as C. F. Unruh Brokerage Co., with their principal office and place of business located in Kinsale, Va. Respondents for a number of years have been engaged in the business of field brokers, acting as the agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities have been effected for sellers by the respondents through brokers, commonly known as corresponding or local brokers, who have been employed by the respondents to assist them in making such sales. In other instances sales of such commodities have been effected for sellers by respondents to purchasers directly.

PAR. 2. For the services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondents have received from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities have been effected for sellers by the respondents through corresponding or local brokers, a certain percentage, usually 50 percent of the brokerage fee or commission paid by sellers to the respondents for services in connection with such sales has been granted and allowed by the respondents to such corresponding or local brokers for brokerage services rendered to the respondents in connection with such sales.

In the instances where sales of such commodities have been effected for sellers by respondents to purchasers directly, a certain percentage, usually 50 percent of the brokerage fee or commission paid by the sellers to the respondents for services in connection with such sales,

or an allowance or discount in lieu thereof, has been granted and allowed by the respondents to such direct purchasers.

PAR. 3. In the course and conduct of their said business since June 19, 1936, the respondents have effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by the respondents to purchasers directly as set forth in paragraph 2 hereof, the respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondents for a number of years have also been engaged in the business of purchasing canned fruits and vegetables for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Virginia, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondents or, pursuant to instructions and directions from the respondents, to the respective purchasers to whom such commodities have been resold by the respondents.

Since June 19, 1936, the respondents have also made many purchases of such commodities for their own account as aforesaid from sellers located in the State of Virginia, which sellers, pursuant to instructions and directions from the respondents, have caused the commodities so purchased by the respondents to be shipped and transported from the State of Virginia across State lines to the respective purchasers to whom such commodities have been resold by the respondents.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by the respondents for their own account in interstate commerce as set forth in paragraph 5 hereof, the respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, the respondents have resold such commodities purchased for their own account as set forth in para-

graph 5 hereof to purchasers located in States other than the State of Virginia, pursuant to which sales the respondents have caused such commodities to be shipped and transported across States lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

CONCLUSION

In granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon their purchases of commodities as set forth in paragraph 6 hereof and in granting and allowing brokerage fees and commission or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as set forth in paragraph 7 hereof, the respondents have violated the provisions of section 2 (c) 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 and the answer of the respondents named in the caption hereof, in which answer said respondents admit all the material allegations of fact set forth in said complaint, and state that they waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in connection with sales of commodities in interstate commerce effected for sellers by respondents in the capacity of field brokers, and in connection with the resale in interstate commerce of commodities purchased by respondents, the said respondents Charles F. Unruh and Robert A. Harris, Jr., trading under the name C. F. Unruh Brokerage Co., or any other name, their agents, employees, and representatives, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodi-

ties to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being effected by respondents to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondents to corresponding or local brokers for brokerage services or sales assistance rendered to respondents in effecting sales of such commodities to other purchasers thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That in purchasing commodities in interstate commerce, the said respondents Charles F. Unruh and Robert A. Harris, Jr., trading under the name C. F. Unruh Brokerage Co., or any other name, their agents, employees and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondents' own account at a price or on a basis which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondents' own account.

It is further ordered, That the respondents named in the caption hereof shall, within 30 days after service upon them of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

CECIL G. REABURN, TRADING AS C. G. REABURN AND 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 4284. Complaint, Aug. 29, 1940—Decision, Nov. 30, 1940

Where an individual engaged in Virginia in acting as field broker, as agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores and other purchasers, and in effecting, in some instances, as thus engaged, sales of such commodities for sellers through corresponding or local brokers employed by him to assist him in making such sales, and, in other instances, in effecting sales of such commodities for sellers to purchasers directly, and pursuant to which sales, whether effected by said individual through aid of such corresponding or local brokers, or directly, commodities thus sold were shipped and transported by sellers thereof across state lines to respective purchasers, and, thus engaged, in compensating such corresponding or local brokers in formen cases through payments to such brokers of certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to him for services in connection with such sales and usually amounting to 4 percent of the purchase price paid by the purchaser for such commodities—

(*a*) Granted and allowed, in connection with the sales of such commodities in interstate commerce effected by him for sellers to purchasers directly, brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to such purchasers and amounting usually to 50 percent of the brokerage fee or commission paid by the sellers to him for services in connection with such sales, or allowance or discount in lieu thereof:

Held, That in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers, as above set forth, said individual violated provision of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

Where said individual, engaged in business of purchasing canned fruit and vegetables for his own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers and, as thus engaged, in making many purchases of such commodities from sellers located in other states and pursuant to which purchases said commodities were shipped and transported by sellers from the respective states in which they were located across state lines, either to said individual or pursuant to instructions and directions from him, to the respective purchasers to whom such commodities had been resold by said individual, and in also making many purchases of such commodities for his own account, as aforesaid, from sellers located in State of Virginia by which sellers, pursuant to instructions and directions from said individual, commodities thus purchased were caused to be shipped and

transported from said State across State lines to the respective purchasers to whom said commodities had been resold by him;

(*b*) Received and accepted from sellers brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, in connection with the purchases of such commodities by said individual for his own account in interstate commerce as above set forth; and

(*c*) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, to the purchasers of such commodities bought by said individual for his own account and resold as aforesaid to purchasers located in other States, and pursuant to which sales he caused such commodities to be shipped and transported across state lines to such purchasers:

Held, That in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon his purchases of commodities, and that in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities, as respectively above set forth, said individual violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

Complaint

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is 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, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

Paragraph 1. Respondent, Cecil G. Reaburn, is an individual trading as C. G. Reaburn & Co., with his principal office and place of business located in Roanoke, Va. Respondent is engaged in the business of a field broker, acting as agent of sellers in transactions of sale and purchase of canned vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities are effected for sellers by respondent through brokers, commonly known as corresponding or local brokers, who are employed by respondent to assist him in making such sales. In other instances sales of such commodities are effected for sellers by respondent to purchasers directly.

Par. 2. For services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent receives from sellers a brokerage fee or commission usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities are effected for sellers by respondent through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to respondent for services in connection with such sales is granted and allowed by respondent to such corresponding or local brokers for brokerage services rendered to respondent in connection with such sales.

In the instances where sales of such commodities are effected for sellers by respondent to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to respondent for services in connection with such sales, or an allowance or discount in lieu thereof, is granted and allowed by respondent to such purchasers.

PAR. 3. In the course and conduct of his said business since June 19, 1936, respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by respondent to purchasers directly as set forth in paragraph 2 hereof, respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent is also engaged in the business of purchasing canned vegetables for his own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondent has made many purchases of such commodities for his own account for resale as aforesaid from sellers located in States other than the State of Virginia pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondent or, pursuant to instructions and directions from respondent, to the respective purchasers to whom such commodities have been resold by respondent.

Since June 19, 1936, respondent has also made many purchases of such commodities for his own account as aforesaid from sellers located in the State of Virginia, which sellers, pursuant to instructions and directions from respondent, have caused the commodities so purchased by respondent to be shipped and transported from the

State of Virginia across State lines to the respective purchasers to whom such commodities have been resold by respondent.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by respondent for his own account in interstate commerce as set forth in paragraph 5 hereof, respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, respondent has resold such commodities purchased for his own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Virginia, pursuant to which sales respondent has caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondent to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondent upon the purchases of commodities by the respondent as set forth in paragraph 6 hereof; and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondent to purchasers upon the resale of commodities by respondent as set forth in paragraph 7 hereof are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, the Clayton Act, as amended by an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 29th day of August 1940, issued and served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with violation of the provisions of subsection (c) of section 2 of the said act.

On September 27, 1940, the respondent filed his answer, admitting all the material allegations of fact set forth in said complaint,

waiving all intervening procedure and further hearings as to said facts and waiving the filing of briefs and presentation of oral argument. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, and the Commission having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondent, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Cecil G. Reaburn, is an individual, trading as C. G. Reaburn & Co., with his principal office and place of business located in Roanoke, Va. Respondent for a number of years has been engaged in the business of a field broker, acting as the agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities have been effected for sellers by the respondent through brokers commonly known as corresponding or local brokers, who have been employed by the respondent to assist him in making such sales. In other instances sales of such commodities have been effected for sellers by respondent to purchasers directly.

PAR. 2. For the services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent has received from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities have been effected for sellers by the respondent through corresponding or local brokers, a certain percentage, usually 50 percent of the brokerage fee or commission paid by sellers to the respondent for services in connection with such sales has been granted and allowed by the respondent to such corresponding or local brokers for brokerage services rendered to the respondent in connection with such sales.

In the instances where sales of such commodities have been effected for sellers by respondent to purchasers directly, a certain percentage, usually 50 percent of the brokerage fee or commission paid by the sellers to the respondent for services in connection with such sales, or an allowance or discount in lieu thereof, has been granted and allowed by the respondent to such direct purchasers.

PAR. 3. In the course and conduct of his said business since June 19, 1936, the respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by the respondent to purchasers directly as set forth in paragraph 2 hereof, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent for a number of years has also been engaged in the business of purchasing canned fruits and vegetables for his own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondent has made many purchases of such commodities for his own account for resale as aforesaid from sellers located in States other than the State of Virginia pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondent or, pursuant to instructions and directions from the respondent, to the respective purchasers to whom such commodities have been resold by the respondent.

Since June 19, 1936, the respondent has also made many purchases of such commodities for his own account as aforesaid from sellers located in the State of Virginia, which sellers, pursuant to instructions and directions from the respondent, have caused the commodities so purchased by the respondent to be shipped and transported from the State of Virginia across State lines to the respective purchasers to whom such commodities have been resold by the respondent.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by the respondent for his own account in interstate commerce as set forth in paragraph 5 hereof, the respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, the respondent has resold such commodities purchased for his own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Virginia, pursuant to which sales the respondent has caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

CONCLUSION

In granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon his purchases of commodities as set forth in paragraph 6 hereof; and in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as set forth in paragraph 7 hereof, the respondent has violated the provisions of section 2 (c) 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 and the answer of the respondent named in the caption hereof, in which answer said 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 its conclusion that the respondent has violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 15, 1936 (U. S. C. title 13, sec. 13).

It is ordered, That in connection with sales of commodities in interstate commerce effected for sellers by respondent in the capacity of a field broker, and in connection with the resale in interstate commerce of commodities purchased by respondent, the respondent Cecil G. Reaburn, trading under the name C. G. Reaburn & Co., or any other name, his agents, employees, and representatives, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodities to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being effected by respondent to other customers of an amount representing,

in whole or in part, brokerage currently being paid by respondent to corresponding or local brokers for brokerage services or sales assistance rendered to respondent in effecting sales of such commodities to other purchasers thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That in purchasing commodities in interstate commerce the respondent Cecil G. Reaburn, trading under the name C. G. Reaburn & Co., or any other name, his agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondent's own account at a price or on a basis which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondent's own account.

It is further ordered, That the respondent shall, within 30 days after service upon him of this order, file with the Federal Trade Commission a report in writing, setting, forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

H. WELDON RUFF, TRADING AS H. M. RUFF & SON

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 4292. Complaint, Aug. 30, 1940—Decision, Nov. 30, 1940

Where an individual engaged in Pensylvania as field broker, in acting as agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers, and in effecting in some instances, as thus engaged, sales of such commodities for sellers through corresponding or local brokers employed by him to assist him in making such sales, and in other instances in effecting sales of such commodities for sellers to purchasers directly, and pursuant to which sales, whether effected by said individual through aid of such corresponding or local brokers or directly, commodities thus sold were shipped and transported by sellers thereof across State lines to respective purchasers, and as thus engaged, in compensating such corresponding or local brokers in former cases through payments to such brokers of certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to him for services in connection with such sales and usually amounting to 4 percent of the purchase price paid by the purchaser for such commodities—

(*a*) Granted and allowed, in connection with the sales of such commodities, in interstate commerce effected by him for sellers to purchasers directly, brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to such purchasers and amounting, usually, to 50 percent of the brokerage fee or commission paid by the sellers to him for services in connection with such sales, or allowance or discount in lieu thereof:

Held, That in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as above set forth, said individual violated provision of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

Where said individual, engaged in business of purchasing canned fruit and vegetables for his own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers, and as thus engaged in making many purchases of such commodities from sellers located in other States and pursuant to which purchases said commodities were shipped and transported by sellers from the respective States in which they were located across State lines, either to said individual or, pursuant to instructions and directions from him, to the respective purchasers to whom such commodities had been resold by said individual, and in also making many purchases of such commodities for his own account as aforesaid from sellers located in State of Pennsylvania by which sellers, pursuant to instructions and directions from said individual, commodities thus purchased were caused to be shipped and transported from said State across State lines to the respective purchasers to whom said commodities had been resold by him;

(*b*) Received and accepted from sellers brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts in connection with the purchases of such commodities by said individual for his own account in interstate commerce as above set forth; and

(*c*) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, to the purchasers of such commodities bought by said individual for his own account and resold as aforesaid to purchasers located in other States and pursuant to which sales he caused such commodities to be shipped and transported across State lines to such purchasers:

Held, That in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon his purchases of commodities, and that in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as respectively above set forth, said individual violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

Complaint

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is 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, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

Paragraph 1. Respondent H. Weldon Ruff is an individual trading as H. M. Ruff & Son, with his principal office and place of business located in York, Pa. Respondent is engaged in the business of a field broker, acting as agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities are effected for sellers by respondent through brokers, commonly known as corresponding or local brokers, who are employed by respondent to assist him in making such sales. In other instances sales of such commodities are effected for sellers by respondent to purchasers directly.

Par. 2. For services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent receives from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities are effected for sellers by respondent through corresponding or local brokers, a

certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to respondent for services in connection with such sales is granted and allowed by respondent to such corresponding or local brokers for brokerage services rendered to respondent in connection with such sales.

In the instances where sales of such commodities are effected for sellers by respondent to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to respondent for services in connection with such sales, or an allowance or discount in lieu thereof, is granted and allowed by respondent to such purchasers.

PAR. 3. In the course and conduct of his said business since June 19, 1936, respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with the sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by respondent to purchasers directly as set forth in paragraph 2 hereof, respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent is also engaged in the business of purchasing canned fruits and vegetables for his own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondent has made many purchases of such commodities for his own account for resale as aforesaid from sellers located in States other than the State of Pennsylvania, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondent or, pursuant to instructions and directions from respondent, to the respective purchasers to whom such commodities have been resold by respondent.

Since June 19, 1936, respondent has also made many purchases of such commodities for his own account as aforesaid from sellers located in the State of Pennsylvania, which sellers, pursuant to instructions and directions from respondent, have caused the commodities so purchased by respondent to be shipped and transported from the State of Pennsylvania across State lines to the respective purchasers to whom such commodities have been resold by respondent.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by respondent for his own account in interstate commerce as set forth in paragraph 5 hereof, respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, respondent has resold such commodities purchased for his own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Pennsylvania, pursuant to which sales respondent has caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondent to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondent upon the purchases of commodities by the respondent as set forth in paragraph 6 hereof; and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by the respondent to purchasers upon the resale of commodities by the respondent as set forth in paragraph 7 hereof, are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, the Clayton Act, as amended by an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 30th day of August, 1940, issued and served its complaint in this proceeding upon the respondent named in the caption hereof, charging him with violation of the provisions of subsection (c) of section 2 of the said act.

On October 2, 1940, the respondent filed his answer, admitting all the material allegations of fact set forth in said complaint, waiving all intervening procedure and further hearings as to said facts and

waiving the filing of briefs and presentation of oral argument. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, and the Commission, having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondent H. Weldon Ruff, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent H. Weldon Ruff is an individual, trading as H. M. Ruff & Son, with his principal office and place of business located in York, Pa. Respondent for a number of years has been engaged in the business of a field broker, acting as the agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities have been effected for sellers by the respondent through brokers, commonly known as corresponding or local brokers, who have been employed by the respondent to assist him in making such sales. In other instances sales of such commodities have been effected for sellers by respondent to purchasers directly.

PAR. 2. For the services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent has received from sellers a brokerage fee or commission usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities have been effected for sellers by the respondent through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to the respondent for services in connection with such sales has been granted and allowed by the respondent to such corresponding or local brokers for brokerage services rendered to the respondent in connection with such sales.

In the instances where sales of such commodities have been effected for sellers by respondent to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to the respondent for services in connection with such sales, or an allowance or discount in lieu thereof, has been granted and allowed by the respondent to such direct purchasers.

PAR. 3. In the course and conduct of his said business since June 19, 1936, the respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by the respondent to purchasers directly as set forth in paragraph 2 hereof, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent for a number of years has also been engaged in the business of purchasing canned fruits and vegetables for his own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondent has made many purchases of such commodities for his own account for resale as aforesaid from sellers located in States other than the State of Pennsylvania, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondent or, pursuant to instructions and directions from the respondent, to the respective purchasers to whom such commodities have been resold by the respondent.

Since June 19, 1936, the respondent has also made many purchases of such commodities for his own account as aforesaid from sellers located in the State of Pennsylvania, which sellers, pursuant to instructions and directions from the respondent, have caused the commodities so purchased by the respondent to be shipped and transported from the State of Pennsylvania across State lines to the respective purchasers to whom such commodities have been resold by the respondent.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by the respondent for his own account in interstate commerce as set forth in paragraph 5 hereof, the respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, the respondent has resold such commodities purchased for his own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Pennsylvania, pursuant to which sales the respondent has caused such

commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

CONCLUSION

In granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon his purchases of commodities as set forth in paragraph 6 hereof; and in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as set forth in paragraph 7 hereof, the respondent has violated the provisions of section 2 (c) 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 and the answer of the respondent, in which answer said 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 its conclusion that the respondent H. Weldon Ruff has violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in connection with sales of commodities in interstate commerce effected for sellers by respondent in the capacity of a field broker, and in connection with the resale in interstate commerce of commodities purchased by respondent, the respondent H. Weldon Ruff, trading under the name H. M. Ruff & Son, or any other name, his agents, employees, and representatives, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodities to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being

effected by respondent to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondent to corresponding or local brokers for brokerage services or sales assistance rendered to respondent in effecting sales of such commodities to other purchasers thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That in purchasing commodities in interstate commerce the respondent H. Weldon Ruff, trading under the name H. M. Ruff & Son, or any other name, his agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondent's own account at a price or on a basis which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondent's own account.

It is further ordered, That the respondent shall, within 30 days after service upon him of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

IN THE MATTER OF

AMERICAN BROKERAGE COMPANY, INC.

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 4298. Complaint, Aug. 30, 1940—Decision, Nov. 30, 1940

Where a corporation engaged in Virginia as field broker, in acting as agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers, and in effecting in some instances, as thus engaged, sales of such commodities for sellers through corresponding or local brokers employed by it to assist it in making such sales, and in other instances in effecting sales of such commodities for sellers to purchasers directly, and pursuant to which sales, whether effected by said corporation through aid of such corresponding or local brokers or directly, commodities thus sold were shipped and transported by sellers thereof across state lines to respective purchasers, and as thus engaged, in compensating such corresponding or local brokers in former cases through payments to such brokers of certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to it for services in connection with such sales and usually amounting to 4 percent of the purchase price paid by the purchaser for such commodities—

(*a*) Granted and allowed, in connection with the sales of such commodities in interstate commerce effected by it for sellers to purchasers directly, brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to such purchasers and amounting, usually, to 50 percent of the brokerage fee or commission paid by the sellers to it for services in connection with such sales, or allowance or discount in lieu thereof:

Held, That in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers, as above set forth, said corporation violated provision of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

Where said corporation, engaged in business of purchasing canned fruit and vegetables for its own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers and, as thus engaged, in making many purchases of such commodities from sellers located in other States and pursuant to which purchases said commodities were shipped and transported by sellers from the respective states in which they were located across State lines, either to said corporation or, pursuant to instructions and directions from it, to the respecive purchasers to whom such commodities had been resold by said corporation, and in also making many purchases of such commodities for its own account as aforesaid from sellers located in State of Virginia, by which sellers, pursuant to instructions and directions from said corporation, commodities thus purchased were caused to be shipped and transported from said State across State lines to the respective purchasers to whom said commodities had been resold by it;

(*b*) Received and accepted from sellers brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, in connection with the purchases of such commodities by said corporation for its own account in interstate commerce as above set forth; and

(*c*) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, to the purchasers of such commodities bought by said corporation for its own account and resold as aforesaid to purchasers located in other States and pursuant to which sales it caused such commodities to be shipped and transported across state lines to such purchasers:

Held, That in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon its purchases of commodities, and that in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities, as respectively above set forth, said corporation violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

Complaint

The Federal Trade Commission having reason to believe that the party respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, has violated and is 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, sec. 13), hereby issues its complaint stating its charges with respect thereto as follows:

Paragraph 1. Respondent, American Brokerage Co., Inc., is a corporation organized and existing under the laws of the State of Virginia with its principal office and place of business located at 119 Norfolk Avenue, Roanoke, Va. Respondent is engaged in the business of a field broker, acting as agent of sellers in transactions of sale and purchase of canned vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities are effected for sellers by respondent through brokers, commonly known as corresponding or local brokers, who are employed by respondent to assist it in making such sales. In other instances sales of such commodities are effected for sellers by respondent to purchasers directly.

Par. 2. For services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent receives from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities are effected for sellers by respondent through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to respondent for services in connection with such sales is granted and allowed by respondent to such corresponding or local brokers for brokerage services rendered to respondent in connection with such sales.

In the instances where sales of such commodities are effected for sellers by respondent to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to respondent for services in connection with such sales, or an allowance or discount in lieu thereof, is granted and allowed by respondent to such purchasers.

PAR. 3. In the course and conduct of its said business since June 19, 1936, respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by respondent to purchasers directly as set forth in paragraph 2 hereof, respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent is also engaged in the business of purchasing canned vegetables for its own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondent has made many purchases of such commodities for its own account for resale as aforesaid from sellers located in States other than the State of Virginia pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondent or, pursuant to instructions and directions from respondent, to the respective purchasers to whom such commodities have been resold by respondent.

Since June 19, 1936, respondent has also made many purchases of such commodities for its own account as aforesaid from sellers located in the State of Virginia, which sellers, pursuant to instructions and directions from respondent, have caused the commodities so purchased by respondent to be shipped and transported from the State of

Virginia across State lines to the respective purchasers to whom such commodities have been resold by respondent.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by respondent for its own account in interstate commerce as set forth in paragraph 5 hereof, respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, respondent has resold such commodities purchased for its own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Virginia, pursuant to which sales respondent has caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondent to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondent upon the purchases of commodities by the respondent as set forth in paragraph 6 hereof; and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondent to purchasers upon the resale of commodities by respondent as set forth in paragraph 7 hereof are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, the Clayton Act, as amended by an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C. title 15, sec. 13), the Federal Trade Commission on the 30th day of August 1940, issued and served its complaint in this proceeding upon the respondent named in the caption hereof, charging it with violation of the provisions of subsection (c) of section 2 of the said act.

On September 24, 1940, the respondent filed its answer, admitting all the material allegations of fact, set forth in said complaint, waiv-

ing all intervening procedure and further bearings as to said facts and waiving the filing of briefs and presentation of oral argument. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint and answer as aforesaid, and the Commission, having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondent, American Brokerage Co., Inc., now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, American Brokerage Co., Inc., is a corporation organized and existing under the laws of the State of Virginia with its principal office and place of business located at 119 Norfolk Avenue, Roanoke, Va. Respondent for a number of years has been engaged in the business of a field broker, acting as the agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores and other purchasers.

In some instances sales of such commodities have been effected for sellers by the respondent through brokers, commonly known as corresponding or local brokers, who have been employed by the respondent to assist it in making such sales. In other instances sales of such commodities have been effected for sellers by respondent to purchasers directly.

PAR. 2. For the services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent has received from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities have been effected for sellers by the respondent through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to the respondent for services in connection with such sales has been granted and allowed by the respondent to such corresponding or local brokers for brokerage services rendered to the respondent in connection with such sales.

In the instances where sales of such commodities have been effected for sellers by respondent to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to the respondent for services in connection with such

sales, or an allowance or discount in lieu thereof, has been granted and allowed by the respondent to such direct purchasers.

PAR. 3. In the course and conduct of its said business since June 19, 1936, the respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by the respondent to purchasers directly as set forth in paragraph 2 hereof, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent for a number of years has also been engaged in the business of purchasing canned fruits and vegetables for its own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondent has made many purchases of such commodities for its own account for resale as aforesaid from sellers located in States other than the State of Virginia, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondent or, pursuant to instructions and directions from the respondent, to the respective purchasers to whom such commodities have been resold by the respondent.

Since June 19, 1936, the respondent has also made many purchases of such commodities for its own account as aforesaid from sellers located in the State of Virginia, which sellers, pursuant to instructions and directions from the respondent, have caused the commodities so purchased by the respondent to be shipped and transported from the State of Virginia across State lines to the respective purchasers to whom such commodities have been resold by the respondent.

PAR. 6. Since June 19, 1936, in connection with the purchase of such commodities by the respondent for its own account in interstate commerce as set forth in paragraph 5 hereof, the respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, the respondent has resold such commodities purchased for its own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Virginia,

pursuant to which sales the respondent has caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

CONCLUSION

In granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon its purchases of commodities as set forth in paragraph 6 hereof; and in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as set forth in paragraph 7 hereof, the respondent has violated the provisions of section 2 (c) 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 and the answer of the respondent named in the caption hereof, 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 its conclusion that the said respondent has violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in connection with sales of commodities in interstate commerce effected for sellers by respondent in the capacity of a field broker, and in connection with the resale in interstate commerce of commodities purchased by respondent, the respondent, American Brokerage Co., Inc., its officers, representatives, agents, and employees, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodities to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being

effected by respondent to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondent to corresponding or local brokers for brokerage services or sales assistance rendered to respondent in effecting sales of such commodities to other purchares thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That in purchasing commodities in interstate commerce the respondent, American Brokerage Co., Inc., its officers, representatives, agents, and employees, do forthwith cease and desist from:

1. Making purchases of commodities for respondent's own account at a price or on a basis which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondent's own account.

It is further ordered, That the respondent, American Brokerage Co., Inc., shall, within 30 days after service upon it of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

IN THE MATTER OF

WILLIAM E. SILVER AND FRANCIS S. SILVER, TRADING AS WILLIAM SILVER & 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 4340. Complaint, Oct. 9, 1940—Decision, Nov. 30, 1940

Where an individual engaged in Maryland as field broker, in acting as agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers, and in effecting, in some instances as thus engaged, sales of such commodities for sellers through corresponding or local brokers employed by him to assist him in making such sales, and, in other instances in effecting sales of such commodities for sellers to purchasers directly, and pursuant to which sales, whether effected by said individual through aid of such corresponding or local brokers or directly, commodities thus sold were shipped and transported by sellers thereof across State lines to respective purchasers, and as thus engaged, in compensating such corresponding or local brokers in former cases through payments to such brokers of certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to him for services in connection with such sales and usually amounting to 4 percent of the purchase price paid by the purchaser for such commodities—

(*a*) Granted and allowed, in connection with the sales of such commodities in interstate commerce effected by him for sellers to purchasers directly, brokerage fees and commissions or allowances and discounts in lieu thereof, in substantial amounts, to such purchasers, and amounting, usually, to 50 percent of the brokerage fee or commission paid by the sellers to him for services in connection with such sales, or allowance or discount in lieu thereof:

Held, That in granting and allowing brokerage fees and commissions, or allowances and discounts in lieu thereof, to purchasers in connection with their respective purchases of commodities from sellers as above set forth, said individual violated provision of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act; and

Where said individual, engaged in business of purchasing canned fruit and vegetables for his own account, for resale to jobbers, wholesalers, retail chain stores, and other purchasers and, as thus engaged, in making many purchases of such commodities from sellers located in other States and pursuant to which purchases said commodities were shipped and transported by sellers from the respective States in which they were located across State lines, either to said individual or, pursuant to instructions and directions from him, to the respective purchasers to whom such commodities had been resold by said individual, and in also making many purchases of such commodities for his own account as aforesaid from sellers located in State of Maryland, by which sellers, pursuant to instruc-

tions and directions from said individual, commodities thus purchased were caused to be shipped and transported from said State across State lines to the respective purchasers to whom said commodities had been resold by him;

(*b*) Received and accepted from sellers brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, in connection with the purchases of such commodities by said individual for his own account in interstate commerce as above set forth; and

(*c*) Granted and allowed brokerage fees and commissions, or allowances and discounts in lieu thereof, in substantial amounts, to the purchasers of such commodities, bought by said individual for his own account, and resold as aforesaid, to purchasers located in other States and pursuant to which sales he caused such commodities to be shipped and transported across States lines to such purchasers:

Held, That in receiving and accepting brokerage fees and commissions, or allowances and discounts in lieu thereof, from sellers upon his purchases of commodities, and that in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities, as respectively above set forth, said individual violated the provisions of section 2 (c) of the Clayton Act as amended by the Robinson-Patman Act.

Mr. John Darsey, for the Commission.

Complaint

The Federal Trade Commission having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of subsection (c) 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. Respondents, William E. Silver and Francis S. Silver, are individuals, trading as William Silver & Co., with their principal office and place of business located in Aberdeen, Md. Respondents are engaged in the business of field brokers, acting as agents of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities are effected for sellers by respondents through brokers, commonly known as corresponding or local brokers, who are employed by respondents to assist them in making such sales. In other instances sales of such commodities are effected for sellers by respondents to purchasers directly.

Par. 2. For services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph

1 hereof, respondents receive from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities are effected for sellers by respondents through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to respondents for services in connection with such sales is granted and allowed by respondents to such corresponding or local brokers for brokerage services rendered to respondents in connection with such sales.

In the instances where sales of such commodities are effected for sellers by respondents to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to respondents for services in connection with such sales, or an allowance or discount in lieu thereof, is granted and allowed by respondents to such purchasers.

PAR. 3. In the course and conduct of their said business since June 19, 1936, respondents have effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by respondents to purchasers directly as set forth in paragraph 2 hereof, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondents are also engaged in the business of purchasing canned fruits and vegetables for their own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of Maryland pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.

Since June 19, 1936, respondents have also made many purchases of such commodities for their own account as aforesaid from sellers

located in the State of Maryland, which sellers, pursuant to instructions and directions from respondents, have caused the commodities so purchased by respondents to be shipped and transported from the State of Maryland across States lines to the respective purchasers to whom such commodities have been resold by respondents.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by respondents for their own account in interstate commerce as set forth in paragraph 5 hereof, respondents have received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, respondents have resold such commodities purchased for their own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Maryland, pursuant to which sales respondents have caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the resale of such commodities in interstate commerce as aforesaid, respondents have granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; the receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof from sellers by respondents upon the purchases of commodities by the respondents as set forth in paragraph 6 hereof; and the granting and allowing of brokerage fees and commissions or allowances and discounts in lieu thereof by respondents to purchasers upon the resale of commodities by respondents as set forth in paragraph 7 hereof are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," approved October 15, 1914, the Clayton Act, as amended by an act of Congress approved June 19, 1936, the Robinson-Patman Act (U. S. C., title 15, sec. 13), the Federal Trade Commission on the 9th day of October 1940, issued and served its complaint in this proceeding upon the respondents named in the

caption hereof, charging them with violation of the provisions of subsection (c) of section 2 of the said act.

On October 9, 1940, the respondent William E. Silver filed his answer, admitting all the material allegations of fact set forth in said complaint, waiving all intervening procedure and further hearings as to said facts and waiving the filing of briefs and presentation of oral argument. On October 19, 1940, the respondent Francis S. Silver filed a motion to dismiss the complaint insofar as it related to him for the reason that he had not been connected with the business involved in the complaint since June 1, 1936. Thereafter the proceeding regularly came on for final hearing before the Commission on the complaint, answer, and motion as aforesaid, and the Commission, having duly considered the matter and being now fully advised in the premises, and being of the opinion that section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, has been violated by the respondent William E. Silver, now makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, William E. Silver, is an individual, trading as William Silver & Co., with his principal office and place of business located in Aberdeen, Md. Respondent for a number of years has been engaged in the business of a field broker, acting as the agent of sellers in transactions of sale and purchase of canned fruits and vegetables between sellers thereof and jobbers, wholesalers, retail chain stores, and other purchasers.

In some instances sales of such commodities have been effected for sellers by the respondent through brokers, commonly known as corresponding or local brokers, who have been employed by the respondent to assist him in making such sales. In other instances sales of such commodities have been effected for sellers by respondent to purchasers directly.

PAR. 2. For the services rendered to sellers in connection with the sale of such commodities in each of the manners set forth in paragraph 1 hereof, respondent has received from sellers a brokerage fee or commission, usually 4 percent of the purchase price paid by the purchaser for such commodities.

In the instances where sales of such commodities have been effected for sellers by the respondent through corresponding or local brokers, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by sellers to the respondent for services in connection with such sales has been granted and allowed by the respondent

to such corresponding or local brokers for brokerage services rendered to the respondent in connection with such sales.

In the instances where sales of such commodities have been effected for sellers by respondent to purchasers directly, a certain percentage, usually 50 percent, of the brokerage fee or commission paid by the sellers to the respondent for services in connection with such sales, or an allowance or discount in lieu thereof, has been granted and allowed by the respondent to such direct purchasers.

PAR. 3. In the course and conduct of his said business since June 19, 1936, the respondent has effected sales of such commodities for sellers in each of the manners set forth in paragraph 1 hereof to purchasers located in States other than the State in which the respective sellers of such commodities are located, pursuant to which sales such commodities have been shipped and transported by the sellers thereof across State lines to the respective purchasers thereof.

PAR. 4. Since June 19, 1936, in connection with sales of such commodities in interstate commerce as aforesaid, which sales were effected for sellers by the respondent to purchasers directly as set forth in paragraph 2 hereof, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to such purchasers.

PAR. 5. Respondent for a number of years has also been engaged in the business of purchasing canned fruits and vegetables for his own account for resale to jobbers, wholesalers, retail chain stores, and other purchasers.

Since June 19, 1936, the respondent has made many purchases of such commodities for his own account for resale as aforesaid from sellers located in States other than the State of Maryland, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to the respondent or, pursuant to instructions and directions from the respondent, to the respective purchasers to whom such commodities have been resold by the respondent.

Since June 19, 1936, the respondent has also made many purchases of such commodities for his own account as aforesaid from sellers located in the State of Maryland, which sellers, pursuant to instructions and directions from the respondent, have caused the commodities so purchased by the respondent to be shipped and transported from the State of Maryland across State lines to the respective purchasers to whom such commodities have been resold by the respondent.

PAR. 6. Since June 19, 1936, in connection with the purchases of such commodities by the respondent for his own account in inter-

state commerce as set forth in paragraph 5 hereof, the respondent has received and accepted from sellers brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts.

PAR. 7. Since June 19, 1936, the respondent has resold such commodities purchased for his own account as set forth in paragraph 5 hereof to purchasers located in States other than the State of Maryland, pursuant to which sales the respondent has caused such commodities to be shipped and transported across State lines to such purchasers.

Since June 19, 1936, in connection with the sale of such commodities in interstate commerce as aforesaid, the respondent has granted and allowed brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts to the purchasers of such commodities.

PAR. 8. The Commission finds that the respondent Francis S. Silver, prior to the issuance of complaint herein, dissociated himself from the business in connection with which the practices involved herein are found to have been engaged in.

CONCLUSION

In granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers in connection with their respective purchases of commodities from sellers as set forth in paragraph 4 hereof; in receiving and accepting brokerage fees and commissions or allowances and discounts in lieu thereof from sellers upon his purchases of commodities as set forth in paragraph 6 hereof; and in granting and allowing brokerage fees and commissions or allowances and discounts in lieu thereof to purchasers upon the resale of commodities as set forth in paragraph 7 hereof, the respondent has violated the provisions of section 2 (c) 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 and the answer of the respondent William E. Silver, in which answer said 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 upon the motion to dismiss filed by respondent Francis S. Silver, and the Commission having made its findings as to the facts and its conclusion that the respondent William E. Silver

has violated the provisions of section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13).

It is ordered, That in connection with sales of commodities in interstate commerce effected for sellers by respondent in the capacity of a field broker, and in connection with the resale in interstate commerce of commodities purchased by respondent, the respondent William E. Silver, trading under the name William Silver & Co., or any other name, his agents, employees, and representatives, do forthwith cease and desist from:

1. Granting or making any allowances or discounts in lieu of brokerage to any purchaser in such transactions by selling commodities to any of such purchasers at a price reflecting a reduction from the prices at which sales of such commodities are currently being effected by respondent to other customers of an amount representing, in whole or in part, brokerage currently being paid by respondent to corresponding or local brokers for brokerage services or sales assistance rendered to respondent in effecting sales of such commodities to other purchasers thereof; and

2. Granting or allowing in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance or discount in lieu thereof to any purchaser in such transactions.

It is further ordered, That in purchasing commodities in interstate commerce the respondent William E. Silver, trading under the name William Silver & Co., or any other name, his agents, employees, and representatives, do forthwith cease and desist from:

1. Making purchases of commodities for respondent's own account at a price or on a basis which reflects a deduction or reduction, or is arrived at or computed by deducting or subtracting, from the prices at which sellers are selling commodities to other purchasers thereof any amount representing or reflecting, in whole or in part, brokerage currently being paid by sellers to their brokers on sales of commodities made for said sellers by, or by said sellers through, their said brokers; and

2. Accepting from sellers in any manner or form whatever, directly or indirectly, anything of value as a commission, brokerage, or other compensation or any allowance and discount in lieu thereof upon purchases of commodities made for respondent's own account.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to the respondent Francis S. Silver for the reason that it appears that this respondent, prior to the issuance of

the complaint herein, dissociated himself from the business in connection with which the practices involved herein were alleged and are found to have been engaged in.

It is further ordered, That the respondent William E. Silver shall, within 30 days after service upon him of this order, file with the Federal Trade Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

ORDERS OF DISMISSAL, OR CLOSING CASE, ETC.

LUZIER'S, INC. Complaint, March 4, 1939. Order, June 4, 1940. (Docket 3730.)

Charge: Misrepresenting product as to special nature of manufacture to individual requirements, qualities, and disparaging and misrepresenting products of competitors; in connection with the manufacture and sale of cosmetics.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same, 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. Fletcher G. Cohn, for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., and *Gage, Hillix, Hodges & Cowherd*, of Kansas City, Mo., for respondent.

K. K. IMPORTING CORP. Complaint, September 5, 1939. Order, June 11, 1940. (Docket 3885.)

Charge: Misbranding or mislabeling as to source or origin of products; in connection with the importing of optical lenses, and exporting and sale thereof to foreign purchasers or importers.

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, K. K. Importing Corporation, has been dissolved and is no longer engaged in business, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume proceedings in the case in accordance with its regular procedure.

Mr. Jay L. Jackson, for the Commission.

Romano, Gluckstein & Schenker, of Brooklyn, N. Y., for respondent.

FROSTED PRODUCTS EQUIPMENT CO., INC. Complaint, June 16, 1938. Order, June 18, 1940. (Docket 3462.)

Charge: Using lottery scheme in merchandising; in connection with the sale of malted milk machines, paper cups, malted milk mix, and wooden spoons.

Record closed by the following order:

This matter coming on to be heard by the Commission upon the record, and it appearing that the business of the respondent has been entirely discontinued 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 proceedings in the case in accordance with its regular procedure.

Mr. D. C. Daniel, for the Commission.

ROGERS IMPORTS, INC. Complaint, November 21, 1938. Order, July 1, 1940. (Docket 3652.)

Charge: Misbranding or mislabeling as to source or origin of foreign products; in connection with the sale of ash trays and tobacco jars.

Motion for permission to withdraw answer and to file substitute answer granted and case closed without prejudice by the following order:

This matter coming on for consideration by the Commission upon the record and upon respondent's motion for permission to withdraw its answer previously filed and to substitute in lieu thereof its answer dated February 17, 1940, and that the Commission close the case without prejudice, and it appearing to the Commission that the respondent has entered into a stipulation as to the facts and an agreement to cease and desist from the practices charged in the complaint, which stipulation and agreement was approved by the Commission, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That respondent's motion that it be permitted to withdraw its answer filed herein on December 9, 1938 and to file in lieu thereof its answer dated February 17, 1940 be, and the same hereby is, granted.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should the facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Jay L. Jackson, for the Commission.

Mr. Henry W. Pollock, of New York City, for respondent.

NATIONAL HOPS CO. Complaint, November 27, 1936. Order, July 31, 1940. (Docket 2997.)

Charge: Disparaging competitors' dealings and inducing breach of competitors' contract on part of respondent, engaged as a hop broker and in doing business as National Hops Clearing House, selling "memberships" therein, and furnishing a bulletin service to its members concerning hop business.

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 respondent's corporate organization has been dissolved and forfeited, 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 trial thereof in accordance with its regular procedure.

Mr. P. C. Kolinski, for the Commission.

RICHARD MURDOC, trading as SERVICE CLUB SALES CO. Complaint, June 16, 1938. Order, August 5, 1940. (Docket 3458.)

Charge: Using lottery scheme in merchandising; in connection with the sale of roulette wheels, rotary clocks, electric razors, 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 it has been impossible to locate the 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.

Mr. D. C. Daniel, for the Commission.

I. SCHNEIERSON & SONS, INC. Complaint, December 17, 1938. Order, September 27, 1940. (Docket 3667.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, failing to disclose composition of product and furnishing means and instrumentalities of misrepresentation; in connection with the manufacture and sale of women's and children's underwear.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the same 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. James L. Fort, for the Commission.

Austrian & Lance, of New York City, for respondent.

SHAW'S JEWELRY CO. and SHAW'S. Complaint, August 21, 1940. Order, October 7, 1940. (Docket 4250.)

Charge: Advertising falsely or misleadingly as to quality, guarantee, certification, make, and composition of products; in connection with the sale of jewelry, silverware, and related products.

Dismissed by the following order:

This matter coming on for consideration by the Commission and it appearing that the respondent corporations are no longer engaged in business and have been legally dissolved, 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.

Mr. Morton Nesmith, for the Commission.

READING BATTERIES, INC., BOWERS BATTERY MANUFACTURING CO., INC., ROYAL BATTERY CORP., PRICE BATTERY CORP. and PERRINE QUALITY PRODUCTS CORP. Complaint, December 20, 1939. Order, October 11, 1940. (Docket 3978.)

Charge: Combining and conspiring to fix and maintain minimum prices and uniform discounts, terms and conditions of sale; in connection with the manufacture and sale of automobile storage batteries of cheaper grade and in low price field.

Respondents' motion to dismiss denied and case closed without prejudice, after answers and trial, by the following order:

This matter coming on to be heard by the Commission upon the record and upon the respondents' amended motion to dismiss the complaint herein, and request to be allowed to file brief in support of said motion, and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the respondents' request to be allowed to file a brief in support of said motion to dismiss be, and the same hereby is, granted, and said brief is hereby ordered to be received and filed.

It is further ordered, That respondents' amended motion to dismiss, filed under date of September 9, 1940, be, and the same hereby is, denied.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

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

Mr. Reuben J. Martin, for the Commission.

Harvey, Bannan & Bannan, of Waltham, Mass., for respondents generally, and along with—

Mr. Edgar S. Richardson, of Reading, Pa., for Reading Batteries, Inc.;

Stevens & Lee, of Reading, Pa., for Bowers Battery Manufacturing Co., Inc.;

Mr. Thomas B. Davidson, of Jersey City, N. J., for Royal Battery Corp.; and

Wolf, Block, Schorr & Solis-Cohen, of Philadelphia, Pa., for Price Battery Corp.

LAWRENCE A. HUFFMAN, doing business as PLANT N-R-G Co. and PLANT ENERGY, INC. Complaint, December 16, 1937. Order, October 21, 1940. (Docket 3283.)

Charge: Advertising falsely or misleadingly and misbranding or mislabeling as to composition, nature, qualities and results of products; in connection with the manufacture and sale of two compounds designated as "No. 2 Legume Inoculation" and "No. 2 Non-Legumes."

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 reopen the same and resume trial thereof in accordance with its regular procedure.

Before *Mr. Randolph Preston*, *Mr. Arthur F. Thomas*, and *Mr. Lewis C. Russell*, trial examiners.

Mr. Carrel F. Rhodes, for the Commission.

Mr. O. F. Rhodes, of Peru, Ind., for respondent.

ELECTROLYSIS ASSOCIATES, INC. and LOUIS ZINBERG, as an officer thereof, and trading as BEAUTIDERM Co. Complaint, May 28, 1940. Original findings and order, September 27, 1940. Docket 4144. Order vacating, etc., October 25, 1940.

Charge: Advertising falsely or misleadingly as to qualities, results, economy and safety of product; in connection with the sale of a cer-

tain device or apparatus designated as the Beautiderm Midget, recommended for use in the electrolytic removal of superfluous hair from the human body.

Stipulation as to the facts and findings and order to cease and desist vacated by the following order:

This matter coming on before the Commission for consideration on the recommendation of the Chief Counsel to vacate the stipulation as to the facts, the findings as to the facts based thereon, and the order to cease and desist heretofore issued herein, and the Commission having duly considered said recommendation and the record herein, and being now fully advised in the premises;

It is ordered, That the stipulation as to the facts approved on September 23, 1940 and the findings as to the facts and order to cease and desist issued on September 27, 1940 be, and the same hereby are, vacated and set aside.[1]

Mr. James L. Baker, for the Commission.

Mr. Irving Payson Zinbarg, of New York City, for respondents.

GOOD HUMOR CORP. OF AMERICA, JOE LOWE CORP., and POPSICLE CORP. OF THE UNITED STATES. Complaint, October 25, 1937. Order, October 26, 1940. (Docket 3250.)

Charge: Claiming patent rights falsely or misleadingly and threatening patent infringement suits, not in good faith, in violation of Section 5 of the Federal Trade Commission Act, and dealing on exclusive and tying and price maintenance basis, in violation of Section 3 of the Clayton Act; in connection with sale of frozen stick confections.

Dismissed, after answer and trial, by the following order:

This matter coming on to be heard by the Commission upon the record and it appearing that the allegations of the complaint have not been sustained by the evidence 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. Charles F. Diggs*, *Mr. Lewis C. Russell*, and *Mr. William C. Reeves*, trial examiners.

Mr. William L. Pencke, for the Commission.

Mr. Daniel G. Albert, of Brooklyn, N. Y., *Mr. Martin J. McNamara*, of Washington, D. C., and *Mr. Harvey C. Price* and *Gilbert & Brandeis*, of New York City, for respondents.

DR. H. B. NORTON SHOE CO., INC. and DR. H. B. NORTON and BENJAMIN WEINSTEIN trading as THE FOOT HEALTH INSTITUTE. Complaint, April 29, 1936. Order, November 1, 1940. (Docket 2790.)

[1] Not published.

Charge: Assuming or using misleading trade name, and misrepresenting business status, and properties and results of product, and ailments, causes, etc., incident to product offered, and misrepresenting and disparaging competitive products and using testimonials misleadingly or falsely; in connection with the sale of shoes, specially built for ill-formed feet.

Record closed, after answer and trial, by the following order:

This matter coming on for consideration by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

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

Mr. Robert N. McMillen, for the Commission.

Mr. Cyril L. Weston, of Philadelphia, Pa., for respondents.

R. T. MILLER, JR., trading under the name of AMERICAN TECHNICAL SOCIETY. Complaint, February 6, 1940. Order, November 4, 1940. (Docket 4019.)

Charge: Assuming or using misleading trade or corporate name and advertising falsely or misleadingly as to special price, comparative merits, nature, standing, qualities, results, business status and free service; in connection with the publication and sale of scientific and technical books and cyclopedias.

Record closed, after answer, by the following order:

This matter coming on to be heard by the Commission upon the record, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. W. M. King, for the Commission.

Morris, KixMiller & Baar, of Washington, D. C., and *KixMiller, Baar & Morris*, of Chicago, Ill., for respondent.

L. & H. STERN, INC. Complaint, August 22, 1940. Order, November 13, 1940. (Docket 4258.)

Charge: Using lottery scheme in merchandising; in connection with the manufacture and sale of pipes and other articles of merchandise.

Record closed by the following order:

This matter coming on for consideration by the Commission upon the record and it appearing that the respondent, L. & H. Stern, 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 November 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 August 22, 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 trial thereof in accordance with its regular procedure.

Mr. L. P. Allen, Jr., for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., and *Cohen, Cole, Weiss & Wharton*, of New York City, for respondent.

AMERICAN SEED CO., INC. and HARRY H. BARD, individually and as General Manager of said corporation. Complaint, September 26, 1934. Order, November 16, 1940. (Docket 2233.)

Charge: Advertising falsely or misleadingly as to agents' premiums, terms and conditions, and free products; in connection with the sale of garden and flower seeds.

Record closed by the following order:

This matter coming on to be heard 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 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 trial thereof in accordance with its regular procedure.

Mr. Morton Nesmith, for the Commission.

Zimmerman, Myers & Kready, of Lancaster, Pa., for respondents.

ALPHONSO M. SIMON, JR. and PHYLLIS SCHUSTER doing business as METROPOLITAN PUBLISHING CO. Complaint, February 3, 1939. Order, November 16, 1940. (Docket 3699.)

Charge: Misrepresenting quality of product and terms and conditions of sale; in connection with the manufacture and sale of greeting cards.

Dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint, the answer, testimony and other evidence, briefs and oral argument in support of and in opposition to the allegations of the complaint, and the Commission having duly considered the same and being now fully advised in the premises, is of the opinion that the evidence is insufficient to support the allegations of the complaint.

It is ordered, That the complaint herein be, and the same hereby is, dismissed.

Before *Mr. Arthur F. Thomas*, trial examiner.

Mr. Merle P. Lyon, for the Commission.

Buchdahl & Lempel, of New York City, for respondents.

PAULMAC TEXTILE CO., INC. Complaint, July 18, 1940. Order, November 16, 1940. (Docket 4191.)

Charge: Misrepresenting product through failure to disclose composition thereof; in connection with sale of ribbons and braids.

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, Paulmac Textile Company, Inc., is no longer engaged in business, and that said corporation has been dissolved, and the Commission having duly considered the record, 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 trial thereof in accordance with its regular procedure.

Mr. Robert Mathis, Jr., for the Commission.

BELLE BLOUSE CORP. Complaint, August 27, 1940. Order, November 16, 1940. (Docket 4273.)

Charge: Advertising falsely or misleadingly, misbranding or mislabeling, and misrepresenting product otherwise as to composition and through failure to disclose; in connection with the sale of blouses and other wearing apparel for women.

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, Belle Blouse Corporation, is no longer engaged in business, and that said corporation has been dissolved and the Commission having duly considered the matter, and being now fully advised in the premises;

It is ordered, That the case growing out of the complaint herein be, and the same hereby is, closed without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

Mr. Robert Mathis, Jr., for the Commission.

Mr. Elmer Levenson, of New York City, for Assignee, George J. Penn.

STIPULATIONS[1]

DIGEST OF GENERAL STIPULATIONS OF THE FACTS AND AGREEMENTS TO CEASE AND DESIST[2]

2832. **"Sportswear" Garments—Mills and Manufacturers.**—Joseph D. Miller and David L. Davis, copartners, trading under the firm name of Hamilton Mills, engaged in the sale and distribution of garments designated "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.

Joseph D. Miller and David L. Davis, and each of them, in connection with the sale and distribution of their merchandise in commerce as defined by said act, agreed to cease and desist from the use of the word "Mills" as part of their trade name and of the words "Mill" and "Manufacturers" as descriptive of their 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 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. (June 3, 1940.)

2833. **Fur Garments—Nature.**—Louis Fenster & Brother, Inc., engaged in the sale and distribution of fur garments 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.

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[1] For false and misleading advertising stipulations effected through the Commission's radio and periodical division, see p. 1730 et seq.

The digests published herewith cover those accepted by the Commission during the period covered by this volume, namely, June 1, 1940, to November 30, 1940, inclusive. Digests of previous stipulations of this character accepted by the Commission may be found in vols. 10 to 30 of the Commission's decisions.

[2] In the interest of brevity there is omitted from the published digests of the published stipulations agreements under which the stipulating respondent or respondents, as the case may be, agree that, should such stipulating respondent or respondents ever resume or indulge in any of the practices, methods, or acts in question, or in event of issuance by Commission of complaint and institution of formal proceedings against respondent, as in the stipulation provided, such stipulation and agreement, if relevant, may be received in such proceedings as evidence of the prior use by the respondent or respondents of the methods, acts, or practices therein referred to.

Louis Fenster & Brother, Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from—

(*a*) Labeling, invoicing, or otherwise designating or referring to coats or other articles made or manufactured from the peltries of Chinese lamb as "Blk. Pers.," "Black Persian Caracul," "Blk. Persian Caracul," "Blk. Pers. Car.," or "Krimmer Caracul," or other use of the words "Persian" or "Krimmer," either with or without the explanatory clause "Dyed Lamb."

(*b*) Representing, directly or inferentially, or placing in the hands of others a means to represent, that coats or other articles made or manufactured from Chinese lamb peltries are made or manufactured from the peltries of Persian lambs or Krimmer lambs; or otherwise making representations which convey or tend to convey a misconception as to the character, name, nature, breed or zoological origin of any fur products offered for sale or sold by it. (June 3, 1940.)

2834. **Photographic Prints—Special Offer and Price and Nature.**—Maurice W. Teplow, sole trader as Hall Gentry Studios, engaged in the making of photographic portraits and in the sale and distribution thereof 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.

A "goldtone" print, properly defined, is made by a process which involves the use of small quantities of nitrate gold in the developing solution, such process giving a light brown tint to photographs and imparting a soft appearance to flesh and hair not obtainable by the ordinary sepia process. A print made by the sepia process and then tinted to simulate goldtone is not correctly designated as "goldtone."

The term "etching" as known to the trade and the public, has no application to photography, as it involves an entirely different process, being produced by the action of acid on a metal plate from which prints are made. Certain photographic prints that have been sometimes referred to as "Photo etchings" are also made by a process different from that used in ordinary photography, being printed through a screen on a rough sensitized paper, making a positive print which is then photographed and another print made on rough paper, whereby a picture is produced which resembles, but is not, an etching. A plain white ground vignette photograph print is not an etching and is misbranded if so designated.

Maurice W. Teplow, in connection with his sale and distribution of photographic prints in commerce as defined by said act, agreed to cease and desist from—

(*a*) Representing in any way that his regular method of sale is a "special offer," or directly or by implication that a special price is offered when the regular price is charged, or that some advantage in quality is offered when there is none; or in any manner whatsoever, that the offer is special or unusual so long as no price reduction or other trade concession is made therewith.

(*b*) Representing the "regular value" of a photograph customarily sold for $1 to be $5 or any other amount in excess of the price charged; or in any other way, directly or by implication, representing that the various types of photographs and portraits made in his studio or for his account have actual and regular values and customarily sell for sums in excess of the prices actually charged therefor.

(*c*) Representing, through advertising literature containing the descriptive language "Goldtone Featherweight Oil Colored Print" or terms or expressions of similar import, or in any manner whatever, that sepia print photographs are Goldtones or are Goldtones Oil Colored.

(*d*) Representing, through advertising literature containing the descriptive language "Black and White Vignette Etching" or terms or expressions of similar import, or in any manner whatever, that ordinary black and white photographs are Vignette Etchings or Etchings of any kind. (June 3, 1940.)

2835. **Mattresses—Doctors' Supervision and Guarantee.**—R. C. Heller Co., Inc., a corporation, engaged in the manufacture of mattresses and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set set forth therein.

R. C. Heller Co., Inc., in connection with the sale and distribution of its products as defined by said act, agreed to cease and desist from—

(*a*) Designating mattresses sold by it as "Dr. Marshall Correct Posture Custom Built Mattress" or "Dr. Reed's Health Rest Mattress"; or representing directly or indirectly through the use of the word "doctor" or the abbrevation "Dr." alone or in conjunction with any other word or words, or through the use of words of similar import, meaning and effect, or through any other means or device or in any other manner that a mattress sold by it has been designed by, or under the supervision and direction of any doctor.

(*b*) The use of the word "guaranteed" or the word "guarantee" or any other words of similar meaning in connection with the advertising, sale or offering for sale of 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. (June 3, 1940.)

2836. **Cameras—Qualities.**—Detrola Corporation, a corporation, engaged in the manufacture of cameras and radios, and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships engaged likewise, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Detrola Corporation, in connection with its sale and distribution of its camera products in commerce as defined by said act, agreed to cease and desist from representing in its advertising or otherwise that its Detrola Candid Camera or other camera having an actual shutter speed of 1/100th of a second has a shutter speed of 1/200th of a second; or in any other way representing the shutter speed of a camera offered for sale and sold by it to be in excess of the speed in point of fact attained. (June 3, 1940.)

2837. **Ribbons—Composition and Nature of Manufacture.**—Lefton Textile 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.

Lefton Textile Corporation, in connection with the sale and distribution of its merchandise in commerce as defined by said act, agreed to cease and desist from—

(*a*) Advertising, branding, labeling, invoicing, 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 a substantial amount, or in any case less than 5 percent; as, "Rayon and Silk," where the rayon predominates.

(*b*) Using the word "velvet" or other word importing pure silk to describe or designate any fabric or product not composed wholly of silk. If the word "velvet" or similar word be used properly as descriptive of the type of construction only, of a fabric or product containing fiber other than pure silk, then such word, wherever used, shall be immediately accompanied by a word or words clearly naming and disclosing the fiber, fibers or material of which said fabric or product is composed, stated in the order of their predominance by weight, beginning with the largest single constituent; for example, "Rayon Velvet with Satin Back" for a product composed of

a rayon pile or face and a satin back, the rayon content of the product predominating.

(*c*) Advertising, branding, labeling, invoicing, selling, or offering for sale any ribbons having cut edges and/or made by the adhesion of separate layers of fabric, unless full and nondeceptive disclosure of such process of manufacture is made by clearly and nondeceptively designating such process or method by the use of some generally understood descriptive term or terms; as for example, "cut-edge" to describe ribbons having cut (not woven or selvage) edges, and "pasted-back" to describe ribbons made by the joining of two separate layers of fabric. (June 4, 1940.)

2838. **Hosiery—Composition and Nature.**—Danville Knitting Mills, Inc., trading also as Master Knit Hosiery Mills, a corporation, engaged in the manufacture of hosiery 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.

Danville 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 representing by statement or by inference, on its labels, transfers, brands, in its advertising matter or otherwise, that its Master Knit Hose, or any product of similar construction or composition:

(*a*) Has toes and/or heels of linen or is made with linen toe and/or heel.

(*b*) Has toe and/or heel of 3-ply construction.

(*c*) Has reinforced gore of toe and/or heel. (June 4, 1940.)

2840.[3] **Hosiery—Domestic as Imported and Manufacture.**—Ellis Mills and Marvin T. Reavis, copartners, trading under the firm name of Ellis Hosiery Mills, engaged in the manufacture, sale, and distribution of hosiery products 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.

English ribbed hose is a distinctive type and quality of hosiery originating in England, manufactured there under a patented process, and imported into the United States where it has long been favorably known and recognized by the trade and the purchasing public. Later, English machines for this type of hosiery were imported into the

[3] Completion of stipulation to which number 2839 has been assigned had not during period covered by this volume been effected.

United States and are used by some hosiery mills. Similar machines are now also manufactured in America on which hosiery in simulation of the English rib is made for the domestic market. Among a substantial portion of the consuming public there is a preference first for the English made imported product, and secondly for that made on machines imported from England. This has in some cases resulted in a false branding of an American machine product as being made on machines imported from England. Hosiery so stamped has been in demand and often sells more readily than hosiery of even better grade and quality not so stamped.

Ellis Mills and Marvin T. Reavis, and each of them, in connection with their sale and distribution of hosiery products in commerce as defined by said act, agreed to cease and desist from the use, on their transfers, brands or other markings, of the words "Genuine 6 x 3 Rib" as descriptive of hose that is but an imitation of English rib, or the words or legend "Made on machines imported from England"; or representing or characterizing such product in any other way that may import or imply, or the effect of which may be to convey the belief that the same is either of a style and quality known to the trade and public as genuine English rib hose or is manufactured by English made machines. (June 3, 1940.)

2841. **Mattresses—Professional Supervision or Indorsement and Guaranteed.**—Eagle Mattress Co., Inc., engaged in the business of manufacturing mattresses, among other things, 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.

Eagle Mattress Co., Inc., in connection with the offering for sale, sale or distribution of its products in commerce, agreed it will cease and desist from the use on labels affixed to its products, or in any other way—

(*a*) Of the word "doctor" or the abbreviation "Dr." or the initials "M. D." either alone or in connection or conjunction with a name or in any way, the effect of which tends or may tend to convey the belief that said products are made in accordance with the design or under the supervision of a doctor of medicine or physician or that said products contain special or scientific features resulting from medical determination or services.

(*b*) Of any word or words, statement, or representation which directly asserts or imports or implies that said products are guaranteed or endorsed by a member of the medical profession, that is to say, a doctor of medicine or physician. (June 4, 1940.)

2842. **Women's Clothing—Composition, Nondisclosure and Guaranteed.**—Kanner Dress Co., Inc., a corporation, engaged in the sale and distribution of women'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.

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. Dress goods described and referred to as "crepe" have been for a long time, and at the present time still are, associated in the public mind with fabrics made of silk, the product of the cocoon of the silkworm. The unqualified term "crepe" denotes pure unweighted silk to a substantial portion of the purchasing and consuming public.

The words "Acetate" and "Celanese," when used either separately or in combination or conjunction with the word "crepe" 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 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.

Kanner Dress 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 words "Crepe," "French Crepe," "Cinderella Crepe," "Acetate Crepe," "Silk Garments," "Silk Weaves," or any other word importing pure silk, to describe, designate or refer to any fabric or product which is not composed wholly of unweighted silk, the product of the cocoon of the silkworm. If the word "Crepe" or similar word be used properly as descriptive of the type of contruction only, of a fabric or product made of rayon, then such word, whenever used, shall be immediately accompanied by the word "Rayon," in letters or type equally conspicuous; for example, "Rayon Crepe," "Acetate Rayon Crepe."

(*b*) Using the words "Acetate," "Celanese," 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 or type of equal conspicuousness; as, "Acetate Rayon," "Celanese Rayon."

(*c*) Selling or offering for sale any product made of rayon without disclosing clearly and unequivocally in the invoices and labeling and

in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published, that the material of which said product is composed is rayon.

(*d*) The use of the word "Guaranteed" or any other word or words of similar meaning in connection with the advertising, offering for sale or 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. (June 5, 1940.)

2843. **Fur Garments — Source or Origin and Nondisclosure.**—Ritz Thrift Shop, Inc., and Aaron Kaye and June Jacobs, copartners trading as Radio City Thrift Shop, engaged in the sale and distribution of fur garments in interstate commerce, in competition with other corporations and partnerships and with firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Ritz Thrift Shop, Inc., and Aaron Kaye and June Jacobs, copartners, in connection with the sale and distribution of fur garments in commerce, as commerce is defined by the Federal Trade Commission Act, agreed they will cease and desist from—

(*a*) Representations which import or imply or the effect of which is to convey or tend to convey the impression or belief to the purchasing public that their second-hand fur garments, or any appreciable proportion thereof, are left with them for sale by society women or the ultra-rich; were purchased from society women, the ultra-rich or estates; or otherwise representing the source of such second-hand garments as other than the true source thereof.

(*b*) Advertising any special sale of used or second-hand furs or other used goods or merchandise, unless such advertisements clearly and unequivocally indicate that the goods or merchandise so offered for sale are used or second-hand. (June 5, 1940.)

2844. **Fur Garments—Nondisclosure.**—Jack Barnett Furs, Inc., a corporation, engaged in the sale and distribution of fur garments, 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.

Jack Barnett, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from disseminating invoices or other descriptive literature which fails to disclose clearly and unequivocally that the garments designated or described therein are manufactured from dyed furs or peltries. (June 5, 1940.)

2845. **Fabrics and Cloth—Composition.**—H. M. Kolbe Co., Inc., engaged in the sale and distribution of woven fabrics or cloth 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.

H. M. Kolbe Co., Inc., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from the use of the descriptive designations "Part Linen," "Part Linen Suitings," or "A Part Linen Fabric," for its Sagamore suitings or any other cloth or fabric of similar composition; and from naming or in any way featuring, in its sales promotional representations, on its brands, labels or otherwise, a minor constituent fiber of a mixed fabric offered for sale and sold by it without first naming also, as part of such descriptive statement and with equal conspicuousness, the major constituent fibers, all in the order of their predominance by weight; for example, "Cotton and Linen." (June 6, 1940.)

2846. **Linens, Laces, Etc.—Quality and Source or Origin.**—The Esther Shop, Inc., a corporation, engaged in the sale and distribution of linens, laces, and other related 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.

True Tuscany Lace, as known to the trade and the public, is a handmade filet lace of grape design produced from linen thread in the Tuscany district of Italy. A lace not made in Tuscany and of linen, which is designated "Tuscany Lace" is a misbranded product.

The Esther Shop, 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 "Fine Tuscany," "Hand-Made Tuscany," or words of similar import as descriptive of laces or other articles sold by it which are not in fact true Tuscany lace actually made in Tuscany of linen thread; or in any way, by assertion or inference, misrepresenting the type, quality or origin of an article of merchandise offered for sale. (June 6, 1940.)

2847. **Linens, Laces, Etc.—Quality, Source or Origin and Guaranteed.**—Esther Beyda, sole trader under the style and name of Beyda's Linen Shop, engaged in the sale and distribution of linens, laces, and infants' and children's wear 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.

True Tuscany Lace, as known to the trade and the public, is a hand-made filet lace of grape design produced from linen thread in the Tuscany district of Italy. A lace not made in Tuscany and of linen which is designated "Tuscany Lace" is a misbranded product.

Esther Beyda, individually and trading as Beyda's Linen Shop or otherwise, in connection with her sale and distribution of merchandise in commerce as defined by said act, agreed to cease and desist from—

(*a*) The use of the words "Tuscany Lace," "Guaranteed Handmade Tuscany Lace," "Tuscany Lace Cloth," or words of similar import, either with or without the explanation "Made in China," as descriptive of laces or other articles sold by her which are not in fact true Tuscany Lace actually made in Tuscany of linen thread; or in any way, by assertion or inference, misrepresenting the type, quality, or origin of an article of merchandise offered for sale.

(*b*) The use of the word "Guaranteed" or any other word or words of similar meaning in connection with the advertising, offering for sale or sale of her 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. (June 6, 1940.)

2848. **Hosiery—Composition.**—Evenknit Hosiery Mills, a corporation, engaged in the manufacture of hosiery and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

In the stocking industry, the word "Crepe" is understood by the trade and the purchasing public to mean a thin fabric of silk fiber (unless otherwise specified) of a distinctive type of construction. Hosiery in order to be properly designated as "crepe" should, according to manufacturing standards, be constructed in the body (or boot) of yarn which in the total of the turns in both the initial and final twists is at least 80 turns per inch for three-thread and 60 turns per inch for four-thread.

Evenknit Hosiery 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*) The use of the designations "Genuine Crepe" or "Crepe" as descriptive of a hose or other product which, due to its construction, cannot be properly labeled "Crepe," that is to say, where such product is knitted of threads having a total number of twists or turns

less than the minimum total number understood by the trade and the public as crepe construction; or in any other particular, wherein said product does not meet the specifications entitling it to be properly designated as crepe.

(*b*) Advertising, branding, labeling, selling, or offering for sale any product composed in whole or in part of rayon unless full and nondeceptive disclosure of the fiber and other content of such product is made by clearly and nondeceptively designating and naming therein each constituent fiber in the order of its predominance by weight, beginning with the largest single constituent, and by giving the percentage of any fiber which is present in less than a substantial amount, or in any case less than 5 percent. (June 4, 1940.)

2849. **Hosiery—Composition and Nature.**—Vermont Hosiery & Machinery Co., a corporation, engaged in the business of manufacturing hosiery 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.

Vermont Hosiery & Machinery Co., in connection with the offering for sale, sale or distribution of its hosiery in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the phrase "100% Virgin Wool Face" either alone or in connection or conjunction with any other word or words as descriptive of such hosiery, the face of which is not in fact composed wholly of virgin wool; and from the use of the words "Wool Face" in any way so as to import or imply that hosiery so described is faced throughout with such wool. If parts of said hosiery, as the top, leg and sole thereof, are faced with wool, but the heel and toe of the hosiery are not so faced, and the words "Wool Face" are used to properly describe the facing of the top, leg and sole of the hosiery, then in that case, the words "Wool Face" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that said hosiery is not faced throughout with wool or so as to indicate clearly that the heel and toe of the hosiery are not so faced. The said corporation also agreed to cease and desist from the use of the word "Lisle" as descriptive of the lining of hosiery which is not in fact lined with lisle, as that term is generally understood and recognized to mean. Said corporation further agrees to cease and desist from the use of the hyphenated words "Shrink-less" or of any other word or words of similar implication as descriptive of hosiery, the effect of which tends or may tend to convey the belief to purchasers that said hosiery is proof against shrinkage, that is

to say, will not shrink when laundered in the usual or customary manner. (June 10, 1940.)

2850. **Feather Quilts and Comforters—Special or Limited Offers.**—Ome Daiber, Inc., a corporation, engaged in the manufacture of feather quilts and comforters, 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.

Ome Daiber, 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 in any way, by the use of statements such as "Pre-season Clearance," "Big Seasonal Reduction," "How I can Save Money on Pre-season Sale," or otherwise, that its regular method of sale is a special offer; or directly or inferentially, that a special price is offered when the regular price is charged, or that some advantage in quality is offered when there is none; or in any other manner whatsoever that the offer is special or unusual so long as no price reduction or other trade concession is made therewith.

(*b*) Representing by the use of statements such as "While They Last," "Prompt Action Will Save You 40%" or in any other way that an offer or purported offer is open for a limited time so long as any orders received after the expiration of the time limitation, implied or otherwise, are accepted and filed; or that diligence in accepting the offer will save the purchaser 40 percent or any other percentage or proportion of the price of such merchandise. (June 11, 1940.)

2851. **Rugs—Source or Origin, Quality and Guaranteed.**—The John Shillito Co., 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.

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 pattern and colors appear on the back side as well as the front.

A "reproduction" is a counterpart or reconstruction of something else. Designations "Persian Reproduction" or "Oriental Reproduction," as applied to rugs simulating or copying the design or pattern

only of Persian or Oriental rugs are misleading in that they connote all the essential structure and properties of a genuine Oriental rug and imply that it possesses the special fibers and the almost universally known superior wearing and appearance qualities thereof.

The John Shillito Co., in connection with its sale and distribution of rugs or other merchandise in commerce as defined by said Act, agreed to cease and desist from:

(*a*) The use of the words "Chinese," "Persian," "Oriental," "Kashmir," "Mandalays," "Bagdad," "Baristan," "Persiatana," "India," 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 Reproduction," "Oriental Reproductions" or other use of the word "Reproduction" 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 "Persian," "Chinese," "Oriental," "Kashmir," "Mandalays," "Bagdad," "Baristant," "Persiatana," "India," or other distinctively Oriental appellation in connection with any rug which does not contain all the inherent qualities and properties of such Oriental rug; 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, "Persian Design," "Chinese Pattern."

(*d*) The use of the word "guaranteed" or any other words of similar meaning in connection with the advertising, sale, or offering for sale of its porducts 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. (June 11, 1940.)

2852. **Dresses—Quality and Value.**—Kallman & Morris, Inc., a corporation, engaged in the manufacture, sale and distribution of women's dresses, 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.

Kallman & Morris, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from:

(*a*) The use of the words "Reproduced by Kalmour" or other use of the word "reproduced" or of any word which imports that the article to which such appellation applies is a replica or duplicate of an original, as descriptive of dresses which are not in fact reproductions of the types named, to wit, true counterparts or reconstructions thereof in all particulars.

(*b*) Using, or placing in the hands of others the means to use pictorial or other representations of dresses which do not accurately or definitely depict the garments offered for sale; or otherwise representing such garments in any way which tends or may tend to convey the impression or belief to the purchasing public that said dresses are of a value greater than is indicated by the prices charged therefor, or that dresses actually sold or offered for sale are identical with or of a quality equal to the garments so depicted. (June 17, 1940.)

2853. **Clothing and Dry Goods—Composition and Nondisclosure.**—Frank & Seder, a corporation, engaged in the sale and distribution of clothing and dry goods in interstate commerce, in competition with other corporations and within 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 trade and with the purchasing public, the unqualified word "silk" as descriptive of a fabric or garment connotes that the fiber content thereof is silk exclusively without any metallic weighting whatsoever.

Frank & Seder, 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 term "all wool" or representations of similar import or meaning as descriptive of a suit or garment which is not in fact composed entirely of wool; or deceptively concealing the true fiber content or failing to make full and nondeceptive disclosures in its advertising and labels or other trade indicia, of the fiber content of articles purporting to be wool, such fibers to be stated in the order of their predominance by weight, beginning with the largest single constituent; as "Rayon and Wool." In a case of named fibers which are present in less than a substantial amount the percentage thereof shall be given.

(*b*) Advertising, branding, labeling, selling, or offering for sale any product composed in whole or in part of rayon unless full and nondeceptive disclosure of the fiber and other content of such product is made by clearly and nondeceptively designating and naming therein each constituent fiber in the order of its predominance by weight, beginning with the largest single constituent, and by giving

the percentage of any fiber which is present in less than a substantial amount, or in any case less than 5 percent.

(*c*) Selling or offering for sale any silk or silk product, or designating the same by the unqualified terms "silk" or "silk crepe," which contains any metallic weighting without full and nondeceptive disclosure of the presence of such metallic weighting, together with the proportion or percentage thereof, designated 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. (June 17, 1940.)

2854. **Cylinder Locks and Padlocks—Qualities.**—Chicago Lock Co., a corporation, engaged in the business of manufacturing cylinder locks and padlocks and in the sale of said products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Chicago Lock 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, designating, or referring to its said lock as "Thief-Proof," and from the use of the said hyphenated words 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 lock thus referred to is proof against the acts of thieves or will withstand indefinitely all attempts to defeat it through the keyhole by picking, or through the use of special keys or tools or other devices.

(*b*) The use of the phrase "defies duplication," as descriptive of the lock key so as to import or imply that said key will completely withstand duplication, when in fact such duplication, though it may be difficult, is not impossible. (June 17, 1940.)

2855. **Home Permanent Wave Outfit—Qualities, Free, Business Status and Manufacturers.**—Sally Lindner, Sybil Moses, and Jean Tanner are copartners, trading under the firm name and style "The Mollin Co." engaged for more than 1 year last past in the business of selling a so-called home permanent wave outfit under the trade name "Glamour Permanent Wave" 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.

Sally Lindner, Sybil Moses, and Jean Tanner, in connection with the advertising, offering for sale, sale or distribution of their wave

outfits in commerce, as commerce is defined by the Federal Trade Commission Act, agreed, and each of them agreed, to forthwith cease and desist.

1. From stating or representing that a so-called permanent wave may be accomplished by the use of their outfit which will last for 6 months in every instance or regardless of the type or kind of hair treated.

2. From the use of the phrase "reconditions the hair" or of any other phrase or statement of similar implication, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the use of said outfit will restore old, worn, or faded hair to its original condition.

3. From the use of the word "free" as descriptive of their shampoo and waveset, when in fact said items are not given free or as a gratuity, but are, in fact, a part of the outfit and their cost is included in the price for which the outfit is sold in the usual course of business.

4. From the use on the box container of the outfit or in any other way of either the words "New York" or the word "Hollywood" in connection with the words "Milady Hair Specialist" or otherwise, so as to import or imply or the effect of which tends or may tend to convey the belief that the said copartners are engaged in business as hair specialists at either of the said localities or that they have an office or place of business in said cities or either thereof.

5. From the use of the words "Manufacturers" or of any other word of similar import, when in fact, the said copartners do not make or manufacture the items of which their wave sets are composed; and from the use of the said word in any way, the effect of which tends or may tend to convey the belief that the said copartners actually own and operate or directly and absolutely control the plant or factory in which said items are made or manufactured. (June 19, 1940.)

2856. **Wood Stain—Nature, Results, Qualities, Etc.**—The C. A. Mauk Lumber Co., a corporation, engaged in the distribution of lumber and shingles and also wood stain bearing the trade designation "Meta-Kote" 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 C. A. Mauk Lumber Co., in connection with the sale and distribution of its products in commerce as defined by said Act, agreed to cease and desist from representing that "Meta-Kote" or any product of similar composition:

(*a*) Is a metal, or a liquid metal coating, or a metal in liquid form.

(*b*) Forms a solid film of metal, or an armor of metal protection, or a tough, dense armor of rust-proof metal, or a metallic finish for old, worn-out shingles or any other surface.

(*c*) Provides an "impenetrable shield" to the attacks of time or the elements, or is an effective coating for years, almost indefinitely or for any period of time in excess of that for which comparable shingle stains on the market afford such protection.

(*d*) Brings beauty to the home that lasts through generations or for any other exaggerated or unreasonable extent of time.

(*e*) Has not the slightest resemblance to paint, stain or varnish or otherwise, that it is not in fact a stain colored with pigment and having a varnish-like vehicle. (June 20, 1940.)

2857. **Wallpapers—Qualities.**—Spiegel, Inc., a corporation, engaged as a mail order house in the sale and distribution of numerous products, including wallpapers, 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.

Spiegel, Inc., in connection with the advertisement, offering for sale, sale or distribution of its wallpapers in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist:

1. From the use of the word "washable" as descriptive of those of its products which are not in fact washable without resultant discoloration or damage thereto, and from the use of the word "washable" in any way, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the products so represented or referred to can be washed when in fact such washing results in the discoloration of or damage to said products.

2. From the use of the word "color-fast" or of any other word or words of similar meaning or implication as descriptive of said products, the color or colors of which are not in fact unfadable, and from the use of said word in any way so as to import or imply that the color or colors of the products thus referred to will not fade, change, or be altered when exposed to light. (June 24, 1940.)

2858. **Barometers or Other Instruments—Domestic and Source or Origin.**—Max Bauer, sole trader as Bauer Thermometer Co., engaged in the importation and sale and distribution of weather recording instruments 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.

A substantial portion of the buying public prefers merchandise of domestic manufacture, and the tariff laws of the United States provide that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly and prominently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article. An article of foreign origin imported into the United States, though enclosed in a frame of domestic manufacture, and marked or labeled "Made in U. S. A." is misbranded.

Max Bauer, in connection with his offering for sale, sale, and distribution of barometers or other instruments having movements or mechanisms of foreign origin, in commerce as defined by said act, agreed to cease and desist from:

(*a*) Representing, by the use of the term "Made in U. S. A.," or any other term indicative of American manufacture, that said barometers or other instruments are wholly of American manufacture,

(*b*) Causing the brands or marks on imported barometer movements or other parts, or on similar products, which indicated the foreign origin or manufacture thereof, to be removed, erased or concealed so as to mislead or deceive ultimate purchasers with reference to the foreign origin or manufacture thereof, unless the removal or erasure or concealment of said brands or marks is necessary to the further manufacture or processing of said products. (June 24, 1940.)

2859. **Neckwear—Nature and Composition.**—J. Schneier Co., Inc., a corporation, engaged in the business of manufacturing neckwear, gentlemen's ties, 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.

J. Schneier Co., Inc., in connection with the advertisements, 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—

(*a*) From the use of the words "Hand Loom" as descriptive of products manufactured from material not made on hand looms; and from the use of the words "Hand Loom" either alone or in connection with the word "Reproductions" or with any other word or words or in any way, the effect of which tends or may tend to convey the belief to purchasers that the products to which such words refer are made of hand-loomed material.

(*b*) From the use of the words "All Wool" as descriptive of products which are not composed wholly of wool; and from the use

of the word "Wool" either alone or in connection with the word "All" or with any other word or words or in any way so as to import or imply that the products thus referred to are composed wholly of wool, when in fact they are not so composed. If the products are composed in substantial part of wool and in part of a fiber or fibers other than wool, and the word "wool" is used to properly describe such wool content, then in that case, the word "wool" 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 products are composed in the order of its predominance by weight, beginning with the largest single constituent.

(*c*) From labeling, invoicing, or advertising in any way products composed of rayon in part without clearly and unequivocally disclosing the fact that the products are composed in part of rayon together with other named constituent fibers, each of such fibers to be named in the order of its predominance by weight, beginning with the largest single constituent. (June 24, 1940.)

2860. **Silk Preservative Compound—Qualities and Manufacturer.**—John W. Daniels, an individual, trading as Charme Manufacturing Co., engaged in the business of selling an alleged silk preservative compound under the trade name "Charme" 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. Daniels, in connection with the offering for sale, sale, or distribution of his "Charme" preparation in commerce, as defined by the Federal Trade Commission Act, agreed to cease and desist forthwith:

1. From stating or representing on the containers of said preparation or in advertising the same or in any other way that runs or snags in silk hosiery or lingerie are prevented by the use thereon of said preparation, or that the use of said preparation will strengthen the heels and toes of silk hosiery, improve the resistance of all colors to washing, or have the effect of deodorizing silk hosiery or lingerie.

2. From the use of the letters "MFG," as part of his trade name, and from the use of the said letters or the word "Manufacturing" or of any other letters, word, or words of similar implication, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said John W. Daniels makes or manufactures the preparation sold by him or that he actually owns and operates or directly and absolutely controls the plant or factory in which said preparation is made or manufactured. (June 24, 1940.)

2861. **Chinaware and Earthenware—Nature.**—Maddock & Miller, Inc., a corporation, engaged in the wholesale distribution of chinaware and earthenware 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.

There are two general classifications of tableware and hotelware, namely, vitrified or chinaware, and semivitrified or earthenware. Although it is sometimes difficult to distinguish between these two wares, the chinaware generally has a more glossy surface, is slightly translucent and is not absorbent, whereas the semivitrified or earthenware is more or less absorbent and is not usually translucent. In the trade the word "vitrified" is associated with chinaware, and the term "semivitrified" or the term "semi-vitreous" with earthenware. As chinaware is a product of considerable superiority, both in appearance and in quality, the use of the word "vitrified" as descriptive of an earthenware product is not warranted in that it imports or implies to a substantial portion of the trade and the public that the article so branded or referred to is chinaware.

Maddock & Miller, Inc., in connection with the sale and distribution of its merchandise in commerce as defined by said act, agreed it will cease and desist from branding, labeling, invoicing, or otherwise designating earthenware products or products other than true chinaware as "Maddock's Vitrified Hotelware," "Vitrified Blue Willow," or "Vitrified Wakefield;" and from the use of the word "Vitrified" or similar descriptive designations as applied to semivitrified products in any manner having the capacity, tendency, or effect of conveying the impression or belief that such product is chinaware as understood by the trade and the public. (June 24, 1940.)

2862. **Fabric Garments—Composition.**—Julius Nelson Corporation, a corporation, engaged in the sale and distribution of fabric garments 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.

Julius Nelson Corporation, in connection with its sale and distribution of wearing apparel or other merchandise in commerce as defined by said act, agreed to cease and desist:

(*a*) The use of the term "Fur-Fabric" as descriptive of garments manufactured from fabrics composed of wool, cotton, or any fibers other than fur; and from the use of the word "fur" or of any other term, designation, or representation either alone or in connection with the word "fabric" or other word, so as to import or imply or the effect of

which may be to convey the belief or impression to the purchasing public that such garments are made or manufactured from the fur or peltries of fur bearing animals or are composed of a fabric made of fur.

(*b*) Advertising, selling, or distributing garments composed of fibers other than fur under any representations or conditions of deceptive concealment whereby purchasers or the consuming public are or may be misled into buying such garments in the belief that they are composed of fur. (June 24, 1940.)

2863. **Abdominal Support—Qualities.**—United States Truss Co., a corporation, engaged in the sale and distribution of a device, known as "Richfal Abdominal Support," 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 States Truss Co., in connection with the advertisement, offering for sale, sale, or distribution of its so-called "Richfal Abdominal Support" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from the use of any statement or representation which directly asserts or imports or implies that the use of said device will have the effect of causing the user to "reduce without exercise" or will enable him or her to "keep thin without dieting" or will otherwise result in the loss of excess fat by the user thereof. (June 24, 1940.)

2864. **Diamonds and Diamond Rings—Government Standards Conformance.**—Schless-Harwood Co., Inc., a corporation, engaged in the wholesale distribution of diamonds 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.

Schless-Harwood Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from representing that the diamonds and diamond rings or other articles of commerce offered for sale and sold by it are perfect "in accordance with the required standards of the Federal Trade Commission," or that they meet or conform to the "Federal Trade Commission Standard"; and from the use of the name "Federal Trade Commission" in its advertising, on its labels, tags, or in any other way which may import or imply that the Federal Trade Commission has examined and approved the articles designated. (June 26, 1940.)

2865. **Paper Products—Manufacturer.**—Merchants Paper Corporation, a corporation, engaged as a jobber in the sale and distribution of a general line of paper products, including corrugated paper boxes 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.

Merchants Paper Corporation, in connection with the sale and distribution of its commodities or merchandise in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use of the word "Manufacturers" as descriptive of its business; or 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 commodities sold by it or that it actually owns or operates, or directly and absolutely controls the plant or factory in which such commodities are made or manufactured.

(*b*) Stamping, branding, or otherwise marking a certificate or any form of certification as "box maker" on boxes or containers not actually made by it; or otherwise, by assertion or implication representing that it is the manufacturer thereof, or that any statement bearing the name of said corporation is the certified statement of the maker of such box or container. (June 26, 1940.)

2866. **Baby Shoes—Professional Supervision.**—Harry L. Katzman, an individual, engaged in the sale of baby shoes 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 L. Katzman, in connection with the offering for sale, sale, or distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use, in marking, branding, labeling, or otherwise designating or referring to his said products, of the words "Dr. Katzman Health Shoes" or the word "Health" in any way, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said products are made in accordance with the design or under the supervision of a physician or doctor of medicine or that they contain special scientific, health, or orthopedic features resulting from medical determination or services. (June 25, 1940.)

2867. **Soaps and Toilet Goods—Qualities, Results, Unique, Comparative Merits, Composition, Indorsements, and Testimonials, Etc.**—Colgate-Palmolive-Peet Co., a Delaware corporation, and Kirkman & Son, Inc., a Delaware corporation, a wholly owned subsidiary of Colgate-Palmolive-Peet Co., engaged in the sale and distribution of soaps and

toilet 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.

Colgate-Palmolive-Peet Co. and Kirkman & Son, Inc., and each of them, agreed that in connection with the sale and distribution of their products in commerce as defined by said act, they will cease and desist from representing, directly or otherwise, by assertion or by implication:

(*a*) That Palmolive Soap contains special protective qualities all its own or not present in any other soap or soaps.

(*b*) That such soap "protects" the skin against the loss of natural or "youth giving" oils, or has a "protective" lather.

(*c*) That the use of Palmolive Soap will keep the skin young or prevent "middle age" skin; or that it is efficacious in retarding the natural aging of the skin.

(*d*) That Palmolive Soap "thoroughly" cleanses the pores or gently removes "every trace" of dirt and cosmetics.

(*e*) That removal of dirt and cosmetics from the pores by the use of Palmolive Soap will enable the skin to breathe; or by statement or inference that breathing or respiration is a function of the human skin.

(*f*) That the "natural" or "youth" oils or the fatty secretions from the sebaceous glands "feed" or "nourish" the skin; or that Palmolive Soap assists in any way toward the nourishment of the skin.

(*g*) That Palmolive Soap is "unique" or "utterly unlike" any other soap, or that it is essentially different from various other soaps on the market.

(*h*) That Palmolive Soap was or is the "only" soap gentle enough or sufficiently pure, soothing, mild, or safe for use by the Dionne Quintuplets; or that no other soap made is as pure, soothing, mild, or safe.

(*i*) That the "soft, smooth complexions" of the Dionne Quintuplets are directly the result of or wholly attributable to Palmolive Soap.

(*j*) By oral or written statements or by depictions or illustrations, that Palmolive Soap is composed wholly or in part of edible olive oil or of the grade of olive oil used for bathing new-born babies.

(*k*) By the use of the unqualified statement "Made with olive oil" as descriptive of Palmolive Soap, Palmolive Shave Cream, or Palmolive Brushless Shave Cream; or by representations of like import, that the oil or fat content of such products is wholly or predominantly olive oil.

(*l*) That persons purporting to be authorities, who have not professionally used and actually approved Palmolive Soap or other products, and whose names appear on published testimonial letters or endorsements thereof, have inferentially or otherwise based such testimonials or opinions upon their own professional experience, use, and controlled laboratory tests.

(*m*) By the use of appellations such as "Beauty Specialists" that persons purporting, in testimonials, endorsements, or otherwise to make scientific statements regarding the skin are experts adequately equipped and qualified to render such opinion unless they actually are accredited skin specialists or dermatologists.

(*n*) That Cashmere Bouquet soap or the lather thereof will remove "every bit" of dirt and cosmetics from every pore; or in any other way asserting or implying that such soap or lather removes all dirt and cosmetics whatsoever from the pores.

(*o*) That Cashmere Bouquet soap will cause or is capable of causing the skin to become alluring, clear, or smooth in cases where such results will not be achieved by cleansing the skin.

(*p*) That the product Concentrated Super Suds destroys or removes all germs, dangerous and otherwise, that "lurk in every family wash" or are present in wearing apparel or other washable fabrics.

(*q*) That Concentrated Super Suds is the only soap which has the capacity to protect the family health from being endangered by germs depicted in accompanying microphotographs or referred to in such statements as "the above microphotos show some of the dangerous germs which Mrs. Robinson saw through the microscope—germs that were actually found in her wash," "millions of germs are present in all family washes," and "dangerous germs that unless removed, may spread serious infection."

(*r*) That clothing or other fabrics washed in a solution of Concentrated Super Suds and water at a temperature ordinarily used for home laundering, will be "Hospital Clean"; or otherwise, that such articles will be effectively sterilized or as germ-free as by hospital sterilization methods.

(*s*) That dishes washed with the product "Super Suds" require no wiping but will dry clean with no soap film adhering thereto; or that dishes washed with Super Suds require no wiping, rinsing, scalding, or other operation subsequent to washing, for the purpose of removing soap or other residue therefrom.

(*t*) That Super Suds "protects your hands," or that such preparation contains any special ingredient that shields or preserves the skin.

(*u*) Unqualifiedly that the use of Colgate Rapid-Shave Cream will obviate the necessity for shaving twice daily; that the use of such product or of Palmolive Shave Creams results in faster or

smoother shaves than are obtainable with comparable shaving preparations.

(*v*) That Palmolive shave creams make the skin either healthier, firmer, or younger; or that such preparations have therapeutic or nutritional properties affecting the skin structure.

(*w*) That "Most bad breath begins with the teeth," or that bad breath in most cases is due to or caused by improperly cleaned teeth; or that "A safe, sure way to correct bad breath is through regular use of the thorough, cleansing action provided only by the special ingredients in Colgate's Dental Cream"; or that the action of said preparation is certain and unfailing in removing bad breath or that it "corrects" the condition regardless of cause; or that "only" Colgate Dental Cream can accomplish the things claimed for it; or that such product contains "special" or "unique" ingredients for combating bad breath or for cleansing purposes not to be found in any other dentifrice.

(*x*) That the foam produced by Colgate Dental Cream removes "all" decaying food deposits lodged between the teeth or in the mouth; or that the use of such product will prevent tooth decay or dental caries.

(*y*) That "every dentist knows" that mucin plaques harden into tartar; or otherwise, that such is the unanimous opinion of the dental profession.

(*z*) That "Kirkman Soap Flakes keep your hands soft and white," or that such flakes "Do my hands more good than a flossy manicure"; or will soak dirt out of fabrics without rubbing or some mechanical or manual action; or that lingerie or other textiles washed with such product will keep their brand new appearance almost forever. (June 26, 1940.)

2868. **Men's Shirts—Quality and Nature of Manufacture.**—Atlas Shirt Co., Inc., a corporation, engaged in the business of manufacturing men's shirts and in the sale thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Atlas Shirt Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist forthwith from—

1. Stating or representing that the material used in the making of said products, or any part or parts thereof, has a tested strength far in excess of Government specifications for aeroplane cloth, and from the use of any statement or representation which either directly asserts or imports or implies that the tensile strength of the

cloth of which said products or parts thereof are made is in excess of that of the cloth used in the manufacture of airplanes by the Federal Government or any of its departments or that the cloth used by the said corporation in the manufacture of its products is of greater tensile strength than is actually the fact.

2. The use of the term "Full Shrunk" or the statement "Will Not Shrink" or of any other word, words, or statement of similar implication as descriptive of said products which are not in fact proof against shrinkage. If, however, the products have undergone the application of a shrinking process and have been shrunk to a substantial extent but as to which there remains a certain amount of residual shrinkage, and the word "Shrunk," "Preshrunk," or term or word of like effect or similar import is used as descriptive of such products, then in that case, the said term or word shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to clearly and unequivocably indicate the fact that there still remains an amount of residual shrinkage, as for example:

(*a*) "Preshrunk (or shrunk)—will not shrink more than —% under Commercial Standard CS59–36."

(*b*) "Preshrunk (or shrunk)—residual shrinkage will not exceed —% under Commercial Standard CS59–36."

(*c*) "Preshrunk (or shrunk)—residual shrinkage will not exceed warp—%, filling—of, Commercial Standard CS59–36."

(*d*) "These goods have been shrunk (or preshrunk) to the extent that residual shrinkage will not exceed —% when tested in accordance with the recognized and approved standards or tests." (June 26, 1940.)

2869. **Household Material Cleaner—Qualities.**—General Household Corporation, a corporation, engaged in the business of manufacturing a solvent known as "Cali-Foam" for use in the cleaning of upholstery furniture, drapes, rugs, and other household materials, 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 Household Corporation 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 or on its labels or in any other way—

(*a*) That its product is a moth preventive or will prevent moths, or that it is a deodorant or will deodordize in the sense that it destroys offensive odors of other substances.

(*b*) That the use of said product "will not ring" or result in the formation of a "ring" when it is applied only to a spot to be cleaned

or removed, or that the "most inexperienced" or unskilled person can successfully apply the product to fabrics without a resultant "ring" formation. (June 28, 1940.)

2870. **Basic Slag—Comparative Merits, Indorsements, Qualities, Results, Economy, Etc.**—Tennessee Coal, Iron & Railroad Co., a corporation, engaged in the manufacture of iron and steel, including a byproduct known as Basic Slag, 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.

Tennessee Coal, Iron & Railroad Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from representing directly or otherwise:

(*a*) That the Basic Slag which it offers for sale and sells is always as good as superphosphate and frequently better or serves as well as acid phosphate for fertilizing purposes; or that the lime content of its Basic Slag makes it superior to superphosphate for winter legumes or other products.

(*b*) Inferentially or otherwise, that quotations from Professor M. J. Funchess or other scientific authorities on basic slag are applicable to the Basic Slag product offered for sale and sold by it, when such comments are in fact based upon other products of superior quality and not upon the grade or product thus advertised and sold.

(*c*) That phosphoric acid induces quick germination of seed or rapid plant growth.

(*d*) That the iron oxide contained in its Basic Slag accounts for the deep green color and splendid healthy condition of foliage or has any material effect thereon.

(*e*) That silica is a neutralizer of soil acids.

(*f*) That calcium oxide, or lime, makes available the potash in the soil, or inferentially or otherwise that the physical quality of all soil is improved by the application of lime; or that this particular form of lime is the "most powerful" neutralizer of acid soils, or is more potent or efficacious than any other true acid neutralizer.

(*g*) That magnesium oxide is lime or a form of lime.

(*h*) That manganese oxide changes crude forms of plant food into simpler and more usable forms; or inferentially or otherwise, that a sufficient quantity of manganese is not usually present in all soils for any purpose for which such element is required; or that so "powerful" is the action of the manganese content of Basic Slag that it may properly be called a "chemical plow."

(*i*) That the addition of manganese sulphate to the soil by the application of Basic Slag will act as a stimulant all during the growing life of the plant; or inferentially or otherwise, that a sufficient quantity of manganese sulphate is not already present in most soils for its scientific purpose.

(*j*) That the Basic Slag offered for sale and sold by it is "unusually economical"; or without due qualification, that its use is economical at all, or that it can be applied at least $1 per ton cheaper, or any cheaper than acid or superphosphate.

(*k*) By statement or implication that phosphoric acid leaches the soil or contains sulphuric acid, through the use of assertions such as "phosphorus as contained in Basic Slag * * * will not leach from the soil, as is the case with many other phosphates. It contains no sulphuric acid," or by means of any other presentation having the capacity unwarrantedly to disparage competitive products.

(*l*) That Tennessee Basic Slag supplies "the 6 important elements that all growing things need," or that silica and iron are essential elements for this purpose; or by omission to name them or otherwise, that nitrogen and potash are not as vital or indispensable as the six elements named; or that each particle of Basic Slag "carries its own complete supply of all elements."

(*m*) That plant food elements in the soil are rendered more available, or that greater results are secured from fertilizers containing nitrogen, phosphoric acid, and potash by the application of Basic Slag than by the use of other ingredients such as lime.

(*n*) That Basic Slag produces thin, smooth skinned fruit or improves the quality or increases the yield of citrus or other fruits, or that it makes pecans or other nuts fill out or produces a superior quality thereof. (June 28, 1940.)

2871. **Shirts, Hose and Other Men's Wearing Apparel—Manufacturers, "Direct to Wearers," Nature of Manufacture, Composition and Nondisclosure.**—Rosecliff-Quaker Corporation, engaged in the sale and distribution of shirts, hose, and other men'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.

Rosecliff-Quaker Corporation, in connection with the sale and distribution of its commodities in commerce agreed it will cease and desist from:

(*a*) The use of the word "manufacturers" or the word "shirtmakers" or of depictions of factory scenes as descriptive of its business; or the use of any other words or representations of similar implication, the effect of which tends or may tend to convey the belief that it makes

or manufactures commodities sold by it or that it actually owns or operates or directly and absolutely controls a plant or factory in which such commodities are made or manufactured.

(*b*) The use of the term "direct to wearers" or expressions of similar import in a manner, the effect of which may be to convey the impression or belief that the consumer procures his goods at factory prices, that is to say, at the prices for which the manufacturer sells to its distributors, thereby effect a saving to the ultimate purchaser of a middleman's profit.

(*c*) The use, directly or inferentially, of the terms or words "shrunk," "double shrunk," "no allowance need be made for shrinkage" or other words, terms, marks, labels, or representations of like effect or similar import, as descriptive of its goods when the same are not in fact shrink proof 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 similar terms or words 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 or words shall be accompanied, as an integral part thereof and in immediate conjunction therewith, by a truthful phrase, statement of 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 filling, whichever has the greater residual shrinkage; for example, "Shrunk—Will not shrink more than —% under Commercial Standard C. S. 59–36."

(*d*) The use of the words "Pure Silk" or "Silk" independently or as a part of or in conjunction with any other word or words in advertisements, trade indicia or otherwise, to designate or describe fabrics or merchandise not made wholly of silk; and the use of the word "Silk" in any way which may have a tendency or effect to confuse, mislead or deceive purchasers into the belief that products made in part of other materials are made wholly of silk. If the leg or boot of hosiery is properly represented as "silk" but the top, heel, toe, sole, or any part thereof, are composed of other materials, than the word "silk" shall be immediately accompanied by suitable phraseology in type equally conspicuous, indicating clearly that such designation does not apply to the top, heel, toe or sole, as the case may be.

(*e*) Advertising, branding, labeling, invoicing, 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 five per cent. (July 1, 1940.)

2872. **Furniture and House Furnishings—Source or Origin, Factories, Prices and Custom Built.**—S. & M. Grand Rapids Furniture Factories, Inc., a corporation, engaged in the retail sale and distribution of furniture and house furnishings 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.

There are numerous furniture manufacturers in the city of Grand Rapids, State of Michigan, whose products have attained such Nation-wide reputation for quality and excellence that the words "Grand Rapids" convey a high prestige in the minds of the purchasing public generally, which naturally assumes that furniture so designated has its origin in the city of Grand Rapids aforesaid.

S. & M. Grand Rapids Furniture 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:

1. The use of the words "Grand Rapids" and the word "Factories" as part of its corporate or trade name.

2. The use of the words "Grand Rapids" in any way so as to import or imply that the said corporation is a dealer in "Grand Rapids" furniture or that its furniture is manufactured or made in or obtained from Grand Rapids, Mich., when such is not the fact.

3. The use of the word "Factory" or "Factories" or the statement "From Factory Direct to You" or of any other word, words or statement of similar implication, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said corporation makes or manufactures the products offered for sale and sold by it or that it actually owns and operates or directly and absolutely controls the plants or factories in which said products are made or manufactured.

4. Tagging, labeling, or otherwise marking its products with any false, fictitious, or misleading price which is in excess of the price for which said products are customarily sold in the usual course of business.

5. Stating or representing in any manner that the prices for which said products are offered for sale or sold are wholesale prices, when in fact they are the prices for which said products are customarily sold in the usual course of retail trade.

6. The use of the words "Custom Built" or of any other words of similar import as descriptive of "stock" products, that is to say,

products not made upon special orders of a customer. (July 1, 1940.)

2873. **Hats and Caps—Second-Hand as New.**—The Lincoln Novelty Co., a corporation, engaged in the manufacture of headgear 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.

Lincoln Novelty Co., in connection with its sale and distribution of hats or caps in commerce, as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(*a*) Representing that hats composed in whole or in part of used or second-hand materials are new or are composed of new materials by failure to stamp on the sweat bands thereof, in conspicuous and legible terms which cannot be removed or obliterated without mutilating the sweat bands, a statement that said products are composed of second-hand or used materials, provided that if sweat bands are not affixed to such hats then such stamping must appear on the bodies of such hats in conspicuous and legible terms which cannot be removed or obliterated without mutilating said bodies.

(*b*) 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. (July 1, 1940.)

2874. **Scalp Treatment—Ailments, Qualities and Laboratories.**—William S. LaRue, an individual, trading as "LaRue Laboratories," engaged in the operation of a barber shop and in the sale and distribution of a product known as "LaRue's Master Scalp Treatment" 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.

William S. LaRue, in connection with the advertisement, offering for sale, sale or distribution of his product known as "LaRue's Master Scalp Treatment" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

(*a*) stating or representing through the use of the words "attacks dandruff germs" or of any other words of similar meaning or implication, the effect of which tends or may tend to convey the belief to purchasers that dandruff is caused by germs, when in truth, such is not medically recognized to be the fact.

(*b*) stating or representing that the use of the said product will retard either gray or falling hair or that it will stimulate hair growth or help bring back its natural oil and give it brilliant luster.

(*c*) stating or representing that bad nerves are the paramount cause of all gray hair.

(*d*) the use of the words "LaRue Laboratories" as and for his trade name, when in fact, there are no such laboratories; and from the use of the word "Laboratories" in any way so as to import or imply that said individual actually owns and operates or controls a place devoted to experimental study of any branch of natural science or the application of scientific principles in the preparation of his product. (July 9, 1940.)

2875. **Hair Dressings—Qualities.**—Relco Drug Co., Inc., a corporation, purchased the business and physical assets of Reliance Drug Co., copartnership consisting of George W. Lundgren and Robert L. Lundgren, who had been engaged in the manufacture of two certain hair dressing commodities, one being designated "Relco Double Quinine Hair Grower" and the other "Relco Hair Dressing Pomade," and the said Relco Drug Co., Inc., since such purchase, is engaged in the sale and distribution of said commodities 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.

Relco Drug Co., Inc., in connection with the advertisement, offering for sale, sale, or distribution of said products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from representing:

(*a*) That said products, or either thereof, when applied externally, will cause or promote the growth of hair or will stop falling hair.

(*b*) That the external application of either of said products will remove dandruff, in the sense that it will not reappear. (July 10, 1940.)

2876. **Hair Dressings—Qualities.**—George W. Lundgren and Robert L. Lundgren, copartners, trading under the firm name and style "Reliance Drug Company" for more than 10 years prior to April 1939, engaged in the business of manufacturing or compounding two certain hair dressing commodities, one designated "Reliance Double Quinine Hair Grower" and the other "Reliance Hair Dressing Pomade," and in the sale and distribution of said commodities 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.

George W. Lundgren and Robert L. Lundgren, in connection with the advertisement, offering for sale, sale, or distribution of said products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from representing:

(*a*) That said products, or either thereof, when applied externally, will cause or promote the growth of hair or will stop falling hair.

(*b*) That the external application of either of said products will remove dandruff in the sense that it will not reappear. (July 10, 1940.)

2877. **Metal Trim and Mouldings—Passing Off, Quality, Composition, Etc.**—Pyramid Metals Co., a corporation, engaged in the manufacture of metal trim and mouldings 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 metal trade the descriptive term "18–8 Stainless" indicates and is understood to mean a steel alloy product superior to that designated as "17–7 Stainless." It is more costly, contains higher percentages of chromium and nickel and a less percentage of carbon, and is deemed more satisfactory for outside construction.

Pyramid Metals Co., in connection with the sale and distribution of its products in commerce, as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(*a*) Substituting or passing off to purchasers, 17–7 metal trim as and for 18–8 trim, or any other product or article of commerce as being that of a superior type, quality or composition.

(*b*) Representing, either directly or indirectly, by instructions or authorizations to its salesmen or dealers or in any other manner whatsoever, that 18–8 metal trim is offered for sale and sold by it when in fact such product is not 18–8 trim; or quoting prices for 17–7 trim as being its prices for 18–8 trim; or by any other means of sales presentation, misrepresenting the type, quality, composition or nature of products which it offers for sale and sells. (July 9, 1940.)

2878. **Dog Shampoo and Medicinal Preparation—Qualities, New Product, Etc.**—Alfred LePine, an individual trading as Exhibitors Products Co., engaged in the sale and distribution of drug supplies, including a shampoo or liquid soap designated "Sulphasol" and a medication designated "Best in Show Conditioning Capsules," in interstate commerce, in competition with other 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.

Alfred Le Pine, in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from:

(*a*) The use of the word "Conditioning" or similar word, term or expression as descriptive of or as part of the name of the product

heretofore designated "Best in Show Conditioning Capsules," or in connection with publicity material pertaining thereto, so as to import or imply that such product is efficacious generally as a conditioner of dogs for show purposes or otherwise.

(*b*) Representations to the effect that the product heretofore sold under the trade designation "Best in Show Conditioning Capsules" gives permanent improvement, keeps show dogs fit or gives them the will to win; or unqualifiedly increases appetite or aids digestion or elimination, gives vitality and pep, puts solid weight on bad doers and underweight dogs, prevents unseasonable shedding, causes dull, lifeless, or staring coats to take on a bright and healthy aspect or makes good dogs look better; or any representations that cause or may cause the impression or belief that such product or any product of similar composition is an effective treatment or competent remedy for all maladies, diseases and ailments to which dogs are subject, or that the use of such product will prevent sickness or generally improve the appearance of dogs for show purposes or otherwise.

(*c*) Statements to the effect that "Sulphasol" is a new product; that it stimulates hair follicles, stops skin trouble from the start, benefits all types of coats, causes even growth or improved texture of the hair or starts the growth of new hair; that it unqualifiedly stops unseasonable shedding, itching or scratching, intensifies coat texture, stimulates a healthy all-over coat growth, destroys mange organisms, heals or repairs eczema ravages, can be relied upon to prevent bald spots or heal raw or bare spots; or other statements or representations which convey or may convey the belief that such product imparts any therapeutic effects other than such as may be due to the action of its sulphur content on certain organisms in the skin and hair, as the sarcoptic mite of scabies and certain fungi. (July 9, 1940.)

2879. **Hats and Caps—Second-Hand as New.**—Lewis Tanenbaum, an individual, trading as Sha-Po Manufacturing Co., engaged in the business of manufacturing hats and caps 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.

Lewis Tanenbaum, in connection with the sale and distribution of hats and caps in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

(*a*) Representing that said headgear, which is composed in whole or in part of used or second-hand materials, is new or is composed of new materials by failure to stamp on the sweatbands thereof, in conspicuous and legible terms which cannot be removed or obliterated

without multilating the sweatbands, a statement that said products are composed of second-hand or used materials, provided that if sweatbands are not affixed to such hats or caps, then such stamp 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.

(*b*) 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. (July 9, 1940.)

2880. **Manual and Course of Instruction—Government Connection, Opportunities, Etc.**—Irving Groger and Leo I. Rieff, copartners trading as Civil Service Aid Publishers, engaged in the publication, sale and distribution, in interstate commerce, of printed manuals or pamphlets containing questions and answers and other material designed to prepare persons for civil service examinations, in competition with other 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.

Irving Groger and Leo I. Rieff 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 words "Civil Service" as part of or in connection with the firm or trade name by which they conduct their business; and from the use of said words independently or in connection with any other word or expression implying or suggesting any connection with the Civil Service Commission or with the United States Government; or the making of such representation in any other manner.

(*b*) Listing the title "Immigration Inspector" as a position for which their manual prepares a student; or naming or indicating as open to their students, any other civil service or alleged civil service positions that are nonexistent, that have been discontinued, or the titles of which have been changed, or the registers of which are not depleted and for which no examinations are presently contemplated.

(*c*) Representing that their manual or course of instruction includes new types of questions and answers "that will be used in coming examinations"; or in any other manner whatsoever, by statement or by implication, that they have access to the questions contemplated by the Civil Service Commission for any future examination, or any means of knowing what type of questions and answers will be given and required. (July 10, 1940.)

2881. **Mattresses and Furniture Products—Prices.**—L. Kenneth Schoenfeld, an individual, trading as Washington Furniture Manufacturing Co., engaged in the business of manufacturing various types of furniture products and bedding, including mattresses, and in the sale there-

of 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.

L. Kenneth Schoenfeld in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from selling, offering for sale, or supplying to his customers for resale, any products labeled, tagged, or otherwise marked with any false, fictitious, or misleading prices which are in excess of the prices for which said products are sold in the usual course of trade. (July 10, 1940.)

2882. **Wrist Watch Straps—Qualities and Prices.**—David F. Cowen and Raymond Cowen, copartners, trading under the firm name of Cowen Brothers, engaged in the sale and distribution of wrist watch straps 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.

"Sweatproof," as descriptive of leather, implies a quality of imperviousness to the penetration of perspiration and to the adverse or deteriorating action of perspiration. While leather is sometimes coated with lacquer to prevent penetrability by perspiration, such treatment is but temporary and would be effective only so long as the lacquered surface remained intact. There is no leather watch strap known to the trade that could be accurately or properly designated as "Sweatproof."

David F. Cowen and Raymond Cowen, and each of them, in connection with the sale and distribution of their leather wrist watch straps or other commodities in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use of the word "Sweatproof" in their advertising matter, on their tags, labels, mounting cards or in any other way as descriptive of their wrist watch straps; and from the use of any other words or representations of similar implication, the effect of which tends or may tend, to convey the belief to purchasers that any wrist watch straps or other leather products offered for sale and sold by them have been rendered impervious to the penetration of perspiration and to the adverse or deteriorating action of perspiration.

(*b*) The use of fictitious price tags or labels indicating that their wrist watch straps sell or are intended to be sold for $1, $1.25, $1.50, or $2; or in any other way, directly or by implication, representing that their various types of straps or other articles of merchandise have regular values and customarily sell for sums in excess of the prices actually charged therefor. (July 11, 1940.)

2883. **Cigarettes—Foreign Branches, Imported and Manufacturers.**—Themis Poulides, an individual trading under the name and style of "Poulides Brothers," engaged in the business of manufacturing cigarettes at his plant or factory in New York from tobacco imported by him, and which cigarettes 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.

Themis Poulides, in connection with the offering for sale, sale or distribution of his cigarettes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist from:

1. Stating or representing in any manner whatsoever that he has a depot or branch at Cavalla, Macedonia, Greece, or that the cigarettes sold by him are made or manufactured at and imported from said place.

2. Using or placing in the hands of his customers for their use any labels or printed matter bearing the name of such customer in connection or conjunction with—

(*a*) The words "Manufacturers of" or any other word or words of similar implication, the effect of which is to convey, or tend to convey the belief to purchasers that the named customer is the manufacturer of the cigarettes, when in fact, said cigarettes are not manufactured by such customer.

(*b*) The phrase "Blended from our own Direct Importation of Choice Turkish Tobacco" so as to import or imply that the said customer imports the tobacco used in the making of the cigarettes, when in fact the customer does not import such tobacco.

(*c*) The words "Branches at Cavalla, Macedonia," when in fact the said customer has no such branch. (July 16, 1940.)

2884. **Electric Refrigerators—Qualities and Nature.**—Nash-Kelvinator Corporation, a corporation, engaged in the business of manufacturing electric refrigerators 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.

Nash-Kelvinator Corporation, in connection with the advertisement, offering for sale, sale, or distribution of its refrigerators in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the statement or representation "Nothing to get out of order" as descriptive of its refrigerator, or the cooling element thereof, which contains or is made up of moving parts that may, in fact, get out of order. (July 16, 1940.)

2885. **Paints and Allied Products—Manufacturers and Composition.**—Leo Sophir, Jack J. Sophir, and Alfred Sophir, copartners, trading under the firm name and style of Morris Paint & Varnish Co., engaged in the sale of paints, varnishes, lacquers, and allied products in interstate commerce, in competition with other partnerships and which 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.

Leo Sophir, Jack J. Sophir, and Alfred Sophir, in connection with the advertisement, offering for sale, sale, or distribution of their products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed, and each of them agreed, to cease and desist forthwith.

1. From representing, either directly or by implication, through the use of the word "Manufacturers" or of any other word or words, statement, picturization, or in any other way that they make 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, when such is not the fact.

2. From the use of the phrase "100% Pure White Lead" as descriptive of the paint, the pigment content of which is not composed wholly of white lead; and from the use of the words "White Lead" 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 that the pigment content of paint so referred to is composed wholly of white lead. If the pigment content of the paint is composed in substantial part of white lead, and in part of an ingredient or ingredients other than white lead, and the words "White Lead" are used to describe such white lead content, then in that case, the words "White Lead" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that the pigment content is not composed wholly of white lead but is composed in part of an ingredient or ingredients other than white lead. (July 17, 1940.)

2886. **Barber and Beauty Preparations—Qualities.**—Grecian Chemical Co., a corporation, trading as "Zala Perfumery Co." and also as "The Olive Co." engaged in the business of compounding a line of barber and beauty preparations and in the sale and distribution thereof under its aforesaid trade names 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.

Grecian Chemical Co., 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:

(*a*) From the use of the words "scalp food" as descriptive of said products, or any thereof, and from the use of the said words in any way or of the statement "Feed the scalp what it needs" or of any other statement of similar import, the effect of which tends or may tend to convey the belief that said products, or any thereof, act or acts as a nutriment for the scalp to which it is externally applied.

(*b*) Stating or representing that the use in any of said products will replace or in any way restore in the scalp natural oil, that is to say, oil such as is derived from the sebaceous glands. (July 17, 1940.)

2887. **Dog Supplies—Qualities and Guarantee.**—Earl Ewing, an individual trading as Zenith Products Co., engaged in the sale and distribution in interstate commerce of dog supplies, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Earl Ewing, in connection with the sale and distribution of his products in commerce, as defined by the Federal Trade Commission Act, agreed he will cease and desist from:

(*a*) The use of the word "conditioning" or similar word, term, or expression as descriptive of or as part of the name of the product heretofore designated "Best-in-Show Conditioning Capsules," or in connection with publicity material pertaining thereto, so as to import or imply that such product is efficacious generally as a conditioner of dogs for show purposes or otherwise.

(*b*) Representations to the effect that the product heretofore sold under the trade designation "Best-in-Show Conditioning Capsules" ends skin and coat trouble; or unqualifiedly prevents or controls unhealthy skin and coat conditions, corrects abnormal blood or constitutional disturbances, eliminates poisons, creates appetite, aids digestion, and elimination, works on every organ, builds up physical condition, adds weight, aborts sickness, or provides pep, vitality, spirit, or style; or any representations that cause or may cause the impression or belief that such product or any product of similar composition is an effective treatment or competent remedy for all maladies, diseases, or ailments to which dogs are subject, or that the use of such product will prevent sickness or generally improve the appearance of dogs for show purposes or otherwise.

(*c*) Statements to the effect that "Sulphasol" is a new or revolutionary product or is a skin tonic; that it will end skin and coat troubles or will stimulate hair follicles or cause hair growth; that it unqualifiedly allays itch, reduces inflammation, destroys eczema or mange organisms, or can be relied upon to stop itching or scratching or prevent or control unhealthy skin and coat conditions; or other statements or representations which convey or may convey the belief that such product imparts any therapeutic effects other than such as may be due to the action of its sulphur content on certain organisms in the skin and hair, as, the sarcoptic mite of scabies and certain fungi.

(*d*) The use of the word "guarantee" or any other word or words of similar meaning in connection with the advertising, offering for sale, and sale of his products, unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by way of security. (July 18, 1940.)

2888. **Cosmetic Preparations—Qualities and Results.**—Barbara Gould, Inc., a corporation, engaged in the sale and distribution of a line of cosmetic preparations under the general trade designation "Barbara Gould," 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.

Barbara Gould, 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, directly or by implication that its product heretofore designated "Firma-Tone" or any preparation of similar composition:

(*a*) Is a competent treatment or an effective remedy for conditions of relaxed facial contours, heaviness of the jaw line, or flabby skin; or otherwise, that it corrects or prevents sagging facial contours.

(*b*) Enables the user to "hold the clean, firm contours of youth," or to have "youthful" contours of face and neck.

(*c*) Is a highly specialized formula to relieve aging contours or any similar condition.

(*d*) Stimulates, exercises, tones, or strengthens the muscles of the face and neck.

(*e*) Brings "improvement immediately" in facial contour, jaw line, or flabby skin.

(*f*) By daily application or otherwise, gives "lasting results"; or in any way, by statement or by inference, representing that steadfast, stable or durable results may be anticipated or expected by the use thereof.

(*g*) Does "everything its name (Firma-Tone) implies."

Said corporation further agreed to cease and desist from the designation "Firma-Tone" for its product or from the use of any similar appellation having the capacity or tendency to convey the belief or create the impression that such preparation or the use thereof may be relied upon either to "firm" the facial or neck contour of the user, or to "tone" her skin or muscles. (July 18, 1940.)

2889. **Carbonated Beverage—Nature, Qualities, Etc.**—Red Seal Beverage Co., trading also as Zip Co., engaged in the bottling of carbonated soft drinks, 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.

Red Seal Beverage Co., in connection with the sale and distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist from representing that its carbonated beverage designated "Zip" or any similar preparation:

(*a*) Is an alkalinizing beverage or an alkalizer or an antiacid; reduces acidity, alkalizes the system, or contains true alkalizing properties or proved agencies for relieving physical and nervous disturbances, designated or otherwise.

(*b*) Is a "health factor" of "proven value" or a "value aid" to health; or has "practical" value, or any perceptible value, in stimulating physical health; or keeps one physically fit."

(*c*) Sweetens, settles, normalizes, or stimulates the stomach; is soothing to the most delicate stomach; is a "sure relief" for indigestions; alkalizes the digestive juices, or cleanses body linings and tissues.

(*d*) Corrects ill-effects caused by overdrinking, overeating, oversmoking, overapplication, or "corrects" any physical condition whatsoever; relieves lethargic conditions from lack of exercise, or banishes fatigue; or helps overcome the bad effects of these or "all other indulgences."

(*e*) Calms the nerves, peps up the nerves, tones the nervous system, renews energy, promotes restful sleep, or stimulates new energy.

(*f*) "Slenderizes" the user or is a "proven aid" to keep "that girlish figure;" helps burn up surplus flesh or dispose; or is a "natural aid" in the "control of physical conditions" that tend to unduly increase the weight.

(*g*) Has any medicinal or therapeutic properties, or any appreciable effect on bodily conditions beyond such degree of refreshment as may properly be attributed to a carbonated water beverage. (July 18, 1940.)

2890. **Dresses—Composition and Nondisclosure.**—M. Mintz, Inc., a corporation, engaged in the manufacture of dresses 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.

M. Mintz, Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from:

(*a*) The use of the word "Alpacas" as descriptive of said products which are not made of fabric composed of the wool of the Alpaca.

(*b*) Representing that its said products, which are made of rayon, are not rayon or are something other than rayon.

(*c*) Failing to clearly and unequivocally disclose the fact that the material of which its said products are made is rayon, such disclosure to appear in all invoices and labeling and in all advertising matter, sales promotional schemes, descriptions, or representations thereof, however disseminated or published. (July 18, 1940.)

2891. **Mattresses—Professional Connections and Price.**—Shifman Bros., engaged in the business of manufacturing mattresses and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Shifman Bros., 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 it will cease and desist from:

(*a*) The use on labels affixed to said products, or in any other way, of the word "Doctor" or the abbreviation "Dr." either alone or in connection or conjunction with a name or in any manner 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 labeled, branded, or referred to are made in accordance with the design or under the supervision of a doctor of medicine or a physician or that the said products contain special or scientific features resulting from medical determination or services.

(*b*) Offering for sale, selling, or supplying customers for resale products to which are affixed or which bear a price purporting to be the retail selling price of said products, when in fact, such price is not the regular retail selling price thereof, but is in excess of the price at which the said products are actually or customarily of-

fered for sale and sold in the usual course of retail trade. (July 18, 1940.)

2892. **Vaccines, Serums, Etc.—Qualities, Results, Etc.**—O. M. Franklin Serum Co., Inc., a Colorado corporation trading also as O. M. Franklin Blackleg Serum Co., engaged in the manufacture of a complete line of vaccines, serums, and veterinary supplies designed for use on livestock and poultry, 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.

O. M. Franklin Serum Co., Inc., in connection with the sale and distribution of its "Franklin Concentrated Blackleg Bacterin" or other product in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from representing that such or any other preparation of similar composition:

(*a*) Gives positive life immunity against blackleg in every bottle, or always brings positive life immunity with one dose, or has a 15 year untarnished record of positive life immunity with one dose; or otherwise, by assertion or by implication, that it is invariably effective or 100 percent efficient for the purpose intended.

(b) Contains in one dose more than double the immunizing potency of the usual large 5 cubic centimeter dose of whole culture. (July 19, 1940.)

2893. **Arch Supporters—Qualities, Made to Order and Results.**—Adam Marshall, Frank Marshall, and Rudolph Marshall, copartners trading as A. Marshall & Sons, engaged in the manufacture of arch supporters, 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.

Adam Marshall, Frank Marshall, and Rudolph Marshall, in connection with the advertisement, offering for sale, sale, or distribution of said devices in interstate 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:

(*a*) That the use of said devices will permanently end foot troubles or permanently remove callouses regardless of the nature thereof or unqualifiedly assure instant and permanent relief in cases of weak arches.

(*b*) That said devices are made to order, that is to say, are fashioned from a positive cast made from a negative impression of the individual customer's foot, through the use of some plastic material.

(*c*) That said devices are or will remain sanitary when used for the purposes for which they are intended.

(*d*) That shoes, with insoles padded haphazardly, exercises and treatments are only temporary, impractical, and expensive substitutes. (July 19, 1940.)

2894. **Courses of Instruction—Price, Special, Introductory or Limited Offer and Free.**—Niagara School, Inc., an Ohio corporation, engaged in conducting a resident school for the teaching of vocabulary, public speaking, voice and memory, 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.

Niagara School, Inc., in connection with the sale and distribution of its printed courses of instruction in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(*a*) Designating or referring to a course regularly sold for $1 as a "$5.00 Course," or a $1 correspondence course as a "$5.00 Resident School Course Complete"; or otherwise, by statement or inference, misrepresenting the usual and customary price or the nature and quality of the instruction offered for sale and sold.

(*b*) Representing an offer as "Special" or "Introductory" when it is in fact a regular offer, with a tendency or capacity to mislead or deceive students, prospective students, or the public.

(*c*) Representing an offer to be limited as to time or otherwise when such is not the fact, with a tendency or capacity to mislead or deceive students, prospective students, or the public.

(*d*) 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, with a tendency or capacity to mislead or deceive students, prospective students, or the public. (July 22, 1940.)

2895. **Life Vests—Qualities and Government Conformance.**—Cluff Fabric Products, Inc., a corporation, engaged in the business of manufacturing auto and marine fabric equipment, including life preserver cushions or vests, and the like, and in the sale and distribution of said products in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Cluff Fabric Products, Inc. in connection with the advertisement, offering for sale, sale or distribution of its life vests in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from stating or representing on tags or labels or in any other manner that the said devices have an individual total

weight of 36 ounces or more or that the weight of the filling used in the construction of each thereof is 24 ounces or more, when in fact, the actual total weight and the actual weight of the said filling is less than that indicated. Said corporation also agreed to cease and desist from stating or representing that said device has a designated total weight or is equipped with a filling of a designated weight, the effect of which tends or may tend to convey the belief to purchasers that said device has a bouyancy commensurate with such designated weight or weights, when in fact, the total weight and the weight of the filling is less than that designated. Said corporation further agreed to cease and desist from stating or representing that the bouyancy of said device is such as to comply with the requirements of Section 5 of the Act of Congress approved June 9, 1910, for Motor Boats not Carrying Passengers for Hire, when in fact, such is not the case. (July 24, 1940.)

2896. **Rye Concentrates or Cultures—Qualities, Composition, Etc.**—Superior Brands, Inc., a corporation, engaged in the sale and distribution of cereal flour and of rye bread sours in interstate commerce, in competition with other corporations and with individuals, firms, and other partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Superior Brands, Inc. in connection with its sale and distribution of rye concentrates or cultures in commerce as defined by said act, agreed to cease and desist from representing that its flavoring concentrate "Ry-Taste" or any product of similar composition:

(*a*) Is the only 100-percent pure rye culture or that it actually is 100 percent pure, or, by either statement or inference that it is a natural rye product devoid of any artificial sour acids or adulterations.

(*b*) Contains in concentrated form "all" of the aromatic flavors, color or germ of the rye berry.

(*c*) May be considered as part of the rye flour for labeling purposes; or otherwise, that no additional labeling would be necessary on brands flavored with said "Ry-Taste" concentrate. (July 24, 1940.)

2897. **Medicinal Preparation—Nature, Results, Qualities and Composition.**—Paul V. McCoy and L. E. Goursmen, copartners, trading as McCoy Drug Co., engaged in the sale of a compound known as "McCoy's Little Tablets," among other things, 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.

Paul V. McCoy and L. E. Goursmen in connection with the sale and distribution of their products in commerce, as defined by said act, agreed to cease and desist forthwith from:

1. The use of the word "modern" or of any other word or words of similar implication as descriptive of said product.

2. Stating or representing in any manner that when constipation is overcome through the use of said product, it ends or often ends nine-tenths or any other specified numerical estimate of other ailments with which a sufferer may be afflicted, when in fact such claim is not based upon statistical or other competent evidence.

3. Stating or representing that the use of said product will correct the elimination of any organ or that its use will effect other than temporary relief from constipation.

4. Stating or representing that the taking of the prescribed dosage of said product will in every instance or in a considerable proportion of instances overcome or cause the disappearance of symptoms, such as headaches, gas pains, biliousness, rheumatism, dizzy spells, or stomach disorders.

5. Stating or representing that said product does not contain harsh laxatives or ingredients that depend upon irritating the bowels for their effect, when in fact such is not the case.

6. Stating or representing that said product will act as a tonic for every part of the digestive tract or that it will sweeten the stomach. (July 26, 1940.)

2898. **Pipes, Etc.—Lottery.**—National Briar Pipe Co., Inc., a corporation, engaged in the manufacture of briar pipes and other articles of merchandise used by smokers 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.

National Briar Pipe Co., 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:

1. Supplying to or placing in the hands of others, pipes or other merchandise, together with punchboards or other lottery devices, which said punchboards or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the general public.

2. Supplying to or placing in the hands of others, punchboards or other lottery devices, either with pipes or other merchandise, or separately, which said punchboards or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the general public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (July 29, 1940.)

2899. **Mothproof Preparation—Qualities and Results.**—O. S. Schaffer, an individual, trading as Per-Mo Mothproof Co., engaged in the preparation of a liquid intended to be used as a treatment for fabrics to do away with moths and in the sale thereof under the trade name "Per-Mo," 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.

O. S. Schaffer 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 words "Permanent Mothproof Liquid" as descriptive of said product; and from the use of the word "permanent" or of any other word or words of similar meaning, or of any statement or representation, the effect of which tends or may tend to convey the belief to purchasers that the moth immunizing effect of said product will last, continue or endure or will remain fixed or constant indefinitely or that the use of said product will assure constant, equal efficacy against moths throughout the years or that such efficacy will not be impaired by dry cleaning, exposure, or use. (July 29, 1940.)

2900. **Rock Wool Insulation—Competitive Product, Comparative Merits, Etc.**—Eagle-Picher Lead Co., an Ohio corporation is engaged in the business of manufacturing rock wool insulating material, among other things, and in the sale and distribution thereof, through its subsidiary, Eagle-Picher Sales Co., in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged. One of their said competitors is Insul-Wool Insulation Corporation of Wichita, Kans., engaged in the manufacture of an insulation from raw material consisting of newspapers and wood pulp magazines which, after being treated or processed with certain chemicals, are ground up into a mass of fine particles which are then further treated to form the finished product such as is sold by the said corporation.

Eagle-Picher Lead Co. and Eagle-Picher Sales Co., in connection with the offering for sale, sale, or distribution of their so-called rock wool insulation in commerce, as commerce is defined by the Federal Trade Commission Act, agreed they and each of them will cease and desist from the inclusion in advertisements or printed matter which they, or either of them, use or place in the hands of others for use, of statements or representations, the effect of which is

to convey or which tends or may tend to convey the belief to purchasers that all insulation using paper as a base or that insulation such as that sold by their competitor, Insul-Wool Insulation Corporation of Wichita, Kans., is inflammable or is readily combustible or that the thermal conductivity thereof compares unfavorably with that of so-called rock wool or is higher than that of sawdust or that the said insulation having a paper base is susceptible to moisture or will settle when properly placed in the stud of a building. Each of the said corporations also agrees to cease and desist from stating or representing, through the use of excerpts from newspapers concerning a fire which occurred at the plant of a competitor, or in any other manner, that the material which was burned in such fire was the finished product offered for sale and sold by such competitor, when in fact, the burned material was not such finished product but was only raw material which had not been placed in the completed form in which it was customarily sold by such competitor in the usual course of trade. (July 30, 1940.)

2901. **Potted Bulbs—Foreign Source or Origin.**—Hewett P. Mulford and M. R. Mulford, copartners, trading as Hewett P. Mulford & Co., engaged in the sale and distribution of potted bulbs to purchasers, as syndicate stores located in different States and therein engaged in reselling said bulbs to the purchasing public, 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.

Hewett P. Mulford and M. R. Mulford 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 phrase "Holland Potted Bulbs" as descriptive of bulbs not grown in and imported from Holland; and from the use of the word "Holland" either alone or in connection with any other word or words or in any way, in the designation of or in the advertising, branding, labeling, or description of bulbs, the effect of which tends or may tend to convey the belief to purchasers that said bulbs were grown in and imported from Holland, when in fact said bulbs were grown elsewhere than Holand. (July 30, 1940.)

2902. **Honey—Qualities, Composition, Etc.**—Albert H. Hoffman, an individual, trading as Hoffman Health Products Co., engaged in the sale of honey under the brand name "El Panel Cuban Wonder Honey," 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.

Albert H. Hoffman in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from stating or representing that the said honey:

(*a*) Has a natural lubricating effect that helps to eliminate waste and thus promotes better appetite and consequently better assimilation.

(*b*) Has nine mineral elements which have special virtue in supplying mineral needs of the body.

(*c*) Vitalizes, alkalizes, and affords special virtues in the treatment of anemia and poor appetite.

(*d*) Assists in relieving and overcoming attacks of asthma, bronchitis, colds, hay fever, sinus trouble, or coughs other than local throat irritations.

(*e*) Possesses remedial powers in the treatment of gastric ulcers and disorders of the bowels and colon.

(*f*) Differs essentially from domestic varieties of honey in the matter of nutritional or therapeutic value. (July 29, 1940.)

2903. **Weight Reducing Product—Qualities.**—Mellquist Reducing & Cosmetic Salons, Inc., a New York corporation, and Mellquist Reducing & Cosmetic Salons, Inc., an Illinois corporation, and Erik W. Mellquist, individually and as officer and director of the two corporations, engaged in the operation of a number of so-called weight reducing and cosmetic salons, 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.

Mellquist Reducing & Cosmetic Salons, Inc., of New York, and Mellquist Reducing & Cosmetic Salons, Inc., of Illinois, and Erik W. Mellquist, in his capacity as president of each of the said corporations and in his individual capacity, 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 their advertisements and advertising matter or in any other way of statements or representations, the effect of which tends or may tend to convey the belief to purchasers that the use of said product in and of itself will break down fat cells and strengthen tissues or in any way reduce the user's weight or otherwise solve the user's reducing problems. (Aug. 1, 1940.)

2904. **Tacks and Upholstering Nails—Imported as Domestic.**—Robert E. Miller, Inc., a New York corporation, engaged in the sale and distribution of tacks and upholstery nails 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.

Robert E. Miller, Inc., in connection with the sale and distribution of its imported commodities in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from the use of the words "Made in U. S. A." as a mark, stamp, brand, or label for said commodities, or from otherwise advertising the same in a manner the effect of which is or may be to convey the belief to purchasers that such commodities are of domestic origin. If commodities of foreign origin or make are treated in the United States of America to improve their appearance or for other purposes and reference is made to such treatment, then in that case, a suitable word or words shall be used to indicate clearly that such commodities are merely treated or processed in this country but are not of domestic origin or produced in the United States of America. (Aug. 2, 1940.)

2905. **Milk—Grade and Composition.**—Embassy-Fairfax Dairy, Inc., a corporation, engaged in the sale and distribution of milk within the District of Columbia and States adjacent thereto, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Embassy-Fairfax Dairy, 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 "Guernsey" as descriptive of said product; and from the use of the word "Guernsey" either alone or in connection with the word "milk" or with any other word or words so as to import or imply that said product has been obtained exclusively from Guernsey cows. If said product is composed in substantial part of milk obtained from Guernsey cows and in part of milk obtained from cows other than the Guernsey breed, and the word "Guernsey" is used as descriptive of such Guernsey milk content, then in that case, it shall be made clearly and conspicuously to appear that said product is not composed exclusively of Guernsey milk or that said product is composed in part of milk other than milk obtained from Guernsey cows. (Aug. 6, 1940.)

2906. **Shoes—Simulating, History of Product, Source or Origin, Nature of Manufacture and Price.**—Bridgewater Workers Cooperative Association, Inc., a corporation, engaged in the business of manufacturing shoes 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.

Bridgewater Workers Cooperative Association, 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 words "J. W. Stetson Quality Shoes" or the word "Stetson" either alone or in connection or conjunction with any other word or words or arranged within a triangle, so as to simulate the brand or label or name heretofore used by the Stetson Shoe Co., Inc., in the sale and distribution of its shoes; and from the use of the word "Stetson" in any way in connection with the marking, stamping, branding, labeling, or advertising of its shoes, the effect of which tends or may tend to convey the belief to purchasers that said shoes are products made by or for or in accordance with the standards and specifications of the Stetson Shoe Co., Inc.

2. From the use, as a mark, stamp, brand, or label for or in the advertisement of its products, of the name or private brand or of any simulation of the name or private brand of well-known advertised products of shoe manufacturers or shoe dealers, the effect of which conveys, tends, or may tend to convey the belief to purchasers that the products thus marked, branded or labeled are such well-known advertised products.

3. From the use, in stamping or branding its shoes, of the phrase "Quality Shoemakers Since 1875" or of any other similar statement or representation, the effect of which tends or may tend to convey the belief to purchasers that said shoes have been on the market for such indicated period of time.

4. From the use of the words, "Lord Kent English Custom Shoes" as descriptive of domestically made, machine-manufactured, shoes; and from the use of the said words in any way, so as to import or imply that said shoes are of English make or are English custom shoes.

5. From the use of the words "Slater's Bench Made" as descriptive of machine-made products.

6. From the use of the price figure "$8.00" or "$12.00" or any other amount which purports to be the retail selling price of shoes, when in fact, such indicated retail selling price is fictitious or much in excess of the price customarily asked for said shoes in the usual course of retail trade. (Aug. 7, 1940.)

2907. **Cleaner and Water Softener—Manufacturer, Composition and Qualities.**—Werner Walter, an individual, trading as Wonder Products Co., engaged in the business of packaging a cleaner and water softener product and in the sale thereof under the trade name "Wonder Glo" 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.

Werner Walter in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from stating or representing in any manner whatsoever:

1. That the said product is made or manufactured by himself or that he actually owns and operates or directly and absolutely controls the plant or factory in which said product is manufactured.

2. That the said product contains no caustic soda or lye.

3. That the said product is a most excellent antiseptic, germ destroyer, or that any antiseptic or germ destroying properties are ascribed to the said product.

4. That the use of said product in a tub of wash will eliminate the necessity of rubbing clothes placed in such wash to remove the soil therefrom.

5. That the said product has any particular value as a shampoo other than to soften hard water used in connection therewith. (Aug. 8, 1940.)

2908. **Correspondence Courses—Employment Opportunities, Nature, Results, Government Indorsement, Testimonials, Etc.**—J. A. Vaughn, a sole trader as Mechanix Universal Aviation Service Co., engaged in the sale and distribution in interstate commerce of correspondence school courses for home study intended to assist students thereof to obtain employment in the aviation industry, 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.

J. A. Vaughn, in connection with the offering for sale, sale, and distribution of his correspondence courses of instruction in commerce as defined by the Federal Trade Commission Act, agreed he will cease and desist from:

(*a*) Representations which import, imply, or infer that persons answering his advertisements or applying for registration will or may receive employment, or that work as apprentices or other employment opportunities are offered by him.

(*b*) The use of "blind" advertisements or sales literature to attract prospective students when such advertisements or literature fail to set forth that courses of instruction or other educational services are being offered, in such manner as to mislead or deceive students, prospective students, or the public.

(*c*) Using any progressive, integrated, or continuous plan to sell home study or correspondence courses unless the first mailing to the prospective student, before any money is accepted, shows without

ambiguity exactly what is offered for sale and the price or prices thereof.

(*d*) Representations which import, imply, or infer that the courses of instruction offered for sale and sold by him include apprenticeship work or practical training either with or without compensation therefor; or that such instruction is other than a home study or correspondence course.

(*e*) Statements which cause or may cause the impression or belief that students completing his home study courses will or may thereby be qualified for aviation mechanic's licenses or other licenses issued by the United States Bureau of Air Commerce.

(*f*) Representing, directly or inferentially, by the use of testimonial letters or otherwise, that courses of instruction offered for sale or sold by him have the approval, recommendation or endorsement of the United States Bureau of Air Commerce or any other agency of the Federal Government.

(*g*) The use on his stationery or in his advertising or printed matter or in any other way of illustrations, pictures or drawings or other representations of the Wayne County Airport building or buildings in conjunction with the letters or initials "M U A S" or the words and letters "Home of M. U. A. S." or other letters or words, or otherwise, so as to import or imply or the effect of which tends or may tend to convey the belief to students or prospective students that the school conducted by him is situated in said building or buildings or that they are occupied in their entirety by him. (Aug. 13, 1940.)

2909. **Furs—Earnings or Profits, Opportunities, Price Guarantee, Etc.**—Leo M. Goldberg Fur & Wool House, Inc., a Montana corporation, and Leo M. Goldberg, an individual trading as The Federal Raw Fur Exchange, engaged as dealers in the purchase and sale of raw furs 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.

Leo M. Goldberg Fur & Wool House, Inc., and Leo M. Goldberg, and each of them, agreed that in connection with their buying and selling furs in commerce as defined by the Federal Trade Commission Act, they will cease and desist from—

(*a*) Quoting or otherwise holding forth any fictitious or exorbitant prices which trappers or fur dealers may expect to receive from them for their furs; quoting prices which they have not paid in the usual course of business; or prices which might be applicable to furs of grade and quality not produced or which are exceptions in the section circularized.

(*b*) Representing, directly or inferentially, that they pay a higher price for furs than do any other fur buyers, or that trappers or dealers in furs can or will realize a greater return by selling their furs to them than would be obtainable by selling such furs through brokers or to any other fur buyers.

(c) Stating that they can make dealers or manufacturers pay their demands or otherwise conveying the impression or belief that they are in a position to control the resale prices of furs.

(*d*) The use of the word "Guaranteed" or any word of similar meaning in connection with prices offered for furs, or representing that such prices are guaranteed unless they actually pay the prices quoted during the period of time for which such price lists are effective or in force. (Aug. 14, 1940.)

2910. **Medications, Cosmetics, Etc.—Qualities, Results, Composition, Free, Limited Offer, Guaranteed, Etc.**—Tyson & Co., Inc., a Tennessee corporation, engaged in the sale and distribution in interstate commerce of medications, cosmetics, and other commodities, in competition with other corporations and with individuals, firms, and partnerships 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.

Tyson & Co., Inc., 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—

(*a*) Representing that J & T Tried and True Vegetable Compound or any similar preparation is a dependable or competent remedy for illnesses or ailments peculiar to women, is efficacious in the relief of dysmenorrhoea or other pain or has been used successfully as a remedy or sedative for dysmenorrhoea or any form of female trouble.

(*b*) Stating that J & T Tried and True Vegetable Compound or any similar preparation is a tonic, an antispasmodic or a sedative; that it soothes the nerves or insures peace, or alleviates lack of interest or listlessness; that its use is indicated for nervousness or malnutrition; or any other statements which import or imply that such product is an effective treatment or competent remedy for nervousness, malnutrition, or dysmenorrhoea.

(*c*) Representations to the effect that nervousness is peculiar to women; that herbs are a woman's medicine; or that J & T Tried and True Vegetable Compound is a scientific blend or is scientifically compounded.

(*d*) Representing that La Dainty Hair Dressing & Grower, La Dainty Special Hair Grower, La Dainty Temple Grower, La Dainty Pressing Compound, La Dainty Quinine Pomade, La Dainty Shiek Cream, or any similar preparation—

Grows hair, makes long natural flowing hair, or aids in growing hair; causes short hair to become longer, prevents falling hair or splitting or breaking of hair at the ends; silkifies hair, makes hair natural or restores natural color to the hair; or makes ugly hair pretty.

Tones the scalp, keeps the hair or scalp in a healthy or growing condition, or soothes or helps the scalp; prevents baldness, thickens individual hairs to cover thin spots, or is a competent remedy for falling hair.

Contains expensive oils, penetrates the skin or inner layer thereof, radiates energy or vigor to hair roots or tissues, stops the life force from leaking out at the hair ends; includes any vitamins, overcomes deficiencies of skin and scalp, or eliminates the cause of dandruff; or is made of the purest and finest drugs and ingredients obtainable, or is "extra powerful," "effective," "special strength," or otherwise potent for any purpose whatsoever.

(*e*) The use of the words "Hair Grower," "Special Hair Grower" or "Temple Grower," either independently or in connection with the words "La Dainty" or any other words, as descriptive of its products; or of any similar term, designation, or expression, the effect of which is to import or imply that its products or any of them will cause hair to grow or will restore a growth of hair.

(*f*) Representing that La Dainty Cold Cream, Mme. Carue Tissue Cream, Mme. Carue Cleansing Creme, La Dainty Lucky Lovin' Cream, Tyson's Ideal Bleaching Creme, La Dainty Vanishing Cream, or any similar preparation—

Penetrates deep into the pores or sinks into the structure cells of the skin, nourishes, tones, or heals the skin; or is a tissue builder, a skin food or a skin invigorator.

Floats out impurities, clears up sallowness, or puts sallowness and sallow skin to flight, clears up liver spots, or rules out or removes blotches, pimples, or freckles.

Causes the skin to become firm or of exquisite color; has any youthifying action, makes skin beautiful, creates or preserves beauty, makes users beautiful "instantly" or otherwise, or "gives you the raving beauty that men love."

Makes skin soft or firm, whitens or lightens the skin "shades lighter" or at all, or causes a tan muddy skin to become lighter.

(*g*) Statements to the effect that the dark skin of colored persons is not their true color, or other representations which cause or have the capacity to cause the belief that the pigment in the skin is not of a permanent nature or that the color thereof may be lightened or changed by the application of creams or lotions to the surface of the skin.

(*h*) Representing that La Dainty Bleaching Ointment is a tonic, tones the skin, whitens the skin, gives youthful beauty and glow, removes or eliminates freckles, liver spots, pimples or skin discolorations, or makes the skin resistant to aging.

(*i*) Statements that La Dainty Beauty Bar tones the complexion, nourishes the skin, keeps the skin young, stimulates the skin, erases age lines, blotches, and blackheads, reduces pimples, blackheads, and wrinkles, refines large pores, or tones the complexion.

(*j*) Statements which cause or may cause the impression or belief that by the use of La Dainty Special Face Soap the skin will become young looking or free of blemish.

(*k*) The use of the term "Vitamin F" as a designation for or descriptive of any of the content or any part thereof of any product advertised, sold, or distributed by it; or otherwise designating any ingredient by a purported scientific name or term not recognized by the prevailing weight of authorities in such field of nomenclature.

(*l*) The use of illustrations depicting unnaturally heavy long wavy hair, of hair "before" and "after" using a certain preparation, of a dark colored mask removed from a lighter colored face, of a face of which one half is dark colored, and disfigured and the other half is light colored and free from blemish, or similar depictions, in connection with advertised claims in behalf of its products, the effect of which is to create or has the capacity to create the impression or belief that such products will cause hair growth, make beautiful hair or otherwise favorably affect the growth or texture of the hair, or will cause dark colored skin to become lighter in color or will eliminate pimples, blackheads, or other skin blemishes.

(*m*) Statements to the effect that its "Beauty experts" have conducted skin tests or that its products or preparations are compounded by skilled and experienced cosmeticians, beauty experts or chemists, or are unequalled.

(*n*) 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.

(*o*) Representing as the cost of shipping and packing an article, any sum or amount greater than or in excess of the actual cost of such shipping and packing.

(*p*) Representing an offer as "limited" when such offer is not definitely limited to certain persons or conditions. If there actually be such a limitation, the nature and terms thereof shall be clearly and unequivocally set forth in immediate connection with such representation.

(*q*) The use of the words "Guarantee" or "Guaranteed" or any other word or words of similar meaning in connection with the advertising, offering for sale or 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. (Aug. 14, 1940.)

2911. **Shoes—Simulating and Price.**—Farmington Shoe Manufacturing Co., a New Hampshire corporation, engaged in the business of manufacturing shoes 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.

Farmington Shoe Manufacturing Co., in connection with the advertisement, offering for sale, sale or distribution of its shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist:

1. From the use of the words "J. W. Stetson Quality Shoes" or the word "Stetson" either alone or in connection or conjunction with any other word or words or arranged within a triangle so as to simulate the brand or label or name heretofore used by the Stetson Shoe Co., Inc., in the sale and distribution of its shoes; and from the use of the word "Stetson" in any way in connection with the marking, stamping, branding, labeling, or advertisement of its shoes, the effect of which tends or may tend to convey the belief to purchasers that said shoes are products made by or for or in accordance with the standards and specifications of the Stetson Shoe Co., Inc.

2. From the use, as a mark, stamp, brand, or label for or in the advertisement of its products, of the name or private brand or of any simulation of the name or private brand of well-known advertised products of shoe manufacturers or dealers, the effect of which conveys, tends, or may tend to convey the belief to purchasers that the products thus marked, branded or labeled are such well-known advertised products.

3. From marking, stamping, branding, or labeling its shoes with the price figure "$8.00" or any other amount so as to import or imply that the said amount is the retail selling price of said shoes, when in fact such indicated retail selling price is fictitious or much in excess of the price customarily asked for said shoes in the usual course of retail trade. (Aug. 14, 1940.)

2912. **Medicinal Preparation—Qualities, Ailments, Composition, Price, Free, Manufacturer.**—Richard O. Mills, a sole trader as R. Mills & Co., engaged in the sale and distribution of a medicinal preparation designated "Nature's Laxative," in interstate commerce, in compe-

tition 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.

Richard O. Mills, in connection with the sale and distribution of his product "Nature's Laxative" agreed he will cease and desist from—

(*a*) Representing that such laxative preparation is mild or soothing; that it is a cleansing agent, efficient or otherwise, for the promotion of internal hygiene generally; that it stimulates or tends to stimulate the kidneys or liver or that its use is indicated for the stomach, kidneys, or liver; that it is a carminative, a tonic-laxative, or tonic; or that it is different from other preparations containing the same laxative ingredients.

(*b*) The use of words and phrases such as "Best to aid nature" or "the ideal laxative" in any manner that the effect of which is to import or imply that the use of "Nature's Laxative" is indicated for all types of constipation or that such product contains laxative principles or ingredients not present in any other preparation or preparations.

(*c*) Representing, directly or by implication, that the regular or continued use of such product will not so affect the organs of elimination as to necessitate the continued use of a laxative; or disparagement of comparable competitive products by publishing warnings against their use.

(*d*) Statements which import or imply that the said preparation may be effectively used as a substitute for fruits and vegetables or to supplement a diet deficient in fruits or vegetables.

(*e*) Representations which cause or may cause the impression or belief that constipation is "the greatest scourge of the age" or that sickness or ill health generally is due to or caused by constipation, or that the use of a cathartic is indicated for most of the diseases or ailments of mankind; or that in the colon lies the secret of life or unqualifiedly of health.

(*f*) Descriptions of such product as "purely vegetable" or in any other manner which fails to include the principal ingredient or ingredients therein or is so worded as to import or imply that it is composed wholly of well known or common garden vegetables or plants such as spinach, celery, and dandelion or other ingredients which constitute a very minor portion of the content of such product.

(*g*) Representations that said product is an intestinal regulator, or that it contains nothing injurious or no drugs.

(*h*) Representing the sum of $1 or any other amount as the price or regular price of the "treatise" or folder disseminated by him.

(*i*) 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 the payment of money.

(*j*) The use of the phrase "R. Mills & Co. Makers of Nature's Laxative" or other use of the word "Makers" or 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 product sold by him or that he actually owns and operates or directly and absolutely controls a plant, factory, or laboratory in which such product is made or manufactured. (Aug. 15, 1940.)

2913. **Men's Clothing—Manufacturer.**—Wolff Clothing Co., a Pennsylvania corporation, engaged in the sale of clothing, consisting of men's suits and topcoats, in interstate commerce, in competition with other corporations 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.

Wolff Clothing Co., in connection with the advertisements, offering for sale, sale or distribution of its clothing products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from stating or representing that it is the maker of the products which it offers for sale and sells or that it owns and operates or controls the factory in which said products are made. It also agrees to cease and desist from the use in its advertisements and printed matter of whatever kind or description of the word "Makers" and the phrases "Buy at Wolff's Factory," "We sell direct from our wholesale factory to you," and "Our factory-to-you merchandising policy makes such savings possible," or of any other word or words, phrase, or statement of similar implication, the effect of which tends or may tend to convey the belief to purchasers that Wolff Clothing Co. actually owns and operates or directly and absolutely controls the plant or factory wherein the products sold by it are made and finished. (Aug. 20, 1940.)

2914. **Burial Vaults—Qualities.**—Fred J. Mead, a sole trader as Mead-Suydam Co., engaged in the manufacture of concrete burial vaults 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.

Fred J. Mead, in connection with the sale and distribution of his burial vaults in commerce as defined by the Federal Trade Commission Act, agreed he will cease and desist from representing that they "Outlast the Tomb," have the quality of "Permanence," or by other

presentations, either directly or indirectly, that they will endure for a longer period of time than has been scientifically proven. He agrees also to cease and desist from the unqualified representation that a vault purchased from him "will not fail," or otherwise representing that it will perform satisfactorily under any and all conditions of installation or use. (Aug. 21, 1940.)

2915. **Nursery Products—School or Institute and State Government Connection.**—C. W. Stuart & Co., a New York corporation, engaged in the nursery business, consisting of the sale and distribution in interstate commerce, of a general line of fruit trees, raspberries, shrubs, shade trees, rose bushes, and the like, 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.

C. W. Stuart & Co., in connection with the offering for sale, sale, and distribution of its nursery products in interstate commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist forthwith from the use in its advertising of whatever kind or description of any statement or representation which imports or implies or the effect of which tends or may tend to convey the belief to prospective salesmen or to the readers of such advertising that the so-called "New York Landscape Institute" or "New York State Landscape Institute" is a school or institute for the training of landscape architects, or that it is a separate and distinct organization with which the C. W. Stuart & Co. is connected or associated, or that it, the said organization, is connected or associated in any way with the government of the State of New York. (Aug. 22, 1940.)

2916. **Candies—"Home Made."**—Frank G. Shattuck Co. and its subsidiary, W. F. Schrafft & Sons Corporation, engaged in the manufacture of candies 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.

Frank G. Shattuck Co. and W. F. Schrafft & Sons Corporation agreed that in connection with the offering for sale, sale, or distribution of their factory-made products in commerce, as commerce is defined by the Federal Trade Commission Act, that they and each of them will cease and desist from the use in their advertisements and advertising matter or in any way of the words "Home Made" or of any other words of similar implication, as descriptive of said products, and from the use of the said words "Home Made" 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 are home-made or made in the home. (Aug. 22, 1940.)

2917. **Plant "Nitragin"—Tests, Indorsements or Approval and Comparative Merits.**—The Nitragin Co., Inc., a Wisconsin corporation, engaged in the sale and distribution in interstate commerce of a product designated "Nitragin," a nitrogen-fixing bacteria culture for the inoculation of seeds of leguminous plants, 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 Nitragin Co., Inc., in connection with the sale and distribution of its product "Nitragin" in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(*a*) Representing that such product is tested and recommended by experiment stations, agricultural workers, and farmers everywhere; or statements which import or imply that said product has been recommended generally by Federal or State agricultural experiment stations.

(*b*) Statements or representations the effect of which tends or may tend to convey the belief to purchasers that all or certain products regardless of their quality which are offered for sale or sold in competition with its product are inferior or without worth or value; or any other presentation in a manner having the capacity, tendency, or effect of disparaging comparable competitive products. (Aug. 23, 1940.)

2918. **Automobile Tires—Composition, Qualities and Comparative Merits.**—Mohawk Rubber Co., a corporation, engaged in the business of manufacturing automobile tires 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.

Mohawk Rubber Co., in connection with the operation of its business in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use on tires offered for sale, sold, or distributed by it in such commerce or on tires which it places in the hands of others for sale:

1. Of the numeral "6" in connection or conjunction with the word "plies" or with any other word or words as a mark, stamp, brand, or label for tires which are not composed of six plies; and from the use on said tires, or the wrappings thereof, or in any other way, of the numeral "6" or of any mark, stamp, brand, or label so as to im-

port or imply, or the effect of which tends or may tend to convey the belief to purchasers that the said tires are composed of six or any other indicated number of plies which is in excess of the number of plies of which said tires actually are composed.

2. Of the word "dual" or the words "extra heavy duty," or of any other word or words of similar meaning or implication, as descriptive of the plies of which said tires are composed, the effect of which tends or may tend to convey the belief to purchasers that the construction of said plies is such that their presence in the tires renders the tires of dual or double efficiency or capable of extra heavy duty, as compared with tires containing a like number of plies of similar quality. (Aug. 27, 1940.)

2919. **Automobile Tires—Composition, Qualities, Comparative Merits and Factory.**—Irving Fine and Gurdie Fine, copartners trading as Imperial Tire Co. and Lafayette Tire Co., engaged in the sale and distribution of automobile tires 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.

Irving Fine and Gurdie Fine, in connection with the offering for sale, sale or distribution of their tire products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith:

1. From the use of the numeral "6" in connection or conjunction with the word "plies" or with any other brand or label for tires which are not composed of six plies; and from the use on said tires or the wrappings thereof, or in any other way, of the number "6" or of any mark, stamp, brand, or label, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said tires are composed of six or of any other indicated number of plies which is in excess of the number of plies of which said tires actually are composed.

2. From the use of the word "dual" or the words "extra heavy duty" or of any other word or words of similar meaning or implication, as descriptive of the plies of which said tires are composed, the effect of which tends or may tend to convey the belief to purchasers that the construction of said plies is such that their presence in the tires renders said tires of dual or double efficiency or capable of extra heavy duty, as compared with tires containing a like number of plies of similar quality.

3. From the use of the word "Factory" or of any other word or words of similar meaning, on their printed or other advertising matter so as to import or imply that the said copartners actually own and

operate or directly and absolutely control the plant or factory in which said tires are made or manufactured. (Aug. 27, 1940.)

2920. **Motor Oil—Composition, Source or Origin and Used or Reclaimed.**—Economy By-Products Co., Inc., a corporation, engaged in the business of selling and distributing motor lubricating oil 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.

Economy By-Products Co., Inc., in connection with the advertisements, offering for sale, sale, or distribution of motor oil in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. The use of the word "Penn" or "Pennfield" as a brand or label for or as part of the trade name under which it sells said product, when in fact said product is not composed wholly of Pennsylvania oil.

2. The use of the word "Penn" either alone or in connection or conjunction with any other word or words, letter, or letters, or in any other way, so as to import or imply that said product is composed of Pennsylvania oil in its entirety.

3. The use of the phrase "100% Pennsylvania Oil" as descriptive of said product, and from the use of said phrase or of any other statement or representation of like import, the effect of which conveys or tends or may tend to convey the belief to purchasers that the product thus referred to is composed of Pennsylvania oil, when in fact said product contains oil other than Pennsylvania oil.

4. Failing to clearly and unequivocally disclose the fact that said product contains used or reclaimed oils in its invoices and on printed and advertising matter, sales promotional descriptions, or representations thereof, however disseminated or published. (Aug. 27, 1940.)

2921. **Cosmetics—Nature of Manufacture, Indorsements or Approval, Qualities, Competitive Products, Safety, Etc.**—Physicians Formula Cosmetics, Inc., a California corporation, engaged in the sale and distribution of cosmetics 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.

Physicians Formula Cosmetics, Inc., in connection with the sale and distribution of its cosmetic preparations in interstate commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(*a*) The use of the letters "Rx" or other letters, signs, or symbols which cause or have or may have the capacity to cause the impression

or belief that its cosmetic or toilet goods are in fact medicinal preparations or that each parcel is individually compounded in accordance with a specific prescription therefor.

(*b*) Stating that its advertising has been accepted by the Los Angeles County Medical Association when such advertising is not currently so accepted.

(*c*) Representations which import or imply that dermatologists, skin specialists, plastic surgeons, or other medical men whose practice is limited to any one of the specialties of medical science, or that physicians or general practitioners on the Pacific coast or elsewhere have commonly or frequently sent their patients to its studios for treatment or prescriptions, or have generally or frequently prescribed, endorsed or recommended its cosmetic preparations.

(*d*) Unqualifiedly representing that its preparations are "non-allergic," "safe," or "effective beauty aids" for the skin, or that they may be depended upon to prevent allergic irritations or maintain healthy skin.

(*e*) Stating that "cholesterin" or any other ingredient in its cosmetic preparations "restores" or "replaces" or has the capacity to restore or replace natural oils in the skin or that it effectively combats or prevents crowsfeet, wrinkles or dry skin by means of oils applied to the skin or in any other manner whatsoever.

(*f*) Representing that the ingredients in its products penetrate the skin deeply or effectively; or that its "Cleansing Cream" removes "every particle" of make-up, grime and dirt from the skin or the pores thereof.

(*g*) Statements to the effect that cosmetic preparations containing mineral oil forms a film which seals in the dirt, causing blackheads, whiteheads, and enlarged pores; or other statements which constitute unwarranted disparagement of competitive products.

(*h*) Representing that "Physicians Formula Deodorant is an absolute necessity," or "unqualifiedly that Modern women's skins require stimulation."

(*i*) Representations which import or imply that its product designated "Facial Masque" or its product heretofore designated "Tissue Cream" can be depended or relied upon to clear up blackheads, whiteheads, or enlarged pores, or keep the skin youthful or free from lines.

(*j*) Denominating, describing or referring to any cosmetic product as a "Tissue Cream," or otherwise by statement or inference representing that such preparation externally applied has of itself any beneficial effect upon the tissues or cell-structure of the skin.

(*k*) Statements such as "Mothers who are interested in the health of their adolescent daughters should insist that they use only Physi-

cians Formula Cosmetics" or similar presentations having the capacity or tendency to convey the impression or belief that competitive cosmetic preparations contain ingredients injurious to the health or that only preparations offered for sale and sold by it may be safely used by adolescents. (Aug. 29, 1940.)

2922. **Termite Preparations—Government Indorsement or Approval, Qualities, Etc.**—Extermital Chemicals, Inc., a corporation, engaged in the sale and distribution in interstate commerce of two chemical preparations or products of substantially the same or similar composition designated "Extermital A" and "Extermital B," which may be and usually are used in conjunction with each other as soil treatments about the foundations of buildings to check or prevent infestation of the woodwork of the buildings by termites, said treatments being applied by what the said corporation refers to as its "Extermital Process" or what is known as the "bar-hole method," consisting of the making of holes, which are then covered or closed. The said corporation, 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.

Extermital Chemicals, Inc., in connection with the offering for sale, sale, or distribution of its products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisements and advertising matter of whatever kind or description, or in any other way of statements or representations which import or imply or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers:

1. That either the said products or the method advocated by the said corporation for the application of said products are or is based on findings of the United States Government.

2. That soil poisoning is recommended or recognized by United States Government authorities as the best termite control method or that such soil poisoning is advocated by the said authorities other than as an adjunct to feasible structural changes, and in place of them only on condition that the structural changes necessary to block termites are impracticable, or that the said authorities advocate soil treatments by the bar-hole system or by any method other than that known as the trenching method.

3. That the repellant effectiveness of said products, when placed in the soil, is of such permanency as to guard against all future termite infestations.

4. That either the H. O. L. C. specifications, or those of any other United States Government agency, recommend soil treatment by

means of bar-holes, the method of application used by the said Extermital Chemicals, Inc., or the use of its chemical mixture for treating.

5. That the United States Government has spent several hundred thousand dollars repairing damages caused by termites to the Treasury and Interior Buildings and in the Smithsonian Museums. (Aug. 30, 1940.)

2923. **Shoes—Maker, History, "Custom Made," Etc.**—Holland Racine Shoes, Inc., a Michigan corporation, engaged in the business of manufacturing shoes of various quality and price grades 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.

Holland Racine Shoes, Inc., in connection with the advertisements, offering for sale, sale, or distribution of its shoe products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist:

1. From the use of the words "J. W. Stetson Quality Shoes" or the word "Stetson" either alone or in connection or conjunction with any other word or words or arranged within a triangle so as to simulate the brand or label or name heretofore used by the Stetson Shoe Co., Inc., in the sale and distribution of its shoes; and from the use of the word "Stetson" in any way in connection with the marking, stamping, branding, labeling, or advertisement of its shoes, the effect of which tends or may tend to convey the belief to purchasers that said shoes are products made by or for or in accordance with the standards and specifications of the Stetson Shoe Co., Inc.

2. From the use of the words "Martin & Martin," either alone or in connection with the words "Custom Made," or the words "Domonick & Domonick," either alone or in connection with the words "Custom Grade," or the words "Made Exclusively for Altman," so as to simulate the brand or label or name heretofore used, respectively, by Martin & Martin, Dominick Fine Shoes, Inc., and B. Altman & Co. in the sale and distribution of shoes, or the effect of which tends or may tend to confuse or mislead purchasers into the belief that said shoes are products of or are made for the particular concern whose brand, label or name is thus simulated.

3. From the use on its shoes of the phrase "Quality Shoemakers Since 1875" so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that said shoes have been sold on the market for such indicated period of time.

4. From the use of the words "Custom Made" or "Custom Grade" either alone or in connection with the name of an alleged shoe dealer so as to import or imply that said products are of custom quality or that they have been made in accordance with the specific order of a dealer. (Aug. 29, 1940.)

2924. **Quinine Products—Safety, Qualities, Results, Comparative Merits and Competitive Products.**—The New York Quinine & Chemical Works, Inc., a New York corporation, engaged in the sale and distribution of pharmaceutical preparations including quinine 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.

The New York Quinine & Chemical Works, Inc. in connection with its sale of quinine or other pharmaceutical preparations in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(*a*) Representing in its advertising or otherwise that quinine is a "perfectly safe remedy," or is the "safest" antimalarial drug; or directly or by implication that its use may always be relied upon to cause no untoward effects.

(*b*) Publishing or disseminating statements having the capacity, tendency, or effect of disparaging competitive products or of creating the impression or belief that such products are dangerous to use or constitute a menace, as, for example, the following:

That Atabrine or other product of like composition—

Is toxic in effect.

Has a marked depressing action on heart and circulation.

Causes cerebral excitation.

Produces permanent liver damage.

Has none of the advantages of quinine while possessing some definite disadvantages.

May result in mental derangements, gasping or accelerated respiration, circulatory failure, collapse, vomiting, rise of temperature, psychoses, loss of appetite and weight, abdominal pain, headache, diarrhea, yellowed sclera, persistent yellowing of the skin, or in any other serious disorder, ailment, or malady. (Aug. 29, 1940.)

2925. **Clothing—Composition and Source or Origin.**—Anderson-Little Co., Inc., a corporation, engaged in the business of manufacturing men's and women's clothing 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.

The cloth known to the trade and the purchasing public as "Harris Tweed" is produced on the Isle of Harris, Lewis, Uist, and Barra of the Hebrides Islands, Scotland, and is made from the wool of native sheep and carded, spun and woven by hand by the inhabitants, crofters, in widths of 26 to 28 inches; is caulked or felted, and because of its attractive appearance, good wearing qualities, fast dyes, and permanent odor of peat smoke, said cloth has acquired a good reputation and has a wide sale, and the producers of and dealers in said cloth have acquired a valuable goodwill in the words "Harris Tweed" as applied to cloth used in the manufacture of garments.

Anderson-Little Co., Inc., in connection with the sale and distribution of garments in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use in its advertisements, on its labels, or in any other way, of the words "Homestead Harrisle" as a trade name for or otherwise to describe garments which are not made or fabricated from Harris Tweed; and from the use of the word "Harrisle" or of any other simulation of the word "Harris" 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 garments so referred to are made or fabricated from Harris Tweed, when in fact, said garments are not made or fabricated from cloth manufactured by crofters of the Isle of Harris, Lewis, Uist, and Barra of the Hebrides Islands, Scotland. (Sept. 3, 1940.)

2926. **Bread—Composition and Government Indorsement or Approval.**—Malbis Bakery Co., a corporation, engaged in the manufacture of bread 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.

Malbis Bakery Co. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist from:

(*a*) Representing directly, inferentially, by picturization or in any other manner that the bread offered for sale or sold by it and which is made with dried skim milk, butter, and water or any other fluid ingredient other than whole milk, is made with or contains whole milk, pure whole milk, or rich creamy milk.

(*b*) Advertisements which import or imply or which cause or may cause the impression or belief that all the bread offered for sale and sold by it is made with whole milk when in fact such bread or a portion thereof is made with dried skim milk, butter, and water or any fluid ingredient other than whole milk.

(*c*) Representing that its bread is made with milk supplied by the Malbis dairy unless or until the entire milk content of such bread is supplied by said dairy.

(*d*) Representing by means of statements, sound films in moving picture theaters, depictions, or otherwise that each loaf of bread so advertised contains one pint of milk or any other quantity of milk, whether fluid milk or any ingredient composed of milk derivatives such as dried skim milk and butter, greater than actually is contained therein.

(*e*) Use of the statement "U. S. Government Approved" or any other statement or representation the effect of which is to import or imply that its bread or the quality thereof has been approved or endorsed by the Federal Government or any department or agency thereof. (Sept. 4, 1940.)

2927. **Cosmetics—Laboratories, Prices, Free, Qualities and Results.**—Walter C. Rathke, an individual, trading as W. C. Rathke Laboratories, engaged in the compounding of cosmetics 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.

Walter C. Rathke in connection with the sale and distribution of his products in commerce, as defined by said act, agreed to cease and desist from:

(*a*) The use of the word "Laboratories" as a part of his trade name or as descriptive of his business; or otherwise representing that he owns, operates, or controls a laboratory, as such term is understood by the trade and the public, for the compounding or manufacture of the commodities offered for sale and sold by him or of any other chemical product.

(*b*) Quoting or otherwise holding forth any marked-up or fictitious prices for his products, or in any other way representing that the ordinary or regular prices of such goods are greater than the prices actually charged therefor in the usual course of business.

(*c*) Advertising an article as being "free" or a gratuity when the cost thereof is included in the price charged for a combination offer of said article with some other commodity, such for example, as a magazine subscription.

(*d*) Designating a complexion cream as a "tissue cream" or representing that any of the creams sold by him is a skin "normalizer" or that it "penetrates deep" into the pores or promotes skin health, or otherwise has any beneficial effect upon the tissues or cell structure of the skin.

(*e*) Representing that a cleansing cream "revitalizes" a skin or otherwise affects the skin beyond that normally resulting from a cleansing of its surface.

(*f*) Representing that the cactus plant has any recognized curative properties or mystic healing properties; or that an "oil" extracted therefrom has been known from the time of ancient civilization, or at all, to possess unusual healing qualities; or that such cactus product or any other ingredient contained in his cosmetic preparations lubricates withered skin to suppleness, stimulates fatigued glands into releasing the precious drop of moisture confined at the bottom of each pore, or penetrates into sluggish or atrophied glands or nourishes them into activity; or that it has any effect whatsoever on lymphatic gland activity, or produces any beneficial results in cases of withered glands or old complexions, or gives one a beautiful complexion or preserves skin loveliness indefinitely, or at all. (Sept. 6, 1940.)

2928. **Magazine and Cosmetics—Prices, Free, Qualities and Results.**—The Continental News, Inc., a corporation, engaged in the publication of a magazine named "True Mystic Science," and in the sale and distribution thereof, together with certain cosmetic products under the trade designation "Mystic Glow" 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 Continental News, Inc., in connection with the sale and distribution of its publications and premium or other merchandise in commerce as defined by said act, agreed to cease and desist from:

(*a*) Quoting or otherwise holding forth any marked-up or fictitious prices of articles or commodities which it offers for sale either in connection with a combination subscription offer or otherwise, or in any other way representing that the ordinary or regular prices of such goods are greater than the prices actually charged therefor in the usual course of business.

(*b*) Advertising an article as being "free" or a gratuity when the cost thereof is included in the price charged for a combination offer of said article with some other commodity, such for example, as a magazine subscription.

(*c*) Designating a complexion cream as a "Tissue cream" or representing that any cosmetic cream sold and distributed by it is a skin "normalizer" or that it "penetrates deep" into the pores or promotes skin health, or otherwise has any beneficial effect upon the tissues or cell structure of the skin.

(*d*) Representing that a cleansing cream "Revitalizes" a skin or otherwise affects the skin beyond that normally resulting from a cleansing of its surface.

(*e*) Representing that the cactus plant has any recognized curative properties or mystic healing properties; or that an "oil" extracted therefrom has been known from the time of ancient civilizations, or at all, to possess unusual healing qualities; or that such cactus product or any other ingredient contained in cosmetic preparations sold or distributed by it lubricates withered skin to suppleness, stimulates fatigued glands into releasing the precious drop of moisture confined at the bottom of each pore, or penetrates into sluggish or atrophied glands or nourishes them into activity; or that it has any effect whatsoever on lymphatic gland activity, or produces any beneficial results in cases of withered glands or old complexions, or gives one a beautiful complexion or preserves skin loveliness indefinitely, or at all. (Sept 11, 1940.)

2929. **Optical Lenses and Frames—Composition and "Certified."**—Joseph T. Cline, Harriet T. Cline, Carol H. Cline, and Robert L. Cline, copartners trading under the firm name of Midwest Optical Supply, engaged in the manufacture of optical lenses and glasses and in the sale and distribution thereof and of optical frames 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.

Joseph T. Cline, Harriet T. Cline, Carol H. Cline, and Robert L. Cline, and each of them, agreed that in connection with the sale and distribution of their merchandise in commerce, as defined by the Federal Trade Commission Act, they will cease and desist from:

(*a*) Designating spectacle frames or other products as "Rhodium" which are not composed throughout of rhodium. If the article is composed of some other metal and only the surface has been finished or coated with rhodium, such fact shall be clearly indicated by suitable terms.

(*b*) The use of the term "semi-precious" as descriptive of products made of so-called "Villadium" which are not composed in part at least of the precious metals, or any thereof; 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 by the trade and purchasing public.

(*c*) The use of the word "Certified" as applied to or descriptive of an article of merchandise which has not been analyzed or appraised by an authorized impartial agency, its quality being duly attested in writing by such agency to be as represented. (Sept. 16, 1940.)

2930. **Linens, Laces and Handkerchiefs—Source or Origin.**—Charles Mamiye and Jacob Hidary, copartners, trading under the firm name of Chinese Linen Importing Co., engaged in the importation and wholesale distribution of Chinese and Japanese decorative linens, laces, and handkerchiefs 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.

True Tuscany Lace, as known to the trade and the public, is a hand-made filet lace of grape design produced from linen thread in the Tuscany district of Italy. A lace not made in Tuscany and of linen, which is designated "Tuscany Lace" is a misbranded product.

Charles Mamiye and Jacob Hidary, 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 the use of the word "Tuscany" or word or words of similar import either with or without the explanation "Made in China" as descriptive of the laces or other articles sold by them which are not in fact true Tuscany Lace actually made in Tuscany of linen thread; or in any way, by assertion or inference, misrepresenting the type, quality, or origin of an article of merchandise offered for sale. (Sept. 17, 1940.)

2931. **Linens, Laces and Handkerchiefs—Source or Origin.**—Salim S. Dweck, an individual, engaged in the importation and wholesale distribution of Chinese and Japanese linens, laces, and 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.

True Tuscany Lace, as known to the trade and the public, is a hand-made filet lace of grape design produced from linen thread in the Tuscany district of Italy. A lace not made in Tuscany and of linen, which is designated "Tuscany Lace" is a misbranded product.

Salim S. Dweck 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 "Tuscany" or word or words of similar import as descriptive of laces, covers, sets, or other articles sold by him which are not in fact true Tuscany lace actually made in Tuscany of linen thread; or in any way, by assertion or inference, misrepresenting the type, quality, or origin of an article of merchandise offered for sale. (Sept. 17, 1940.)

2932. **Herb Tea—Qualities, History, Nature, Results, Importer and Testimonials.**—Ralph E. Pritchard, a sole trader as Egyptian Herb Tea Co.,

engaged in the sale and distribution of a medicinal product under the brand or trade designation "Egyptian Herb Tea" 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.

Ralph E. Pritchard, in connection with the sale and distribution of his medicinal compounds in commerce as defined by said act, agreed to cease and desist from representing:

(*a*) That the product designated and sold by him as Egyptian Herb Tea or any product of similar composition, is a competent treatment or an effective remedy for obesity or for any of the various ailments, sufferings and discomfortures caused by overweight or surplus fat; or that by its use one may reduce safely or pleasantly without exercise, drugs, diet, or embarrassment.

(*b*) That said preparation is efficacious in the treatment of rheumatism, kidney trouble, high blood pressure, indigestion, gas on the stomach, pyelitis, backache, or any other affliction or condition whatsoever aside from constipation; or that priests or wise men of ancient Egypt have worked marvelous cures, or any cures, with the herbs contained in such compound; or that the same is a subtle combination of the world's most valuable medicinal herbs.

(*c*) That said Egyptian Herb Tea or any product of similar composition is a tonic, or that it activates the liver or spleen or flushes the tissues of noxious poisons; or, because of purported tonic properties or otherwise, that it is capable of bringing to the user new health, hope or happiness or more vigorous lasting health; or is of marked benefit to one's health and well being, or keeps or helps to keep the user healthy, active, and clear in mind or normal in weight.

(*d*) That said preparation is a blood purifier or eliminates dangerous toxic poisons from the system, or keeps the blood stream pure; or removes the poisons from the blood which cause all ailments, or that all ailments are caused by poisons in the blood.

(*e*) That Egyptian Herb Tea is the safest or quickest way to give proper elimination, or that it restores proper body action, breaks up fatty tissues, relieves overburdened glands, rids the body of all unwanted materials, brings the action of the different organs back to a normal state, produces a healthy normal action of all the organs of the body, or so conditions the body that no more fat will accumulate.

(*f*) That he is an importer of herbs or any other commodity.

The said Ralph E. Pritchard further agreed not to publish any testimonials containing statements or assertions contrary to the terms of the foregoing agreement. (Sept. 20, 1940.)

2933. **Silverware, Etc.—Manufacture and Quality.**—Diamond Silver Co., a corporation, engaged in the business of manufacturing a line of silverware, cutlery and novelty flatware, 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.

Diamond Silver Co. agreed to cease and desist from the use of the words "Silver Plate" as a mark, stamp, brand, or otherwise to purportedly describe its plated products, when in fact said products actually are not plated with silver; and from the use of the words "Silver Plate" 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 prospective purchasers that the said products are silver plated or plated with silver, when in fact they are not so plated. (Sept. 23, 1940.)

2934. **Silverware, Etc.—Manufacture and Quality.**—J. Busch, Inc., a corporation, engaged in the wholesale distribution of silverware, flatware, cutlery, and glassware in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

J. Busch, Inc., agreed to cease and desist from selling or distributing in commerce, as commerce is defined by the Federal Trade Commission Act, plated products which are marked, stamped, branded, or labeled with the words "Silver Plate" or with any other word or words of similar implication, when in fact said products actually are not plated with silver. It also agreed to cease and desist from the use of the words "Silver Plate" in any way as descriptive of its plated products so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said products are silver plated or plated with silver, when in fact they are not so plated. (Sept. 23, 1940.)

2935. **Plated Products—Manufacture and Quality.**—Samuel Goldfarb, Saul Goldfarb, and Philip Goldfarb, copartners trading as Goldfarb Novelty Co., engaged in the business of operating a wholesale novelty house and in the sale of their merchandise 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.

Samuel Goldfarb, Saul Goldfarb, and Philip Goldfarb and each of them agreed that they would cease and desist from selling or distribution in commerce, as commerce is defined by the Federal Trade

Commission Act, plated products which are marked, stamped, branded, or labeled with the words "Silver Plate" or with any other word or words of similar implication, when in fact said products actually are not plated with silver. Said copartners, individually and collectively, also agreed to cease and desist from the use of the words "Silver Plate" in any way as descriptive of plated products so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said products are silver plated or plated with silver, when in fact they are not so plated. (Sept. 23, 1940.)

2936. **Monogramming Machines and Equipment—Patented.**—Irving Gould, sole trader as The Artcraft Monogram Co., engaged in the sale and distribution in interstate commerce of machines and equipment under the trade name "Maderagram" for the monogramming of letters and insignia on shirts, handkerchiefs, pillow-cases, and other fabrics, 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.

Irving Gould, in connection with his sale and distribution of monogramming machines and equipment or other commodities in commerce as defined by said act, agreed to cease and desist from representing that the Maderagram machine, or machine or device of similar construction, is equipped with patented attachments; or that the transparent stencils or other unpatented commodities sold by him are patented; or by the use of the words or expressions of similar import representing that an article of commerce has protection, characteristics or qualities which it does not in fact possess. (Sept. 23, 1940.)

2937. **Fiber Boxes—Manufacturer.**—Gem Corrugated Box Corporation, a corporation, engaged in the sale and distribution, as jobber, of fiber boxes 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.

Gem Corrugated Box Corporation, 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 marking, stamping, or branding 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 or the effect of which tends or may tend to convey the belief to purchasers or others that the said corporation makes

or manufactures said products or that it actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. (Sept. 23, 1940.)

2938. **Rugs—Composition.**—Manuel Feldman, an individual, engaged in business as an importer of hooked rugs and in the sale and distribution of certain thereof under the name "Province" and of certain others under the name "Acadia" 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.

Manuel Feldman, in connection with the sale or distribution of his rug products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "All Wool" in advertisements and advertising matter, on labels, or otherwise, as descriptive of said products not composed wholly of wool; and from the use of the word "Wool" either alone or in connection with the word "All" or with any other word or words or in any way, the effect of which tends or may tend to confuse, mislead or deceive purchasers with respect to the wool content of said products. If the rug is faced wholly or in substantial part with wool, but is backed with fabric or material other than wool, and the word "Wool" is used to refer only to the wool content of the rug face, then in that case, the word "Wool" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that the rug is not composed wholly of wool. (Sept. 23, 1940.)

2939. **Publications—Nature, Value, Special or Limited Offer, Free, Price, Etc.**—Nathan Gilbert, a sole trader, as Maywood Publishing Co., engaged in the sale and distribution in interstate commerce of a publication designated "20th Century Business Encyclopedia" and of other publications and pamphlets, 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.

Nathan Gilbert, in connection with the sale and distribution of his publications in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use of the word "Encyclopedia" or word or term of similar import in the title of or as descriptive of the publication heretofore designated "20th Century Business Encyclopedia" or of any other publication which is not in fact a comprehensive summary of knowledge or of a certain branch of knowledge.

(*b*) Statements such as "contain $100 worth of plans," "worth $50," "obtained at a cost of from one to five dollars," "value $4.75," or any representation, similar or otherwise, the effect of which is to import or imply that the publication offered for sale or sold by him have a worth or value in excess of the amount or amounts actually paid or charged therefor.

(*c*) Representing that an offer of any of his commodities constitutes or partakes of the nature of a "special" offer limited either as to time, persons, circumstances or otherwise, when in fact such an offer is or has been regularly and continuously made or used by him in connection with his usual method of merchandising.

(*d*) Representing, by use of the word "free" or word or term of similar import or meaning, that any booklets, pamphlets, or commodities regularly included in a combination offer with other articles of merchandise are given as gratuities.

(*e*) Representing that the contents of any publication or pamphlet offered for sale or sold by him are either "secret," "amazing," or otherwise undiscovered, unknown, astonishing, confounding, or bewildering.

(*f*) Representing that each, or any, of the so-called "twenty-six Amazing Secrets" has "at all times" or ever been sold for the sum of one dollar or any amount approximate thereto; or otherwise representing the normal or regular price of his publications or the contents thereof to be amounts which are in fact fictitious and in excess of those at which such publications or their contents are customarily offered for sale. (Sept. 24, 1940.)

2940. **Insecticides—Qualities, Results, Comparative Merits, Safety and Manufacturer.**—The Imperial Chemical Co., engaged in the sale and distribution of horticultural insecticides including a product designated "Bug-Dust-O-Cide," 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 Chemical 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 "Bug-Dust-O-Cide" or similar product is an "all purpose" insecticide; that it is a "dependable" or adequate protection for gardens, flowers, shrubs, or plants against damage by insects generally; that it can be depended upon to prevent plant disease; or that it is superior in quality or more powerful than various comparable competitive products.

(*b*) Statements or representations, pictorial or otherwise, which convey or tend to convey the impression or belief that "Bug-Dust-O-Cide" or similar product can be depended upon to destroy or control all insects injurious to flowers, vegetables, or plants; will destroy or control insects generally; or will destroy any of the various species named or depicted in its advertising media which are in fact immune to the lethal effects of such insecticide.

(*c*) Representing by statements such as "Rotenone is thirty-eight times stronger than lead arsenate as a stomach poison to bugs and insects," that such product generally is more efficacious than lead arsenate as an insecticide, or that it is a stomach poison for all bugs or insects.

(*d*) Unqualified representations that "Bug-Dust-O-Cide" neither stunts, injures nor retards the growth or development of plant life or has any injurious effect thereon.

(*e*) Stating that "Bug-Dust-O-Cide" or other insecticide containing nicotine or other toxic ingredient in sufficient quantity to cause injury when taken into the human or animal system is non-poisonous to humans or domestic animals.

(*f*) Statements which import or imply that the lethal effects of "Bug-Dust-O-Cide" or other insecticide containing ingredients the lethal effects of which are delayed, generally are "almost immediate" or prompt in their action; or which convey or may tend to convey the impression or belief that such product is an effectual or positive insecticide in all cases.

(*g*) Representing that it manufactures or otherwise makes any stock-dips, disinfectants, or other product or products not actually compounded, manufactured, or made by it. (Sept. 25, 1940.)

2941. **Cosmetics—Prices, Value, Special or Limited Offer, History and London Branch.**—Clarence D. Herron and Kenneth Herron, copartners, trading as House of Charm Cosmetic Co., engaged in the sale and distribution of face powder and other cosmetics 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.

Clarence D. Herron and Kenneth Herron, individually and as copartners trading as House of Charm Cosmetic Co., their representatives, agents, and employees, 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 will cease and desist forthwith from:

1. The use on the containers of their products or otherwise of any false, fictitious or misleading price which is in excess of the price at

which said products are customarily sold in the usual course of retail business; and from the use of any purported price marking, the effect of which tends or may tend to convey to purchasers an erroneous belief with respect to either the quality or the value of said product.

2. Stating or representing that their products are a $3.50 value or are of any other alleged valuation which is exaggerated or in excess of the actual value of said products or the price which the said copartners charge and the purchaser pays for said products in the usual course of business.

3. Stating or representing that the offered or purported retail selling price of their products, or any thereof, is special or is limited with respect to time, when in fact said price is the customary price asked for said products in the usual course of business and without limitation as to time.

4. Stating or representing that the manufacturer of any product offered for sale or sold by the said copartners is backed by manufacturing experience extending over a period of time in excess of what is actually the fact.

5. Stating or representing that the amount asked by said copartners for any of their products covers only the packaging and handling costs thereof, when in fact, the said amount offers them a profit in excess of such cost.

6. The use on the containers of their products, in their advertising or printed matter, or in any other way of the word "London" either alone or in connection with any other word or words so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said copartners have an office or offices or a business establishment at London, England. (Sept. 26, 1940.)

2942. **Mausoleums, Vaults and Burial Boxes—Composition.**—Missouri Mausoleum Co., Inc., a corporation, engaged in the business of manufacturing mausoleums, vaults and sectional concrete burial boxes 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.

Missouri Mausoleum Co., Inc., in connection with the advertisement, labeling, offering for sale, sale, and distribution of its products in commerce as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the words "Asphalt-Lined" as descriptive of such of said products as are not in fact lined with asphalt; and from the use of the said words 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 lining of the products to

which said word or words refer is composed wholly of asphalt. If the lining is composed in substantial part of asphalt and in part of other material, and the word "asphalt" is used as descriptive of such asphalt content, then in that case, the said word "asphalt" shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly and unequivocally that said lining is not composed wholly of asphalt but is composed in part of material other than asphalt. (Sept. 30, 1940.)

2943. **Livestock and Poultry Feeds—Qualities, Results, Comparative Merits, Competitive Products, Scientific Facts, Composition, Etc.**—Honeymead Products Co., an Iowa corporation, engaged in the manufacture of prepared livestock and poultry feeds 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.

Honeymead Products Co., in connection with the sale and distribution of its products in interstate commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist from:

(*a*) Representations which import or imply that livestock fed with its products command top market prices or sell at prices greater than are received for livestock of comparable quality or breed fed with rations containing equal or superior nutritional values or protein supplements.

(*b*) Representing, by the use of statements such as "Honeymead fed cattle are dressing out whiter and with a higher quality beef than the average," that the beef or meat of such cattle is superior to that of cattle of comparable quality or breed fed with other rations of recognized nutritional value; or any other unwarranted disparagement of competitive products.

(*c*) Stating that the so-called "Honeymead Market Calendar," or any other advertisement or publicity material prepared by it is compiled or otherwise prepared by the editors or other members of the staff of the Chicago Drovers Journal or other publication, or by any person or persons who do not actually compile or prepare such material.

(*d*) Statements which misrepresent or unduly exaggerate the importance or value of dextrose or corn sugar molasses as an animal or poultry ration, such as:

The best and most economical way of giving stock a large amount of energy producing and fat building carbohydrates.

Dextrose can be made to double your farm profits.

Adding corn sugar molasses to your feeding program will not only produce high quality beef and pork but will reduce total feeding costs.

Corn sugar molasses assures you of fine livestock, gives you greater quality and quantity of pork, and brings you the top price on the market.

Science has provided that the addition of dextrose to the ration is the most important step in getting big returns in the feed lot since balanced feed of livestock was first conceived; increases its palatability; the most nutritional food your hogs can be given.

The most scientific hog feeding program.

The miracle in nutrition.

The ideal hog fattener.

(*e*) Representing that authorities agree that corn sugar molasses should be added to ensilage, or that experiments have proved the health value of feeding corn sugar molasses to stock in indicated quantities or otherwise, until such claims shall have been endorsed or subscribed to by recognized livestock nutritional authorities or substantiated by experiments conducted by reliable disinterested authorities such as state agricultural experiment stations.

(*f*) Statements which import or imply that corn sugar molasses is a prophylactic, an effective treatment or a competent remedy for any malady, disease or ailment to which livestock are subject.

(*g*) Statements to the effect that its "Special Hybrid Hog Supplement" is a sensational new finding in the hog feeding industry; that such product has attracted widespread or general attention; or that it is one of the most important developments which has taken place in years; or any other misleading or exaggerated statements concerning said product.

(*h*) Representations which import or imply that Hybrid corn differs from open pollinated corn in chemical content, texture, hardness or palatability; or that hybrid corn is superior in food energy to open pollinated varieties of corn.

(*i*) Statements which tend or may tend to convey the impression or belief that the food energy contained in Hybrid corn can be utilized only by the addition of "Special Hybrid Hog Supplement"; or, by implication or otherwise, that a protein supplement to open pollinated varieties of corn is not indicated.

(*j*) Representing that "Honeymead Milkmeel" is a competent supplement or substitute for milk, takes the place of milk in hog or pig rations, or keeps pigs healthy.

(*k*) Statements to the effect that such product provides an ideal protein supplement for other rations or furnishes a balanced feeding

program, until such time as it may be determined by competent disinterested scientific authorities that such product is in fact a complete, balanced supplement for pig or hog rations.

(*l*) Statements to the effect that a feed or ration consisting of "Milkmeel," corn sugar molasses and corn is the quickest known ration to fatten hogs.

(*m*) The use of the brand name "Milkmeel," or of the word "milk" either alone or in connection with any other word, as descriptive of a product composed predominantly of ingredients other than milk or milk products; or in any manner so as to import or imply that such product contains a predominant or substantial quantity or proportion of milk or milk products.

(*n*) Use of the phrase "rich in dextrose" as descriptive of a product which does not contain a substantial quantity of dextrose; or any statement or representation the effect of which causes or may cause the impression or belief that any of its products contain specified ingredients in quantities or percentages greater than are actually contained therein.

(*o*) Asserting that any of its livestock or poultry food products contains every needed element in the most digestible form; is completely or scientifically balanced, laboratory controlled, vitamin calculated, or an ideal supplement; contains all necessary minerals, proteins, carbohydrates, and fats; or otherwise representing such foods or food supplements as containing all necessary elements or constituents in proper quantities or proportions, until the correct nutritional and vitamin requirements of various farm animals and poultry has been determined or established by competent scientific authorities and the Honeymead products definitely meet such scientifically ascertained requirements.

(*p*) Statements which import or imply that vitamins A, B, D, E, and G, or any of them, are indicated as a supplement to the diet of farm livestock or poultry, unless in direct connection with each and every such representation, it be clearly and unambiguously stated that the benefits claimed will obtain only when there is a deficiency or suboptimal supply of such vitamin or vitamins in the feed or ration ordinarily provided such animals or poultry. (Sept. 30, 1940.)

2944. **Raw Furs—Prices to be Paid, Guarantee and Comparable Prices.**—Albert H. Singer, sole trader as Albert H. Singer Fur Co., engaged as a dealer in the purchase and sale of raw furs 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.

Albert H. Singer, in connection with his buying and selling furs in commerce as defined by said act, agreed to cease and desist from:

(*a*) Quoting or otherwise holding forth any fictitious or exorbitant price or prices which trappers or fur dealers may expect to receive from him for their furs; quoting prices which he has not in fact paid in the usual course of business; or quoting prices which might be applicable to furs of a grade or quality not produced in or which are exceptions in the section or territory circularized.

(*b*) Representing, directly or inferentially, that he pays a higher price for furs than do any other fur buyers, or that trappers or dealers in furs can or will realize a greater return by selling their furs to him than would be obtainable by selling such furs to any other fur buyers or through brokers.

(*c*) The use of the word "Guarantee" or any other word or words of similar meaning unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security.

(*d*) Representing that prices quoted are guaranteed unless he actually pays the prices quoted during the full period of time for which such price lists are effective or in force.

(*e*) Representations which import or imply that he purchases furs from trappers at prices equal or comparable to prices paid any other shippers so long as he pays dealers substantially more for the same types and grades of furs. (Sept. 30, 1940.)

2945. **Live Stock and Poultry Food—Comparative Value and Merits, Qualities, Results, Testimonials, Composition, Manufacturer, Guarantee, Etc.**—Myco-Lac Mineral Yeast Co., Inc., a corporation, engaged in the sale and distribution of a livestock and poultry food or food supplement designated "Myco-Lac Mineral Yeast," 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.

Myco-Lac Mineral Yeast Co., Inc., in connection with the sale and distribution of its products in commerce as defined by said act, agreed to cease and desist, directly or indirectly, from:

(*a*) Representing that a product composed of 32 pounds of oats and one-third pound of "Myco-Lac" is equal in feeding value to 56 pounds of corn; or to any quantity of corn or other feed not scientifically proven.

(*b*) Statements to the effect that "Myco-Lac" is a "necessary" supplement to the food of livestock and poultry; that its use results in complete digestion of rations to which it is added or causes livestock to fatten on less quantities of food than otherwise would be used; that it enriches milk or generally increases milk production; or that it or its yeast content can be depended upon to build or strengthen repro-

ductive organs, increase fertility, prevent abortion, or make calving easier.

(*c*) Stating, directly or inferentially, that such product is superior to all competing products for increasing weight, stimulating appetite, rounding out cattle for market, or for any other purpose.

(*d*) Representing that "Myco-Lac" when fed to sheep, generally reduces birth losses, prevents poison milk, improves the wool texture, or increases the growth thereof.

(*e*) Publishing or disseminating testimonials exaggerating the weight gains or other benefits obtainable by the use of "Myco-Lac," or containing any claims, assertions, or implications contrary to the terms and spirit of this agreement.

(*f*) Representing that "Myco-Lac" when fed to hogs results in decreased loss at farrowing or in strong and healthy pigs.

(*g*) Statements to the effect that pulverized grain cultured with "Myco-Lac" constitutes a balanced ration, until such time as it may be determined by competent disinterested scientific authorities that such ration is in fact a completely balanced food for farm livestock or poultry.

(*h*) Representing that charcoal absorbs gas, sweetens the stomach, purifies stomach acids, or is beneficial in cases of diarrhea; that sulphur purifies the blood, stimulates circulation, improves, or benefits the hair or skin, or aids digestion; or that either sodium sulphate or magnesium sulphate has a healing effect.

(*i*) Representing that potassium iodide purifies blood or prevents abortion; or that it acts as a goiter preventive or prevents the condition designated "big neck," assists the action of the thyroid gland or prevents hairless pigs, unless in direct connection with each and every such representation, it be clearly and unambiguously stated that the benefits claimed will only obtain in cases of iodine deficiency.

(*j*) Statements which import or imply that the yeast contained in "Myco-Lac" is the greatest known source of Vitamins B or G; or that the yeast, mineral, or other content thereof causes livestock food to take on a predigested form or appreciably improves the palatability, digestibility, or utility thereof.

(*k*) Representing that farm soil generally has been robbed or depleted of the elements necessary to supply minerals in livestock food; that it is necessary generally to supplement livestock food with minerals; or that sulphate of iron or any other minerals or constituents not present in "Myco-Lac" are contained therein.

(*l*) Representations which import or imply that "Myco-Lac" is a prophylactic, an effective treatment or a competent remedy for any malady, disease, or ailment to which farm livestock or poultry

are subject; that it builds up the resistance of livestock; or is an insurance against disease or a safeguard for health.

(*m*) Representing, directly or inferentially, that such product when used or fed as directed:

1. Provides sufficient protein for livestock or poultry.

2. Is a potent or adequate source of yeast, cod liver oil or Vitamins A, B, D, G, in livestock deficient in vitamins.

3. Is adequate as a supplement to rations lacking in vitamins; or

4. Will produce miraculous or almost miraculous results.

(*n*) Statements which import or imply that Vitamins A, B, D, and G are indicated as a supplement to the diet of farm livestock or poultry, unless in direct connection with each and every such representation, it be clearly and unambiguously stated that the benefits claimed will obtain only when there is a deficiency or suboptimal supply of such vitamin or vitamins in the feed or ration ordinarily provided such animals or poultry.

(*o*) Representing that the same care is used in selecting the ingredients and compounding "Myco-Lac" as is used in preparing physicians' prescriptions.

(*p*) Statements which import or imply that it manufactures or makes product it sells or owns or controls the factory in which such product is manufactured; or that it has any chemists on its staff or in its employ.

(*q*) The use of the word "guaranteed" or any other word or words of similar meaning 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. (Sept. 30, 1940.)

2946. **Poultry and Livestock Food Conditioner—Qualities, Properties, Comparative Value and Prices, and Testimonials.**—Stock-Gro, Inc., a corporation, engaged in the sale and distribution in interstate commerce of a food conditioner designated "Stock-Gro" for poultry and livestock, 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.

Stock-Gro, Inc., in connection with the sale and distribution of its product in commerce as defined by said act, agreed to cease and desist from representing:

(*a*) That Stock-Gro, or any product of similar composition, is a competent treatment or an effective remedy for, a preventive of, or "corrects" necro enteritis, blackhead, coccidiosis, round worm, scours or any other disease or affliction of livestock or poultry; or directly or inferentially that it possesses any therapeutic properties what-

soever, or is efficacious as a food conditioner or otherwise beyond such nutritive properties as it may possess.

(*b*) By statement or inference that lactic acid is "a most excellent antiseptic," or that it aids the growth of animal tissue, or has or may have any beneficial effect whatsoever in the prevention or treatment of round worm infestation, intestinal disturbances, or other diseases of animals.

(*c*) That Stock-Gro has or will cut the cost of milk feeding 40 percent, or is the most economical form of milk feeding; or that its use is economical at the prices charged, so long as similar food conditioners, some with even higher protein percentages, are obtainable at substantially less cost.

The said Stock-Gro, Inc., further agrees not to publish or disseminate any testimonials containing statements, assertions or implications contrary to the terms and spirit of the foregoing agreement. (Oct. 1, 1940.)

2947. Asbestos Liquid Roof Coatings—Government Conformance and Approval and Composition.—Overall Paint & Lead Co., Inc., a corporation, operating under a number of trade names, including Nu-Ruf Roofing & Manufacturing Co., Fibre-Oil Roofing & Manufacturing Co., Western Products Co., Top-All Roofing & Manufacturing Co., and Crescent Products Co., engaged in the manufacture of a general line of house paints and of asbestos liquid roof coatings, and in the sale and distribution thereof, in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships engaged likewise, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Overall Paint & Lead Co., Inc., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from, on its labels, in its advertising matter, or in any other way:

(*a*) Representing that its liquid roof coating or any other product of similar composition conforms to Federal Government Specifications for roof coating SS-R-451; or that said product contains absolutely no water; or otherwise by statement or inference, that the same meets the standard of the Federal Government as a roof coating material.

(*b*) The use of the letters "W P A" or legend or symbol of similar implication, in any manner having the capacity, tendency, or effect of conveying the belief or creating the impression that such product has been sponsored, adopted, or approved by the Works Progress Administration or any other agency of the United States Government. (Oct. 2, 1940.)

2948. **Hosiery—"Union Made" and "Knitting Mills."**—Roxborough Knitting Mills, Inc., a corporation, engaged as wholesaler in the business of selling and distributing 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.

Roxborough Knitting Mills, 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 forthwith from:

(*a*) the use of the words "Union Made" or any mark or insignia resembling or simulating the Union Label upon or in connection with products not made by workmen affiliated with the American Federation of Labor or with any Labor Union Organization.

(*b*) the use of the words "Knitting Mills" as part of its corporate or trade name; and from the use of either the word "Knitting" or "Mills" in any way so as to import or imply or the effect of which tends or may tend to convey the belief to customers or prospective customers that the said Roxborough Knitting Mills, Inc., actually owns and operates or directly and absolutely controls the plant or factory in which its products are knitted or manufactured. (Oct. 2, 1940.)

2949. **Hosiery—"Union Made."**—Springfield Dyeing Co., Inc., a corporation, engaged in the business of performing certain services, including the dyeing and finishing of hosiery furnished it in the grey, for the owners of said products, said services being rendered at the instance and at the request of such owners in accordance, with, or in pursuance of, agreements with them, with the knowledge, expectation, purpose, and intent that the hosiery, dyed and finished by said Springfield Dyeing Co., Inc., for the owners thereof would be offered for sale and sold by said owners 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.

Springfield Dyeing Co., Inc., in connection with the dyeing or finishing and subsequent sale of products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from marking, stamping, branding, or labeling said products with the words "Union Made" or with any mark or insignia resembling or simulating the Union Label, when in fact said products are not made by workmen affiliated with the American Federation of Labor, or with any Labor Union Organization. (Oct. 2, 1940.)

2950. **Fabrics—Nature.**—Seneca Textile Corp., a corporation, engaged in the manufacture of textiles, including vat-dyed prints and cretonnes used as furniture covering material, and in the sale of said fabrics in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Seneca Textile Corp., in connection with the offering for sale, sale or distribution of fabrics in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of either the word "sunfast," "tubfast," or "faskolor," or of any other word or words of similar meaning or implication as descriptive of fabrics, the appearance or color of which is changed or affected when the fabrics are laundered or exposed to light; and from the use of the said words, or any thereof, as descriptive of fabrics so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the coloring of the fabrics thus purportedly described is unfadable or proof against fading, as when the fabrics are exposed to light or are laundered. (Oct. 3, 1940.)

2951. **Life Preservers—Qualities, Guarantee, Nature, and Insured.**—Jno. O. Flautt Manufacturing Co., Inc., a corporation, formerly Jno. O. Flautt and John M. O'Connor were copartners, trading under the firm name and style of O'Connor-Flautt Co. The said Jno. O. Flautt Manufacturing Co., Inc., upon its incorporation, on or about April 4, 1939, acquired the business theretofore conducted by said copartners, by purchase of the physical assets, and from and since its incorporation has continued the operation of such business. The said Jno. O. Flautt Manufacturing Co., Inc., and/or Jno. O. Flautt and John M. O'Connor, copartners, have been engaged in the sale and distribution of life preservers or buoyancy belts designated "Lifeguard" or "LifeGard" in interstate commerce, in competition with other corporations and partnerships and with firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Jno. O. Flautt Manufacturing Co., Inc., and Jno. O. Flautt and John M. O'Connor, copartners, and each of them, in connection with their sale and distribution of life preservers or buoyancy belts in commerce as defined by said act, agreed to cease and desist from:

(*a*) Representing, directly or inferentially, that "Lifegard" belts or other life preservers or buoyancy belts afford complete protection from drowning or that the use of such life preservers or belts pro-

vides "perfect" or absolute safety for persons in or on the water, or "positive insurance" against drowning.

(*b*) The use of the word "guarantee" or any other word or words of similar meaning unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security.

(*c*) Statements, such as "When needed, it inflates itself into a man-size life preserver," which import or imply that the inflating mechanism contained in "lifegard" belts is completely automatic or that no manual action is required or necessary in order to inflate such belts.

(*d*) Representing that insurance policies are issued to purchasers of "Lifegard" belts or that purchasers and wearers of such belts are insured against drowning in the sum of $1,000 or any other amount, unless in direct connection with each and every such representation any and all limitations or qualifications pertaining to such insurance be clearly and definitely stated.

(*e*) Representing that purchasers and users of "Lifegard" belts are insured by Lloyds of London, or any statements the effect of which tends or may tend to convey the impression or belief that such purchasers and users are insured by Lloyds of London. (Oct. 4, 1940.)

2952. **Automobile Jacks—Unique Nature, Qualities, and Results.**—Moto-Sway Corporation of America, an Illinois corporation, engaged in the manufacture of pneumatic automobile jacks designated "Moto-Sway," 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.

Moto-Sway Corporation of America, in connection with the sale and distribution of its products in interstate commerce, as defined by the Federal Trade Commission Act, agreed it will cease and desist, directly or inferentially, from representing that automobile shock absorbers cannot be examined or refilled without the use of "Moto-Sway" automobile jacks; that enclosed springs of automobiles cannot be lubricated without the use of such appliances; that the use thereof results in the removal of all oils and sediments from crank-cases of automobile engines or in the elimination of repair bills; or in any other manner importing or implying that such equipment is necessary or essential for the lubrication or other servicing of automobiles. (Oct. 4, 1940.)

2953. **Raw Furs—Prices to be Paid and Comparative Prices.**—Otto P. Barth, a sole trader as Jas. C. Gordon Fur Co. and as Victor Fur Co., engaged as a dealer, in the purchase and sale of raw furs in inter-

state 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.

Otto P. Barth, in connection with his buying and selling furs in commerce as defined by the Federal Trade Commission Act, agreed he will cease and desist from:

(*a*) Quoting or otherwise holding forth any extravagant or exorbitant price or prices which trappers or fur dealers may expect to receive from him for their furs; quoting price ranges which include amounts seldom paid, or quoting such extraordinary prices in any other manner having the capacity, tendency or effect of conveying the impression that the same are frequently paid; or quoting prices which might be applicable to furs of a grade or quality not produced in or which are exceptions in the section or territory circularized.

(*b*) Representing, directly or inferentially, that he pays higher prices for furs than do all other fur buyers; that trappers or dealers in furs can or will realize a greater return by selling their furs to him than would be obtainable by selling such furs to other fur buyers or through brokers; or by direct statement or by inference such as, for example, an implied necessity of obtaining raw furs with which to fill orders, that he pays higher prices than are justified by general market conditions. (Oct. 4, 1940.)

2954. **Corrugated Fiber Boxes—Maker or Manufacturer.**—Federated Container Co., Inc., a New York corporation, engaged as a jobber in the sale and distribution of corrugated fiber shipping boxes 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.

Federated Container Co., Inc., in connection with the sale and distribution of its corrugated fiber boxes in interstate commerce, as commerce is defined by the Federal Trade Commission Act, agreed it will cease and desist from stamping or marking said boxes or causing the same to be stamped or marked with the purported certification of a box maker or manufacturer together with such use of its corporate or trade name "Federated Container Co., Inc." as tends or may tend to create the impression that it, the named corporation, is the maker of said boxes. The said corporation also agrees to cease and desist from the use, as a mark or stamp on its boxes or otherwise in connection with the sale in commerce of said products, of the word "maker" or of any other word or words of similar meaning, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said

corporation actually owns and operates or directly and absolutely controls the plant or factory in which said products are made or manufactured. (Oct. 4, 1940.)

2955. **Fiber Board Boxes—Maker or Manufacturer.**—Samuel Goldstein and Abraham Goldstein, copartners trading as Merit Container Co., engaged in the sale of fiberboard packing boxes 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.

Samuel Goldstein and Abraham Goldstein, in connection with the sale or distribution of their fiberboard packing boxes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from stamping or marking said products or causing the same to be stamped or marked with the purported certification of a box maker or manufacturer together with such use of their trade name "Merit Container Co." as tends or may tend to create the impression that they make or manufacture said boxes. They also agreed to cease and desist from the use as a mark or stamp on their products or otherwise in connection with the sale in commerce of said products, of the word "maker" or of any other word or words of similar meaning, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said copartners actually own and operate or directly and absolutely control the plant or factory in which said products are made or manufactured. (Oct. 4, 1940.)

2956. **Cosmetics—Endorsement or Approval and Qualities.**—Carolyn Nilson Dietrich, an individual trading as "Carolyn Nilson System of Beauty Culture," with her principal place of business located in Detroit, Mich., engaged primarily in personally administering so-called Swedish massage and gymnastics, and as an adjunct to this line of endeavor has also sold and distributed a line of cosmetics 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.

Carolyn Nilson Dietrich, in connection with the offering for sale, sale, or distribution of her preparations in commerce, as commerce is defined by the Federal Trade Commission Act, agreed she will cease and desist forthwith from the use in advertisements and advertising or printed matter of whatever kind or description, or in any other way, of any word or words, statement, or representation, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers (*a*) that said products

have been endorsed or approved by either physicians, Hollywood stars or leaders everywhere or, in fact, anywhere; (*b*) that either the hair tonic preparation or the eyelash preparation will stimulate or in any way cause the hair to grow; (*c*) that the use of the so-called Bust Developer Cream will enlarge or reduce the breasts or in any way influence the development or contour of the breasts; (*d*) that the use of the so-called reducing lotion will bring about a reduction of body weight. (Oct. 7, 1940.)

2957. **Herb Medicine—Qualities, Properties, Results, and Prices.**—Oman E. Johnston, an individual, trading as Kenjol Pharmacal Co., engaged in the sale of a product known as "Native Herb Medicine" 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.

Oman E. Johnston, in connection with the advertisement, offering for sale, sale or distribution of his product "Native Herb Medicine" in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from stating or representing:

1. That said product will relieve or cure ailments such as biliousness, colds, or suffering from piles, or rid the system of lumbago or rheumatism, or afford rapid relief from pain or all female complaints.

2. That said product is a competent remedy for or will afford a curative action upon such organic or functional diseases as hardening of the arteries, diseased kidneys, ulcers of the stomach or bowels, lowered vitality, or liver diseases.

3. That said product possesses any direct remedial value or has medicinal properties, other than that of a laxative.

4. That said product is "Standard $1.00 Size" or that its regular retail price is $1, when in fact, such amount is fictitious, in excess of the price for which said product is customarily sold in the usual course of retail trade.

5. That said product is sold for 25 cents only if the coupon is presented or as an advertising medium, when in fact said product may be purchased at any time for 25 cents with or without the coupon. (Oct. 7, 1940.)

2958. **Mattresses and Other Household Furnishings—Prices or Values.**—Stewart & Co., Inc., a corporation engaged in the sale and distribution of mattresses and other household furnishings 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.

Stewart & Co., Inc., in connection with the sale and distribution of its mattresses or other merchandise in commerce as defined by said

act, agreed to cease and desist, directly or inferentially, from quoting or representing as the customary or regular price or value thereof, prices or values which are in fact fictitious and in excess of the prices at which such merchandise customarily is offered for sale and sold in the normal course of business. (Oct. 7, 1940.)

2959. **Raw Furs—Prices to be Paid, Comparative Prices, and Guarantee.**—W. Irving Herskovits Fur Co., Inc., a corporation engaged as a dealer in the purchase and sale of raw furs 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.

W. Irving Herskovits Fur Co., Inc., in connection with its buying and selling furs in commerce, as defined by said act, agreed to cease and desist from:

(*a*) Quoting or otherwise holding forth any fictitious or exorbitant price or prices which trappers or fur dealers may expect to receive from it for their furs; quoting prices which it has not in fact paid in the usual course of business; or quoting prices which might be applicable to furs of a grade or quality not produced in or which are exceptions in the section or territory circularized.

(*b*) Representing, directly or inferentially, that it pays higher prices for furs than do all other fur buyers; that trappers or dealers in furs can or will realize a greater return by selling their furs to it than would be obtainable by selling such furs to other fur buyers or through brokers; or by direct statement or by inference such as, for example, an implied necessity of obtaining furs with which to fill orders, that it pays higher prices than are justified by general market conditions.

(*c*) The use of the word "Guarantee" or any other word or words of similar meaning unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security. (Oct. 7, 1940.)

2960. **Automobile Tires—Composition and Quality.**—Ethyl Tire & Rubber Co., Inc., a corporation, and Harry Mufson and Samuel Mufson are officers and sole owners of the capital stock of said corporation and also engaged in business as copartners under the firm name of Fordham Tire Co. at the same place of business. Said corporation and copartners, engaged in the sale and distribution of automobile tires in interstate commerce, in competition with other corporations and partnerships and with firms and individuals likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

There is a custom and usage in the rubber tire industry, followed by a number of manufacturers of pneumatic automobile and truck tires, of marking such tires with words and figures or phrases so as to indicate conspicuously and truthfully the number of plies existing in the construction of such tires. The industry's interpretation of a "heavy duty" passenger-car tire is one having more than four plies, usually six. This custom and usage is well known to the public, and the public is accustomed in the purchase of tires to place full credence in the manufacturer's representations as to the manner and quality of construction and the number of plies therein contained as indicated, by the marks, brands, words, letters, figures, insignia, or phrases appearing on the wrappings and sidewalls of said tires.

Ethyl Tire & Rubber Co., Inc., and Harry Mufson and Samuel Mufson, and each of them, in connection with their sale and distribution of automobile tires in commerce as defined by said act, agreed to cease and desist from:

(*a*) The use of a figure five medallion or the words "Heavy Duty" as descriptive of a four-ply automobile tire; or representing directly or indirectly, by means of letters, blotters, words, figures, price lists, tire wrappings, markings, insignia, or brands appearing on their automobile tires or in any other way, that the tires sold by them contain more plies in their construction than they actually contain.

(*b*) Representing directly or indirectly that the construction of tires offered for sale and sold by them or the materials therein contained are other than the actual construction and materials contained in said tires. (Oct. 7, 1940.)

2961. **Corrugated Fiber Boxes—Maker or Manufacturer.**—United Box Corporation, a corporation, engaged as a jobber in the sale and distribution of corrugated, fiber boxes 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 Box Corporation, in connection with the sale and distribution of its corrugated fiber boxes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from stamping or marking said boxes or causing the same to be marked or stamped with the purported certification of a box maker or manufacturer together with such use of its corporate or trade name "United Box Corporation," as tends or may tend to create the impression that it, the named corporation, is the maker of said boxes. The said corporation also agreed to cease and desist from the use, as a mark or stamp on its boxes or otherwise in connection with the sale in commerce of said products, of the word "maker" or of any other word or words of similar meaning, so as to import or imply or the effect of which tends

or may tend to convey the belief to purchasers that the said corporation actually owns and operates or directly and absolutely controls the plant or factory in which said boxes are made or manufactured. (Oct. 9, 1940.)

2962. **Pens—Composition, Prices, and Limited Offer.**—William J. Brewer, an individual, trading as "Signet Stationery Company" engaged in the sale and distribution of stationery, letterheads, and envelopes, 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.

William J. Brewer, in connection with the advertisement, offering for sale, sale, and distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. The use of the word "Tipped" either alone or in connection with the word "Durium" or the word "Warranted" or with any other word or words so as to import or imply or the effect of which conveys, tends, or may tend to convey the belief that the pen to which said word or words refer has been headed, pointed or tipped with a substance known as "Durium" or with any superior, hard or other metal, different from the body of the pen, to insure smooth writing and lasting quality.

2. The use of the statement "14-karat gold point" as descriptive of the pen of said item which actually is not composed of gold of such indicated carats fineness; and from the use of the mark "14 K" or any symbol of similar import or meaning, as a stamp or brand for pen points or in advertising or printed matter referring to pens so as to import or imply or the effect of which tends or may tend to convey the belief that said pens or pen points are 14-carat gold. If such pen or pen point actually is plated with gold of 14 carats fineness, and the symbol "14 K" is used as descriptive of such plate, then in that case, the symbol "14 K" shall be immediately accompanied by the words "gold plate" or other word or words of like import printed in equally conspicuous and discernible type so as to indicate clearly that the said symbol refers to the plating of said pen or pen point.

3. Stating or representing that said items are sold to stores for resale or that $1.50 is the lowest price at which said items may be purchased; and from the use of any statement or representation, the effect of which is to ascribe to said item a purported retail selling price which is fictitious or in excess of that at which said item, or articles of comparable value are customarily sold in the usual course of business.

4. The use of the statement "we are going to give to a few representative people in each section * * * a pen and pencil * * * If

you mail the enclosed reservation at once * * * for it is good for only ten days" or of any other statement or representation which imports or implies or the effect of which tends or may tend to convey the belief that such offer is limited with respect to either the time of its acceptance, the number or type or residential location of the persons to whom such offer is customarily made, when in fact the offer is a continuous one, unlimited as to time, and is available to anyone who responds to the advertising of the said William J. Brewer. (Oct. 11, 1940.)

2063. **Indian Preparation—Qualities, Results, History, Composition, Value, Price, and Special or Limited Offer.**—Jacob G. Bowser, an individual, together with his wife Opal Keller Bowser, trades under the name "Ponca Drug Company." Said individuals engaged in business of compounding a preparation called "Highwood's Old Indian Prescription" and in sale of said preparation 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 G. Bowser and Opal Keller Bowser, in connection with the advertisement and labeling, offering for sale, sale, or distribution of their preparation in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from:

1. Stating or representing that the use of said preparation will relieve the worst cases of stomach trouble in a few minutes, or pain in the back, shoulders, and hips in 1 day, or colds, fever, and tired feeling in 1 day, or that the use of said preparation will do more than to act as a laxative and thus temporarily relieve ailments, as headaches, stomach gas, and sour stomach due to constipation or digestive fermentation.

2. Stating or representing that the taking of said prepartion results in the elimination from the takers' system of "black as ink bile."

3. The use of the word "Indian" either alone or in connection with the words "Old" or "Prescription" as a trade name for or in any way as descriptive of said preparation so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said preparation consists of a formula in use by and which has been handed down from old Indian tribes, when in fact said preparation contains ingredients unknown to the old Indian tribes and medicine men.

4. Stating or representing that their prescription is a one dollar value or is of any other alleged valuation which is exaggerated or in excess of the actual value of said product or the price which

the said individuals charge and the purchaser pays for said preparation in the usual course of business.

5. Stating or representing that the offered or purported retail selling price of said preparation is special or is limited with respect to time, when in fact said price is the customary price asked for said preparation in the usual course of business and without limitation as to time. (Oct. 15, 1940.)

2964. **Men's Neckwear—Nature of Manufacture and Composition.**—Harry Isaacs, Inc., a corporation, engaged in the manufacture of men's neckwear 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.

Harry Isaacs, Inc., in connection with the sale and distribution of its neckwear in commerce as defined by said act, agreed to cease and desist from the use of depictions or illustrations of hand looms on labels, brands, or other advertising media, so as to import or imply that the fabric or material of which such neckwear was manufactured was made on hand looms when, in fact, such material was made or fabricated on power driven or machine looms; or from any representation, whether by depiction, statement or otherwise, the effect of which tends or may tend to convey the impression or belief to purchasers that neckwear or other textile products manufactured of fabric or material not actually made on hand looms are made of hand woven or homespun materials. (Oct. 17, 1940.)

2965. **Perfumes—Importers, Manufacturers, and Source or Origin.**—Donald Sloat, an individual, trading as Sloat Perfume Co., engaged in the business of selling perfumes and in said business 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.

Donald Sloat, in connection with the advertisement, labeling, offering for sale, sale or distribution of his perfumes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. The use of either the word "Importers" or the word "Manufacturers" as descriptive of the business conducted by him.

2. The use of the word "Manufacturers" or of any other word or words of similar meaning, either alone or in connection with any other word or words or in any way so as to import or imply that he actually owns and operates or directly and absolutely controls

the plant or factory in which said products are made, manufactured or compounded.

3. The use of the words "Dorian of London," "Etoile Du Soir," "Celeste Nuit," "Rejuoir," or the words "Blue Hawaii," as descriptive of products of domestic origin; and from referring to said products through the use of the said quoted words or of any other word or words of similar implication, either alone or in connection with any pictorial or other representation, the effect of which tends or may tend to convey the belief to customers or prospective customers that the products so referred to are of such foreign origin as is indicated by the particular word or words used. (Oct. 18, 1940.)

2966. **Perfumes—Source or Origin and Price.**—R. Rudinger, an individual trading as R. Rudinger & Co., engaged in the sale of perfume in commerce as defined by the act, in competition with other individuals, firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

R. Rudinger, in soliciting the sale of and selling his perfume in commerce as defined by the act, agreed to cease and desist from the use on labels affixed to said product of the words "Hawaiian Pikaki," or of either of said words so as to import or imply or which may convey or tend to convey the belief to purchasers that said product has been made or compounded in the Hawaiian Islands or has been made or compounded from the flower of that name, when such is not the fact. The said individual also agreed to cease and desist from the use on the containers of said product or otherwise of any false, fictitious, or misleading price which is in excess of the price at which said product is sold in the regular course of business, and from the use of any purported price marking, the effect of which is to convey to purchasers an erroneous belief with respect to the quality or value of said product. (Jan. 7, 1939.) [4]

2967. **Perfumes and Cosmetics—Source or Origin, Imported, Composition and Qualities.**—The House of Hollywood, a corporation, engaged in the business of selling and distributing perfumes and cosmetics in interstate commerce, in competition with other corporations, individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition as set forth therein.

The House of Hollywood, in soliciting the sale of and selling its perfume products in interstate commerce, agreed to cease and desist from the use in its advertising matter or on the labels affixed to the containers of said products, of the words "Honolulu, Hawaii" or of either of said words alone or in connection or conjunction with the

[4] Not released until Oct. 31, 1940.

words "Aloha Lei" or with any other word or words or in any way so as to import or imply or the effect of which conveys or may tend to convey the belief to purchasers that said products are of Honolulu or Hawaiian origin and/or that the said products have been imported from thence into the United States of America. Said corporation also agreed to cease and desist from labeling or otherwise referring to any of its said preparations as "Pikake" either alone or in connection with the word "Paradise" or with any other word or words so as to import or imply that said preparation has been made or compounded from the Hawaiian flower of that name, when such is not the fact.

Said corporation also agreed to cease and desist from the use of either of the words "Avocado" or "Turtle" in connection with or as a trade designation or otherwise to describe its cosmetic preparations so as to import or imply that the oil content of the respective preparations is composed of the oil of avocados or of turtle oil, when such is not the fact. If the oil content of the preparation is composed in substantial part of either the oil of avocados or of turtle oil and of other oil or oils, and the word "Avocado" or "Turtle" is used to describe such avocado or turtle oil content, then in such case the said used word shall be immediately accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that the oil content of said product is not composed wholly of the oil of avocados or of turtle oil, as the case may be, but is composed in part of an oil or oils other than avocado oil or turtle oil.

Said corporation further agreed to cease and desist from stating or representing that an application of its product "La Finne Tahitian Cleansing Cream," will effectually cleanse or remove deep pore dirt, or that its product "La Finne Honey Pack," when used in place of soap, will be effective in correcting blemishes, as blackheads, or that the use of its "La Finne Spinach Cream" product will prevent or remove wrinkles, when such is not the fact. (Jan. 3, 1939.) [5]

2968. **Sweaters—Composition.**—Sidney Saltz, Albert Saltz, and Joe Zimmerman, copartners, trading under the name and style of S & Z Manufacturing Co., engaged in the manufacture of sweaters from raw materials in accordance with designs and patterns used previously, in the sale thereof in interstate commerce, in competition with other partnerships, corporations, firms, and individuals 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 Saltz, Albert Saltz, and Joe Zimmerman, in connection with the sale and distribution of their products in commerce, as

[5] Not released until Oct. 31, 1940.

commerce is defined by the Federal Trade Commission Act, agreed to cease and desist forthwith from the use of the word "Kamelo" as descriptive of products not made from fabrics composed of camel hair; and from the use of the word "Kamelo" or of any other derivation or simulation of the word "camel," 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 products so referred to are made from fabric composed of camel hair. The said copartners also agreed to cease and desist from offering for sale or selling any product made of rayon, in whole or in part, without disclosure of the fact that the material of which said product is composed is rayon, in whole or in part as the case may be, made clearly and unequivocally, in the labeling and invoicing and in all advertising matter, sales promotional descriptions or representations thereof, however disseminated or published. (Oct. 21, 1940.)

2969. **Jewelry—Free and Value.**—Frank Milligan, an individual who traded originally as "Frank Milligan Co." but whose present trade name is "Empire Diamond Company," engaged in the business of selling jewelry 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.

Frank Milligan, in connection with the sale and distribution of his articles of merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed he will cease and desist from:

1. The use of the word "free" or of any other word or words of similar import or meaning, to describe or refer to merchandise offered as compensation for services rendered in selling or distributing his merchandise, unless all the terms and conditions of such offer are clearly and unequivocally stated in equal conspicuousness and in immediate connection or conjunction with the word "free" or other used word or words of similar import or meaning, and there is no deception or probability of 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.

2. Stating or representing that merchandise offered for sale or sold by him, either alone or in connection with an alleged free gift or gratuity, is of or has a designated sales value, when in fact, such alleged valuation is fictitious or is in excess of the price for which such merchandise, or merchandise of similar quality or character, is customarily sold in the usual course of business. (Oct. 22, 1940.)

2970. **Diamonds—"Certified."**—Shiman Bros. & Co., Inc., a corporation, engaged as an importer of diamonds and a manufacturer of diamond rings and in the sale of such 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.

Shiman Bros. & Co., Inc., in connection with the sale of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of, or from supplying others for their use, of advertisements or advertising matter of whatever kind or description which features or in any way makes use of the word "Certified" or of any other word or words of similar import or meaning to designate or as descriptive of diamonds which are not certified by any governmental agency, scientific bureau, or other responsible agency charged with the duty of examining and certifying to the perfection thereof. (Oct. 22, 1940.)

2971. **Diamonds—"Certified."**—Joseph Hagn Co., engaged as a wholesaler in the sale and distribution of jewelry 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.

Joseph Hagn Co., in connection with the sale of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use, or from supplying others for their use, of advertisements or advertising matter of whatever kind or description which features or in any way makes use of the word "Certified" or of any other word or words of similar import or meaning to designate or as descriptive of diamonds which are not certified by any governmental agency, scientific bureau, or other responsible agency charged with the duty of examining and certifying to the perfection thereof. (Oct. 22, 1940.)

2972. **Raw Furs—Prices to be Paid, Comparable Prices and Guaranteed.**—F. C. Taylor Fur Co., a corporation, engaged as a dealer in the purchase and sale of raw furs 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. C. Taylor Fur Co., in connection with its buying and selling furs in commerce, as defined by said act, agreed to cease and desist from:

(*a*) Quoting or otherwise holding forth any extravagant or exorbitant price or prices which trappers or fur dealers may expect to re-

ceive from it for their furs; quoting price ranges which include amounts seldom paid, or quoting such extraordinary prices in any other manner having the capacity, tendency, or effect of conveying the impression that same are frequently paid; or quoting prices which might be applicable to furs of a grade or quality not produced in or which are exceptions in the section or territory circularized.

(*b*) Representing, directly or inferentially, that it pays higher prices for furs than do all other fur buyers; that trappers or dealers in furs can or will realize a greater return by selling their furs to it than would be obtainable by selling such furs to other buyers or through brokers; or by direct statement or by inference such as, for example, an implied necessity of obtaining furs with which to fill large orders, that it pays higher prices than are justified by general economic conditions.

(*c*) The use of the word "Guaranteed" or any other word or words of similar meaning unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith, of exactly what is offered by way of security. (Oct. 22, 1940.)

2973. **Radios—Special or Reduced Prices and Source or Origin.**—George's Radio Co., Inc., a corporation, engaged in the business of selling merchandise, including radio receiving sets together with cabinets in which said sets are housed, 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's Radio Co., 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 from:

1. Stating or representing that said products have a "factory" or "list" price of $99.95 or any other designated price, when in fact, the designated price is fictitious or in excess of or is other than the price for which said products are customarily sold in the usual course of retail trade.

2. The use of the phrase "More Than ½ Off" or "Reduced $60" in connection with the offered retail selling price of $39.95 or in any other way so as to import or imply that the regular or customary retail selling price of said products is $99.95 or that the price of $39.95 is a special price or is less than one-half the customary sales price or is $60 less than the customary sales price or is other than the regular or customary retail sales price of said products.

3. The use of the word "Grunow" as an escutcheon on cabinets housing radio receiving sets so as to import or imply that said radio re-

ceiving sets were made or manufactured by Grigsby-Grunow Corporation, formerly of Chicago, Illinois; and from the use of the said word "Grunow" in any way, the effect of which tends or may tend to mislead or deceive the purchasing or consuming public as to the origin, size, capacity, make, manufacture, brand, or type of said sets. (Oct. 24, 1940.)

2974. **Geophysical Instruments—Doctor and Laboratories.**—Gerhard R. Fisher, an individual trading as "Fisher Research Laboratories" with his principal place of business located at Palo Alto, Calif., engaged in the business of manufacturing a number of types of geophysical instruments, including one called "Metallascope," or "M-Scope" for use as means to locate pipes and metal objects underground in connection with utility operations and for prospecting, in interstate commerce, in competition with other individuals and firms, and 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.

Gerhard R. Fisher, in connection with the advertisement, offering for sale, sale and distribution of his products in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use:

(*a*) Of the word "doctor," or its abbreviation, in connection with his name; and from the use of the said quoted word, or its abbreviation, in any way, the effect of which tends or may tend to convey the belief that the said individual has received such a degree or an appropriate degree from a college or university of recognized standing empowered to confer such degree.

(*b*) Of the plural word "Laboratories" in or as part of his trade name; and from the use of the said word "Laboratories" in any way so as to import or imply that the said individual actually owns and operates or directly and absolutely controls two or more laboratories. (Oct. 24, 1940.)

2975. **Educational Material—Association.**—Raymond E. Fideler, an individual, trading as "Informative Classroom Picture Association," engaged in the production of certain types of so-called visual educational aids, in the form of publications, for use in libraries, classrooms, and by school teachers, and in the sale thereof in interstate commerce, in competition with other individuals and with concerns likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Raymond E. Fideler agreed to cease and desist from the use of the word "Association" as part of his trade name under which he conducts his business in commerce as defined by the Federal Trade Com-

mission Act; and from the use of the word "Association" in any way, in connection with the advertisement, offering for sale, or sale of his educational material, so as to import or imply or the effect of which tends or may tend to create the impression that the business conducted by the said individual is that of a body or society of persons engaged in the disseminating of informative learning or teaching of the type described. (Oct. 25, 1940.)

2976. **Cosmetics—Qualities.**—Gaetano Andronaco and Anna Andronaco, individuals, trading as "Casa Anna," engaged in the sale of a line of cosmetics, and after the consummation of such sales, in the shipment of said preparations 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.

Gaetano Andronaco and Anna Andronaco, in connection with the advertisement, offering for sale, sale, or distribution of their cosmetic preparations in commerce, as commerce is defined by the Federal Trade Commission Act, agreed, and each of them agreed, to cease and desist from stating or representing that the use of their said cosmetic preparations, or any thereof, will either nourish, protect, or impart tone or tonicity to the skin, or will prevent, smooth, or take away lines or wrinkles in the skin. (Oct. 28, 1940.)

2977. **Beer—Composition.**—Joseph Hensler Brewing Co., a corporation, engaged in the business of brewing beer 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.

Joseph Hensler Brewing Co., in connection with the advertisement, offering for sale, sale, or distribution of its beer product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the statement "made from Barley Malt and Hops" or of any other statement or representation of similar implication, as descriptive of said product, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that said product is composed of barley malt flavored with hops as the only fermentable substance contained therein, when in fact, it actually contains such a substance other than barley malt. If said product contains hops-flavored barley malt in substantial quantity, and also other fermentable substance, and the words "barley malt and hops" are used to refer to such hops-flavored barley malt content, then in that case, it shall be conspicuously and unequivocally disclosed that the fermentable substance content of said product is not composed wholly of hops-flavored barley malt

or that the said product contains a fermentable substance other than barley malt flavored with hops. (Oct. 28, 1940.)

2978. **Bread—Qualities, Composition, Etc.**—Fischer Baking Co., Inc., a corporation, engaged in the manufacture of bread and in the sale and distribution thereof in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, enterd into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Fischer Baking Co., Inc., in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist, directly or indirectly, from:

(*a*) Statements which import or imply that the inclusion in the diet of "Fischer's Buttercup bread" or any bread, is essential or necessary; or is vitally important or essential in the building or development of bone structure or muscle; or that the use thereof insures healthy bones or strong muscles.

(*b*) Representations, the effect of which conveys or tends to convey the belief or impression that "Fischer's Buttercup Bread," or any other bread composed of the same or similar ingredients in approximately the same proportions, is a "quick energy" food or provides or affords "quick" or immediate energy; that such bread or the protein content thereof is not fattening; or that the use thereof eliminates or aids in the elimination of fat.

(*c*) Statements which cause or may cause the belief or impression that "Fischer's Buttercup Bread" provides a "sure" or otherwise invariable means of combating or counteracting "tired, let-down" feelings or fatigue, or that it contains ingredients or constituents efficacious in combating fatigue which are not present in other foods. (Oct. 28, 1940.)

2979. **Corsets and Girdles—Qualities, Results, Special Prices, Etc.**—Abram R. Canter, an individual, trading as Surgical Appliance Co., engaged in the business of selling certain corsets and girdles known by the trade name "Camp" and certain other so-called "reducing girdles," 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.

Abram R. Canter 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:

(*a*) Of the words "Give Health" or of any other word or words of similar implication, the effect of which tends or may tend to convey

the impression or belief that the wearing of such garments, or any thereof, will give or restore health where there is an unhealthful or diseased condition.

(*b*) Of the statement "You Don't Have To Be Fat" or "Reduce Your Waist and Hips with this Marvelous New Reducing Girdle" or the word "reducing" in any way as descriptive of said garments, or any thereof, so as to import or imply or the effect of which tends or may tend to convey the impression or belief that the wearing of such garment will reduce or eliminate fat or cause the removal of local tissue and thus overcome a condition of fatness or result in the reduction of bodily tissue from either the waist or hips.

(*c*) Of the price representation "5.95" either alone or in connection with the word "regularly" or with any other word or words as indicative of the selling price of an article which customarily sells for less, and from the use of the word "special" as descriptive of the price for which the article is offered for sale, when in fact, such price is that for which the article is generally sold in the usual course of business. (Oct. 29, 1940.)

2980. **Cowboy and Rodeo Equipment—Foreign as Domestic.**—The George W. Prior Hat Co., a corporation, engaged in the sale and distribution of Western hats, shirts, scarfs, mufflers, and other cowboy and rodeo 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.

The George W. Prior Hat Co., in connection with the sale and distribution of its merchandise in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the statements or representations "made in U. S. A.," "American Made" or any term, legend, or expression of equivalent meaning, to designate the place or country of origin of an article not actually made in the United States of America; and from advertising an imported article in any manner signifying domestic origin, or otherwise, in a manner having the capacity to mislead or confuse purchasers with respect to the identity of the country of origin thereof. (Oct. 29, 1940.)

2981. **Fiber Board Packing Boxes—Manufacturers.**—Henry S. Rosen and Sadie Rosen, copartners, trading as Mutual Fiber Box Co., engaged in the sale of fiberboard packing boxes 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.

Henry S. Rosen and Sadie Rosen, in connection with the sale and distribution of their fiberboard packing boxes in commerce, as commerce is defined by the Federal Trade Commission Act, agreed, and each of them agreed, to cease and desist from marking or stamping said boxes or causing the same to be marked or stamped with the purported certification of a box maker or manufacturer together with such use of their trade name "Mutual Fiber Box Co.," as tends or may tend to create the impression that they make or manufacture said boxes. Said copartners also agreed to cease and desist from the use, on their stationery or printed matter or in marking or stamping their boxes or otherwise in connection with the sale of said products, of the word "manufacturers" or "makers" or of any other word or words of similar meaning, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers that the said copartners actually own and operate or directly and absolutely control the plant or factory in which said boxes are made or manufactured. (Oct. 25, 1940.)

2982. **Textile Fabrics—Composition and Domestic as Imported.**—Security Mills, Inc., a corporation, engaged in the manufacture of textile fabrics simulating the appearance of Persian Lamb peltries, 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.

Security 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:

(*a*) Advertising, branding, labeling, selling, or offering for sale, or placing in the hands of others a means to advertise, brand, label, sell, or offer 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 five percent.

(*b*) The use of the words "Lam," "Beauty-Lam," "Reel-Lam" or other word or words connoting lamb peltries or fur as descriptive of, or as a trade name for, fabrics made of textile fibers; or in any manner representing, or placing in the hands of others a means to represent, that fabrics made or manufactured from cotton, rayon, wool, or other textile fibers are of fur or are the peltries of sheep or lambs, Persian or otherwise.

(c) Representing, through the use of the words "Persian fabric," "Persian" or any other word or term, that fabrics or other products of domestic manufacture are imported from Persia or elsewhere abroad; or in any manner representing, or placing in the hands of others a means to represent, that textile or other products woven or otherwise manufactured in the United States are made or manufactured in Persia or elsewhere abroad, or in any country other than the United States. (Nov. 4, 1940.)

2983. **Ribbons—Mills and Manufacturers.**—Interstate Ribbon Mills, Inc., 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.

Interstate Ribbon Mills, Inc., in connection with the offering for sale, sale, or distribution of its merchandise 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 its corporate or trade name, and from the use of the word "Mills" or the word "Manufacturers" or of any other word or words of similar import or meaning in any way, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that the said corporation makes or manufactures the merchandise sold by it or that it actually owns and operates or directly and absolutely controls the plant or factory in which said merchandise is made or manufactured. (Nov. 4, 1940.)

2984. **Advertising Material—Nature, Quality, and Order Nonconformance.**—Harry J. Baruch, sole trader, as Harry J. Baruch Operating Co., also the manager and active directing head of Owen-Fields, Inc., and Curtis, Owen, Fuller Corporation, engaged in the sale and distribution, in commerce between and among the various States of the United States, of prepared 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., Curtis, Owen, Fuller Corporation, and each of them, agreed that in connection with their sale and distribution of advertising material in commerce as defined by said act, they will cease and desist from:

(*a*) The use of samples or other sales promotional presentations which do not accurately, correctly, and truthfully portray the mats and prepared advertising copy or other products or commodities offered for sale and sold by them.

(*b*) Holding out, stating or representing, by assertion, inference, or otherwise, that they have advertising mats of a type which they do not in fact possess or produce, and that they are prepared to fill orders for the same.

(*c*) Representing, or causing others to represent, their products in any way which tends or may tend to convey an erroneous belief to purchasers that they, or any of them, will and do fill orders with the product for which such orders have been received when in fact a different and inferior grade of product is substituted in the performance of their contracts. (Nov. 4, 1940.)

2985. **Pipes, Etc.—Lottery.**—L. & H. Stern, Inc., a corporation, engaged in the business of selling and distributing pipes and other articles 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.

L. & H. Stern, Inc., in connection with the sale and distribution of its merchandise in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. Supplying to or placing in the hands of others, pipes or other merchandise, together with punchboards or other lottery devices, which said punchboards or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the general public.

2. Supplying to or placing in the hands of others, punchboards or other lottery devices, either with pipes or other merchandise, or separately, which said punchboards or other lottery devices are to be used, or may be used, in selling or distributing such merchandise to the general public.

3. Selling or otherwise disposing of any merchandise by means of a game of chance, gift enterprise, or lottery scheme. (Nov. 8, 1940.)

2986. **Silk Hosiery and Lingerie Compound—Qualities and Price.**—Carroll Metcalf, an individual, trading as Preventa Sales Co., engaged in the business of compounding a powdered product to be used in the treatment of silk hosiery and lingerie and in the sale thereof in interstate commerce, in competition with other individuals and with firms, partnerships, and corporations likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

Carroll Metcalf, in connection with the offering for sale, sale, or distribution of its product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from stating or representing in any way that the use of said product as

a treatment for silk fabrics will (*a*) prevent runs, snags, and breaks in, or the rotting or fading of such fabrics; (*b*) make such fabrics proof against rain spotting or do more than to increase the resistance thereof to spotting by rain; (*c*) improve the texture of such of said fabrics as have already been given treatments of this character; (*d*) improve the color fastness of all dyes; or (*e*) reduce the user's hosiery expense by one-half. Said individual also agreed to cease and desist from marking or in any way representing or advertising his product with what purports to be the selling price of said product, but which price is fictitious or in excess of the price for which said product is regularly or customarily sold in the usual course of business. (Nov. 6, 1940.)

2987. **Beer—Composition.**—Peter Breidt Brewing Co., a corporation, engaged in the business of brewing beer 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.

Peter Breidt Brewing Co., in connection with the sale and distribution of its product in commerce as defined by said act, agreed to cease and desist from the use of the statement or representation that its beer product is brewed "from fine malt, choice hops, crystal pure water, and time," or of any other statement or representation of similar implication, as descriptive of its said product, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that said product is composed of malt flavored with hops as the only fermentable substance content thereof, when in fact, it actually contains such a substance other than malt. If said product contains hops-flavored malt, in substantial quantity, and also other fermentable substance, and the words "malt and hops" are used to refer to such hops-flavored malt content, then in that case, it shall be conspicuously and unequivocally disclosed that the fermentable substance content of said product is not composed wholly of hops-flavored malt or that the said product contains a fermentable substance other than malt flavored with hops. (Nov. 7, 1940.)

2988. **Girdles, Corsets, Etc.—Qualities and Composition.**—Frederick A. Purchas and Carl D. Hammond, copartners trading under the firm name "Vesta Corset Company," engaged in the business of manufacturing garments, including girdles, combinations, and corsets, in competition wtih 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.

Frederick A. Purchas and Carl D. Hammond, in connection with the sale or distribution of their garments in commerce, as commerce is defined by the Federal Trade Commission Act, agreed they will cease and desist from the use in advertising matter employed by them or which is furnished by them to others for use, of the word "reducing" or of any other word or words of similar meaning, as descriptive of said garments or of the material of which they are made, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that the wearing of such garments will cause a reduction of local or bodily tissue or effectively remove fat and thus overcome or lessen a condition of fatness or weight. (Nov. 8, 1940.)

2989. **Raw Pelts or Furs—Prices to be Paid.**—A. B. Shubert Fur Co., a corporation, engaged in the purchase and subsequent sale of raw pelts or furs in interstate commerce, in competition with other corporations and with individuals, firms, and partnerships likewise engaged, entered into the following agreement to cease and desist from the alleged unfair methods of competition in commerce as set forth therein.

A. B. Shubert Fur 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*) Quoting or otherwise holding forth any fictitious or exorbitant price which trappers or fur dealers may expect to receive for their furs from said corporation; quoting prices which it has not paid in the usual course of business, or prices which might be applicable to furs of grade and quality not produced or which are exceptions in the section circularized.

(*b*) Representing, directly or inferentially, that it pays a higher price for furs than do any other fur buyers, or that trappers or dealers in furs can or will realize a greater return by selling their furs to it than would be obtainable by selling such furs through brokers or to any other fur buyers. (Nov. 8, 1940.)

2990. **Publications—Nature, Special Offer and "Publishing."**—Charles B. Higgins, an individual trading as Progressive Publishing Co., engaged in the sale of sets of subscription books entitled "The New Outline of Knowledge" 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 herein.

Charles B. Higgins, in connection with the offering for sale, sale, or distribution of his publications in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist

forthwith from representing, either directly or through salesmen in his employ or in any other manner, to purchasers or prospective purchasers:

1. That said publications are a complete library of human knowledge and/or that each subject dealt with therein is covered by the world's foremost writers so as to assure the reader thereof of the world's learning and culture.

2. That as a special introductory offer, a selected number of persons or only the outstanding citizens in a given community would be sold, for advertising purposes, sets of said books at a price much lower than that which was later to be charged therefor or after the lapse of the advertising period or that the price of said sets of books would be advanced later.

The said individual also agreed to cease and desist from the use on his stationery, printed, or advertising matter of the word "Publishing" as part of his trade name, and from the use of the word "Publishing" in any way, so as to import or imply or the effect of which tends or may tend to convey the belief that the business conducted by him is that of a publisher or printer or that he actually owns and operates or directly and absolutely controls the plant or factory in which the publications offered for sale and sold by him are published or printed. (Nov. 8, 1940.)

2991. **Beer—Composition.**—Rubsam & Horrmann Brewing Co., a corporation, engaged in the business of brewing beer and in the sale thereof in interstate commerce under the brand name "R & H Premium Beer" 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.

Rubsam & Horrmann Brewing Co., in connection with the advertisement, offering for sale, sale, or distribution of its beer product in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the statement "Brewed from special premium malt and hops" or of any other statement or representation of similar implication, as descriptive of its said product, the effect of which tends or may tend to convey the belief to purchasers or prospective purchasers that said product is composed of malt flavored with hops as the only fermentable substance content thereof, when in fact, it actually contains such a substance other than malt. If said product contains hops-flavored malt, in substantial quantity, and also other fermentable substance, and the words "malt and hops" are used to refer to such hops-flavored malt content, then in that case, it shall be conspicuously and unequivocally disclosed that the fermentable substance content of said product is not composed wholly

of hops-flavored malt, or that the said product contains a fermentable substance other than malt flavored with hops. (Nov. 12, 1940.)

2992. **Hair Preparation—Scientific Facts, Qualities, Results, Nature and Guarantee.**—Hinton Pharmaceutical Co., a Kentucky corporation, engaged in the sale and distribution, in interstate commerce, of an application for the hair under the trade name or designation "Danzola," 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.

Hinton Pharmaceutical Co., in connection with the sale and distribution of its products in commerce as defined by the Federal Trade Commission Act, agreed it will cease and desist, directly or inferentially, from representing:

(*a*) That experts have learned the secrets of dandruff, or by statement or inference that the product "Danzola" is the result of such alleged knowledge or that because thereof dandruff is "now unnecessary."

(*b*) That Danzola or any similar product is a competent treatment or an effective remedy for the condition known as dandruff, or that its use may be relied or depended upon to accomplish more than a temporary removal of loose dandruff scales or a physical hiding thereof.

(*c*) That Danzola is a preparation of "merit" for treatment of dandruff conditions or works like "Magic" or is either a "new" or "sensational" discovery or an "antiseptic" hair dressing.

(*d*) That Danzola or any preparation of similar composition will "clear up" or "do away" with dandruff, or will "rid," "free," or relieve one of dandruff or any other impaired condition of the scalp, either "instantly," "quickly," "easily," "in a hurry," "in just a few days time" or at all.

(*e*) That dandruff "gets rid of your hair" or that Danzola or any similar application intended for use in dandruff conditions will rid one of "the risk of losing" his hair or will "prevent" or keep one "free from" the "ever present danger of falling hair" or will enable one to "keep all the hair you have now"; or by statement or inference that dandruff is a recognized cause for falling hair or that said product is efficacious in any way for checking or stopping the loss of hair.

(*f*) That Danzola is a "fine tonic" for dandruff or "other scalp ailments," or instantly relieves itching scalp or has any remedial or tonic effect in scalp conditions.

(*g*) By the use of statements such as "get that clean, glowing, bright head of hair which you've long wished to own," "keep your

hair healthful"; "enjoy glossy, healthy hair," or otherwise, that Danzola has any material effect upon the growth or the health of the hair.

(*h*) That Danzola will revive drab and lifeless hair or add life and brightness to hair parched and bleached by the sun, or otherwise rejuvenate hair so exposed; or that it will do more than possibly present a dressy, clean, and bright appearance to said hair without adding to the health thereof.

(*i*) That results from the use of Danzola are guaranteed or that said preparation is guaranteed to completely clear up all dandruff; and from the use of the words "guarantee" or "guaranteed" or any other word or words of similar meaning in connection with the advertising, offering for sale or sale of its products, unless, whenever used, clear and unequivocal disclosure be made in direct connection therewith of exactly what is offered by the way of security. (Nov. 12, 1940.)

2993. **Reducing Garment—Qualities and Results.**—Lit Brothers, a corporation, engaged in the business of conducting a department store at which it sells a general line of merchandise, including girdles and corsets, some of which are distributed through its mail order department 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.

Lit Brothers, in connection with the advertisement, offering for sale, sale, or distribution of its garments, in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the word "reducing" or of any other word or words of similar meaning, as descriptive of said garments, so as to import or imply or the effect of which tends or may tend to convey the belief to purchasers, or the impression that the wearing of such garments will cause a reduction of local or bodily tissue or effectively remove fat and thus overcome or lessen a condition of fatness or weight. (Nov. 12, 1940.)

2994. **Cosmetics—Nature, Qualities, Results, Composition, Laboratory, Etc.**—Rubinoff Cosmetic Co., Inc., a corporation, engaged in the sale and distribution of a general line of cosmetics under the trade designation "Mme. Rubinoff's Cosmetics," 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.

Rubinoff Cosmetic Co., Inc. in connection with the sale and distribution of its products in commerce, as defined by said act, agreed to cease and desist, in printed advertising, by oral presentation or otherwise, either directly or inferentially, from:

(*a*) Designating or representing any cosmetic preparation as a "Tissue Cream," a "tissue builder," a "food for the skin," a "rejuvenating cream," or a "nourishing" cream or oil; or otherwise representing that any of its preparations externally applied affects the texture or cell structure of the skin, or imparts renewed vitality thereto, or provides sustenance therefor.

(*b*) The use of the term or expression "Vitamin F" as part of or in connection with the name of any cosmetic product or as descriptive of linoleic or linolenic acids; or representing that an external application of such or any other chemicals or ingredients will restore a healthy and youthful skin.

(*c*) Representing that its "Neck Cream" or any similar preparation will of itself remove swarthy or scrawny appearance of, or bleach or fill out the neck, or make the skin smooth, white, or youthful.

(*d*) Designating or describing any cosmetic product as a "Wrinkle Remover," or representing in any way that it will eliminate or overcome wrinkles, or that its ingredients will fill out undernourished cells and tissues so left by age, worry, or otherwise.

(*e*) Representing that Vitamin D contained in a cream externally applied supplies irradiated sunshine to the tissues or is very nourishing to the skin or subcutaneous structure, or has any perceptible effect whatsoever upon the part or area so applied.

(*f*) Designating a preparation externally applied as an "Acne Cream" or an "Acne Lotion," or otherwise by assertion or by implication that such product is a competent treatment or an effective remedy generally for the condition known as acne.

(*g*) Representing that its product designated "Russian Herb Pack" or any similar preparation will bring youth to older skins or otherwise rejuvenate the same, or unqualifiedly will leave the skin white, soft, and radiant.

(*h*) Representing that its product designated "Skin Freshener" or any other rubefacient brings either a "healthy" or a "natural" glow to the skin or will produce any glow more than afforded by a temporary stimulation of the blood circulation.

(*i*) Representing that its product designated "Skin Tightener" or any similar preparation will make the skin smooth and firm, or will "restore" or reestablish the original firm smooth appearance of one's skin.

(*j*) Representing that its product designated "Muscle Oil" is a competent treatment or an effective remedy for wrinkles or sagging

muscles, or by statement or inference that it is capable of restoring muscle tone or eliminating skin wrinkles.

(*k*) Representing that its product designated "Hair Tonic" or any preparation of similar composition is a competent treatment or an effective remedy for either brittle, dry, or falling hair; or enables the user to avoid dandruff; or by statement or inference that it provides direct nourishment to the hair follicles, or that a hair follicle derives or may derive its separate maintenance from any surface application.

(*l*) Representing that its product designated "Hair Remover" will "retard future growth" of or in any way prevent the growth of hair.

(*m*) Representing that its product designated "Eye Bath" either "strengthens," that is to say, increases visual acuity of the eyes or "brightens" them or serves any purpose beyond that of an ordinary eye wash.

(*n*) Representing that any product offered for sale and sold by said corporation "instantly" removes freckles.

(*o*) Representing that any preparation sold by said corporation or any combination thereof has the capacity to "correct" the "defects" in one's skin or is "scientifically" blended or assembled to such end.

(*p*) Representing by statement or inference that it owns, operates, or controls a laboratory or plant in which its preparations are compounded or manufactured.

(*q*) Representing by assertion or implication that its cosmetics are blended especially to supply the necessary ingredients essential for the particular needs of an individual skin, after exact and correct determination by its skilled operators; or designating or referring to prepared stock treatments for merely general types of skin as "individual service." (Nov. 13, 1940.)

2995. **Medicinal Preparation—Qualities, Results, Doctor, Endorsements or Approval and Testimonials.**—D. R. Parsons, sole trader, engaged in the sale and distribution of a medicinal preparation designated "Psori-Oil," 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.

D. R. Parsons, in connection with the sale and distribution of his medicinal preparation under the trade designation "Psori-Oil" or any other designation, in interstate commerce as defined by said act, agreed to cease and desist, directly or inferentially, from:

(*a*) Statements or representations which convey or may tend to convey the belief that "Psori-Oil" or any other medicinal preparation composed of substantially similar ingredients is a competent remedy or a "real" or effective treatment for, or will "cure" or "rid" one of psoriasis, scaly skin diseases, or any other skin or scalp affliction.

(*b*) The use of the trade name "Dr. D. R. Parsons" or of any statements or representations which import or imply that he is a physician or doctor of medicine or that he is engaged in the practice of medicine; or any use of the word "Doctor" or the term "Dr." in his advertising matter unless, whenever so used, it clearly appear that he is a doctor of dentistry and not of medicine,

(*c*) Representing that "Psori-Oil" is or has been recommended or endorsed by "many physicians," or otherwise importing or implying that such preparation has received the recommendation or endorsement of any number of physicians in excess of the number actually recommending or endorsing the same.

(*d*) Statements which import or imply that any testimonial letter not recently received was "just received" or was received immediately prior to the time of making such representations; or disseminating or publishing testimonials without indicating the dates when same were written, or which contain any claims, assertions or implications contrary to the terms and spirit of this agreement. (Nov. 13, 1940.)

2996. **Reducing Garments—Qualities, Results and Composition.**—Lane Bryant, Inc., a corporation, and Newman Cloak & Suit Co., a corporation, engaged in the operation of a chain of retail apparel shops from which sales are and have been made and mail orders filled by shipping merchandise by parcel post, or 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.

Lane Bryant, Inc., and Newman Cloak & Suit Co., in connection with the sale and distribution of their products in commerce, as defined by said Act, agreed to cease and desist from use in advertisements and advertising matter employed by them, or by either of them, of the word "reduce" or "reducing" or of any other word or words of similar meaning or implication, as descriptive of said garments, or of the fabric of which they are made, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that the wearing of such garments will cause a reduction of local or bodily tissue or will effectively remove fat and thus overcome or lessen a condition of fatness or weight. (Nov. 14, 1940.)

2997. **Medical Instruments—Source or Origin.**—MacGregor Instrument Co., a corporation, engaged in the business of selling and distributing medical 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.

MacGregor Instrument Co. agreed to cease and desist from the use in connection with the advertisement, sale or distribution of its medical instruments in commerce, as commerce is defined by the Federal Trade Commission Act, of the words "MacGregor Made" or of any other word or words of similar import, as descriptive of those of its instruments not made by the said corporation; and from the use of said words, either alone or in connection with a domestic address or in any other way, the effect of which tends or may tend to convey the impression or belief that said instruments are made in their entirety by the said corporation or that all the parts of which said instruments are composed are made in the U. S. A. If said instruments are composed in part of a part or parts made domestically by the said corporation, and the words "MacGregor Made" or other words of similar import, are used to indicate such fact, then in that case, said words shall be so qualified as to indicate clearly and unequivocally that said instruments are not composed wholly of parts made by the said corporation or in the United States of America, and will also indicate in clearly discernible manner the part or parts of said instruments which are not domestically made by said corporation. (Nov. 14, 1940.)

2998. **Health Belt and Shoulder Brace—Qualities and Results.**—Nulife Garments Corp., a corporation, engaged in the sale and distribution of a so-called "health" belt and a shoulder brace under the trade name "Munter's Nulife" 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.

Nulife Garments Corp., in connection with the offering for sale, sale, or distribution of its devices 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, or in advertising matter supplied by it to others for their use, of any word or words, statement, or representation, the effect of which tends or may tend to convey the impression or belief that the wearing of said devices, or of either thereof, will:

1. Correct congenital or acquired postural deformities of the wearer.
2. Improve physical activity, increase vitality or store up physical energy throughout the entire body.
3. Make every wearer stand and grow erect or supply all the physical improvements for the body until it is corrected.
4. Straighten round shoulders instantly and permanently.
5. Compel deep breathing or stimulate respiration or correct the breathing capabilities of all persons.
6. Give instant benefits to all wearers, regardless of weight, size, age, or condition.

7. Air condition the wearer's body or stabilize or regulate the control of body temperature regardless of conditions or weather.

8. Make children stand, sit and grow up healthy and naturally strong or so improve the wearer's posture in all cases as to make him "look and feel like a West Pointer." (Nov. 15, 1940.)

2999. **Girdles—Qualities and Results.**—Frank & Seder of Philadelphia, Inc., a corporation, engaged in the sale and distribution of a line of merchandise, including women's girdles 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.

Frank & Seder of Philadelphia, Inc., in connection with the advertisement, offering for sale, sale or distribution of its girdles in commerce as defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the word "reducing" or of any other word or words of similar meaning, as descriptive of said devices, so as to import or imply or the effect of which tends or may tend to convey the belief or impression that the wearing of such devices will cause a reduction of local or bodily tissue or effectively remove fat and thus overcome or lessen a condition of fatness or weight. (Nov. 15, 1940.)

3000. **Burial Vaults—Nature, Qualities, and Results.**—Neff & Fry Co., a corporation, engaged in the construction of concrete burial vaults or so-called "Surface-Sepulchers" for the entombment of the dead, 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.

Neff & Fry Co., in connection with the advertisement, offering for sale, sale, or distribution of its burial vaults in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

1. The use of any statement or representation, the effect of which tends or may tend to convey the belief or impression that said vaults will either last unimpaired throughout eternity or will afford permanent or absolute protection to or lasting preservation of bodies encased therein.

2. Stating or representing that, at the time of its interment, each vault is waterproof or that it will continue to be or to remain impervious to water, dampness or moisture.

3. Stating or representing that the initial appearance of the cast stone lid or top of said vault will endure or forever remain unmarred

with its "beauty" unimpaired, as by checking, chipping, or cracking. (Nov. 26, 1940.)

3001. **Novelty Hats—Old as New.**—L. David Schwartz, an individual, trading as D. Schwartz Hat Works, engaged in the business of manufacturing so-called specialty and novelty hat items, and in the sale and shipment 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.

L. David Schwartz, in connection with the sale and distribution of his hats or hat items in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from:

(*a*) Representing that said products, which are made in whole or in part of second-hand, old, worn, or used materials, are new or are composed of new materials by failure to properly disclose, as by stamping on the sweat bands or bodies of said products, in conspicuous and legible terms which cannot be removed or obliterated without mutilating such stamped part, a statement that such products are composed of or contain second-hand, old, worn, or used materials.

(*b*) Representing in any manner that said products which are made in whole or in part from second-hand, old, worn, or used materials, are new or are composed of new materials. (Nov. 26, 1940.)

3002. **Snapshots—Nature.**—Louis Pierce Hartley, an individual, engaged in business under the trade name "Natural Color Photo Service," said business consisting of the sale and distribution in interstate commerce, of photo supplies and of colored or tinted snapshots made from films sent in by customers, 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 Pierce Hartley, in connection with the advertisement, offering for sale, sale, or distribution of his snapshots in commerce, as commerce is defined by the Federal Trade Commission Act, agreed to cease and desist from the use of the words "Natural Color" as part of his trade name, and from the use of the words "Natural Color" or "Natural Color Prints" or of any other word or words of similar import, the effect of which tends or may tend to convey the belief or impression to customers or prospective customers that said snapshots are the result of natural color photography, that is to say, the entire reproduction of the natural color in the photographic print by photographic process. (Nov. 28, 1940.)

3003. **Candies and Cookies—"Home Made," Factory, Direct to Consumer, Special Offer and Price, Nature, Etc.**—De Groodt & Associates, Inc., a

corporation trading under the name "Mrs. Sothern Home Made Sweets," engaged in the business of selling candies and cookies 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.

De Groodt & Associates, Inc., 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, agreed to cease and desist from:

1. The use of the words "Home Made" as part of its trade name, and from the use of the said words in any way as descriptive of its factory-made products or the effect of which tends or may tend to convey the impression or belief to purchasers that its said products are made at home and thus differ from factory-made products.

2. The use of the statements "The only candy which is delivered fresh from the kitchen to your place of business" so as to import or imply that the products sold by the said corporation are actually made in its own kitchen or that it owns and operates or controls the plant or factory where said products are made or that the said corporation is the only concern which delivers products from kitchen to consumer.

3. Stating or representing that its "Red Satin Heart" package formerly sold for $2 to $4 or that the price of $1.25 charged therefor is a "special" offer, when in fact such price of $1.25 is the regular price for which said package at all times has been customarily sold by the said corporation in the usual course of retail trade.

4. The use of the word "Orchid" or the picturization of such flower as descriptive of the corsage represented to be included with the purchase of certain candies, unless such word or flower picturization, when so used, is accompanied by some other word or words printed in equally conspicuous type so as to indicate clearly that such corsage is not composed of a natural orchid but is only an imitation thereof.

5. The use of the words "Due to the special construction of this Orchid Corsage, 10 days are required for the making" so as to import or imply that said commodity is such as required 10 days to construct the same. (Nov. 28, 1940.)

DIGEST OF FALSE, MISLEADING, AND FRAUDULENT ADVERTISING STIPULATIONS [1]

0235.[2] **Stomach Antacid Tablets—Qualities, Results, and Composition.**—Ramstead Co., Inc., a corporation, P. O. Box 1925, Milwaukee, Wisc., vendor-advertiser was engaged in selling certain stomach antacid tablets designated Ramstead Treatment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication.

(*a*) Is a competent remedy or an effective treatment for stomach ailments generally, or has any therapeutic value in the treatment thereof in excess of affording temporary symptomatic relief in cases of gastric hyperacidity.

(*b*) Enables one to eat all kinds and types of foods.

(*c*) Will overcome, eliminate, or is of any benefit for, the relief of constipation.

(*d*) Eliminates hunger pains or the pains of gastric ulcers.

(*e*) Will cause a recovery to health.

(*f*) Will end sleepless nights, correct or alleviate insomnia.

(*g*) Possesses miraculous powers.

(*h*) Will heal, cure or give complete relief from gastric ulcers, or has any value in excess of an antacid.

(*i*) Is a substitute for surgical treatment of gastric ulcers.

The said Ramstead Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 5, 1940.)

0561.[2] **Cigar and Cigarette Lighter—Qualities, New, Composition, Exclusive Territory, and Earnings or Profits.**—Wright G. Scroxton, an individual, trading as New Method Manufacturing Co., Bradford, Pa., vendor-advertiser, was engaged in selling a cigar and cigarette lighter designated Self Starting Lighter and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the Self Starting Lighter remains lit in all wind velocities.

(*b*) That the Self Starting Lighter requires no refill.

(*c*) That the Self Starting Lighter employs a new principle of ignition.

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[1] The stipulations in question are those of the radio and periodical division with vendor-advertisers. Period covered is that of this volume, namely, June 1, 1940, to November 30, 1940, inclusive. For digests of previous stipulations, see vols. 14 to 30 of Commission's decisions.

[2] Supplemental.

(*d*) That the gold plated Self Starting Lighter has three separate platings of gold.

(*e*) That the settings in the Self-Starting Lighters are precious or semi-precious stones or are birthstones unless modified by the word "imitation" or its equivalent, or from designating or otherwise representing that such lighters are jeweled.

(*f*) That any repeat business built up through the sale of Self Starting Lighters requires no time or effort.

(*g*) That exclusive territory is assigned to or may be reserved by prospective agents, sales persons, or other representatives, when such is not the fact.

(*h*) That agents, salesmen, distributors, dealers, or other representatives make profits in excess of the minimum profits possible from the sale of the Self Starting Lighter unless disclosure is made of the fact that purchase must be made of a minimum quantity of lighters before the represented profit is made.

(*i*) 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.

The said Wright G. Scroxton agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 26, 1940.)

01906.[4] **Medicinal Preparation—Qualities, Safe, New, and Results.**—Pickgan Labrofacts, Inc., a corporation, 250 East Forty-third Street, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation in tablet form designated Allay and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Through the use of the word "pain" unqualified to indicate the types of pain for which the product normally will afford some measure of relief or in any other manner that such preparation has any appreciable effect upon persistent and frequently recurring pain.

(*b*) Through the use of such terms and expressions as "pain banisher," "get rid of pain," "insure freedom from pain," "drives away pain," "kills pain," or in any other manner, that such product terminates pain or has any effect on pain in excess of affording temporary relief.

(*c*) That such product is safe for use, or that it is a new preparation on the market or affords a new method for relieving pain.

(*d*) That such product has any efficacy in preventing the development of colds, is an effective remedy for colds, or has any influence upon stuffiness, congestion, or coryza due to colds.

(*e*) That such product acts or commences to act in three seconds after the tablets are taken, or in any other manner that it produces effective results in any definite period of time.

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[4] Supersedes former similar numbered stipulation reported in 25 F. T. C. 1652.

The said Pickgan Labrofacts, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 10, 1940.)

02578. **Laxative Preparation—Comparative Merits, Qualities, Results, Safety, and Limited Offers.**—Roy Quinlan, an individual operating under the trade name of Sunclean Products Co., 551 Fifth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a laxative preparation designated "Safe-Clean Laxative" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That this product is a "wonderful discovery," produces "amazing results," or, by any other terminology, that it is different from, or that its results are different from, competing laxatives.

(*b*) That this preparation will end constipation, or that one who uses it will never be troubled with constipation again, or by any other terminology that it will cure constipation or have any other permanent effect upon constipation.

(*c*) That the product is safe or contains nothing injurious.

(*d*) That this product is not habit-forming or contains no ingredients which are habit-forming.

(*e*) That the use of this product will promote internal hygiene, or will result in inner cleanliness, or aids in eliminating waste products from the system, or that this preparation will have any appreciable effect upon the system generally, or upon any part of the system except the intestinal tract.

(*f*) That the use of this product will keep the intestines clean and in a healthy condition.

(*g*) That this preparation has any appreciable effect upon the functioning of the liver or kidneys.

The said Roy Quinlan further agreed to cease and desist from describing or otherwise referring to any terms of sale as an "offer" or an offer which must be accepted immediately before it is withdrawn, and unless and until a definite time limit is fixed as the expiration date of such offer, and acceptances thereof are refused after such date.

The said Roy Quinlan further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 3, 1940.)

02579. **Service for Prize Contests—Qualities and Results.**—Charles A. Roberts, an individual doing business as Editors & Publishers Service Co., vendor-advertiser, 25 West Broadway, New York, N. Y., was engaged in selling lists and bulletins containing information relating to slogans, titles and names which have been successful in winning prizes in various competitive contests and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

By unqualified statements such as "You can win," or "You cash in on our knowledge of what it takes to win," or in any other manner that the reader of the advertisement is assured of winning any contest, cash or prize, by reason

of buying material composed by, or information furnished by, Editors & Publishers Service Co., or that the material or information furnished will definitely enable one to win, or constitutes more than the assistance of Editors & Publishers Service Co., to the reader in competing for such cash or prize.

The said Charles A. Roberts hereby further agreed to cease and desist from publishing instances of prizes or cash won in contests, to the winning of which Editors & Publishers Service Co. contributed neither information nor material to the winner thereof, without at the same time plainly and conspicuously disclosing that fact.

The said Charles A. Roberts hereby further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 3, 1940.)

02580. **Cleaning Device—Earnings or Profits and Opportunities.**—The Artmoore Co., Inc., a corporation, 108 North Water Street, Milwaukee, Wis., vendor-advertiser, was engaged in selling a cleaning device designated New Art Cleaner and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) 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.

(*b*) By the use of such words as "up to," "as high as," or any other 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.

(*c*) That no investment is required in order for one to sell the "New Art Cleaner."

(*d*) That persons selling the "New Art Cleaner" have no competition.

(*e*) That there is any number of prospective customers or purchasers for the "New Art Cleaner" in excess of the number of persons who might reasonably be expected to purchase the same or similar commodity if given the opportunity.

The said Artmoore Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 3, 1940.)

02581. **Hair Preparation—Qualities.**—Michael Michalik, trading as Dixie Dale Co., 43 East Ohio Street, Chicago, Ill., vendor-advertiser, was engaged in selling a preparation designated "Dixie Dale De Luxe Hair Preparation" and agreed, in connection with the dissemination of

future advertising, to cease and desist from representing directly or by implication:

(*a*) Will grow hair or speed the growth of hair or have any influence upon the growth of hair.

(*b*) Will stop hair from falling out.

(*c*) Will give hair strength or life.

(*d*) Will make hair softer.

(*e*) Will make dandruff disappear or end dandruff troubles.

The said Michael Michalik further agreed not to publish or cause to be published any testimonials containing any representations contrary to the foregoing agreement. (June 3, 1940.)

02582. **Radios—Comparative Merits, Qualities, and Success.**—Louis Jutze, an individual trading and doing business as Reliable Radio Co., 7710 South Bishop Street, Chicago, Ill., vendor-advertiser, was engaged in selling a crystal radio set now designated Tee-Nie Radio 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 "new" or any other word of similar import or meaning, that the Tee-Nie radio operates on a different or new principle or that it is more effective in performance than other types of radios.

(*b*) That it is designed or constructed so that it will operate in one's pocket or that it operates without ground or antenna connections.

(*c*) That it gives clear reception, so as to import or imply that such is generally true or that reception is obtainable through the Tee-Nie radio without the use of earphones.

(*d*) That he has sold any number of Tee-Nie radios in excess of that number which he has actually sold.

(*e*) That a greater number of persons are satisfied with the results obtained from the Tee-Nie radio than that number of persons who have affirmatively expressed satisfaction with results obtained therefrom.

The said Louis Jutze agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 3, 1940.)

02583. **Medicinal Preparation—Nature, Qualities, and History.**—Katz Drug Co., a corporation, 1130 Walnut, Kansas City, Mo., vendor-advertiser, was engaged in selling a medicinal preparation designated Perma Tonic 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 health builder unless explained in direct connection therewith that Perma Tonic of itself does not build health.

(*b*) That the system needs the ingredients contained in the product.

(*c*) That the product will keep the system working smoothly or regularly or that it will enable one to get the best out of food.

(*d*) That the product is a competent treatment or an effective remedy for headaches or biliousness unless limited to the temporary relief of those conditions when they are due to constipation.

(*e*) That the product is a competent treatment or an effective remedy for constipation unless limited to temporary relief of that condition.

(*f*) That the product is a competent treatment or an effective remedy for, or that it will afford relief from, any form of nervousness.

(*g*) That persons who have symptoms of constitutional weakness need or can be materially benefited by Perma Tonic, or that the product will be effective in cases where others have failed.

(*h*) That Perma Tonic is a discovery or a preparation of recent origin.

The said Katz Drug Co. further agreed that in connection with the use of the word "Tonic" as a part of the trade name for the product it will insert the word "Gastric" immediately prior thereto.

The said Katz Drug Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 3, 1940.)

02584. **Medicinal Preparation—Qualities, Composition, and Professional Connection.**—Mrs. L. H. Tillotson, an individual, 95 South State Street, Painesville, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation designated Black Drops 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 a "specific" for neuritis of the sciatic nerve, kidney trouble, or for any other sickness or disease.

(*b*) That said preparation is a competent treatment or remedy or will afford relief for neuritis of the sciatic nerve, and kidney and bladder trouble.

(*c*) That the use of said preparation will effect a cure for any sickness or disease.

(*d*) That the use of said preparation will perform miracles.

(*e*) That the use of said preparation will afford permanent relief from any disease or sickness.

(*f*) That said preparation contains no drugs; and

(*g*) That said preparation is sold by a medical doctor.

The said Mrs. L. H. Tillotson further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 3, 1940.)

02585. **Root Beer—Qualities.**—O'Dea, Sheldon & Canaday, Inc., a corporation, 400 Madison Avenue, New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a root-beer beverage designated Hires R-J Root Beer on behalf of The Charles E. Hires Co., Philadelphia, Pa., 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. (June 6, 1940.)

02586. **Insecticidal and Fungicidal Spray—Qualities, Results, and Success.**—Rose Manufacturing Co., a corporation, Thirty-seventh and Filbert Streets, Philadelphia, Pa., vendor-advertiser, was engaged in selling an insecticidal and fungicidal spray designated Tri-Ogen and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Tri-Ogen will kill, protect against or repel all insects generally, or all beetles, or all types of sucking or leaf-eating insects; or

(*b*) That Tri-Ogen will control, or give complete protection against, all fungus diseases, or that it will control all types of rust yellows, delphinium blight, or stem-rot; or

(*c*) That Tri-Ogen will give complete plant protection, or otherwise representing that the use of this spray will make the plant immune from attacks by all insects and diseases; or

(*d*) That Tri-Ogen assures healthy green foliage or luxuriant blooms, or that any results are assured through use of said spray; or

(*e*) That Tri-Ogen is the most successful and revolutionary discovery ever made in the history of rose culture or that it is the first definite mildew and black-spot control combined with an insecticide.

The said Rose Manufacturing Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 11, 1940.)

02587. **Medicinal Preparation—Qualities, Composition, and Comparative Merits.**—International Laboratories, Inc., a corporation, Rochester, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Dare's Mentha-Pepsin and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Dare's Mentha-Pepsin is a competent treatment or effective remedy for stomach distress or stomach ailments generally.

(*b*) That Dare's Mentha-Pepsin is a competent treatment or effective remedy for gastritis.

(*c*) That any given amount of Dare's Mentha-Pepsin will prove its efficacy for stomach distress or stomach ailments in a definite period of time.

(*d*) That Dare's Mentha-Pepsin contains ingredients which will invigorate the stomach generally or which are corrective stomach agents or that such ingredients are so combined with pepsin as to make the pepsin highly efficacious and speedy in its action.

(*e*) That Dare's Mentha-Pepsin cleanses or sweetens the stomach or that it makes weak stomachs stronger.

(*f*) That Dare's Mentha-Pepsin supplies sufficient hydrochloric acid to the stomach to relieve gas or sour stomach where such affections are due to a lack of this acid.

(*g*) That Dare's Mentha-Pepsin is a substantial treatment or effective remedy for weak digestion.

(*h*) That Dare's Mentha-Pepsin will relieve stomach distress or stomach ailments quicker than any competing products.

The said International Laboratories, Inc., further agreed to cease and desist from using the word "Pepsin" alone or in connection 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 therapeutic value by reason of such pepsin content.

The said International Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1940.)

02588. **Chewing gum—Qualities.**—Peter Paul, Inc., a corporation, Naugatuck, Conn., vendor-advertiser, was engaged in selling a chewing gum known as Ten Crown Charcoal Gum and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the use of Ten Crown Charcoal Gum will make or help make teeth white or otherwise alter their inherent color except to the extent that it may do so through the removal of such enamel film or such debris as it may remove from the teeth.

The said Peter Paul, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 17, 1940.)

02589. **Chewing Gum—Qualities.**—Platt-Forbes, Inc., a corporation, 386 Fourth Avenue, New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a chewing gum designated Ten Crown Charcoal Gum on behalf of Peter Paul, Inc., Naugatuck, Conn., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the use of Ten Crown Charcoal Gum will make or help make teeth white or otherwise alter their inherent color except to the extent that it may do so through the removal of such enamel film or such debris as it may remove from the teeth. (June 17, 1940.)

02590. **Chicken Feeds—Comparative Merits and Qualities.**—John W. Eshelman & Sons, a corporation, Lancaster, Pa., vendor-advertiser, was engaged in selling various chicken feeds under the brand name of Red Rose, including Red Rose Laying Mash and Red Rose Fattening Mash and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Red Rose Laying Mash is the only feed that will produce or maintain profitable hens.

(*b*) That it is necessary to use Red Rose Fattening Mash in order to obtain fancy or top-grade broilers.

(*c*) That Red Rose Fattening Mash imparts a delicacy of taste or flavor that cannot otherwise be secured.

The said John W. Eshelman & Sons further agreed to cease and desist from designating or describing as a "complete" laying mash, any mash in conjunction with which it is necessary to feed grain or other feeds. (June 19, 1940.)

02591. **Rat-killing Preparation—Qualities.**—A. J. Child & Sons Mercantile Co., a corporation, 800 Chouteau Ave., St. Louis, Mo., vendor-advertiser, was engaged in selling a rat-killing preparation designated "Black Cat Rat and Mouse Killer" and agreed, in connection with the dissemination of future advertising to cease and desist from representing directly or by implication:

That the product will drive rats outdoors to die unless it is explained in direct connection therewith in an equally conspicuous manner that their burrows or habitats must be outdoors before it will do so.

The said A. J. Child & Sons Mercantile Co. further agreed to cease and desist from using the word "mouse" as a part of the trade name for the product, or from otherwise representing or implying that it will kill mice.

The said A. J. Child & Sons Mercantile Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 24, 1940.)

02592. **Deodorants—Success, Special or Limited Offers, Qualities, Safety, and Results.**—Estelle A. Kirstein, an individual doing business as Hugh Sales Co., 116 Market Street, Philadelphia, Pa., a vendor-advertiser, was engaged in selling deodorants designated Hush Cream Deodorant, Hush Liquid Deodorants, Hush Sno, Hush Powder Deodorant, and Hush Stick Deodorant and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That millions or any fictitious number of people use her products.

(*b*) That any special offer will be terminated at a specified date, is for any limited period of time, or that there is a limitation as to the time during which her products may be purchased, unless the offer is terminated on the specified date or within the time limitation.

(*c*) That Hush Cream Deodorant, Hush Liquid Deodorant, Hush Sno, Hush Powder Deodorant, and Hush Stick Deodorant have absolute powers of controlling or stopping body and perspiration odors or any other odor by the use of such words, phrases or terms as "sure," "instantly," "banish," "corrects," "keep free," "stops," "ends," "removes," "keeps," "eliminates," or any other word, phrase, or term of like or similar import.

(*d*) That Hush Cream Deodorant is greaseless.

(*e*) That the application of Hush Cream Deodorant is more facile as compared with other similar products.

(*f*) That Hush Cream Deodorant is effective in controlling, neutralizing or destroying all perspiration and all body odors.

(*g*) That Hush Liquid Deodorants are harmless or cannot or will not irritate or injure the skin.

(*h*) That Hush Liquid Deodorants will not cause damage to clothing fabrics.

(*i*) That Hush Sno is greaseless.

(*j*) That Hush Sno is harmless or cannot or will not irritate or injure the skin.

(*k*) That Hush powder neutralizes, destroys, or is effective in controlling all perspiration and all body odors.

(*l*) That Hush Powder Deodorant will not obstruct the pores of the skin.

(*m*) That Hush Powder Deodorant completely deodorizes sanitary napkins.

(*n*) That Hush Stick Deodorant has any permanent action or effect.

The said Estelle A. Kirstein further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (June 28, 1940.)

02593. **Metal Seal—Nature, Qualities, Results, Composition, Comparative Merits, and Earnings or Profits.**—Bill Reardon, an individual trading as Grafize Products, Peoria, Ill., vendor-advertiser, was engaged in selling a metal seal designated Bra-Zit 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 weld or that it welds or that its action is the same as or equivalent to the welding process or that it saves the cost of welding.

(*b*) That the product effects a permanent seal or that it is self-fusing.

(*c*) That the product of itself is a metal.

The said Bill Reardon further agreed to cease and desist from using the term "Bra-Zit" or any other term or terms or word or words of similar import or meaning as the trade name for the product or from otherwise representing or implying that the action of the product is the same as or equivalent to the brazing process.

The said Bill Reardon further agreed to cease and desist from making any general or specific disparaging statement with reference to similar or competing products.

The said Bill Reardon further agreed to cease and desist from representing directly or by implication:

1. That prospective agents, salesmen, distributors, dealers, or other representatives can make profits or earnings within a specified period of time, which are in excess of the average net profits or earnings which have 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.

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 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.

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 in the ordinary course of business and under normal conditions and circumstances.

4. That the minimum amounts which prospective agents, salesmen, distributors, dealers, or other representatives can make in profits or earnings within any specified period of time is an amount in excess of the minimum net amount earned in like periods of time by all 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.

The said Bill Reardon 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.

The said Bill Reardon 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 Bill Reardon agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (June 28, 1940.)

02594. **Crow Repellent—Qualities.**—Cedar Hill Formulae Co., a corporation, New Britain, Conn., vendor-advertiser, was engaged in selling a crow repellent designated Stanley's Crow Repellent and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Stanley's Crow Repellent will afford absolute, positive or sure protection for planted seed corn from injury or molestation by insects or animal pests, or will protect planted seed corn against damage from all animal pests, or of any animal pests when such is not the case, and from making any representations which exaggerate the extent said product will protect planted seed from damage by animal pests.

(*b*) That Stanley's Crow Repellent is known to be more effective or more convenient to use or more economical than any other material.

(*c*) That Stanley's Crow Repellent is non-poisonous.

(*d*) That Stanley's Crow Repellent does not affect germination in any way.

(*e*) That Stanley's Crow Repellent will "insure" a good corn crop.

The said Cedar Hill Formulae Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 9, 1940.)

02595. **Dog Remedy—Qualities, Results, Success and Guarantee.**—Bernice Berner, an individual doing business under the trade name Dog Aid, Box 373, Arlington, Va., vendor-advertiser, was engaged in selling a dog remedy designated Witch's Brew and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That Witch's Brew—1. Is a competent remedy or effective treatment for sarcoptic mange, eczema or other skin irritations of dogs. 2. Has curved 25,000 or any other number of cases of sarcoptic mange, eczema or other skin irritations of dogs. 3. Is the only preparation of its kind that carries a money-back guarantee; and 4. Has never failed.

The said Bernice Berner further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (July 9, 1940.)

02596. **Cosmetic Preparations—Composition, Qualities and Results.**—Marcus-Lesoine, Inc., a corporation, and L. J. Marcus and John A. Lesoine, individuals, 575 Sutter Street, San Francisco, Calif., vendor-advertisers, were engaged in selling cosmetic designated Lovalon Hair Rinse and Lovalon Oil of Lemon Hair Rinse and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Lovalon Hair Rinse is a vegetable product.

(*b*) That Lovalon Hair Rinse gives hair more life.

(*c*) That use of Lovalon Hair Rinse will enable one to say goodbye to dull or drab hair or from otherwise representing or implying that it is permanent in effect.

(*d*) That Lovalon Oil of Lemon Hair Rinse accomplishes the same results as a lemon rinse or that it restores natural loveliness of the hair or invigorates the scalp or hair.

The said Marcus-Lesoine, Inc., and L. J. Marcus and John A. Lesoine further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 11, 1940.)

02597. **Hair Preparations—Qualities, Results, and Nature.**—Ada G. Smith, an individual trading under her own name and as Smith Mfg. Co., 107 Underwood Street, Fayetteville, N. C., vendor-advertiser, was engaged in selling hair preparations designated Smith's Instant Hair semination of future advertising for the products Smith's Instant Tetter Salve and Scalp Cure and agreed, in connection with the dissemination of future advertising for the products Smith's Instant Hair Grower and Smith's Instant Hair Grower (Special), to cease and desist from representing directly or by implication that they:

(*a*) Grow hair; or that they, or either of them, grow present hair from one to three inches per month; or will grow hair on any bald head or temple in three weeks or less time where the roots are living.

It is further agreed, in connection with the dissemination of future advertising for the product Smith's Instant Tetter Salve and Scalp Cure, to cease and desist from representing directly or by implication:

(*b*) That it is a competent remedy or an effective treatment for dry scalp, tetter, eczema, dandruff, falling hair, or other scalp diseases.

(*c*) Heals sores or skin diseases, or that it would do more than temporarily relieve the itching that may be associated with certain skin diseases and promote the healing of raw surfaces.

It is agreed by Ada G. Smith that she will forthwith cease and desist from the use of the word "Cure," or any other word or words of similar import or meaning, as a part of the trade name of her product designated "Smith's Instant Tetter Salve and Scalp Cure."

It is further agreed by Ada G. Smith that she will forthwith discontinue the use of the word "Grower," or any other word or words of similar import or meaning, on the label and as a part of the trade name of Smith's Instant Hair Grower and Smith's Instant Hair Grower (Special).

The said Ada G. Smith further agreed not to publish or cause to be published any testimonials containing any representation contrary to the foregoing agreement. (July 11, 1940.)

02598. **Cow Remedies—Qualities.**—Hays Advertising Agency, a corporation, Burlington, Vt., was engaged in the business of conducting an advertising agency which disseminated advertisements for cow remedies designated Bag Balm and Kow Kare on behalf of Dairy Association Co., Inc., Lyndonville, Vt., 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 food properly.

(*f*) That Kow Kare will assure any specific increase in milk production or profits. (July 12, 1940.)

02599. **Hair Preparation—Qualities.**—Maurice J. Allen, an individual trading as M. J. Allen Co., 1038 Tenth Street, Des Moines, Iowa, vendor-advertiser, was engaged in selling a hair preparation designated La Palm Rapid Hair Grow and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. Through the use of the trade name "La Palm Rapid Hair Grow," or otherwise, that the preparation will grow hair or cause hair to grow more rapidly.
2. That the preparation will aid in the more rapid growth of hair.
3. That the preparation will give new life or life to the hair.

The said Maurice J. Allen further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 12, 1940.)

02600. **Nasal Filter—Qualities, Indorsement, or Approval and Patented.**—H. E. Clarke, an individual trading as H. E. Clarke Co., 701 Ridge

Avenue, Pittsburgh, Pa., vendor-advertiser, was engaged in selling a nasal filter designated H. E. Clarke's Nasal Filter and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said device is of value in the prevention of any case of nasal irritation except where such case may be caused by the inhalation of dust or other impurities through the nostrils, or that said device will afford complete protection against nasal irritation which might result in such manner.

(*b*) That said device will afford complete protection against contagion resulting from a nasal inhalation of dust and other impurities, or that said device will, in any case, serve to afford complete protection against or will, in any case, serve to entirely eliminate hay fever, rose fever, sinusitis, dust irritation or extrinsic asthma, or any of the symptoms of such conditions, or from making any representations which exaggerate the extent to which said device will protect against or lessen the severity of any disease, ailment or condition.

(*c*) That the mat filters used in said device are sterile.

(*d*) That said device is an effective agent in protecting against colds.

(*e*) That said device, when inserted in the nostrils, is completely invisible.

(*f*) That the wearing of said device excludes the possibility of inhalation of dust, pollen, or other impurities through the nostrils.

(*g*) Generally, that physicians recommend said device, or that "many" physicians have given their approval of said device, and from making any representations which exaggerate the extent to which said device has been recommended or approved by members of the medical profession.

(*h*) That the patent application covering said device affords complete or full protection.

The said H. E. Clarke further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 15, 1940.)

02601. **Medicinal Preparation—Qualities, Laboratories, Etc.**—H. W. Barker, an individual doing business under the trade names H. W. Barker Chemical Co. and Barker Laboratories, 500 South Water Street, Sparta, Wis., vendor-advertiser, was engaged in selling a medicinal preparation designed Barker's Xzmo and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation rids, relieves, or is an effective remedy or competent treatment for eczema, piles, athlete's foot, nerve disorders, weed poisoning, any other skin or flesh troubles, or is an effective remedy or competent treatment for soreness and skin irritations caused by eczema, athlete's foot, piles, ringworm, itch, bee stings, insect bites, poison ivy, decayed vegetation, or any other skin or flesh troubles; or

(*b*) That said preparation has any appreciable therapeutic value in the treatment of the aforesaid diseases, disorders, or skin or flesh conditions in excess of a mild antiseptic and astringent with no keratolytic or penetrating action; or

(*c*) That said preparation will eradicate the itching power of disease germs in cases of sore and itching irritation of skin or flesh or otherwise representing that said preparation will kill or destroy the cause of itching; or

(*d*) That the curative power of nature is extended by soothing the germ itching condition of skin or flesh afflicted with a sore or itching irritation; or

(*e*) That the information furnished by him to sufferers of eczema, athlete's foot, piles or skin troubles, is reliable, or otherwise representing that persons suffering from said ailments may obtain information which will afford effective relief in the treatment of said ailments.

The said H. W. Barker further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement.

The said H. W. Barker further agreed to forthwith cease and desist from using the word "laboratory" or "laboratories," or any other word, syllable, or abbreviation that imitates or simulates in sound or spelling the word "laboratory" or "laboratories," as part of any trade name, and from making any representation in any form by any means that states or implies that he has a laboratory unless he owns, operates, or controls a place that is adequately and properly equipped to conduct scientific experiments and tests of the products made and sold by him in interstate commerce, and the materials composing the same, and operated under the direct supervision of a person qualified to conduct such experiments and tests.

The said H. W. Barker further agreed to cease and desist from using the coined word "XZMO" or any other word, term, syllable, letters, or abbreviation that simulate or imitates by appearance, sound or spelling the word "eczema." (July 15, 1940.)

02602. **Shoes and Hosiery—Qualities, Results, Success, and Composition.**—Melville Shoe Corporation, a corporation doing business under the trade name of Thom McAn, 555 Fifth Avenue, New York City, vendor-advertiser, was engaged in selling shoes and hosiery designated Thom McAn Shoes and Thom McAn Hosiery and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That its shoes will fit perfectly or afford immediate and instant comfort without breaking-in for everyone.

(*b*) That its shoes will eliminate, end, or correct foot troubles.

(*c*) That its shoes will prevent foot burning not due to ill fitting shoes.

(*d*) That any specific number or numbers of persons purchase its shoes or hosiery when it does not have statistics available in verification of said number or numbers of purchases of its merchandise, or that all of its stores in the aggregate or otherwise sell more hosiery than any single department store when it is impossible to secure statistics in verification.

(*e*) That its women's hose are made from pure thread silk, when they contain any material other than silk, even when such other material is used as reinforcement only, in the foot and the garter top, and is plainly visible. (July 17, 1940.)

02603. **Foods—Nature, Composition, Qualities, and Ailments.**—Janet Warfel, an individual doing business under the trade name of Nutritional Service, 162 North State Street, Chicago, Ill., vendor-adver-

tiser, was engaged in selling foods designated Wyd-E-Wake Silicon Tea and Vitamin B Food Cons and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Wyd-E-Wake Silicon Tea is

1. A health beverage.
2. A drink for health or beauty.
3. An excellent source of the mineral elements of calcium, silicon, or manganese.
4. An antiseptic.
5. A preventative against acid conditions.
6. Essential as a basic nutrient to the nervous system.
7. An invigorating agent of the generative system, or otherwise representing that said product has any effect upon the generative system.

(*b*) That the human body is deficient in silicon.

(*c*) That Wyd-E-Wake Silicon Tea

1. Replenishes the silicon lacks of the human body, or otherwise representing that said product supplies silicon to the human body.
2. Possesses qualities conducive to mental peace, contentment, or contemplative pleasure.
3. Performs many important functions in the body.
4. Has any influence on the body's resistance to disease.
5. Helps tissues maintain their alkaline balance.
6. Gives fiber or strength to muscles, arteries, ligaments, or the cellular structures of the organs.

(*d*) That mental lethargy or dullness are symptomatic of silicon scarcity.

(*e*) That mental vigor or buoyancy are indices of proper silicon balance.

(*f*) That when silicon is low in the body the nails on the hands and feet become ridged or brittle, felons form frequently alongside of the nail roots, inflamed swellings, or styes appear at frequent intervals on or near the eyelids.

(*g*) That silicon is helpful in all cases where eyes, hair or nails are in poor condition.

(h) That skin eruptions or internal ulcers are general symptoms of silicon deficiency.

(*i*) That pimples or boils are cleared up, when silicon lacks have been restored to the body.

(*j*) That silicon, in combination with calcium helps build healthy teeth; in combination with sulphur is a corrective of skin conditions; in combination with manganese is a hair-food; with phosphorous and iron affects importantly the nerve and circulatory systems; in combination with fluorine performs many antiseptic functions; and is an aid to the cure of blood diseases.

(*k*) That Vitamin B Food Cons

1. Supply the body with mineral elements.
2. Help the body replace the vitality it lacks, unless limited to cases where an actual deficiency of Vitamin B_1 already exists.
3. Bring one vigor or youthful zestfulness.
4. Are highly potent or readily assimilated into the system.

The said Janet Warfel further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 12, 1940.)

02604. **Medicinal Preparation—Qualities, Nature, Composition, New, Results, Success, Indorsements, Safety, and Guarantee.**—A. P. Durham, an individual trading as Herb Products Co., Anderson, S. C., vendor-advertiser, was engaged in selling a medicinal product designated Vim Herb and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation will strengthen or build up or revitalize or cleanse the system, or will build up body resistance, or will rid the system of poisons, or will strengthen or regenerate or tone digestive organs, or will renew or restore digestive action, or will cleanse the entire intestinal tract, or will completely cleanse the intestinal walls, or will lead to or preserve or protect or restore health, or can be relied upon to give one a healthy appearance, or will restore one's youth or vigor or vitality, or will cause one to have a clear brain or an active body, or will act as a tonic for the blood, or will re-tone the blood, or will help restore the cells or corpuscles of the blood, or will remove impurities from the blood, or will benefit everyone, or is curative or corrective for or will permanently rid one of any disease, ailment or disorder, or will relieve the pains of neuritis or rheumatism, or, generally, will relieve pain, or will remove poisons or wastes or acids from the kidneys, or will afford immediate or lasting or sure and positive relief from any disease, disorder or ailment, or can be relied upon to afford complete relief from flatulence, or is effective as a treatment for uric acid conditions, or will clear the skin of eruptions, or is of value in cases of skin disorders, nervousness, sleeplessness, biliousness, headaches, irritability, indigestion, or lack of energy, except where and to the extent that such conditions are caused or aggravated by constipation, or, generally, is of value in the treatment of stomach or liver or kidney disorders, or is an effective treatment for nycturia, bladder irritations, leg cramps, or backaches, or is an effective aid to digestion, or is effective as an alkalizer or cholagogue, or activates the liver, or has a great cleansing action on the liver, or is effective as a treatment or preventive of colds or of influenza, or is an effective means for enabling persons to regain lost weight.

(*b*) That said preparation is a tonic, or is nature's medicine, or is a health elixir, or is composed entirely of herbs, roots, barks and berries, or is purely vegetable, or is entirely different from ordinary patent medicines, or is a new discovery or a new development in medicine, or is made by an entirely new and different process, or is the most effective laxative on the market, or contains ingredients procured from all parts of the world.

(*c*) That "science" has recognized or is cognizant of said preparation.

(*d*) That said preparation benefits thousands daily, or that thousands have attested to its value, or that said preparation is known to have benefited thousands, or from making any representations which exaggerate the number of persons who have benefited from the use of said preparation or who have attested to its value.

(*e*) That said preparation is known to be the most popular and most highly recommended medicinal preparation in the area in which it is distributed.

(*f*) That said preparation is harmless, without at the same time clearly and conspicuously indicating that its use may be injurious where there are present acute inflammatory conditions of the gastro-intestinal tract.

(*g*) That constipation is the usual cause of stomach disorders, kidney and liver troubles or nervousness, and from making any representation which exaggerates the consequences of or the number or severity of symptomatic conditions resulting from constipation.

(*h*) That results from the use of said preparation are guaranteed or that said preparation is guaranteed, without at the same time clearly indicating the nature and scope of the guarantee.

The said A. P. Durham further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 17, 1940.)

02605. **Medicinal Preparation—Qualities, Results, Etc.**—The Ferguson Co., Inc., a corporation, Liberty Bank Building, Dallas, Tex., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal preparation designated Hay-No on behalf of Morten Laboratories, Inc., Dallas, Tex., 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. (July 17, 1940.)

02606. **Medicinal Herb Tea—History, Qualities, Nature, Ailments, Etc.**—V. R. Smith, an individual trading as Smith & Bull Advertising Agency, 553 South Western Avenue, Los Angeles, Calif., was engaged in the business of conducting an advertising agency which disseminated advertisements for a medicinal herb tea designated Cento Tea on behalf of Otto Wise, an individual trading as Medical Tea Co. of California, Inc., Los Angeles, Calif., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation or the particular formula for said preparation has been used for centuries or for any period of time greater than is actually the case.

(*b*) That said preparation, or that any of the ingredients in said preparation, 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 said preparation is not a laxative.

(*d*) That the ingredients of said preparation are carried to the affected parts.

(*e*) That all modern physicians subscribe to the theory that constipation causes autointoxication or a "backing up" of toxic poisons within the body.

(*f*) That every ingredient in said preparation possesses therapeutic value.

(*g*) That the hypericum content of said preparation stimulates the appetite.

The said V. R. Smith further agreed not to disseminate or cause to be disseminated any testimonial containing any representation contrary to the foregoing agreement. (July 18, 1940.)

02607. **Soft Drinks—Earnings or Profits and Composition.**—Dr. Ward's Medical Co., a corporation, Winona, Minn., vendor-advertiser, was engaged in selling food products designated Ward's Summer Drinks or Summer Koolers and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That its agents, salesmen, retailers, distributors, dealers, or other representatives can earn more money by selling products of the Dr. Ward's Medical Co. than they can earn in any other business or occupation.

(*b*) 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 average net profits or earnings which have theretofore consistently been made in like periods of time by its active full time agents, salesmen, distributors, dealers, or other representatives in the ordinary or usual course of business and under normal conditions and circumstances.

It is hereby further agreed by Dr. Ward's Medical Co. that in connection with the dissemination of advertising by the means and in the manner above set out, in connection with the sale of its soft drinks, designated collectively as "Ward's Summer Drinks" or "Summer Koolers," and individually designated as "Summer Kooler—Cherry," "Summer Kooler—Grape," "Summer Kooler—Lemon," "Summer Kooler—Lemon-Lime," and "Summer Kooler—Orange," or any other products of substantially the same composition or possessing substantially the same properties, it will forthwith cease and desist from representing directly or by implication—

That its soft drinks are composed wholly of the natural fruit or juice of the fruit.

The said Dr. Ward's Medical Co. further agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 18, 1940.)

02608. **Candy—Qualities.**—Curtiss Candy Co., a corporation, 622 Diversey Parkway, Chicago, Ill., vendor-advertiser, was engaged in selling a confection designated Baby Ruth and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Baby Ruth candy will avoid fat.

(*b*) That Baby Ruth candy will avoid fatigue; or banish or keep fatigue away; or keeps pep, heat, or energy up to par; or sustains body activity; or

reinforces body resistance to avoid ill health; or restores lost vigor; or will snap one out of spring fever, unless it is plainly and clearly stated in direct connection therewith that it is intended to help overcome fatigue and temporarily increase energy when eaten between meals.

(*c*) That it is necessary to eat dextrose to secure the energy building and sustaining foods; or that people who need energy need dextrose or Baby Ruth candy bars.

The said Curtiss Candy Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 19, 1940.)

02609. **Hair Lotion—Qualities, Composition, Safety, New, Success, and Nature.**—Beutalure, Inc., a corporation, 14 Ashley Place, Wilmington, Del., vendor-advertiser, was engaged in selling a hair lotion designated Beutalure Hair Tonic (now Beutalure Hair Lotion) and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the product:

1. Will restore natural or youthful luster or color.
2. Will bring hair back to its original shade.
3. Is not a dye.
4. Contains no dye.
5. Contains no harmful dye, or from otherwise representing or implying in any manner that it is safe or harmless.
6. Brings back or restores life or health to the hair.
7. Relieves dandruff unless limited to its aid in the temporary removal of dandruff.
8. Relieves itching scalp, unless limited to temporary relief of that condition.
9. Checks or stops excessive falling hair.
10. Will correct or overcome dull, faded, gray, or streaked hair.
11. Will prevent, correct, or eliminate dandruff, falling hair, or itching scalp.
12. Will end gray hair.
13. Will be of aid in stimulating the hair follicles or that it will cause them to function normally.
14. Reconditions the scalp or causes it to have a healthy or youthful appearance.
15. Is new.
16. Is sold or used all over the world.
17. Is a discovery.

(*b*) That the product is a competent treatment or an effective remedy for gray, dull, faded, or streaked hair.

(*c*) That the action of the product in such effect as it has on the hair is similar to or the same as nature's action in removing color from the hair.

(*d*) That such action as the product has on the hair is permanent in effect.

(*e*) That the product acts on the cause of gray, faded, streaked, and dull hair or that it will prevent those conditions.

(*f*) That beauty of the hair is hidden or that by use of the product, natural beauty of hair will be revealed.

The said Beutalure, Inc., further agreed that it will not describe the product as a tonic and will not use the word "tonic" as a part of the trade name for the product.

The said Beutalure, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 19, 1940).

02610. **Medicinal Preparation—Qualities, Ailments, Results, Guarantee, Indorsements, Etc.**—The Milks Emulsion Co., a corporation, Terre Haute, Ind., vendor-advertiser, was engaged in selling a medicinal preparation designated Milks Emulsion 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 Milks Emulsion, 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 treatment or effective remedy for constipation, or will do more than aid in temporarily relieving constipated conditions.

(*b*) Would cause female troubles, loud noises or burning sensations in the stomach to disappear, or that such disorders are due to constipation.

(*c*) Has been found to be, or that it is, "most effective."

(*d*) Will "positively" relieve constipation or all the disagreeable symptoms thereof; give the bowels a thorough cleaning or keep them clean, or give Nature a chance to heal or strengthen them; or that it will do all that medicine can do, or that it is possible for medicine to do, for constipation or in "ridding" one of constipation.

(*e*) Dissolves all food waste or makes it easier for the bowels to expel it; or that it leaves the lining of the bowels coated with a soothing oil, or that it thereby assists Nature in putting the bowels back into normal condition.

(*f*) Will assist in promoting the appetite by relieving constipation or otherwise unless it is clearly and plainly stated in direct connection therewith that it will render such assistance only if the loss of appetite is due to constipation.

(*g*) Is "Nature's Remedy."

(*h*) Would free one from constipation for all time.

(*i*) Is a competent or effective remedy for sore throat, or that it promotes the appetite.

(*j*) Is sold under the "strongest" guarantee of any medicine, or

(*k*) That the first thing necessary in almost any sickness is to give the system a thorough cleaning out, or

(*l*) That thousands or any specified number of mothers have testified as to what Milks Emulsion has done for their children.

The said The Milks Emulsion Co. further agreed to cease and desist from using the word "Emulsion" or any letters, word or syllable that simulates emulsion in sound or spelling to designate or describe the said preparation as compounded and manufactured prior to May 13, 1940.

The said The Milks Emulsion Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 23, 1940.)

02611. **Booklets, Folders, Formulas, and Health Information—Business Status, Qualities, Price, and Ailments.**—James M. Piwonka, an individual, P. O. Box 333, Station D, Cleveland, Ohio, vendor-advertiser, was engaged in selling booklets, folders, formulas and health information designated Gaining Weight Rapidly, Body-Cleansing Diet System, Guide to Beauty Culture, Nature's Health Food Laxative and Drawsit and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That he is a qualified or licensed health director.

(*b*) That the information in the folios "Gaining Weight Rapidly," "Body-Cleansing Diet System," and "Guide to Beauty Culture" or any of it is a system or will benefit, improve, or aid the health.

(*c*) That the folios "Gaining Weight Rapidly," "Body-Cleansing Diet System," and "Guide to Beauty Culture" sold for $1 and $2 each or any price other than the price at which they were actually sold.

(*d*) That the regimen prescribed in the folio "Gaining Weight Rapidly" is of any therapeutic, remedial, curative, corrective, or restorative value.

(*e*) That the regimen prescribed in the folio "Gaining Weight Rapidly" is a miracle or a miracle of nature.

(*f*) That human ailments, diseases, or old age are caused by acids or wastes.

(*g*) That human ailments, diseases, or old age can be eliminated by home treatment.

(*h*) That the "Body-Cleansing Diet System" is of any therapeutic, remedial, curative, corrective, or restorative value.

(*i*) That the information, formulæ, and instructions in the folio "Guide to Beauty Culture" are secret or valuable.

(*j*) That any one of the formulæ in the folio "Guide to Beauty Culture" is worth more than the price of the folio.

(*k*) That the health is ruined by constipation.

(*l*) That frequent headaches, coated tongue, bad taste, bad temper, nerves, irascibility, weariness, tendency to despondency, stomach trouble, piles, lassitude, or kindred ills are necessarily indicative of constipation.

(*m*) That the phrases "internal cleanliness" and "clean blood" are of therapeutic or scientific significance or that they represent conditions essential or contributing to good health.

(*n*) That "Nature's Health Food Laxative" is of any therapeutic, remedial, curative, corrective, or restorative value in excess of a mild laxative to temporarily aid evacuation in the intestine.

(*o*) That "Drawsit" is a competent remedy or effective treatment for boils, old running sores, abscesses, corns, scaly skin, chronic ulcers, or other ailments, diseases, or disorders.

(*p*) That the formula for "Drawsit" was to be sold for $1 or any other price in excess of the price at which it was actually sold.

The said James M. Piwonka agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 25, 1940.)

02612. **Shoes—Qualities, Results, Tests, and Personnel.**—Musebeck Shoe Co., a corporation, Danville, Ill., vendor-advertiser, was engaged in

selling a line of shoes recommended for the correction of weak and misshapen feet, designated "Health Spot Shoes" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Health Spot Shoes—

1. Will straighten up weak feet and hold them straight, unless it is clearly and plainly stated in direct connection therewith that such straightening and holding is only temporary and obtains only while the shoes are being worn.
2. Will relieve aches and pains throughout the entire body, unless it is clearly and plainly stated in direct connection therewith that such claim only refers to aches or pains that are due to, or caused by, weak feet, and that such relief as may result is only temporary and obtains while the shoes are being worn.
3. Will restore body balance, unless it is clearly and plainly stated in direct connection therewith that such claim only refers to body unbalance that is due to, or caused by, weak feet, and obtains only while the shoes are being worn.
4. Will relieve the wearer of foot trouble, or enable the wearer to get rid of foot trouble, sick, sore, tired, or aching feet.
5. Are perfect foot health and comfort insurance.
6. Will keep the feet healthy; or
7. Will control the bones of the feet.

(*b*) That the exclusive patented features of Health Spot Shoes are foot comfort insurance.

(*c*) That Health Spot Shoes—

1. Keep the whole body in good posture; or
2. Are superior as a foundation for balancing and supporting body weight in the feet, or that either of these facts or these statements are proven by rigid tests made by the Institute of Postural Mechanics.

(*d*) That all Health Spot Shoes are fitted by people who have taken a course in scientific shoe fitting.

The said Museback Shoe Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 25, 1940.)

02613. **Medicinal Preparation—Qualities, History, Results, Laboratories, and Nature.**—E. A. Hartman, Ezra Hartman, and R. J. Jeffries, copartners doing business under the trade name of Neah Laboratories, 326 East Wayne Street, Fort Wayne, Ind., vendor-advertisers, were engaged in selling a medicinal preparation designated Sinus-Aid and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That said preparation or the fumes thereof is a competent treatment or effective remedy for sinus infections, colds, asthma, hay fever, or other disturbances of the respiratory tract.
2. That said preparation affords a new or effective method of treating sinus infections, colds, asthma, hay fever, or other disturbances of the respiratory tract.
3. That said preparation attacks diseases of the respiratory tract directly.
4. That the warm fumes of said preparation reach the diseased tissues.

5. That the fumes of said preparation are effective without carrying the infection to other parts of the respiratory tract, or avoid the spreading of the disease or disturbance.

From using the word laboratory or laboratories or any abbreviation, syllable, or letters that simulate or imitate in appearance, sound, spelling, or meaning of the words "laboratory" or "laboratories" as any part of their trade name, and from representing in any manner or by any means that they own and operate or control and operate a laboratory.

From using the word sinus or any abbreviation, syllable, or letters that simulate or imitate in meaning, appearance, spelling, or sound the said word or its true meaning as a part of the trade name of any medicinal preparation of substantially the same composition or possessing substantially the same properties as the medicinal preparation herein designated Sinus-Aid.

The said E. A. Hartman, Ezra Hartman, and R. J. Jeffries further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 25, 1940.)

02614. **Musical Instrument—Qualities and Results.**—The Tonette Co., a corporation, and Chicago Musical Instrument Co., a corporation, both of 30 East Adams Street, Chicago, Ill., vendor-advertisers, were engaged in selling a musical instrument designated "Tonette" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That anyone, though unable to read musical notes, and without regard to knowledge of music, musical training, or aptitude for music, can in just a few minutes' time learn to play on the Tonette, song hits, classics or "old favorites," or that anyone, without regard to knowledge of music, musical training or aptitude for music, can learn to play the Tonette in a few minutes, and from publishing or causing to be published any statements, claims or representations which in any manner misrepresent the length of time, the amount of practice or the instruction required to enable one to play the Tonette, or which in any way exaggerate the ease with which one can learn to play the Tonette, or the degree of musical proficiency that can be attained with said instrument and with the instructions accompanying said instrument.

The said the Tonette Co. and the said Chicago Musical Instrument Co., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 26, 1940.)

02615. **Obesity Treatment—Safety, Qualities, and Results.**—Medical Tea Co. of California, a corporation, 823 East Seventeenth Street, Los Angeles, Calif., vendor-advertiser, was engaged in selling an obesity treatment designated Sylphide (or Cleo) Tea and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That it is safe or harmless to use the said preparation for weight reducing purposes, except when such use is moderate or employed over short periods of time.

(*b*) That said preparation provides an effective method of reducing body weight or otherwise representing that the preparation is a competent or effective remedy or treatment for obesity, except to the extent that it may reduce weights by increased elimination.

(*c*) That said preparation or the buckthorn content thereof has any effect upon liver function.

(*d*) That said preparation or the plantain content thereof has any effect upon the thyroid gland.

(*e*) That said preparation or the wild potato content thereof has any effect upon body glands.

(*f*) That said preparation or the red clover blossom content thereof tones body glands.

(*g*) That said preparation or the water cress content thereof prevents the accumulation of additional body weight.

(*h*) That said preparation or the cut weed content thereof brings about proper balance of red and white blood corpuscles or has any effect upon blood corpuscles.

(*i*) That said preparation or the elder flower or greenwood contents thereof creates a proper distribution of water in the body.

(*j*) That said preparation or the parsley content thereof stimulates uric functions or causes excess water to be flushed away through the kidneys or the colon.

(*k*) That said preparation or the white birch content thereof enlivens or has any effect upon the gall; activates or has any effect upon the kidneys.

The said Medical Tea Co. of California further agreed not to publish or cause to be published any testimonial containing any representation contrary to the aforegoing agreement. (July 26, 1940.)

02616. **Remedies for Corns, Callouses, and Bunions—Scientific or Relevant Facts, Qualities, Nature, and Laboratories.**—Henry J. Pinkston, an individual trading as The Henry J. Pinkston Laboratories and The Pinkston Laboratories, 54 West Randolph Street, Chicago, Ill., vendor-advertiser, was engaged in selling alleged remedies for corns, callouses and bunions, designated Pinkston's Corn and Callous Remover and Pinkston's Bunion Reducer and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said preparation—

(*a*) Is one of the greatest discoveries of modern times or that it is a discovery at all.

(*b*) Will remove corns or callouses by the roots, or that corns or callouses have roots.

It is further agreed by Henry J. Pinkston, that in connection with the dissemination of advertising by the means and in the manner above set out in connection with the sale of a preparation now designated Pinkston's Bunion Reducer, or any other preparation of substantially the same composition or possessing substantially the same properties, whether sold under that name or any other name, he will forthwith cease and desist from representing, directly or by implication, that said preparation—

(*c*) Will cure new bunions or reduce old ones, or stop pain due to bunions at once, or at all, or that it will do more than temporarily relieve the pain caused by inflammation of the skin over the bunion.

It is further agreed that the said Henry J. Pinkston will forthwith cease and desist from the use, as any part of the trade name for said product, of the word "Reducer," or any word, abbreviation, syllable, or letters that by appearance, sound, or spelling, simulates or imitates the word "Reducer," and that he will not by any means or in any manner represent, directly or by implication, that the said preparation will reduce bunions.

It is further agreed that the said Henry J. Pinkston will forthwith cease and desist from the use of the word "Laboratory," or "Laboratories," or any abbreviation, syllable, or letters that by appearance, sound, or spelling simulates or imitates the word "Laboratory" as a part of his trade name, and also from making any representation in any form by any means that states or implies that he owns and operates or controls and operates a laboratory.

The said Henry J. Pinkston further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (July 30, 1940.)

02617. **Rice—Comparative Merits, Composition, and Qualities.**—James & Harwell, Inc., a corporation, 1513 Chapman Street, Houston, Tex., vendor-advertiser, was engaged in selling rice, designated Uncle Ben's Rice and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That most nutriment has been removed from polished rice or that polished rice is without substantial food value.

(*b*) That polished rice has been deprived of its healthful, or energy-giving properties.

(*c*) That all essential nutriment is preserved in Uncle Ben's Rice.

(*d*) By comparison or otherwise that the nutritional value of Uncle Ben's Rice is far superior to that of polished rice.

(*e*) That Uncle Ben's Rice as a principal item of diet will not cause anemia or malnutrition.

(*f*) That Uncle Ben's Rice contains large quantities of, or is strong in, Vitamin B-1.

(*g*) That the coating on polished rice is injurious to, or has a harmful effect on, the health.

(*h*) That Uncle Ben's Rice is a balanced food or contains all food properties or all necessary food properties.

(*i*) That the food value of Uncle Ben's Rice is practically the same as brown rice.

(*j*) That the nutritive elements of Uncle Ben's Rice are more nearly those of brown rice than polished rice.

(*k*) That any of the properties of Uncle Ben's Rice are very nearly those of the natural grain.

(*l*) That Uncle Ben's Rice increases the strength or energy.

(*m*) That due to "Natural Milling" Uncle Ben's Rice has more nourishment.

The said James & Harwell, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 5, 1940.)

02618. **Rat Killing Preparation—Qualities, Results, and Comparative Merits.**—The K-R-O Co., a corporation, Springfield, Ohio, vendor-advertiser, was engaged in selling a rat killing preparation designated K-R-O (Kills Rats Only), and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said preparation is a sure killer and will make rats go outside to die unless their burrows or habitats are outside of the homes and other buildings, or that it will drive rats out of homes or other buildings once and for all, or that it will protect homes, or farm buildings, or livestock, or supplies from damage by rats, or that K-R-O is the most effective rat killer on the market.

The said The K-R-O Co. agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Aug. 1, 1940.)

02619. **Stoves—Qualities, History, Indorsements or Approval, Results, Opportunities, Limited Offers, and Earnings or Profits.**—The Akron Lamp & Mfg. Co., a corporation, 600 South High Street, Akron, Ohio, vendor-advertiser, was engaged in selling stoves using gasoline for fuel designated "Diamond Radiant Heaters," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said heater burns 96 percent air, or that the liquid transforms ordinary air into heat, or that it burns air at all, or that it burns only 4 percent fuel.

(*b*) That the heat produced by said heater is a new kind of heat, or that it is hotter or cheaper than coal heat, or that it is the kind of heat that experts recommend.

(*c*) That the heat produced by said heater is almost like from the sun itself, or that it is a sunlike healthy heat, or that it is a heat just like the sun's rays, or that it produces infra-red or ultra-violet rays, or the same penetrating or health-giving rays as are produced by the sun.

(*d*) That said heater will relieve lumbago, rheumatism, inflamed muscles or ligaments, or that it is a competent treatment for colds, flu or pneumonia, or that its healing qualities are used by medical science for the relief or treatment of any of said disorders, or that it has healing qualities, or that it is valuable for checking disease or for the promotion of health, or that it will give unequalled healthful heat or that it replaces furnaces.

(*e*) That the method of heating provided by said heater is endorsed by physicians or leading health authorities.

(*f*) That its sales plan offers the advantages of a steady or independent business, or that the investment of a single penny is not required.

(*g*) That any offer made in connection with the sale of its product is for a limited time unless a definite time limit is fixed and adhered to and unless orders are refused after the expiration of such time, or that the price at which the said heater is offered is a special wholesale price.

The Akron Lamp & Mfg. Co. further agreed to cease and desist from representing directly or by implication by the use of such words as "up to," "as high as," or any other words or terms of like import, or by any means or in any manner, 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 average earnings 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 Akron Lamp & Mfg. Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 2, 1940.)

02620. **Divining Instrument—Qualities.**—Findley Haile, an individual, trading and doing business as Treasure Research, Redlands, Calif., vendor-advertiser, was engaged in selling an instrument for locating gold, gold ore, silver, silver ore, other veins of ore and buried treasure, now designated "Aztec Mercuroid Earth Needle," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That the use of said instrument will enable one to locate gold, gold ore, silver, silver ore, other veins of ore, or buried treasure.

The said Findley Haile agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 7, 1940.)

02621. **Massage Device—Qualities and Results.**—H. S. Bird, an individual doing business under the trade name Anthony Brice, 179 Sidney Street, Cambridge, Mass., vendor-advertiser, was engaged in selling a moulded rubber vacuum cup designated "Vac-U-Massage Cup", "Vacu-Bell No. 1" and "Vacu-Bell No. 2," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said device enables one to massage all parts of the scalp, or otherwise representing that a vacuum suction may be obtained on all parts of the scalp; or

(*b*) That said device prevents or aids in the prevention of baldness, stops the spread of baldness or stimulates hair growth, or otherwise representing that said device is a competent remedy or effective treatment for baldness or falling hair; or

(*c*) That said device makes the hair roots or scalp healthy, or that it has any therapeutic value in excess of a massage medium resulting in increased cutaneous circulation; or

(*d*) That said device removes or aids in the removal of surplus fat from the body or that said device massages fat from areas on abdomen, thighs, or other parts of the body.

The said H. S. Bird further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 8, 1940.)

02622. **Baby Chicks—Replacement Guarantee.**—J. M. Atkinson, an individual trading as El Dorado Hatchery, El Dorado Springs, Mo.. 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:

That chicks which are lost within 14 days after delivery will be replaced without cost to the purchaser when such is not the fact. (Aug. 9, 1940.)

02623. **Hair Grower and Hair Dressing—Composition, Qualities, and Nature.**—The Peerless Products Co., a corporation, 96 Atlantic Street, Jersey City, N. J., vendor-advertiser, was engaged in selling a line of hair dressings designated Nu-Nile Hair Dressing, the products composing the line being designated Double-Strength Tar Hair Grower and Pressing Oil Glossine and Special Hair Grower, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That said preparation is medicated or contains a significant amount of tar, or that it will grow hair or cause hair to grow or aid in the growth of hair in any way, or that it is a scalp food or that it will provide or contribute any food or nourishment to the scalp, or that it is an effective or competent treatment for dandruff or the removal of dandruff, or to stop or reduce falling hair, or for the prevention or correction of thin temples, or for eczema of the scalp or eczema of any other kind or type.

The Peerless Products Co. further agreed that in connection with the dissemination of advertising by the means and in the manner above set out in connection with the sale of its preparation now designated Nu-Nile Pressing Oil Glossine and Special Hair Grower or any other preparation of substantially the same composition or possessing substantially the same properties whether sold under that name or any other name, it will forthwith cease and desist from representing directly or by implication that said preparation has any special value as a hair grower or that it will grow hair or cause hair to grow or aid the growth of hair in any way, or that it will keep the hair soft, smooth, or glossy, or do other than impart an oily substance to the surface of the hair shafts to temporarily make them feel soft and appear smooth and glossy.

The Peerless Products Co. further agreed to forthwith cease and desist from using the word "grower" or any simulation or abbreviation thereof to designate or describe either of the aforementioned preparations that states or implies by spelling, sound, or meaning that such a preparation is a hair grower.

The Peerless Products Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 15, 1940.)

02624. **Medicinal Preparation—Qualities, Results, and Nature.**—W. J. O'Neil, an individual operating under the trade names of Owl Stimulators Co., O. S. T. Co., and Owl Stimular Tablet Co., 120 Boylston Street, Boston, Mass., vendor-advertiser, was engaged in selling a drug designated Owl Stimulators (variously called Owl Stimulars), and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That such a product stimulates pep, vigor, or vitality, or that it has any tonic, nutritive, or stimulating properties.

(*b*) That Owl Stimulators is a systemic tonic, or will rid the system of fetid matter, or by any other terminology that it has any effect upon the system as a whole, or upon any part of the body except the intestinal tract.

(*c*) That such a product will assure good health, or the return of normal strength, energy, stamina, or nerve force.

(*d*) That this product is a special preparation, or that it is a remedy, generally or for any specified condition or disease.

The said W. J. O'Neil further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 21, 1940.)

02625. **Hair Tonic—Qualities and Nature.**—Henry Charambura, an individual, trading as Silver Pine Manufacturing Co., 45 Astor Place, New York, N. Y., vendor-advertiser, was engaged in selling a cosmetic designated "Silver Pine Hair Tonic," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Silver Pine Hair Tonic retards or stops falling hair or stops the loss of hair.

(*b*) That Silver Pine Hair Tonic develops healthy scalps or keeps scalps healthy or revitalizes the scalp.

(*c*) That Silver Pine Hair Tonic grows hair or eliminates or destroys dandruff.

The said Henry Charambura further agreed to cease and desist from using the word "Tonic" alone or in connection with any other word or words to designate, describe, or refer to any preparation which does not contain an ingredient or ingredients capable of stimulating scalp circulation by means of a rubefacient action.

The said Henry Charambura further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 21, 1940.)

02626. **Hog Preparation—Nature, Qualities, Price, and Guarantee.**—May Seed and Nursery Co., a corporation, Shenandoah, Iowa, vendor-advertiser, was engaged in selling a medicinal preparation for the treat-

ment and prevention of various diseases of swine, said preparation being designated as Miller's Liquid Hog Medicine, 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 a tonic or a conditioner, or is an effective treatment for swine in a run-down condition.

(*b*) That said preparation can be relied upon to increase the profits of swine raisers.

(*c*) That the sample quantity of said preparation, costing 25 cents, is regularly worth $1, or regularly sells for any amount greater than is actually the case.

(*d*) That said preparation is a competent and effective treatment for or will serve to prevent common hog diseases generally, or is a competent and effective treatment for or will serve to prevent necrotic enteritis, or worms, or swine influenza, or intestinal infection, or scours, or irritation due to worms, or is of therapeutic value for or will serve to prevent any disease or disorder in swine, when such is not the case.

(*e*) That satisfaction is guaranteed or that said preparation is guaranteed to combat hog troubles or that said preparation is guaranteed without at the same time clearly indicating the nature and scope of the guarantee.

The said May Seed and Nursery Co., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 22, 1940.)

02627. **Hog Preparation—Nature, Qualities, Price, and Guarantee.**—Miller Chemical Co., a corporation, Fifteenth and California Streets, Omaha, Nebr., vendor-advertiser, was engaged in selling a medicinal preparation for the treatment and prevention of various diseases of swine, designated Miller's Liquid Hog Medicine, 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 a tonic or a conditioner, or is an effective treatment for swine in a run-down condition.

(*b*) That said preparation can be relied upon to increase the profits of swine raisers.

(*c*) That it has no competition in the sale of said preparation, or that the sample quantity of said preparation costing 25 cents is regularly worth $1, or regularly sells for any amount greater than is actually the case.

(*d*) That said preparation is a competent and effective treatment for or will serve to prevent hog diseases generally, or is a competent and effective treatment for or will serve to prevent intestinal disturbances, or mixed infection, or scours, or thumps, or necrotic enteritis, or intestinal infection, or irritation due to worms, or swine influenza or worms, or is of therapeutic value for or will serve to prevent any disease or disorder in swine, when such is not the case.

(*e*) That results are guaranteed, or that said medicine is guaranteed to combat hog troubles, or that said medicine is guaranteed without at the same time indicating the nature and scope of the guarantee.

The said Miller Chemical Co., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 22, 1940.)

02628. **Soap—Comparative Merits and Qualities.**—The Procter and Gamble Co., a corporation, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a certain soap designated Ivory Soap, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That any test as to the mildness of Ivory Soap as compared with any competitively sold soaps shows that Ivory Soap is the purer soap or otherwise representing that the mildness of a soap is indicative of its purity.

The Procter and Gamble Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Aug. 21, 1940.)

02629. **Nursery Stock—Employment, Opportunities, Institute, Earnings, or Profits, Nursery, Etc.**—Knight & Bostwick, a corporation, Newark, N. Y., vendor-advertiser, was engaged in selling nursery stock, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That it has any position to offer such as local manager, district superintendent, field supervisor, trainer, or representative when such is not the fact; or

(*b*) That it sends pay checks regularly or otherwise to solicitors, agents, or salesmen except in payment of commissions on orders sent in, when such is not the fact; or

(*c*) That it is offering agents or solicitors any established nursery or landscape business for sale or management, or that it starts men in an established nursery or landscape business for themselves unless clearly indicated that the business is only that of taking orders for nursery and landscape stock; or

(*d*) That the booklets, pamphlets, or instructions supplied by their author are home study courses, or that the person supplying them to it is an institute, or conducting an institute, or is in any way connected with any school, college, or institute; or

(*e*) That its plan for securing the names of prospective buyers eliminates house-to-house or door-to-door canvassing; or

(*f*) That group profit leaders assure $1, or any other amount per hour, week, or month; or that any prospect-getting plan or other plan, service, help, or cooperation, produces all the business an order solicitor can handle, or that the earnings are unlimited, or sure every week the year around; or

(*g*) 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

(*h*) 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

(*i*) That the minimum amount which prospective agents, salesmen, distributors, dealers, or other representatives can make in profits or earnings within any specified period of time is any 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; or

(*j*) That it is a nursery or nurseryman unless and until it owns, controls, or operates a place where the trees, shrubs, bushes, plants, and bulbs and other nursery stock which it sells and offers for sale, are grown.

Said Knight & Bostwick further agreed not to advertise amounts or rates of earnings of any salesman which are in fact unusual, exceptional and not even approximately representative of, or fairly comparable with the amount of earnings actually made by a substantial number of its salesmen under like circumstances, in such manner or form as to import or imply that such earnings are representative, usual, and the amount of earnings which any prospective agents may reasonably expect to earn.

Knight & Bostwick 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.

Knight & Bostwick 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 Knight & Bostwick further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 3, 1940.)

02630. **Books on Health and a Breathing Device—Qualities, Results, Comparative Merits, Etc.**—Harold Wells Turner, an individual trading as Health Culture Co., 1133 Broadway, New York, N. Y., vendor-advertiser, was engaged in selling a breathing device designated "The Wilhide Exhaler," certain books, booklets and courses giving information on diet cures and modes of living, and a certain magazine giving information in matters of diet, exercise, and health, 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 "Wilhide Exhaler" will enable one to become healthy.

(*b*) That persons are starved for air, or that they are unable to increase their lung capacity normally.

(c) That a short use of the "Wilhide Exhaler" will make one feel the exhilarating effect of a cleaner blood stream, or that said device has any effect upon the blood stream.

(d) That the "Wilhide Exhaler" is more effective than other known devices for strengthening the lungs, or that said device adds to the power of the voice, or promotes the power of resisting diseases, or improves health.

(e) That the "Wilhide Exhaler" is a competent remedy or an effective treatment for catarrhal affections.

It is further agreed by the said Harold Wells Turner, that in connection with the offering for sale, sale and distribution of certain books, booklets, and courses entitled "Uncooked Foods," "No Animal Food," "Attainment of Efficiency," "The Enlightened Life," "Health for Women," "Catarrh, Colds and Hay Fever," "The No-Breakfast Plan and Fasting Cure," "How to Live Long," "Health in the Home," and "What Shall We Eat to be Healthy," in commerce as defined by the Federal Trade Commission Act, he will forthwith cease and desist from representing directly or by implication:

(f) That the application of heat in the matter of cooking destroys the value of food.

(g) That eating uncooked foods is a diet cure or of any material benefit to health or strength.

(h) That the health of persons has been restored or benefited by the use of uncooked foods as outlined in the book called "Uncooked Foods."

(i) That persons suffering from indigestion, constipation, nervousness, weakness, obesity, headache, or other functional disorders are restored to health or are benefited in any manner by making the changes in their diet suggested in the book called "Uncooked Foods."

(j) That foods unchanged by heat are the best or are materially beneficial for the maintenance of health or vitality.

(k) That many cases of increased strength or vitality have resulted from a strictly vegetarian regime, or that the book called "No Animal Food" contains information which if followed or put into effect enables a person to increase his strength or vitality.

(l) That the book called "The Attainment of Efficiency" is one of the few great books that have been written.

(m) That the book called "The Attainment of Efficiency" is a key to efficient manhood or womanhood, or a long or happy life.

(n) That reading and putting into effect the principles expressed in "The Enlightened Life" will make one physically regenerated, healthy, or will enable one to live a long life.

(o) That reading and putting into effect the principles set forth in "Health for Women" will make women who are negative, nervous, weary, or generally pessimistic, strong, beautiful, happy, attractive, healthy, genial, or of a strong personality, or in any manner representing that said book will enable a woman to become strong, beautiful, happy, attractive, healthy, genial, or acquire a strong personality.

(p) That a woman who regulates her bowels has a clear complexion, a sweet breath, quick, active brains, an even temper, or lives a longer life than she would otherwise.

(*q*) That the methods of Dr. Latson which are indicated in the book entitled "Catarrh, Colds and Hay Fever" are sure.

(*r*) That the book called "Catarrh, Colds and Hay Fever" shows that in the treatment of a cold, patent medicines, or drugs are valueless.

(*s*) That E. H. Dewey, M. D., author of "The No-Breakfast Plan and Fasting Cure" amazed the world with his system of natural healing for acute or chronic ailments.

(*t*) That putting into effect the principles set forth in the book called "The No-Breakfast Plan and Fasting Cure" will enable persons suffering from chronic or acute ailments to overcome them, or to regulate their health.

(*u*) That patent medicines or drugs are experimental, or that they injure the stomach, poison the blood, or contaminate the body, or that when persons recover under drug treatment, it is in spite of it, or that natural methods are better than those methods which make use of drugs.

(*v*) That feeding sick persons causes death, or that fasting sick persons cures them, or that when persons have no appetite, no food should be taken by them.

(*w*) That putting into effect the principles set forth in the book called "The No-Breakfast Plan and Fasting Cure" will give one brighter days, glowing health, better mentality, strength, vim, energy, or happiness, or that it will be a life-saver.

(*x*) That if the principles expressed in "The No-Breakfast Plan and Fasting Cure" are followed, the stomach can be rebuilt or benefited or a sick body can be cured or cleansed.

(*y*) That the application of the principles expressed in the book entitled "The No-Breakfast Plan and Fasting Cure" will give one health or make it unnecessary for one ever to go to a specialist or to a sanitarium for advice or treatment.

(*z*) That "How To Live Long" is an up-to-date book on health.

(*aa*) That modern foods have been deprived of their mineral elements before they are served.

(*bb*) That the book called "Health in the Home" is the best or the most important work ever published for the promotion of the health of women or children.

(*cc*) That thousands of persons, or any other number of persons, have been helped to a new life, or to glowing, vital energy through reading and putting into practice the theories advocated in the book called "What Shall We Eat To Be Healthy?"

The said Harold Wells Turner, trading as Health Culture Co., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 3, 1940.)

02631. **Medicinal Preparations—Comparative Merits, Results, Qualities, Indorsements, or Approval, Etc.**—H. L. Williams, an individual trading as Williams S. L. K. Laboratories, Milwaukee, Wis., was engaged in selling medicinal preparations designated Rux Compound and Williams Formula, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That its alkalizing or salicylating effect is different from old-fashioned or modern salves or liniments, or that it is absorbed by the bloodstream, or that it salicylates the system, or that physicians say it is a proven method of relieving rheumatic pain, or that it is such a proven method or that it acts on congestion of rheumatic pain, or helps flush acids out of the body or kidneys, or that acids accumulate in the kidneys, or that it can or will make or keep the blood alkaline,

or that it is a competent treatment to relieve the suffering from inflamed or aching muscles, or the agony of rheumatic, or neuritic, or neuralgic pain, or that any or every ingredient used in its composition acts directly on pain or the cause of the pain, or

(*b*) That said preparation is an effective diuretic, or can do more than promote the flow of urine as a mild diuretic, or that acids accumulate in the kidneys to cause painful deposits, or that it is a full strength medicine, or that it is recommended by doctors, or that it is unexcelled as an antipyretic, or an analgesic for the relief of pain, or that neuralgic pain is due to toxic conditions, or that stimulation of the kidneys or the liver will relieve it; or

(*c*) That said preparation has any therapeutic value for the relief of pain in excess of a temporary relief from minor pains, and further agreed:

(*d*) That the said preparation will stimulate digestion, or act upon the whole digestive mechanism, or do more than promote the flow of urine as a mild diuretic, or eliminate waste material from the kidneys, or help build up the quality of blood, or increase hemoglobin of the blood, or give relief like several good medicines in one, or that it is an iron tonic, or that it has any therapeutic value in excess of a laxative for the temporary relief of acute constipation, a bitter stomachic, and a very mild and limited diuretic, or that it acts in any other way, or to any greater extent upon the stomach, bowels or kidneys.

The said H. L. Williams further agreed that he will not make any therapeutic claims for any ingredient or ingredients in either of his preparations—Rux Compound or Williams Formula—when such drugs are not contained in his preparations in quantities recognized by science and the medical profession as sufficient to give or contribute significant therapeutic value to the preparations.

The said H. L. Williams further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 4, 1940.)

02632. **Literature on Health and Rejuvenation—Qualities, Guarantee, Etc.**—Uriel Buchanan, an individual, P. O. Box 5327, Chicago, Ill., vendor-advertiser, was engaged in selling literature in the form of printed booklets and mimeographed sheets respectively entitled "Keeping Young" and "Health and Rejuvenation" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That his literature contains instructions pertaining to health, food, and diet which when observed and applied will enable one to regain youth or youthful vitality, ward off old age or prolong life, acquire or keep a youthful body, reactivate or rejuvenate glands, rebuild body cells or aging tissues, renew or energize the organism, strengthen the heart or any other organ, attain or maintain health, acquire strength or energy, clear the blood of impurities, correct abnormal blood pressure or restore normal circulation, restore elasticity to the arteries, improve digestion, correct or keep free of functional troubles, eliminate the conditions that cause constipation, increase power of elimination, or lose or gain weight as desired.

(*b*) That any one by applying the theories expounded in his writings has regained youth or health, or has enjoyed more youthful health, strength, or physical experience.

(*c*) That his literature discloses any secrets, discoveries, or newly discovered principles; that it differs materially from other writings dealing with similar subjects; or that it expounds theories that are supported by informed scientific authority.

The said Uriel Buchanan also agreed:

(*d*) That he will not use the word "guarantee" or "guaranteed" or language of similar meaning in connection with the advertising or sale of his literature, unless clear and unequivocal disclosure is made of exactly what is offered by way of security, for example, refund of purchase price.

The said Uriel Buchanan agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 5, 1940.)

02633. **Poultry and live stock feed—Qualities and results.**—Universal Mills, a corporation, Fort Worth, Tex., vendor-advertiser, was engaged in selling poultry and live stock feed designated Red Chain Feeds and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Red Chain Feeds are superior to all others.

(*b*) That the use of Red Chain Feeds insures profitable egg production, increased egg production, or greater profits.

(*c*) That the use of Red Chain Feeds produces more milk or eggs.

(*d*) That the use of Red Chain Feeds gives greater profits, more uniform development of the flock, increased hatchability of eggs, or faster growing, stronger, or healthier chicks.

(*e*) That the use of Red Chan Nuggets insures uniform development of the flock, uniform, consistent, or sturdy growth or maximum egg production.

(*f*) That the use of Red Chain Nuggets gives earlier maturity, increased egg production, extra profits, better eggs, or better health or condition of the flock.

(*g*) That the use of Red Chain Egg Nuggets gives greater egg production or greater hatchability of eggs or that such results are obtained at less cost.

(*h*) That the use of Red Chain Chick Starter gives definite or sure results, more profits, lower mortality, earlier maturity, or better development.

(*i*) That the use of Red Chain Turkey Starter will produce more number one turkeys.

(*j*) That calves fed Red Chain Calf Meal develop more uniformly or start dry feed eating earlier.

(*k*) That calves fed Lone Star Range Nuggets grow more rapidly, have bigger bone structures or respond more quickly to the market finishing process.

(*l*) That the use of 18 percent Dairy Feed gives peak production at a lesser cost.

The said Universal Mills further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 5, 1940.)

02634. **Food Supplement—Qualities, Ailments, Etc.**—The Battle Creek Food Co., a corporation, Battle Creek, Mich., vendor-advertiser, was engaged in selling a food supplement, designated as Food Ferrin and

agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That its product now designated Food Ferrin or any other product of substantially the same composition or possessing substantially the same properties, whether sold under that name or under any other name or names, is a blood builder, except in cases where an iron deficiency in the blood exists, or is beneficial in cases of a tired, nervous or irritable condition, except when such condition is due to iron deficiency in the blood, or imparts new life, pep, or freedom from nervousness except in cases where lack of pep, new life, or freedom from nervousness is due to iron deficiency in the blood, or is beneficial for lack of coloring in the cheeks except in cases where such condition is due to iron deficiency.

2. That it has ben scientifically determined that the chlorophyl content of Food Ferrin is utilizable in building blood.

3. That in any cases other than extreme anemia, when the hemoglobin is diminished to approximately one-third the normal amount does a blood deficiency in iron cause the tissues to starve or suffocate for lack of oxygen or skins to wither or pale or lose elasticity.

4. That it is known that the majority of women do not get as much iron as their system requires from their ordinary food supply. (Sept. 10, 1940.)

02635. **Cold Ointment—Composition, Qualities, and Nature of Manufacture.**—Brown Drug Co., a corporation, 212 East Tenth Street, Sioux Falls, S. Dak., vendor-advertiser, was engaged in selling a medicinal preparation designated Spencer's Cold Ointment and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That such preparation:
   (*a*) Has a wool fat base; or
   (*b*) Contains double strength or extra strength medication; or
   (*c*) Penetrates the skin; or
   (*d*) Possesses a superiority in effectiveness or in speed of absorption over any cold ointments other than those over which it actually does possess a superiority in effectiveness or in speed of absorption.

2. That such preparation is manufactured by a laboratory.

3. That such preparation is a competent remedy or an effective treatment for colds.

4. That cold ointments made with a mineral jelly base stay on the surface of the skin because of the presence of the mineral jelly.

The said Brown Drug Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 10, 1940.)

02636. **Girdles—Qualities, Results, and Comparative Merits.**—The Ohio Truss Co., a corporation, trading as Ohio Airway Surgical Co., 10 East Ninth Street, Cincinnati, Ohio, vendor-advertiser, was engaged in selling girdles designated Air-Way Girdles and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the action of an Air-Way Girdle upon the wearer is massage-like or otherwise representing that said girdle will massage the body of the wearer.

(*b*) By the use of the designation "Air-Way Reducing Girdle," or by any other means, that wearing an Air-Way Girdle will cause one to reduce, or will effect a definite reduction in weight or measurement, or result in the loss of fatty tissue.

(*c*) That Air-Way Girdles are non-absorbent.

(*d*) That the possibility of skin infection from excreted waste matter absorbed by a girdle is eliminated by wearing an Air-Way Girdle.

(*e*) That Air-Way Girdles are the only girdles having none of the objectionable features of rubber girdles.

(*f*) That Air-Way Girdles are the only girdles which may be worn next to the body with complete comfort.

(*g*) That the material used in Air-Way Girdles shrinks with wearing or laundering.

The said The Ohio Truss Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 13, 1940.)

02637. **Medicinal Preparation—Ailments and Qualities.**—W. T. Hanson Co., a corporation, 31 Lafayette Street, Schenectady, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Dr. Williams Pink Pills and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That a low blood count is due only to a red corpuscle deficiency or that pimply skin indicates an iron deficiency or that the use of Dr. Williams Pink Pills will clear the skin.

(*b*) That Dr. Williams Pink Pills build blood or aid breathing or that Dr. Williams Pink Pills will restore to normal weight those who are underweight.

(*c*) That Dr. Williams Pink Pills are a competent treatment or effective remedy for fatigue or "fatigue anemia," or that gray hair is a symptom of iron deficiency or that changes occur in the blood cells after the age of forty which impair the function of body organs.

(*d*) That the use of Dr. Williams Pink Pills will enable every gland, organ, or muscle of the body to function better or that the use of Dr. Williams Pink Pills will enable one to have ruby lips or a colorful complexion.

(*e*) That the use of Dr. Williams Pink Pills renders one less susceptible to colds or diseases or that Dr. Williams Pink Pills will increase resistance to colds or illnesses.

(*f*) That Dr. Williams Pink Pills are a competent treatment or effective remedy for those affections caused by the menopause or puberty.

The said W. T. Hanson Co., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 17, 1940.)

02638. **Electro-therapeutic Device—New, Indorsement or Approval, Qualities, Guarantee, Manufacturer, and Nature.**—Unico Products, Inc., a corporation, 3932 Field Avenue, Detroit, Mich., vendor-advertiser, was engaged in selling an electro-therapeutic device recommended for numerous conditions and ailments of the human body, such device being designated Electro-Health Activator and the New Improved Activator

and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said device is new in principle or employs a new kind or a new type of therapeutic treatment.

(*b*) That said device has been approved by the medical profession as a whole, or that doctors of medicine use or approve said device when such is not the case, or from making any representation which in any way exaggerates the extent to which said device is used or approved by members of the medical profession.

(*c*) That said device will benefit everyone over 40, or may be expected to be of benefit to any number of persons greater than is actually the case.

(*d*) That said device will have a rejuvenating or general tonic effect, or will strengthen the system, or will act as a tonic for or will strengthen the nerves or possesses healing properties, or will cause a regeneration of wasted tissues or of wasted muscles, or will have a stimulating effect on all the vital organs of the body.

(*e*) That said device will for the first time enable persons to use electro-therapy at home.

(*f*) That said device, is guaranteed, without at the same time clearly indicating the nature and scope of the guarantee and without also indicating that the guarantee does not cover detachable parts.

(*g*) That said device has any physical therapeutic value except as a possible aid in the temporary relief of chronic nerve pain, where there is no acute inflammation present along the nerve, and, as an adjunctive treatment, in cases where its actual skin stimulative properties are known to be helpful.

It is also agreed by Unico Products, Inc., that, in connection with the offering for sale, sale, and distribution of said device in commerce, as defined by said act, and in connection with the dissemination of advertising by the means and in the manner above set out, it will cease and desist from representing that it manufactures, constructs, or assembles said device, when such is not the fact, and, furthermore, that it will discontinue the use of the name, "Electro-Health Activator" to describe or designate said device, or the use of the word "health" or any other similar term in such manner as to import or imply that said device is "health giving."

The said Unico Products, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 18, 1940.)

02639. **Hair-waving Equipment and Hair Dryer—Comparative Merits, Guarantee, and Qualities.**—Rilling-Arnao Co., a corporation, 607 Fifth Avenue South, Minneapolis, Minn., vendor-advertiser, was engaged in selling hair-waving equipment of the machineless type designated Rilling Koolerwave, and a hair dryer designated Rilling Concentrator and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That a permanent wave given with Rilling Koolerwave equipment starts at the scalp or one-half inch closer, or closer by any definite measurement, than any other method.

(*b*) By any means or in any manner that all methods of permanent waving other than the Rilling Koolerwave injure the hair.

(*c*) That Rilling Koolerwave equipment, or the results represented as attainable by its use, or the features represented as attributable to it are guaranteed unless the true nature and extent of such guarantee are clearly and adequately disclosed.

(*d*) That tests of all hair dryers on the market have demonstrated that the Rilling Concentrator costs less to operate, dries heads at less cost, or dries hair faster than any other hair dryer.

The said Rilling-Arnao Co. agrees not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 24, 1940.)

02640. **Novelty Jewelry—Price, Special Offer, Qualities, Composition, Opportunities, and Free.**—Picture Ring Co., a corporation, Butler Building, Cincinnati, Ohio, vendor-advertiser, was engaged in selling novelty jewelry, designated "Picture Ring," "Portrait Ring," "Photo Gem Ring," "Charm Bracelet," "Portrait Crucifix," "Portrait Tie Clasp," "Fountain Pen," "Portrait Bracelet," "Cross Ring," and "Birthstone Ring" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the regular price or value of any of said products is any amount in excess of the price at which they are regularly sold, or that any price offer is special unless the price is in fact reduced and is maintained only for a definite, advertised period of time, at the expiration of which, acceptances of such offer are refused.

(*b*) That the said products or the pictures applied thereto will last a lifetime or that the latter will never fade, rub, wash, or wear off or are permanently reproduced.

(*c*) That the process by which pictures are applied to these products is secret or special.

(*d*) That its products contain precious jewels, or gems.

(*e*) That the Charm Bracelet advertised and sold by Picture Ring Co. is heavily plated with gold, or has a golden setting or gold design.

(*f*) That the Portrait Crucifix will last for generations, or that it is made of ebony.

(*g*) That the Portrait Tie Clasp is silver or has a silver design.

(*h*) That the Fountain Pen sold by the Picture Ring Co. has a genuine iridium tip point.

(*i*) That the Portrait Bracelet referred to is heavily gold plated.

(*j*) That prospective agents, salesmen, distributors, dealers, or other representatives can make 10 or 20 sales each day, or dozens of sales each day, or any other number of sales within any specified period of time, which are in excess of the average number of sales which have theretofore been consistently made in like periods of time by its active agents, salesmen, distributors, dealers, or other representatives in the ordinary and usual course of business and under normal conditions and circumstances.

The Picture Ring Co. further agreed to cease and desist from 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.

The Picture Ring Co. further agreed to cease and desist from the use of the word "gem" as a part of the trade name for any article not containing a gem or jewel.

The said Picture Ring Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 24, 1940.)

02641. **Hair Preparations—Qualities, Nature, and Lottery.**—Mrs. C. T. Hall, an individual, 4610 Champlain Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling certain hair preparations designated "Palm Beach Hair Grower" and "Palm Beach Pressing Oil" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That by the use of Palm Beach Hair preparations the scalp is made healthy or that the hair regains its vitality; or that new life appears or can be seen in the strands of the hair.

(*b*) That the product heretofore designated Palm Beach Hair Grower is beneficial to the roots of the hair; or that it is a competent treatment or effective remedy for diseased, dandruffed or itchy scalp, or that it heals such conditions.

(*c*) That the product heretofore designated Palm Beach Hair Grower (Double Strength) will make healthy a diseased, dandruffed or itchy scalp; or that to rub or massage the scalp, after its use, will cause hair to grow, or that it will aid or affect the growth of hair.

The said Mrs. C. T. Hall further agreed to cease and desist from using the word "grower" or any other word or words of the same import or meaning, or any letters, word or syllable that simulates "grower" in sound or spelling, on the label of the containers, or as a part of the trade name, of any of said products, or from using the word "grower" in any other manner or means to designate or describe any of the said preparations.

The said Mrs. C. T. Hall further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement.

The said Mrs. C. T. Hall further agreed to cease and desist from advertising, selling or distributing any of her products by any means in which the element of chance, a gift enterprise, or a lottery scheme is involved. (Sept. 26, 1940.)

02642. **Rheumatism Remedy—Nature, Qualities, and History.**—J. H. Dornheggen, an individual, trading as J. H. Dornheggen Medicine Co., 3530–32 Eastern Avenue, Cincinnati, Ohio, vendor-advertiser, was engaged in selling a medicinal preparation recommended for the cure and treatment of rheumatism designated "Peerless Rheumatism Remedy" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) By use of the word "Remedy" or any other word or words of similar import or meaning, in the trade name of said preparation, or in any other manner, that said preparation is a competent remedy or an effective treatment for rheumatism or has any therapeutic value in the treatment thereof in excess of affording temporary relief for the symptoms in cases of rheumatoid arthritis.

(*b*) That said preparation is a competent remedy or an effective treatment for arthritis, neuritis, sciatica, lumbago, neuralgia, or "Rheumatic Pains of the Kidneys"; or has any therapeutic value in the treatment thereof in excess of affording temporary symptomatic relief.

(*c*) That said preparation is a discovery or that it prevents relapses or recurrences of rheumatic pains.

The said J. H. Dornheggen further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 30, 1940.)

02643. **Cosmetic Preparation — Composition, Qualities, and Nature.**—Lucone, Inc., a corporation, 217 Seventh Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a cosmetic preparation designated Lucone Herb Tonic 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 herb tonic or from otherwise representing or implying that it is composed wholly of herbs or from making any other untrue statement regarding its composition.

(*b*) That the product contains no greasy substances.

(*c*) That the product will promote, provide, cause, or assure a healthy or robust or abundant hair growth or from otherwise representing or implying that it will cause hair to grow.

(*d*) That the product will prevent baldness, hair loss, or dandruff.

(*e*) That the product will save the hair or check or end falling or thinning hair or that it will stop hair loss or dandruff.

(*f*) That the product will keep the hair roots active.

(*g*) That the product is of aid in correcting unhealthy scalp conditions or that it nourishes or stimulates the scalp or hair roots.

(*h*) That the product will prevent or avoid or keep the hair free of infection or preserve the scalp.

The said Lucone, Inc., further agreed to cease and desist from using the word "Herb" as a part of the trade name of the product.

The said Lucone, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 30, 1940.)

02644. **Drug Product—Qualities, Manufacturer, and Laboratory.**—Victoria Chemical Co., a corporation, 887 Broad Street, Newark, N. J., vendor-advertiser, was engaged in selling a drug product designated Bilaphen Tablets 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 enable one to say good-bye to a distressed feeling resulting from an upset stomach or that it will be of aid in relieving an upset stomach unless limited to relieving that condition when it is due to constipation.

(*b*) That the product will cause the liver to return to normal functioning or that it will keep the liver functioning normally.

(*c*) That the product will cause normal or natural movements.

(*d*) That it manufactures the product or that it owns, controls, maintains, or operates a laboratory.

The said Victoria Chemical Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Sept. 30, 1940.)

02645. **Finished Photographs—Prices.**—Photo Developing, Inc., a corporation, trading as "Posto-Photo," Front and Walnut Streets, Camden, N. J., advertiser-vendor, was engaged in selling finished photographs produced from exposed, undeveloped film rolls supplied by subscribers and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Misrepresenting directly or by failure to disclose accurately extra charges to be made, the price at which it sells and distributes said finished photographs produced from exposed undeveloped films.

(*b*) Representing that it will sell and distribute finished photographs produced from "any" exposed undeveloped roll of film for 25 cents, when in truth and in fact it charges more for finished photographs produced from certain kinds of rolls of film without plainly and accurately disclosing the amount of the extra charge.

The said Photo Developing, Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 4, 1940.)

02646. **Treatment for Hay Fever, Asthma, and Colds—Qualities, Results, and Professional Approval.**—Harry D. Mayhugh, an individual doing business under the trade name of Nasal Inhaler Co., Walton, Ky., vendor-advertiser, was engaged in selling Mayhugh's Oil Solution and Mayhugh's Nasal Inhaler, a treatment for hay fever, asthma and colds 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 aforesaid preparation and device—

1. Affords a competent treatment or effective remedy for Hay Fever, Rose Fever, Asthma, Colds, or other inhalant ailments.

2. Affords a means of keeping the nostrils free from pollen and dust.
3. Affords permanent or quick relief from Hay Fever, Rose Fever, Asthma, Colds, or other inhalant ailments.
4. Filters the air one breathes.
5. Affords the most satisfactory treatment for Hay Fever, Rose Fever, Asthma, Colds, or other inhalant ailments.
6. Affords freedom from congestions in the head.
7. Assures one daytime relief or restful slumber at night.
8. Assures rest for children as well as adults.

(*b*) That physicians recognize in the Mayhugh Nasal Inhaler a device for properly treating Hay Fever, or other inhalant ailments.

(*c*) That the said inhaler filters the germs from the air inhaled, relieving congestion of the nostrils during the period of a cold.

(*d*) That the said inhaler filters the pollens of flowering plants from the air, purifies the air entering the nostrils, or removes the cause of Hay Fever and Asthma, due to pollen or dust.

(*e*) That the said inhaler serves as a prophylactic against Hay Fever, Rose Fever, Asthma, or inhalant ailments.

(*f*) That the said inhaler is of great importance to those working in factories, laboratories, paint shops, or wherever dust or injurious gases are present.

The said Harry D. Mayhugh further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 4, 1940.)

02647. **Eyeglasses—Savings, Qualities, Guarantee, and Prices.**—Michael M. Egel, an individual trading as Advance Spectacle Co., 537 South Dearborn Street, Chicago, Ill., vendor-advertiser, was engaged in selling eyeglasses and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the savings achieved in purchasing his glasses is any amount or percentage in excess of the actual amount or percentage saved.

(*b*) That his glasses will enable one to read, sew, or see better in every way.

(*c*) That the method used in testing the eyes and in purchasing his glasses is the same as that used by anyone else, or from otherwise representing or implying that his method is the same as all other methods.

(*d*) That he guarantees that the glasses will fit.

(*e*) That the ordinary or regular selling price of the glasses whether sold by him or others is any amount in excess of the actual amount at which they are ordinarily or regularly sold or that the regular or ordinary price at which his glasses are sold is a special price.

The said Michael M. Egel further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 4, 1940.)

02648. **Chewing Gum—Qualities, Composition, Results, and Indorsements or Approval.**—Frank H. Fleer Corp., a corporation, Tenth and Diamond Streets, Philadelphia, Pa., vendor-advertiser, was engaged in selling a certain kind of chewing gum now designated "Fleers Dubble

Bubble Chewing Gum" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That chewing the advertiser's gum will do away with the gray or dingy condition of teeth, or that it will clean them thoroughly.

(*b*) That the advertiser's gum will force its way between or into crevices in teeth that an ordinary tooth brush won't or can't reach.

(*c*) That food particles left between the teeth are the principal cause of bad breath.

(*d*) That chewing the advertiser's gum will remove all the particles of food left between the teeth, or remove entirely any of the causes of bad breath.

(*e*) That chewing the advertiser's gum will rid one of unpleasant breath.

(*f*) That the use of the advertiser's gum will beautify teeth.

(*g*) That merely chewing the advertiser's gum will enable a person to remain or to keep awake or alert during drives.

(*h*) That the advertiser's gum is rich in dextrose or that the dextrose content in the advertiser's gum will—

1. Help relieve a person of fatigue.
2. Give pep or animation.
3. Contributes any appreciable energy to a person.
4. Increase vitality or strength in men, women, and children.

(*i*) That dextrose is nonfattening or that it is the least fattening of all sugars.

(*j*) That chewing the advertiser's gum will provide substantial help in keeping the mouth healthy or will keep teeth clean, or strong.

(*k*) That the chewing of the advertiser's gum is a competent aid or treatment for a great variety of oral disorders or dental diseases or gingivitis, or gingival recession or alveolar atrophy, or acute and chronic Vincent's infection, or periodontoclasia (pyorrhea), or any of them.

(*l*) That the use of the advertiser's gum will be of material benefit in developing well-arranged teeth in Children.

(*m*) That the exercise provided by chewing the advertiser's gum will enable the teeth of boys or girls to grow straight or strong.

(*n*) That the exercise of the facial muscles provided by chewing the advertiser's gum is or constitutes a beauty treatment.

(*o*) That the exercise provided by chewing the advertiser's gum will bring, give, or in any way impart youth to a person's face, features or facial muscles, or that it will keep the facial muscles young.

(*p*) That the use of the advertiser's gum will be of material influence in combating or relaxing tired lines.

(*q*) That the use of the advertiser's gum will be a material factor in promoting oral health, or that the use of the advertiser's gum will have a material effect in obviating the necessity of later dental work.

(*r*) That dentists agree that the detergent action of freely flowing saliva caused by chewing the advertiser's gum or otherwise, materially assists in providing immunity to dental caries.

(*s*) That a reason why any dentist or dentists urge the chewing of the advertiser's gum is that dentists agree that the detergent action of freely flowing saliva caused by chewing the advertiser's gum or otherwise, materially assists in providing immunity to dental caries.

(*t*) That Fleers gum exclusively has been recommended by school teachers or parents or dentists for children.

The said Frank H. Fleer Corp. further agreed not to make any unwarranted claims concerning the relative toughness or elasticity of its gum.

That said Frank H. Fleer Corp. further agreed not to publish or cause to be published any testimonials containing any representation contrary to the foregoing agreement. (Oct. 8, 1940.)

02649. **Tampon—Comparative Merits, Qualities and Indorsements or Approval.**—Tampax, Inc., a corporation, 155 East Forty-fourth Street, New York City, vendor-advertiser, was engaged in selling a tampon designated Tampax and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the pad or napkin methods of menstrual control are unhygienic and make personal cleanliness and daintiness impossible.

(*b*) Through direct association with other claims or otherwise, that there is a consensus among gynecologists to the effect that there is no comparison between Tampax and the external sanitary napkin from a hygienic standpoint.

(*c*) That the pad or napkin methods of menstrual control have become antiquated.

(*d*) That the American Medical Association has examined and accepted Tampax for advertising.

(*e*) That physicians, as a group, have "endorsed" Tampax.

The said Tampax, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 10, 1940.)

02650. **Cosmetic—Qualities, History, Composition and Laboratory.**—Beatrice Mabie, Inc., a corporation, 510 Culver Way, St. Louis, Mo., vendor-advertiser, was engaged in selling a cosmetic designated Beatrice Mabie's Pore Cream and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That such a preparation will clear the skin of blackheads or banish blackheads or by any other terminology that it will remove blackheads permanently or that it has any effect upon blackheads beyond tending to soften temporarily the sebum in the pores.

(*b*) That this product will reduce or contract enlarged pores or that it will cause them to resume their normal size, or that it is a competent treatment for enlarged pores.

(*c*) That this product was created by one of America's five most expensive beauty experts.

(*d*) That the said preparation contains any special ingredients, or that it acts in a way different from all competing products.

(*e*) That a single application of this product will remove dust, dirt or make-up imbedded in pores for days or weeks.

(*f*) That blackheads or enlarged pores are due to faulty diet or to a skin condition requiring daily correction.

Beatrice Mabie, Inc., further agreed to cease and desist from representing, directly or indirectly, that it owns, operates, or controls a laboratory.

The said Beatrice Mabie, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 10, 1940.)

02651. **Medicinal Preparation—Qualities, Results, and Comparative Merits.**—Hannon's Medicines, Inc., a corporation, Brookhaven, Miss., vendor-advertiser, was engaged in selling a medicinal preparation designated Hannon's Emergency Medicine and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation has any value as a treatment for menstrual colic or asthma.

(*b*) That said preparation is a competent remedy or an effective treatment for the croup, coughs, laryngitis, bursitis, itching, or ring worm.

(*c*) That said preparation is a remedy or heals or cures or has any therapeutic value other than that of a local counter-irritant or rubefacient.

(*d*) That said preparation prevents suffering from aches or pains or ends or removes aches or pains.

(*e*) That said preparation affords immediate certain or instant relief from aches or pains or relief from aches or pains within any specified period of time.

(*f*) That said preparation produces heat, has a heat reaction or produces heat waves.

(*g*) That said preparation will not cause a blistering of the skin.

(*h*) That said preparation is a cure for or prevents colds.

(*i*) That said preparation is a means of obtaining health or of maintaining health; and

(*j*) That other products or preparations do not have the same reaction or are not capable of producing the same results as Hannon's Emergency Medicine.

The said Hannon's Medicines, Inc., further agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Oct. 10, 1940.)

02652. **Vitamin Concentrate—Qualities, Ailments, Results, Etc.**—Vitamins Plus, Inc., a corporation, 370 Lexington Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a vitamin concentrate supplement designated Vitamins Plus and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That vitamins are of significance in determining the duration of time hair stays in curl, or make-up remains on the skin surface, or nail polish adheres to the nails.

(*b*) That cloudy or lusterless eyes or lack of whiteness of the teeth are generally, or in the majority of instances, due to a Vitamin A deficiency, or are always symptoms of such a deficiency.

(*c*) That Vitamin A is of value in cases of lowered vitality except where and to the extent that such cases may be due to lack of sufficient Vitamin A, or that

Vitamin A is by itself capable of keeping the skin smooth and clear or is of value in this respect except insofar as and to the extent that it is necessary in maintaining a normal condition of the skin.

(*d*) That Vitamin B will maintain or nourish brain tissue, or will remove lactic acid from the bloodstream and thereby eliminate fatigue, or is of value in cases of constipation or nervous disorders except where and to the extent that such cases may be due to insufficient Vitamin B, or that foods commonly and customarily consumed have but a negligible amount of Vitamin B.

(*e*) That Vitamin C is known to be capable of causing skin to have a radiant glow or is known to be of value in healing skin eruptions and pimples.

(*f*) That Vitamin D is known to be of value in helping to prevent muscular soreness.

(*g*) That Vitamin E is known to be capable of preventing sterility in humans or of promoting mental or physical vigor or a feeling of well being.

(*h*) That Vitamin G is known to be capable of causing hair to become thick or glossy or is known to be capable of aiding digestion, or that said vitamin will prevent skin diseases, or dermatitis, or granulation at the edge of the eyelids, or is of value in cases of anemia or lowered vitality except where and to the extent that these conditions may be known to be due to a Vitamin G deficiency.

(*i*) That, by the use of Vitamins Plus, one may expect to have sparkling eyes, or gleaming or lustrous hair, or a lovely complexion, or that one may become active, or gay, or beautiful, or charming, or live without a "let-up" or "let-down."

(*j*) That the foremost medical authorities completely understand the role vitamins play in human nutrition.

The said Vitamins Plus, Inc., further agreed not to publish or cause to be published any testimonial containing any representations contrary to the foregoing agreement. (Oct. 9, 1940.)

02653. **Medicinal Preparation—History, Qualities, and Results.**—Will T. Warren, Jr., an individual trading as Fentone Medicine Co., Paris, Tenn., vendor-advertiser, was engaged in selling a medicinal preparation designated Fentone Compound 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 a new type or new kind of medicine, or that it constitutes a medical discovery.

(*b*) That said preparation is a competent agent in the relief of flatulence, or in removing excess acids, or in relieving gastric hyperacidity, or in relieving hyperacidity of the kidneys.

(*c*) That said preparation is an effective agent in the treatment of lumbago, liver trouble, kidney trouble, rheumatism, neuritis, high blood pressure, impure blood, or nervousness.

(*d*) That said preparation is a competent diuretic, or will increase the flow of bile from the liver.

(*e*) That said preparation removes impurities in a natural manner, or removes or assists in removing poisons and impurities from the entire system.

(*f*) That the various ingredients present in said preparation are sent to the different organs of the body.

The said Will T. Warren, Jr., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 15, 1940.)

02654. **Food Products—Composition.**—Crescent Macaroni and Cracker Co., a corporation, Davenport, Iowa, vendor-advertiser, was engaged in selling food products designated Crescent Macronets and Crescent Egg L-Bo Macronets and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Crescent Macronets contain all elements essential to life, health, and growth.

(*b*) That Crescent Egg L-Bo Macronets are made with fresh country eggs.

(*c*) That its products contain food value greater than is actually the fact.

The said Crescent Macaroni and Cracker Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 11, 1940.)

02655. **Cosmetics—Qualities, Results, and Composition.**—The George W. Luft Co., a corporation, 34–12 36th Avenue, Long Island City, N. Y., vendor-advertiser, was engaged in selling cosmetic products designated Tangee Lipstick and Tangee Theatrical Lipstick and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Tangee Theatrical Lipstick ends a painted look.

(*b*) That Tangee Theatrical Lipstick cannot make one look painted or that it contains no pigment or paint.

(*c*) That Tangee Theatrical Lipstick was created at the request of America's most prominent actresses.

(*d*) That either of the lipsticks is permanent.

The said The George W. Luft Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 15, 1940.)

02656. **Birth Control Device—Qualities, Results, Comparative Merits, Etc.**—Edwin Rees, an individual doing business as The Health Calendar Co., 2407 Clark Ave., Cleveland, Ohio, vendor-advertiser, was engaged in selling a mechanical device designated Fertility Calendar and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That conception may be completely controlled or partially controlled to any definitely stated percentage by using the Fertility Calendar or any other device designed for the purpose of making calculations necessary to practice the Ogino-Knaus Law of Conception.

(*b*) That the problem of birth control is solved by using the Fertility Calendar, any other similar device, or, by practicing the Ogino Knaus Law of Conception.

(*c*) That physicians are either unconscientious or disreputable by reason of having prescribed the use of methods of birth control other than the Ogino Knaus Law of Conception method—including the use of drugs or devices such as suppositories, jellies, or rubber goods.

(*d*) That the use of methods of birth control other than the Ogino-Knaus Law of Conception—including the use of drugs or devices such as suppositories, jellies, or rubber goods—upon prescription of competent physicians in most cases and without substantial exceptions result in pelvic infections, cancer, glandular disturbances, congestive troubles of the reproductive organs, menstrual disorders, mental distress, sterility, nervous breakdowns, or any other disorders serious enough to require heavy expenditures for medical treatment or hospitalization, or which result finally, in permanently ruined health.

(*e*) That the Fertility Calendar, as compared with other devices designed for the same or similar purpose, is superior in the following respects: It applies to menstrual cycles of any length from 21 to 36 days; it applies to menstrual cycles of irregular length up to variations of 10 days; it tells the fertile and sterile days without any figuring; it is adjustable to months of any length, including the 29-day month of February in Leap Year; it requires only three simple moves to indicate the fertile and sterile days in any given case; it affords the positive convenience of being used always in an upright position; or, that none of the important figures or dates involved during a calculation are ever covered up.

The said Edwin Rees agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 18, 1940.)

02657. **Hair Preparation—Results, Qualities, History, and Earnings or Profits.**—R. H. Powell, H. G. Taylor, W. M. Russell, C. M. Haygood, and Howard Pill, copartners, trading as Peanut Products Co., Tuskegee, Ala., vendor-advertiser, were engaged in selling a hair preparation designated Peano-Oil and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

1. That the use of Peano-Oil will—
   (*a*) Result in healthy hair.
   (*b*) Restore the natural oil to the hair.
   (*c*) Prevent hair from falling out or becoming brittle.
   (*d*) Restore the natural sheen or luster to the hair.
   (*e*) Prevent baldness.
2. That Peano-Oil penetrates to the roots of the hair or affords nourishment to the scalp.
3. That Peano-Oil is the discovery of an eminent scientist.
4. That anything contained in Peano-Oil will grow hair.
5. That salesmen of Peano-Oil earn any profit in excess of the amount that is actually earned by such salesmen.

The said R. H. Powell, H. G. Taylor, W. M. Russell, Dave Randall, C. M. Haygood, and Howard Pill further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 22, 1940.)

02658. **Jewelry—Imported, Prices, Commission Approval, Free Trial Offer, Etc.**—Finlay Straus, Inc., a corporation, trading as L. W. Sweet, 25 West Fourteenth Street, New York City, vendor-advertiser, was engaged in selling jewelry and agreed, in connection with the dis-

semination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That all of its diamonds are imported direct.

(*b*) That it has definite information to the effect that certain of its articles of merchandise would cost more than the prices quoted if bought from one of its competitors.

(*c*) That the sales price asked for certain of its articles of merchandise is less than the regular or ordinary price asked for such articles.

(*d*) That the person signing the affidavit of perfection is a disinterested party.

(*e*) That the Federal Trade Commission's rulings alone constitute any assurance or protection to the purchaser with regard to the quality of any of the merchandise sold or offered for sale by Finlay Straus, Inc.

(*f*) That any offer is a free trial offer unless the article is delivered to the prospective purchaser without requiring the payment of a deposit and the additional expense of returning the merchandise. (Oct. 22, 1940.)

02659. **Medicinal Preparation—Qualities, Results, and Nature.**—Maria Ofria, an individual operating under the trade name of Philip Ofria, 1158 Fifty-sixth Street, Brooklyn, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated Ofria (variously known as L'Unguento Ofria, Ofria Pile Remedy and Ofria Ointment) and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That this preparation will cure or dry up piles, pruritus, festering sores, or fistulae, or that it is a healing ointment, or that it affords lasting relief, or that it will enable one to get rid of piles.

Maria Ofria further agreed to cease and desist from the use of the word "Remedy" in the trade name for this product or any other preparation of the same or similar composition, or from otherwise representing, importing or implying that it is a competent remedy for piles, or for pruritus, festering sores, or fistulae.

The said Maria Ofria further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 22, 1940.)

02660. **Food Flavoring, Medicinal Preparations, Spices, Cosmetics, and Food Products—Nature, Composition, and Laboratories.**—Ideal Laboratories, Inc., a corporation, Waxahachie, Tex., vendor-advertiser, was engaged in selling food flavorings, medicinal preparations, spices, cosmetics, and food products designated Ideal Products and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That its products are extracts when such products are not composed of genuine ingredients suspended in ethyl alcohol.

The said Ideal Laboratories, Inc., further agreed to forthwith cease and desist from representing by the use of the word "Laboratories" or

"Laboratory" or any abbreviation thereof, as part of its trade name, or by any other means, that it maintains, operates, or controls a laboratory.

The said Ideal Laboratories, Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 22, 1940.)

02661. **Drug—Qualities, Results, Indorsement or Approval, Etc.**—Vapo-Cresolene Co., a corporation, Chatham, N. J., vendor-advertiser, was engaged in selling a drug designated Vapo-Cresolene and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That such product is a "remedy' or by any other terminology, that it is a cure or will cure any disease or condition, or that it is "healing."

(*b*) That such product or the vapor inhalation treatment represented thereby is favored by medical opinion today, is favored more than formerly, is now recognized as the most direct method of treating nasal and bronchial membrane, reaches all such parts, avoids unnecessary dosing, or thereby saves the stomach.

(*c*) That such product will achieve any specified results in 48 hours or any other given period of time.

(*d*) That the administration of Vapo-Cresolene constitutes a competent treatment or an effective remedy for colds.

(*e*) That such product is a competent treatment or an effective remedy for spasmodic or ordinary croup, whooping cough, "children's diseases," pneumonia or bronchial pneumonia, "chest complaints," influenza or deep chest colds.

(*f*) That the effect of Vapo-Cresolene is more prolonged than that of medicated steam inhalations employed for the same purpose.

(*g*) That Vapo-Cresolene is the quickest and easiest way to relieve nose and throat congestion.

(*h*) That Vapo-Cresolene is antiseptic or will overcome lesions, or is germicidal, or will render the air of a room germicidal, or that laboratory tests demonstrate germicidal efficiency of Vapo-Cresolene under conditions of use, or that it counteracts infection or avoids serious complications.

(*i*) That Vapo-Cresoline insures sleep; or that it will have any effect upon promoting sleep except to the extent that it relieves coughing; that Vapo-Cresolene prevents complications, or causes diseases to run a shorter course.

(*j*) That employees of gas works are free from bronchial troubles.

The Vapo-Cresolene Co. further agreed to cease and desist, in connection with the sale of Vapo-Cresolene or any other preparation of the same or substantially the same composition, from making any statement which represents, directly or by implication, that Vapo-Cresolene is a competent remedy or an effective treatment for bronchitis or is of any therapeutic value in the treatment thereof in excess of affording temporary relief to the membranes of the mucous lining of the bronchial tree in cases of bronchitis due to colds.

The Vapo-Cresolene Co. further agreed to cease and desist from representing or implying, by means of general statements relating to asthma, or otherwise, that Vapo-Cresolene, or any other prepara-

tion of similar composition, is of any benefit in the treatment of all types of asthma, or, by failure properly and clearly to explain and limit its claims, that the product will be effective in the treatment of asthma due to allergic or cardiorenal conditions, or that it affords the greatest relief from asthma available by the use of any product.

The said Vapo-Cresolene Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 23, 1940.)

02662. **Coal Saver—Savings, Qualities, Results, Guaranteed, Opportunities, Etc.**—Fred B. Peake and William H. Roose, copartners, doing business under the trade name of National Distributors, 1205 West Market Street, Louisville, Ky., vendor-advertiser, was engaged in selling a product designated "Economy Coal-Saver" for the treatment of coal which allegedly causes the production of better results and a saving in quantity and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) Will save coal up to one-third, or in any proportion, or that 200 percent, or any definite percentage in profit would result from its use; or that a 60 cent box or any amount thereof will save a ton of coal or any amount of coal.

(*b*) Is an effective soot destroyer or smoke reducer.

(*c*) Creates oxygen or a steadier or more even heat.

(*d*) Makes coal burn better, last longer, produce more heat, or leave less ash.

(*e*) Helps to burn the carbon or preserve the heating element in coal.

(*f*) Aids in burning gases, purifying the air, or reducing evaporation.

(*g*) Prevents odors or gases or saves labor.

Fred B. Peake and William H. Roose further agreed to cease and desist from representing that any results claimed are guaranteed or that Economy Coal-Saver is the newest or biggest money making specialty ever offered sales people.

The said Fred B. Peake and William H. Roose also agreed to cease and desist from the use of the words, "Economy" or "Saver," or any other word or words of similar import or meaning as parts of the trade name of said product.

The said Fred B. Peake and William H. Roose agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 21, 1940.)

02663. **Nasal Filter—Qualities.**—The F. Koehler Manufacturing Co., Inc., a corporation, 231 Monmouth Street, Newport, Ky., vendor-advertiser, was engaged in selling a device designated F. K. Invisible Nasal Filter and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said device will relieve the misery or discomforts of hay fever, rose fever, sinus infections, or asthma, or has any therapeutic value in the treatment thereof in excess of a partial protection of the nasal membrane from the irritating substances; or

(*b*) That said device will protect the nasal passages from dust or pollen, or otherwise representing that said device will prevent all dust, pollen, or other irritating substances from reaching the nasal passages; or

(*c*) That said device will afford a complete seal, or otherwise representing that said device will afford a perfect fit for all individuals; or

(*d*) That said device will stop or afford effective relief for headaches caused by gasoline fumes; or

(*e*) That said device will clear up coughing or a phlegm-filled throat caused by asthma or sinus trouble, or otherwise representing that said device affords effective relief for coughing or a phlegm-filled throat condition caused by asthma or sinus infections.

The F. Koehler Manufacturing Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 25, 1940.)

02664. **Food Product—Comparative Merits, Qualities, and Nature.**—R. C. Williams & Co., Inc., a corporation, 265 Tenth Avenue, New York, N. Y., vendor-advertiser, was engaged in selling a food product designated Delphi Olive Oil, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That by using the product, salads and cooked vegetables will taste better than when any other olive oil is used.

(*b*) That the product is the purest ever imported into America.

(*c*) That the product is different from all other olive oils.

The said R. C. Williams & Co., Inc., further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Oct. 25, 1940.)

02665. **Vending Machine and Breath Purifier—Manufacturer, Unique Qualities, Comparative Value, and Special Prices.**—American Products Co., a corporation, 711 North Taylor Avenue, St. Louis, Mo., vendor-advertiser, was engaged in selling a vending machine designated "Penny Snappy Vending Machine" and an alleged breath purifier designated "Penny Snappy Breath Flavors," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That it manufactures any product unless and until it owns, controls, maintains or operates a factory wherein the said product is manufactured.

(*b*) That the Penny Snappy Breath Flavor bar is the only Product of its kind on the market.

(*c*) That in selling the Penny Snappy Breath Flavor bar and the Penny Snappy Vending Machine one would have no competition.

(*d*) That the Penny Snappy Breath Flavor bar is sold only through the Penny Snappy Vending Machine.

(*e*) That the Penny Snappy Breath Flavor bar is unique in flavor.

(*f*) That the Penny Snappy Breath Flavor bar will kill or destroy liquor, onion, cheese, garlic, or tobacco odors, or any other odor, or that it will do more than temporarily mask any odor.

(*g*) That the Penny Snappy Breath Flavor bar has no equal or that no other similar product sells at the same price.

(*h*) That the regular price of any product is a special price or that it has sold any product for any amount greater than is actually the case.

(*i*) That its facilities afford mass production or that in buying from it one would be buying direct from the manufacturer.

The said American Products Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 1, 1940.)

02666. **Drug Preparation—Qualities, Results, and Prices.**—Pow-A-Tan Medicine Co., a corporation, 825 Fourth Avenue, Huntington, W. Va., vendor-advertiser, was engaged in selling a drug preparation designated Powatan Herb Tonic, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That its preparation is a cure, a remedy, or a competent treatment for all common ailments, rheumatism, neuritis, arthritis, indigestion, gas and bloatiness, piles, la grippe, colds, sick headache, heartburn, palpitation of the heart, weakness, tired out feeling and general run-down condition, pains in the neck, shoulders, side, back or hips, lumbago, and female complaints.

(*b*) That its preparation possesses any value in the treatment of the above symptoms or conditions in excess of such temporary relief as may be furnished by a laxative when such symptoms or conditions are due to or caused by constipation, or that the preparation has any therapeutic value in the treatment of constipation in excess of providing temporary relief.

(*c*) That the beneficial effects of this preparation will prevent or make improbable such diseases and conditions as appendicitis, tuberculosis, catarrh, typhoid and other contagious and acute diseases.

(*d*) That any price is the regular price for Powatan Herb Tonic, unless such is the price at which the product is regularly and customarily sold.

The said Pow-A-Tan Medicine Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 4, 1940.)

02667. **Cosmetics—Nature, History, Etc.**—House of Westmore, Inc., a corporation, 730 Fifth Avenue, New York, N. Y., and Perc H. Westmore, an individual, Warner Bros. Studios, Burbank, Calif., vendor-advertisers, were engaged in selling cosmetics designated House of Westmore Cosmetics, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That color has been filtered out of or removed from House of Westmore cosmetics.

(*b*) That cosmetics contain undesirable or unflattering colors or colors which give a harsh or aged appearance.

(*c*) That the selectivity of cosmetics in the reflection or transmission of color is a discovery or a secret.

The said House of Westmore, Inc., and Perc H. Westmore further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 6, 1940.)

02668. **Medicinal Preparations—Qualities and Laboratories.**—Joseph H. Miller, an individual, trading as Darmela Laboratory, and Darmela Lab., 1446 North Western Avenue, Chicago, Ill., vendor-advertiser, was engaged in selling medicinal preparations designated Darmela Salve and Darmela Liquid, 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 is a competent treatment or an effective remedy for sores, wounds, or abscesses, unless limited to the temporary relief of the pain and soreness associated therewith.

(*b*) That either of the products will heal any condition.

(*c*) That either of the products is a competent treatment or an effective remedy for open and running wounds or sores (skin ulcers), unless explained in direct connection therewith that they will be of no benefit for the condition when due to varicose veins, tuberculosis, or syphilis.

(*d*) That either of the products is a competent treatment or an effective remedy for shingles, unless limited to the temporary relief of the pain and itching associated therewith.

(*e*) That Darmela Liquid is a competent treatment or an effective remedy for stiffness, numbness, paralytic stress, toothache, rheumatism, backache, chills, arthritis, neuritis, neuralgia, mumps, strains, swellings, or bruises, unless limited to the temporary relief of the pain, discomfort, and soreness associated therewith.

(*f*) That Darmela Liquid is a competent treatment or an effective remedy for colds or coughs.

The said Joseph H. Miller further agreed to cease and desist from using the terms or words "Laboratory" or "Lab" as a part of his trade name or from otherwise representing or implying that he owns, controls, maintains, or operates a laboratory.

The said Joseph H. Miller further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 6, 1940.)

02669. **Rat and Mice Killers—Guarantee, Qualities, and Results.**—Howard E. Bagnall, an individual, Martin City, Mo., vendor-advertiser, was engaged in selling rat and mice killers, designated Calico Seed and Calico Bait, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said products or either of them are guaranteed for complete satisfactory pest control or to destroy or exterminate all rats or mice in 4 or 5 days or at all or that he guarantees any results claimed by the use thereof, unless the nature and extent of such guarantee are clearly and adequately disclosed in immediate connection or conjunction with such guarantee and with equal prominence and emphasis.

(*b*) That said products or either of them will kill *all* rats or all mice in 4 or 5 days or any other specified period of time or at all; or

(*c*) That the product now designated Calico Bait will kill any rodents other than rats and house mice.

The said Howard E. Bagnall agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 12, 1940.)

02670. **Chicken Feeds—Qualities and Results.**—Gooch Feed Mill Co., a corporation, Lincoln, Nebr., vendor-advertiser, was engaged in selling chicken feeds designated as Gooch's Best Starting Feed, Gooch's Best Laying Mash and Gooch's Best Growing Mash, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That favorable results in egg production or chick raising depend solely on using Gooch's chicken feeds.

(*b*) That a low feeding cost or a balanced egg making ration is insured by using Gooch's Best Laying Mash.

(*c*) That Gooch's Best Laying Mash will enable hens to lay more eggs, or have better body weight or condition, or be more vigorous or resistant to disease than any other product.

(*d*) That its chicken feeds insure egg production.

(*e*) That the use of Gooch's Best Starting Feed insures healthy chicks or insures a given weight within a specified period of time.

The said Gooch Feed Mill Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 13, 1940.)

02671. **Mineral Soil Conditioner—Qualities and Results.**—Mikolite Co., a corporation, 1100 South Mill Street, Kansas City, Kans., vendor-advertiser, was engaged in selling a mineral soil conditioner designated Mikolite Mineral Soil Conditioner, or Mikolite, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Mikolite provides a continuous supply of air and water to plant roots, or that it makes plant roots breathe.

(*b*) That Mikolite destroys anaerobic bacteria or that fungus or plant diseases cannot live in Mikolite.

(*c*) That plants grown in Mikolite are sturdier or more resistant to plant pests than those raised in gravel, cinders, or pumice.

(*d*) That Mikolite provides the factors essential to vigorous healthy plant growth, except to the extent that it may provide a means of conditioning the soil so that air and water are made available to plant roots.

The said Mikolite Co. agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 13, 1940.)

02672. **Health Course and Magazine—Qualities and Results.**—Charles B. McFerrin, an individual, 13 Carolina Court, Orlando, Fla., vendor-

advertiser, was engaged in selling a health course designated "The Pilot Health Course" and publishing and selling a magazine designated "The Spot Light Magazine," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the Spot Light Magazine contains information of any value whatsoever for gall bladder trouble, liver trouble, rheumatism, anemia, ulcers, dandruff, hardening of arteries, nervous afflictions, migraine headaches, inflammation of eyes, and intestinal marbles, or that it contains information of any value whatsoever for any disease or affliction.

(*b*) That the Pilot Health Course is of any value whatsoever for sinus trouble, bronchitis, asthma, rheumatism, nervousness, skin diseases, food assimilation, acidity, catarrh, intestinal indigestion, above and below normal weight, constipation, fermentation, hardening of arteries, Bright's disease, tuberculosis of bones, enlarged joints, circulatory imperfections, insomnia, muscular contraction, hair roots, apoplexy, weariness, vital organs, physical ailments, intestinal gas, fibroid tumors, arthritis, neuritis, heart trouble, colds, fevers, cancer, and insanity, or that such course is of any value whatsoever for any disease or affliction.

(*c*) That the Pilot Health Course enables one to have health, prosperity or happiness.

The said Charles B. McFerrin further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 19, 1940.)

02673. **Drug Preparations—Qualities and Results.**—Smith Bros. Drug Co., a corporation, 524 Prescott Street, Greensboro, N. C., vendor-advertiser, was engaged in selling two drug preparations designated Digesto-Pep and Coldlax, and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Digesto-Pep is a competent treatment or remedy for stomach disorders, or will do anything more than give temporary relief to stomach discomforts associated with gastric hyperacidity.

(*b*) That Digesto-Pep will enable a person to eat whatever may be desired without discomfort.

(*c*) That Coldlax will attack a cold at its cause or at the seat of a cold, or will do anything more than give temporary relief from the symptoms of a cold.

The said Smith Bros. Drug Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 22, 1940.)

02674. **Antacid Medicinal Preparation—Qualities, Results, Comparative Merits, and Composition.**—F. A. Stuart Co., a corporation, 117 South Jefferson Street, Marshall, Mich., vendor-advertiser, was engaged in selling a certain antacid medicinal preparation designated Stuart's Tablets, and agreed, in connection with the dissemination of future

advertising, to cease and desist from representing directly or by implication that:

(*a*) Said tablets are a remedy for any disfunction of the stomach.

(*b*) Said tablets are more efficacious as an antacid than other preparations with like ingredients in similar proportions for the same or similar purposes or have any action upon the stomach other than to relieve, temporarily, gastric acidity.

(*c*) Said tablets prevent the occurrence of any disfunction of the stomach.

(*d*) Said tablets check or prevent the formation of acid in the stomach.

(*e*) The effervescent types of stomach antacids lose their alkalizing properties before taking.

(*f*) Any premium which it offers in connection with the sale of its products is finished with gold, when such premium has no gold finish.

The said F. A. Stuart Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 23, 1940.)

02675. **Rat-killing Preparation—Qualities and Results.**—Burgess Seed & Plant Co., a corporation, trading as V. & M. Products Co., Galesburg, Mich., vendor-advertiser, was engaged in selling a rat-killing preparation designated "Black Cat" and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Black Cat will kill gophers, or mice of a species or class other than house mice.

(*b*) That it kills rats and mice quickly.

(*c*) That it drives rats and mice that are induced to take it outside to die.

The said Burgess Seed & Plant Co. agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Nov. 25, 1940.)

02676. **Medicinal Preparation—Indorsements or Approval, Qualities, and Results.**—Charles J. Ahsbahs, an individual trading as Neo-Products Co., of America, 72 Leonard Street, New York, N. Y., vendor-advertiser, was engaged in selling a medicinal preparation designated "Activanad" and vendor-advertiser agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication that said preparation:

(*a*) Is praised or recommended by eminent physicians or psychiatrists.

(*b*) Strengthens the body; is beneficial for persons afflicted with fear, anxiety, irritability, worry or fatigue; benefits failing physical processes; prevents chronic disorders or otherwise representing that said preparation has any therapeutic value in the prevention of any ailment or disease; prevents fatigue; builds up the body; promotes formation of new blood, or is of any therapeutic value in the treatment thereof; strengthens the muscles, or promotes sleep; increases capacity for mental concentration; provides new reserves of power, new funds of energy, better poise or self-confidence; provides energy for the body and strengthens the nerves; is an effective aphrodisiac; produces a striking or prompt effect; is beneficial following childbirth or physical collapse.

The said Charles J. Ahsbahs further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 26, 1940.)

02677. **Antacid Medicinal Preparation—Qualities, Results, Comparative Merits, and Composition.**—Benson & Dall, Inc., a corporation, 327 South LaSalle Street, Chicago, Ill., was engaged in the business of conducting an advertising agency which disseminated advertisements for a certain antacid medicinal preparation now designated Stuart's Tablets on behalf of the F. A. Stuart Co., of Marshall, Mich., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said tablets are a remedy for any disfunction of the stomach.

(*b*) That said tablets are more efficacious as an antacid than other preparations with like ingredients in similar proportions for the same or similar purposes or have any action upon the stomach other than to relieve, temporarily, gastric acidity.

(*c*) That said tablets prevent the occurrence of any disfunction of the stomach.

(*d*) That said tablets check or prevent the formation of acid in the stomach.

(*e*) That the effervescent types of stomach antacids lose their alkalizing properties before taking; and

(*f*) That any premium which it offers in connection with the sale of its products is finished with gold, when such premium has no gold finish.

The said Benson & Dall, Inc., further agreed not to disseminate or cause to be disseminated any testimonial containing any representation contrary to the foregoing agreement. (Nov. 26, 1940.)

02678. **Mouse-killing Preparation—Qualities, Comparative Merits, and Success.**—F. Lucas, an individual, 174 West Sixty-fifth Street, New York, N. Y., vendor-advertiser, was engaged in selling a mouse-killing preparation designated "Flu-Mous-Ded," and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Flu-Mous-Ded is sure death to mice.

(*b*) That it will drive mice outside to die.

(*c*) That mice destroyed by it will leave no decomposition odors.

(*d*) That it is the most effective rodenticide.

(*e*) That it is used everywhere by pest control operators, warehousemen, and feed men, and in food packing plants or places used for like or similar purposes.

The said F. Lucas agreed not to publish, or cause to be published, any testimonial containing any representation contrary to the foregoing agreement. (Nov. 25, 1940.)

02679. **Disinfectant Preparation—Qualities and Results.**—Linco Products Corp., a corporation, 2155 West Eightieth Street, Chicago, Ill., vendor-advertiser, was engaged in selling an alleged disinfectant preparation, designated "Linco" and agreed, in connection with the dis-

semination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That the product will remove all stains or discolorations or that it will remove any stain or discoloration other than those stains or discolorations which are capable of oxidation to a colorless end-product.

(*b*) That the product kills all germs.

(*c*) That the product positively disinfects.

(*d*) That all bacteria and infectious germs are removed by the product.

(*e*) That the product is a positive sterilizer.

The said Linco Products Corporation agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 28, 1940.)

02680. **Bath Cabinets—Qualities and Results.**—Gellman Manufacturing Co., a corporation, Rock Island, Ill., vendor-advertiser, was engaged in selling vapor-electric bath cabinets alleged to be of value for weight-reducing purposes, designated Beauty Builder and Beauty Fount and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

That its vapor-electric bath cabinets designated Beauty Builder and Beauty Fount have a direct value in the permanent reduction of excess weight, or that said cabinets, by means of vapor heat, infra-red or ultra-violet rays, help eliminate excess fat, or that the use of said cabinets will rid the body of harmful toxins, or will "cure," "banish," or "erase" fatigue, or will benefit nervous or underweight persons.

The said Gellman Manufacturing Co. further agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 28, 1940.)

02681. **Rat Killer—Qualities, Results, and Safety.**—Carbola Chemical Co., Inc., a corporation, Natural Bridge, N. Y., vendor-advertiser, was engaged in selling a liquid rat and mice destroyer, designated "CCC" Rat Killer and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That said preparation attracts both rats and mice because it is sweetly flavored or that it attracts, will be eaten by, or kill mice of kinds other than house mice; or

(*b*) That said preparation kills entire families of rats or mice, or that it poisons the milk of nursing mothers, or that it infects or kills the nursing young, or that it is 100 percent effective; or

(*c*) That the said preparation causes rodents to die outdoors, or that it will kill or cause rodents other than rats and house mice to die, or that rats or mice eating it rush for or seek water and seldom die indoors; or

(*d*) That the preparation is "absolutely" safe for use about the house, farm, public markets, grain houses, meat markets, etc., or in any place where small children, pets, poultry or other animals might eat it.

The said Carbola Chemical Co., Inc., agreed not to publish or cause to be published any testimonial containing any representation contrary to the foregoing agreement. (Nov. 28, 1940.)

02682. **Hair Tonic—Qualities and Results.**—Dundes & Frank, Inc., a corporation, 64 West Forty-eighth Street, New York, N. Y., was engaged in the business of conducting an advertising agency which disseminated advertisements for a cosmetic designated Silver Pine Hair Tonic on behalf of Henry Charambura trading as Silver Pine Manufacturing Co., New York, N. Y., and agreed, in connection with the dissemination of future advertising, to cease and desist from representing directly or by implication:

(*a*) That Silver Pine Hair Tonic retards or stops falling hair or stops the loss of hair.

(*b*) That Silver Pine Hair Tonic develops healthy scalps or keeps scalps healthy.

(*c*) That Silver Pine Hair Tonic eliminates or destroys dandruff. (Nov. 29, 1940.)

DECISIONS OF THE COURTS

IN CASES INSTITUTED AGAINST OR BY THE COMMISSION [1]

CARTER CARBURETOR CORPORATION v. FEDERAL TRADE COMMISSION [2]

No. 434, Original

(Circuit Court of Appeals, Eighth Circuit. June 3, 1940)

FINDINGS OF COMMISSION—WHERE SUPPORTING EVIDENCE—CLAYTON ACT.

In action to review cease and desist order issued by the Federal Trade Commission for violation of the Clayton Act, findings of the Federal Trade Commission which are supported by evidence must be taken as true. Federal Trade Commission Act, sec. 5, 15 U. S. C. A., sec. 45; Clayton Act, secs. 3, 11, 15 U. S. C. A., secs. 14, 21.

INTERSTATE COMMERCE—CLAYTON ACT, SEC. 3—"COMMERCE"—WHETHER "PERSON ENGAGED IN"—MANUFACTURER SELLING UNDER CONTRACTS, AT SPECIFIED PRICES AND F. O. B. PLANT, TO REGIONAL DISTRIBUTORS AND INDEPENDENT SERVICE STATIONS, AND SHIPPING TO DISTRIBUTORS IN OTHER STATES.

Where it appeared that manufacturer of carburetors made sales to some 67 regional distributors of automotive equipment, that 30 of them sold in territory comprising more than one State, that manufacturer also sold products directly to more than 86 independent service stations which could also purchase from the regional distributors, that both regional distributors' and service stations' contracts provided for purchase of carburetors and parts from mnaufacturer at specified prices f. o. b. St. Louis, and that orders were filled by shipment from St. Louis, in making such sales and shipments to distributors located in States other than Missouri, manufacturer was engaged in "interstate commerce" within meaning of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—CONTRACTS—WHETHER "FOR SALE OF GOODS"—MANUFACTURER EXTENDING SPECIAL SERVICING TRAINING TO EMPLOYEES OF CONTRACTEES UNDER CONTRACTS IN WHICH, HOWEVER, PRICE AND CANCELATION CONTROL VESTED IN SELF.

Where, by contracts between manufacturer of carburetors, regional distributors, and independent service stations, manufacturer established

[1] During the period covered by this volume, namely, June 1, 1940, to Nov. 30, 1940, the United States Supreme Court, on Oct. 14, 1940, granted petitions for certiorari in *F. T. C. v. Bunte Bros., Inc.*, 311 U. S. 624, 61 S. Ct. 10, to review decision of Circuit Court of Appeals for the Seventh Circuit in *Bunte Bros., Inc. v. F. T. C.*, 110 F (2d) 412, 30 F. T. C. 1650, and in *Millinery Creators' Guild, Inc., et al. v. F. T. C.*, 311 U. S. 625, 61 S. Ct. 34, to review decision of Circuit Court of Appeals for the Second Circuit in *Millinery Creators' Guild, Inc., et al. v. F. T. C.*, 109 F. (2d) 175, 30 F. T. C. 1619.

[2] Reported in 112 F. (2d) 722. For case before Commission, see 28 F. T. C. 116.

terms and conditions of sales by regional distributors to service stations, and manufacturer had power to impose conditions in respect to sales, to cancel contracts if it saw fit or to raise prices on goods delivered to the regional distributors, the contracts were "contracts for the sale of goods" within the Clayton Act, notwithstanding manufacturer conducted training courses where service station mechanics received special training in service and repair of carburetors.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—CONTRACTS—WHETHER "FOR SALE OF GOODS"—CONTRACTS' DESIGNATION.

In determining whether contracts between manufacturer of carburetors, engaged in selling them in interstate commerce for profit, and manufacturer's service stations, were contracts for sale of goods within Clayton Act, the fact that contracts were denominated service station contracts was not controlling.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—PREFERENTIAL DISCOUNTS—WHERE CONTINUANCE PREDICATED ON ABSTENTION BY DISTRIBUTORS AND INDEPENDENT STATIONS FROM TAKING ON NEW LINE—WHETHER VIOLATION BY GRANTING MANUFACTURER—INTENT AND EFFECT—MANUFACTURER'S CONTROL RETAIL PRICE MAINTENANCE SYSTEM ESTABLISHED BY IT AS INCIDENT TO.

In determining whether manufacturer of carburetors violated Clayton Act, the purpose and effect of manufacturer's general bulletin advising that preferential discount granted distributors and independent service stations would be discontinued if a new carburetor line was taken on by a distributor or service station without manufacturer's written approval, was required to be considered in light of fact that manufacturer had established within its contract a complete system of retail price maintenance.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—PRICES AND DISCOUNTS CONDITIONED ON RETAILER PURCHASERS' ABSTENTION FROM DEALING IN NEW COMPETING LINE—IF THEIR AFFIRMATIVE PROMISE ABSENT.

Where manufacturer of carburetors fixed prices it charged and discounts allowed on purchases of its products by retailers upon condition that they should cease and refrain from dealing in a new competing line of carburetors, the contracts imposed a condition that retailer should not deal in goods of a competitor of manufacturer within prohibition of the Clayton Act, notwithstanding the retailer was not obliged to affirmatively promise in express terms not to handle goods of man[723]ufacturer's competitors.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—PRICES AND DISCOUNTS CONDITIONED ON RETAILER PURCHASERS' ABSTENTION FROM DEALING IN NEW COMPETING LINE—WHETHER EFFECT, ETC., "MAY BE TO SUBSTANTIALLY LESSEN COMPETITION"—WHERE NOTIFICATION BY GENERAL BULLETIN TO INDEPENDENTS, OF SUCH CONTINGENT DISCONTINUANCE BY DOMINANT MANUFACTURER, OF PREFERENTIAL DISCOUNT.

Where dominant carburetor manufacturer issued general bulletin notifying independent service stations that preferential discount would be discontinued if a new carburetor line was taken on by service stations without manufacturer's written approval, the action of the manufacturer was to "lessen competition" within prohibition of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—PRICES AND DISCOUNTS CONDITIONED ON RETAILER PURCHASERS' ABSTENTION FROM DEALING IN NEW COMPETING LINE—WHETHER EFFECT, ETC., "MAY BE TO TEND TO CREATE A MONOPOLY IN ANY LINE OF COMMERCE"—WHERE NOTIFICATION BY GENERAL BULLETIN TO INDEPENDENTS, OF SUCH CONTINGENT DISCONTINUANCE, BY DOMINANT MANUFACTURER, OF PREFERENTIAL DISCOUNT.

Where dominant carburetor manufacturer issued general bulletin notifying independent service stations that preferential discount would be discontinued if a new carburetor line was taken on by service stations without manufacturer's written approval, the action of manufacturer tended to create a "monopoly" within prohibition of the Clayton Act.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—PRICES AND DISCOUNTS CONDITIONED ON RETAILER PURCHASERS' ABSTENTION FROM DEALING IN NEW COMPETING LINE—WHETHER EFFECT, ETC., "MAY BE TO TEND TO CREATE A MONOPOLY IN ANY LINE OF COMMERCE"—WHERE NOTIFICATION, BY GENERAL BULLETIN TO INDEPENDENTS, OF SUCH CONTINGENT DISCONTINUANCE, BY DOMINANT MANUFACTURER, OF PREFERENTIAL DISCOUNT—IF COMPLETE MONOPOLY NOT EFFECTED AND CONTROL OF ALL OR NEARLY ALL OF BUSINESS CONCERNED NOT YET ACCOMPLISHED—WHETHER DETERMINATIVE.

In determining whether action of dominant carburetor manufacturer, in fixing prices it charged and discounts allowed on purchases of its products by independent service stations upon condition that they should cease from dealing in a new competing line of carburetors, tended to create a monopoly in violation of the Clayton Act, the fact that manufacturer's action had not effected a complete monopoly and that it still did not control all or nearly all of the carburetor business was not determinative. Clayton Act, secs. 2, 3, 15 U. S. C. A. secs. 13, 14.

DEALING ON EXCLUSIVE AND TYING BASIS—CLAYTON ACT, SEC. 3—PREFERENTIAL DISCOUNTS—WHERE CONTINUANCE PREDICATED ON ABSTENTION BY DISTRIBUTORS AND INDEPENDENT STATIONS FROM TAKING ON NEW LINE—WHETHER VIOLATION BY GRANTING MANUFACTURER—WHERE LARGE EXPENDITURE IN RESEARCH, ADVERTISING AND INSTRUCTION TO MECHANICS OF INDEPENDENT SERVICE STATIONS IN INTEREST OF BETTER SERVICE TO PUBLIC FROM PRODUCT—EFFECT.

The fact that dominant manufacturer of carburetors had made large expenditures in research and engineering activities, for advertising and disseminating current advice and in giving instruction and information concerning complicated mechanism into which its carburetors had been developed to independent service station mechanics so as to enable service stations to render better service to public, did not vest in manufacturers a right to dictate conditions in the sale of its goods which are forbidden by the Clayton Act.

INDUCING BREACH OF COMPETITOR'S CONTRACTS—DOMINANT MANUFACTURER'S COERCIVE COMPULSION AND INDUCING OF INDEPENDENTS SO TO DO, AND TO CEASE DEALING IN PRODUCT OF COMPETITOR.

Where dominant carburetor manufacturer interfered with and diverted the business of a competitor by inducing, coercing, and compelling many independent automobile service stations to cancel existing sales contracts with such competitor and to cease to deal in the products of the competitor. record sustained conclusion of Federal Trade Commission that the dominant manufacturer had engaged in acts constituting "unfair method of competition in commerce" within Federal Trade Commission Act.

CEASE AND DESIST ORDERS—METHODS, ACTS, AND PRACTICES—DEALING ON EXCLUSIVE AND TYING BASIS—DOMINANT MANUFACTURER'S PREFERENTIAL PRICES AND DISCOUNTS CONDITIONED ON INDEPENDENT SERVICE STATIONS' ABSTENTION FROM DEALING IN NEW COMPETING LINE.

Where dominant carburetor manufacturer, by fixing the prices it charged and discounts allowed on purchases of its products by independent automobile service stations upon condition that they should cease from dealing in a new competing line of carburetors, sought to coerce service stations to change their character and to narrow and limit their customary service, cease and desist order of Federal Trade Commission could be sustained on ground that manufacturer's action would harmfully affect public, as against manufacturer's contention that it simply took steps which were necessary to meet and protect itself against unfair trade practices and methods of a competitor.

(The syllabus, with substituted captions, is taken from 112 F. (2d) 722)

On petition to review and set aside cease and desist order issued by Commission, order sustained and entered against petitioner.

Mr. Noah A. Stancliffe, of New York City (*Mr. George T. Barker*, of New York City, *Mr. George R. Ericson* and *Mr. William R. Gen*[724]*try*, both of St. Louis, Mo., *Hardy, Stancliffe & Hardy*, of New York City, and *Watts & Gentry*, of St. Louis, Mo., on the brief), for petitioner.

Mr. Cyrus B. Austin, special attorney, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, of Washington, D. C., on the brief), for the Commission.

Before GARDNER, WOODROUGH, and THOMAS, Circuit Judges.

WOODROUGH, *Circuit Judge:*

This is a petition by Carter Carburetor Corporation (referred to as petitioner) to review a cease and desist order issued against it by the Federal Trade Commisison under section 11 of the Clayton Act 15 U. S. C. A. 21, and section 5 of the Federal Trade Commission Act, 15 U. S. C. A. 45, for violation of section 3 of the Clayton Act, 15 U. S. C. A. 14, and section 5 of the Federal Trade Commission Act. The order was issued after hearings had been held upon complaint, amended complaint and answer, at St. Louis, Chicago, Detroit, Philadelphia, and New York, at which some 1,500 pages of testimony were taken and more than 300 exhibits were introduced. The findings of fact and conclusions of the Commission were as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Carter Carburetor Corporation, is a Delaware corporation, organized in 1925 with factories and principal offices located at 2820–50 North Spring Avenue, St. Louis, Mo. It is engaged in the business of manu-

facturing and selling, chiefly, carburetors and carburetor parts for use in the automobile industry. It is the successor of Carter Carburetor Co., a corporation which was engaged in the same business from 1909 to 1921 when it went into bankruptcy.

PAR. 2. The respondent and Bendix Products Corporation are the two largest manufacturers of automobile carburetors in the United States. More than 90 percent of the passenger cars produced in the United States in 1937 were equipped with Carter or Bendix (Stromberg) carburetors. Other carburetors, adopted by automobile manufacturers as standard equipment on recent models are Chandler-Groves, on Packard Six, Plymouth, standard model, Lincoln-Zephyr, and part of Ford; Marvel on Graham, part of Nash and part of Buick and Tillotson on Willys. Zenith Carburetor Co. is a subsidiary of Bendix and makes carburetors for replacement use on practically all makes of passenger cars and also truck carburetors.

PAR. 3. Carter Carburetors were standard equipment on 60 percent of 1937 passenger cars and trucks and on more than half of all passenger cars and trucks sold for three years prior to 1937. Respondent's carburetors were standard equipment on 1937 and 1938 models of Chevrolet, Pontiac, Oldsmobile, LaSalle V-8, DeSoto, Hudson, Terraplane and Reo; also Chrysler-Royal, Plymouth, DeLuxe Model, Cadillac V-16, Dodge trucks and some Studebaker cars and trucks. About 70 percent of the Carter Carburetors used on Chevrolets are manufactured by the Chevrolet Company in Bay City, Michigan, under license from Carter. These are Carter carburetors and the parts are interchangeable with those manufactured by the respondent. Respondent also makes and sells a number of carburetors which are designed for use in replacing carburetors of various makes and models on automobiles in use, such as the Universal, the Packard, and the Ford carburetors featured in its sales literature. Respondent sold 1,635,000 carburetors to automobile manufacturers in 1937 for use as standard equipment.

PAR. 4. Trade and commerce in carburetors has two principal branches, first, the sale of carburetors to automobile manufacturers for original equipment of automobiles; second, the sale of carburetors and parts for replacement and service of carburetors in use, commonly referred to as "after market" business. The acts and practices of respondent complained of have been in connection with the after market branch of its business, but competition in the original equipment field as well is affected. Respondent's dollar volume of sales in the two branches is in the ratio of about 5 to 2, so that its after market business amounts to a little less than 30 percent of the total. Respondent sold more than 103,000 replacement carburetors in 1937 in the after market field, the list prices of such carburetors ranging from $10 to $28 each; and the volume of the after market business was greatly increased by the sale of parts.

PAR. 5. The after market business in the service of carburetors of a new manufacture entering the field is at first relatively small and takes two or three years to [725] develop in any volume, because a carburetor ordinarily does not require replacement or repair during the first year or more of use. On recent models little service is required until the car has been driven from 12,000 to 14,000 miles. In the early stages of respondent's business, after market sales amounted to only 5 percent of its total volume. Nevertheless, service station distribution is necessary at the start so that parts or new carburetors will be available if something goes wrong, and also to be able to assure the automobile manufacturer proper warranty service will be given on the carburetor.

PAR. 6. The carburetor manufacturer customarily warrants his carburetor to the automobile manufacturer to be free from defect of material or workmanship in normal use and service, for the warranty period of the automobile (generally

90 days or 4,000 miles). Respondent has an agreement with practically all of its customers that warranty service will be given, and that repairs during the warranty period will be taken care of by respondent's service stations and distributors without expense to the automobile maker.

PAR. 7. Most automobile makers desire and rely on the carburetor makers' retail outlets for warranty service and, after the warranty period, for service supplemental to that given by automobile dealers. The automobile dealers also rely on the service stations for a ready supply of carburetor parts for making repairs. Such service can be given by a carburetor maker only through a wide service station distribution of its products, and the availability of such service is considered by most automobile makers (except Ford and possibly Chevrolet) to be a very important factor in connection with the approval of standard equipment. Lists of "official service stations" are issued by equipment manufacturers and distributed by automobile manufacturers to their dealers for the purpose of making this service available to the dealers and car owners.

PAR. 8. The business of servicing, replacing and repairing automobiles and automobile equipment is carried on in large part by about 60,000 independent service stations and garages located throughout the United States (not including automobile dealers). Seven thousand or more of these service stations specialize in the service of electrical equipment and carburetors. Practically all stations so specializing carry and sell respondent's products, its products being handled by about six thousand general cabinet stations, and more than 900 contract service stations, as hereinafter described.

PAR. 9. Modern carburetors are complicated mechanisms, respondent's carburetors comprising some 150 to 175 parts. Competent carburetor service requires special equipment and training not possessed by the ordinary garage and garage mechanic or by many automobile dealers. For this reason the 7,000 specialized service stations above referred to handle a great bulk of the carburetor service business and the remaining 53,000 or more independent repair shops are chiefly garages not specializing in, and in most cases not giving, carburetor service.

PAR. 10. It is the established custom of the specialized carburetor and ignition stations to offer service on all makes and models of automobiles in current use and to carry in stock and deal in various competing lines of standard equipment in use on such automobiles, so that service can be given on any car that may be driven in. Most service stations originally specializing in the service of electrical equipment have since taken on carburetor service. The larger and better equipped service stations now carry practically all lines of such equipment standard on automobiles, and have contracts with competing manufacturers. A specialized carburetor service station must stock more than one line of carburetors, because the average automobile driver does not know the make of carburetor he has on his car, and different models of the same make of car may carry different carburetors.

PAR. 11. Respondent's original distributors had for years previously been specialized ignition service stations. The greater majority of stations now dealing in respondent's products carried other carburetor lines before taking on respondent's line, and still deal in and give service on one or more competing carburetors. Respondent's is one of the newer carburetors in the automotive field, although it has succeeded in acquiring the bulk of the desirable equipment accounts.

PAR. 12. For many years it has been the custom for manufacturers of electrical equipment and carburetors, and their distributors, to enter into contracts with the larger independent service stations throughout the country governing the sale [726] of their products requiring the service station to carry a stock of the manufacturer's equipment and parts and providing for the price to be paid or

discounts to be received by the service station. These contract service stations are known as official service stations of the equipment manufacturer, and are used as service references by the automobile manufacturer.

PAR. 13. Although respondent had some service station distribution prior to 1927 it did not begin to enter the service field on a large scale until 1930, when it began to sell a general parts cabinet to stations throughout the country. Service stations which have purchased and maintained these cabinets now number about 6,000, are referred to as "general cabinet" stations, and are allowed a discount of 40 percent on purchases of respondent's products, as against respondent's general trade discount of 25 percent.

PAR. 14. In 1932, respondent commenced to enter into service station contracts, as above described, offering such contracts in many cases to stations already handling Stromberg or other competing carburetors. Respondent now has between 900 and 1,000 official contract service stations (in addition to the 6,000 general cabinet stations), located in the larger towns, cities and trading areas throughout the United States. These contracts provide that the service station shall receive a discount of 50 percent (in some cases 50 and 10 percent) from list price on purchases of respondent's products and that service station shall sell and exchange such products at prices and discounts "recommended" by respondent. Such contracts also provide that the service station shall give the warranty service [about] described and certain advertising services. The parties to such contracts are the respondent, the regional distributor and the service station. Said contracts are made for a period of 1 year, subject to renewal and subject to cancellation by any party on thirty days notice.

PAR. 15. Respondent sells and ships its carburetors and carburetor parts f. o. b. St. Louis, to distributors or wholesalers of automobile equipment located in the various States of the United States, who are also under contract with respondent. Regional distributors (66) receive a discount of 60 and 10 percent, and are granted exclusive territory covering in the aggregate the entire United States. Thirty of said regional distributors have territory located in more than one state. Zone distributors (86) may purchase at 60 percent discount for shipment either direct from St. Louis or from the regional distributor.

PAR. 16. Both regional and zone distributors' contracts provide that the distributor shall sell respondent's products at prices and discounts specified by respondent, and respondent, in practice, fixes the prices and discounts at which said distributors sell such products. List prices are published in respondent's catalogue. The catalogue list prices are the prices used by the distributors and service stations as a basis for the purchase and sale of Carter carburetors and parts.

PAR. 17. Contract service stations purchase from distributors f. o. b. the distributor's city, but parts cabinets are generally shipped to the service station directly from St. Louis, and occasionally other shipments are so made at the distributor's request. General cabinet stations may purchase either from the distributor or a contract service station, at the prices fixed by respondent. Sales to contract service stations constitute the major part of the distributors' sales of respondent's products.

PAR. 18. Respondent has a large mailing list, including all contract and general cabinet service stations and their personnel, and mails to said stations and personnel from time to time, a large amount of service and sales bulletins, charts, catalogue sheets, and trade information. This literature is very valuable to the service station in the conduct of its business.

PAR. 19. Respondent employs a staff of 19 field representatives who travel in the field and call upon distributors and service stations, maintaining direct contact between respondent and service stations located throughout the country.

The country is divided into four districts, each under the supervision of a district manager, who supervises the work of the field representatives in his district. Respondent conducts short training courses at various distribution points, and a school at its factory in St. Louis, where many service station mechanics have received special training in the service and repair of carburetors, and in engine tune-up.

PAR. 20. On or about April 1, 1937, respondent mailed to all its distributors, contract service stations, cabinet sta[727]tions, and sales service personnel, its General Bulletin No. 134, notifying the service stations "that if you take on a new carburetor line without our written approval, preferential discount, service information, and Carter contract, if any, will be discontinued by the Carter distributor." A new carburetor was defined as a carburetor made only since the publication of respondent's Bulletin No. 77, which was dated June 23, 1934. Said Bulletin No. 77 was issued only to respondent's distributors, its gist being that if the distributor took on a competing line of carburetors, he could not expect to hold his Carter representation on an exclusive territorial basis. General Bulletin No. 134 is still in effect.

PAR. 21. The manager of respondent's Parts and Service Division instructed respondent's field representatives to insist on the enforcement of the policy stated in Bulletin No. 134, and told them to see that the distributors carried out such policy, and to aid the distributors in carrying it out. He also told them to check up on the service stations that they might visit to see whether the service station was handling a new line of carburetors. On April 5, 1937, he sent a telegram to one of his field representatives in Michigan announcing the issuance of Bulletin No. 134, and stating that "our outlets must choose between Chandler-Groves and Carter" and "until they make up their minds twenty five per cent will be their discount" and in the meantime "suspending all contracts and special discounts." Distributors were to be notified. Copies of this telegram were sent to all of respondent's field men.

PAR. 22. Under date of April 7, 1937, a "confidential" bulletin was sent to all regional and zone distributors requesting them to call on all service stations handling the Chandler-Grove carburetor line, and stating that if service stations kept "the other line" after May 1, "mailings to them would be discontinued" and their Carter contracts, if any, would lapse. The standard trade discount of 25 percent would then apply.

PAR. 23. Thereupon, respondent's field representatives, distributors, and distributors' salesmen called upon the service stations and notified them, and thereafter continued to inform them, that the policy stated in Bulletin No. 134 would be enforced. Service stations found to be handling a new competing line of carburetors were told that they could not continue to carry that line and retain their preferential discount and their Carter contract, if they held such contract, and were asked to notify respondent in writing that they had discontinued the competing line and returned their stock.

PAR. 24. There appear to be three carburetors which have been made only since June 23, 1934—Chandler-Groves, Mallory, and Fish. Of these, Chandler-Groves is the only one which has been adopted as standard equipment on automobiles. Chandler-Groves carburetors and parts were manufactured by Chandler-Groves Co., a Michigan corporation organized in 1935, with offices and factory in Detroit. Chandler-Groves Co. is a wholly-owned subsidiary of Holley Carburetor Co. of Detroit, a concern which has for many years manufactured electrical equipment, and formerly carburetors, for the Ford Motor Co. and other automobile manufacturers. After December 31, 1937, Chandler-Groves Co. ceased to do business, and since that time Chandler-Groves carburetors have been manufactured and sold by Holley Carburetor Co., through Chandler-Groves distributors and service stations.

PAR. 25. In addition to carburetors, the Chandler-Groves Co. at first attempted to develop car heaters, inlet manifolds, fuel pumps, and various other automotive devices. Eventually it developed a single barrel carburetor of the concentric type. Carburetors of that type in use in 1936 were made chiefly by respondent, whereas Bendix Products Corporation manufactured chiefly carburetors of the duplex or double barreled type. For that reason, during 1936 and 1937, Chandler-Groves Co.'s competition was mainly with respondent.

PAR. 26. In 1936, Chandler-Groves carburetors were adopted for use as standard equipment on Packard Six and Plymouth PT-50 (truck). In 1937, Chandler-Groves became standard equipment on Plymouth standard model passenger car and, late in the year, was adopted for Lincoln-Zephyr and for a part of Fords. In addition to the foregoing, Chandler-Groves was used on several Dodge and DeSoto export models and on the Chrysler industrial engine. The great majority of the carburetors produced by Chandler-Groves Co. have been for Plymouth and Packard.

[728] PAR. 27. Adoption of the Chandler-Groves carburetor by Plymouth was announced by Chandler-Groves in a bulletin dated March 10, 1937. Previously, all Plymouth passenger cars had been equipped with Carter carburetors. Respondent received a copy of this Chandler-Groves bulletin a short time before respondent issued its General Bulletin No. 134. Prior to that time, respondent had not objected to its service stations handling Chandler-Groves along with other competing lines.

PAR. 28. In developing its after market business, Chandler-Groves Co. followed the usual service station contract plan hereinabove described and, prior to April 1, 1937, had entered into sales agreements with a large number of independent service stations in various parts of the United States specializing in electrical and carburetor service. In soliciting these contracts, the Chandler-Groves distributors approached the larger and better equipped service stations in their respective territories. The Chicago distributor contacted Auto-Lite (electrical equipment) service stations, and the Philadelphia distributor was also an Auto-Lite distributor and was already selling various kinds of electrical equipment to these service stations. The stations thus contracting with Chandler-Groves were established service stations carrying various lines of automotive equipment, and the great majority of them dealt in the products of respondent and other carburetor manufacturers, many of them being holders of respondent's service station contracts.

PAR. 29. About April 1, 1937, respondent, its field representatives and distributors, commenced to contact and seek out said Chandler-Groves service stations and informed them that, if they continued to deal in Chandler-Groves products, they would no longer be permitted to purchase respondent's products at a favorable discount, would cease to receive service bulletins and information from respondent, and in the case of respondent's contract service stations, that such contracts would be cancelled. Respondent's instructions to its distributors and field representatives, as indicated by its said General Bulletin No. 134 and its confidential bulletin under date of April 7 have been and are being carried out. Respondent has carried out this policy to the extent of cancelling its contracts with and reducing the discounts available to some nineteen service stations refusing to discontinue dealing in Chandler-Groves products. In some instances, respondent offered the service station the privilege of purchasing respondent's products at a more favorable discount than the station was then receiving, upon condition that the service station sever its connection with Chandler Groves, at the same time threatening to reduce the discount if the service stations would not do so.

PAR. 30. As a result of this concerted action by respondent, its field representatives and its distributors, the independent carburetor and ignition stations

throughout the country were given a choice of losing the privilege of handling on favorable terms the carburetor which was standard equipment on a majority of automobiles in use and which furnished a large part of their carbuerators service business, or of giving up a new carburetor line which was standard equipment on only a few cars, which, even as to those, had not been in the field long enough to require any substantial amount of service. Confronted with these alternatives many service stations throughout the country cancelled their contracts with Chandler-Groves, returning their Chandler-Groves stock or ceased to deal in Chandler-Groves products. In a few cases the service stations refused to comply with conditions imposed by respondent, but these were mostly Chandler-Groves distributors (wholesalers dealing in respondent's products only on a service station basis). In the 10 months after April 1, 1937, a substantial number of service stations in various parts of the country severed their official service station connection with Chandler-Groves or returned their Chandler-Groves stock, or both. A large majority of these cancellations and returns occurred in April and May, 1937.

PAR. 31. About 55 service stations in the Chicago, Milwaukee, Detroit, and Philadelphia areas cancelled their Chandler-Groves contracts after April 1, 1937, and in most cases returned their Chandler-Groves stock or ceased to purchase their additional stock. After April 1, 1937, the efforts of the distributors in these areas to obtain new Chandler-Groves service station representation met with little success and many service stations assigned opposition by respondent as the reason for their refusing to sign contracts or purchase stock. The Chicago distributor [729] obtained about 40 service station contracts for Chandler-Groves prior to April 1, 1937, and only about 10 thereafter; of the 50 contracts obtained, only half were still in force in February 1938, the other half having been cancelled by the service stations. None of these cancellations occurred prior to April 1, 1937.

PAR. 32. Of 50 service stations in the Philadelphia area which held Chandler-Groves contracts during all or part of 1937, 36 which did not cancel such contracts purchased an average of $104 worth of Chandler-Groves products per station during the period of April to December of that year. Fourteen stations which cancelled their contracts purchased a net total of $18 worth of Chandler-Groves merchandise during the same period. While there was very little demand for Chandler-Groves products during the first 3 months of 1937, the 14 stations which later cancelled their contracts purchased slightly more per station from January to March than the other 36 stations.

PAR. 33. By the terms of the sales contracts between Chandler-Groves Co. and service stations, the service stations agreed "to prominently display the advertising material of the vendor and to maintain mechanical equipment to efficiently service the product of the vendor." The sale of carburetors is promoted by the display of stock and advertising material. Some service stations did not return their Chandler-Groves stock after receiving respondent's Bulletin No. 134, but nevertheless refrained thereafter from displaying or advertising Chandler-Groves products, kept such stock out of sight, and ceased to promote the sale thereof.

PAR. 34. Respondent has entered into or renewed contracts for the sale of its products with more than 900 service stations on the condition or understanding that the purchasers thereof shall not use or deal in the goods of a competitor or competitors of respondent.

PAR. 35. Respondent has fixed the prices charged for its products and discounts from such prices, to approximately 7,000 service stations, on the condition or understanding that the purchasers thereof shall not use or deal in the goods of a competitor or competitors of respondent.

PAR. 36. Respondent has made such contracts, fixed such prices, and imposed such condition and understanding, in the course and conduct of its after market, interstate business.

PAR. 37. The effect of the contracts and the condition or understanding mentioned in paragraph 34 hereof, and of the condition or understanding mentioned in paragraph 35 hereof, has been and may be to substantially lessen competition and tend to create a monopoly in the sale and distribution of carburetors and carburetor parts in interstate commerce.

PAR. 38. The effect of the respondent's above described acts and practices has been to induce, coerce and compel a large number of automobile service stations throughout the United States to cease and refuse to deal in or purchase the products of Chandler-Groves Co. and to cancel or violate existing Chandler-Groves sales agreements. Respondent has thereby closed to a competitor a substantial number of actual and potential service station outlets for its products, has diverted business and trade from such competitor, and has prevented such service stations from selling and dealing in a full line of standard carburetors and parts.

CONCLUSIONS

1. By its acts and practices described in paragraphs 20, 21, 22, 23, 29, 34, and 35 of the foregoing "Findings as to the Facts," the respondent, Carter Carburetor Corporation, has violated and is violating section 3 of the Clayton Act.

2. The aforesaid acts and practices of the respondent have been and are to the prejudice of the public and of respondent's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

The petitioner has not included in its points to be argued any contention that any finding of the Commission, which is admitted to be strictly a finding of fact, is not supported by evidence in the record. It has at several places in the brief assailed some of the findings as conclusions, unsupported by and contrary to the record, and has insisted that material facts were not reported by the Commission, al[730]though pleaded in the answer to the complaint and shown by irrefutable evidence, and that the record as a whole discloses no violation as charged. Our examination convinces that each of the above findings which is strictly a fact finding is supported by evidence in the record, 15 U. S. C. A. 45 (c), and must be taken as true in this proceeding.

The petitioner admits that it promulgated its General Bulletin No. 134 of date April 1, 1937, to all its distributors, contract service stations, cabinet stations and sales service personnel, notifying "that if you take on a new carburetor line without our approval preferential discount, service information and Carter contract, if any, will be discontinued by the Carter distributor," and that it has taken effective measures to enforce the same, but it contends that there was no violation of the Clayton Act as charged and has argued points for reversal in substance as follows: (*a*) that in its after market transactions

which are here involved it is not engaged in interstate commerce, and that its service station contracts are not contracts for the sale of goods within the meaning of section 3 of the Clayton Act; (*b*) that it has not fixed prices (and discounts therefrom) subject to a condition or understanding that the service stations shall not use or deal in the goods of competitors within the prohibition of section 3 of the act; (*c*) that the effect of petitioner's action has not been, and may not be to lessen competition or tend to create monopoly, and that its action was lawful and without unlawful motive; (*d*) that its actions do not constitute methods of unfair competition within section 5 of the Federal Trade Commission Act; (*e*) that this proceeding was not, and is not, in the public interest, and that it should be dismissed.

(*a*) *Interstate commerce.*—Section 3 of the Clayton Act denounces making contracts for sale of goods by a person engaged in interstate commerce on the condition or understanding that the purchaser shall not use or deal in the goods of competitors of the seller where the effect of the contract or condition may be to substantially lessen competition or tend to create a monopoly in any line of commerce. The petitioner does not deny that it engages in interstate commerce in that first branch of its business described in the findings (par. 4) involving the sales of carburetors for original equipment of automobiles. But as to the "second, the sale of carburetors and parts for replacement and service of carburetors in use, commonly referred to as 'after market' business" (id.), it contends that it does not engage in interstate commerce.

It appears that petitioner's sales in this branch of its business are made to some 67 distributors or wholesalers of automotive equipment located in many states, classified by petitioner as "regional distributors." The total sales territory of these distributors covers the entire United States, and 30 of them sell in territory comprising more than one State. Petitioner also ships some of its products directly to more than 86 "zone distributors," service stations doing a certain amount of wholesale business who may also purchase from the regional distributors. Both regional distributors' contracts and zone distributors' contracts provide for purchase of carburetors and parts from petitioner at specified prices, f. o. b. St. Louis where petitioner's principal offices and factories are located. Orders are filled by shipment from St. Louis to the distributors and shipments may be made directly to service stations if the distributors so direct. We think that in making such sales and shipments to distributors and service stations located in other States than Missouri, petitioner is engaged in interstate commerce. The fact that petitioner delivers its merchandise f. o. b. St. Louis, title passing there and freight being paid by the purchaser, is immaterial where the actual movement is interstate.

Santa Cruz Co. v. *Labor Board*, 303 U. S. 453; *Penn R. Co.* v. *Clark Bros. Coal Mining Co.*, 238 U. S. 456. The contracts between petitioner and its service stations contemplated and required the movement of petitioner's products in interstate commerce. They provide for continuing purchases by the service stations of carburetors and parts to be manufactured by petitioner in Missouri and transported to distributors (also parties to the contracts) in other States, the shipments in some cases being made directly to zone distributors and service stations, and we entertain no doubt that all such contracts, except those involving sales and shipments to distributors and service stations in Missouri, were in the course of interstate commerce.

[731] We think it must also be held that the service station contracts were contracts for the sale of goods within the act. Petitioner concedes that the service station contracts which include the petitioner, its distributors and the service stations as parties thereto "establish the terms and conditions of sales by distributors to service stations, and the actual business in this respect is conducted uniformly therewith," but it argues that the sales which are finally consummated are sales from the distributors and not from petitioner to the service stations. It is to be observed that petitioner not only made the service station contracts in the sense that it was a party to them, but they are essentially petitioner's contracts, made on printed forms issued by petitioner and headed by its name and trade-mark and of no validity till approved by petitioner's general manager. The sales provisions are prescribed by petitioner and it fixes and controls the prices and terms upon which the service station receives its products from the distributors, as set forth in the contracts. In the separate contracts with the distributor the distributor agrees to sell at prices and discounts specified by the petitioner. The list prices are found in petitioner's catalog. Complete control of the sales prices and terms is in the petitioner, and the evidence is clear that it was not the distributors but it was the petitioner which had and exercised the power to impose the conditions of its General Bulletin No. 134 in respect to sales, to cancel the contracts if it saw fit, or to raise the prices on goods to be delivered to the service stations. The method of disposing of products of manufacture in intertsate commerce to retailers who in turn sell to the public, is general in many lines of industry and there is no reason to believe that the scope of section 3 may be so limited by interpretation as to sanction restraint of trade and monopoly of interstate commerce merely because of such method of distribution.

It is argued that the service station contracts may be regarded as "contracts for services" to be rendered by the stations for the benefit of petitioner and may be related to the many services rendered by petitioner to the stations, and that the contracts should be deemed "service

contracts" as between the petitioner and the stations, rather than contracts for the sale of goods. Much of petitioner's complaint in the brief is directed to the failure of the Commission to make findings upon the matter of such services. The Commission found that petitioner "conducts short training courses at various distribution points, and a school at its factory in St. Louis, where many service station mechanics have received special training in the service and repair of carburetors, and in engine tune up," but in its answer to the complaint against it, and in its evidence, the matter of services and the relation of service to petitioner's business and the very great expenditures incurred by it in connection with service were developed in voluminous detail. The importance of service is again urged in the brief and we entertain no doubt that the element of service has been and is a great factor in the building up and maintenance of petitioner's business.

But the fact remains that the essential character of the petitioner's business is that of a manufacturer of carburetors and parts, engaged in selling them in interstate commerce for profit. To the extent that it does so in contravention of section 3 of the Clayton Act, it is amenable to the provisions of the Federal Trade Commission Act. We think no one of the provisions of the service station contracts relating to carburetor servicing, nor all of them taken together, operated to divest those contracts of their essential character as contracts for the sale of goods made in the course of interstate commerce, and we hold that they were contracts for sales of goods within that section. That they may be denominated Service Station Contracts is not controlling. "While this contract is denominated one of agency, it is perfectly apparent that it is one of sale." *Standard Co.* v. *Magrane-Houston Co.*, 258 U. S. 346.

(*b*) *Price fixing on conditions against use of competitor's goods.*—Petitioner contends that the Commission's findings set forth in paragraphs 34 and 35 are conclusions merely and unsupported. They are to the effect that petitioner has entered into or renewed contracts for the sale of its products with more than 900 service stations on the condition or understanding that the purchasers thereof shall not use or deal in the goods of a competitor or competitors of respondent, and that it has fixed the prices and discounts from such prices to approximately 7,000 service stations on the condition or understanding that the purchasers thereof shall not use or deal in the goods of a competitor or competitors of petitioner.

Petitioner argues that its service station contracts, considered with General Bulletin No. 134, do not effect a fixing of prices on [732] the conditions denounced by section 3 of the Clayton Act. Its position is that when due regard is given to the business as a whole it should be found that the service stations are simply accorded a privilege and free choice between taking the Carter goods and performing the serv-

ices required by Carter on the terms offered, or, in the exercise of their judgment and at their election, to deal with Carter's competitors. The Carter contract forms contain no provision that the service station obligates itself to deal exclusively with Carter.

We think it is clearly proved that petitioner did fix the prices it charged and discounts allowed on purchases of its products by the contract service stations and general cabinet service stations, upon the condition that they should cease and refrain from dealing in a new competing line of carburetors. Petitioner's contracts with distributors require the distributors "to sell and exchange Carter Carburetors at prices and discounts specified by Company," and pursuant to these contracts, petitioner fixes the prices at which service stations may purchase from the distributors, contract service stations purchasing at a discount of 50 percent and general cabinet stations at a discount of 40 percent from list prices. Such list prices are published by petitioner in its catalog, which is furnished to all service stations and distributors and kept up to date by a loose leaf system. General cabinet stations may purchase their stock requirements from contract service stations, and the service station contracts likewise provide that the service station shall sell and exchange Carter carburetors and parts at prices and discounts recommended by petitioner. Petitioner thus has established within its own control a complete system of retail price maintenance, effective as to all sales to both contract and general cabinet service stations.

The purpose and effect of General Bulletin No. 134 must therefore be considered in the light of that situation. The Bulletin advised that the preferential discount would be discontinued if a new carburetor line (defined as a carburetor made after June 23, 1934) was taken on without petitioner's written approval. Petitioner gave instructions that if the service stations "should elect to keep the other line * * * the standard trade discount of 25 percent would then apply." Petitioner's telegram to its field representatives stated that "until they make up their minds 25 percent will be their discount." The policy was enforced by increasing prices to some service stations which refused compliance and by threats of reduction of discounts made to others and by cancelation of contracts. It was made perfectly clear to all service stations that their preferential discount would be available only on condition that they did not carry or take on a new competing line. Under these circumstances it is immaterial that those who handled petitioner's products were not obliged to affirmatively promise in express terms not to handle goods of Carter's competitors. The condition against handling the goods of competitors was made as fully effective as though it had been written in and affirmatively agreed to in express terms in the contracts. Of course it was necessary that the petitioner's distributors should cooperate to effectuate

the purpose because the distributors were the immediate source from which the service stations obtained their stocks directly. But there is, and was, no doubt that such cooperation was complete, both in actual practice and according to the terms of the contracts between petitioner and distributors. The arguments presented as to the right of an individual to contract or refuse to contract with whom he pleases must be related to the provisions of section 3 of the act and the limitations there imposed. The service stations contracts were intended to and did impose a condition that the purchaser should not deal in the goods of a competitor of petitioner within the prohibition of section 3.

(c) *Lessening competition and tendency to create monopoly.*—The petitioner has very fully detailed and developed out of the mass of testimony in the record, facts and circumstances upon which it contends that the effect of its action in promulgating and enforcing its General Bulletin No. 134 was not and "may not be" to substantially lessen competition or to create a monopoly in commerce in carburetors. The question is primarily a question of fact, though illuminated by many court decisions, and the Commission has found on the issue against the petitioner (par. 37).

Our study of the record has convinced that the Commission has correctly found and described the relevant important factors in the carburetor industry throughout the country and the connection of petitioner's activities therewith, and the actual and imminent effects upon interstate commerce in carburetors of petitioner's action, which is the subject of the complaint herein. There is no doubt that the petitioner occu[733]pies a dominating position in the carburetor business of the country and no service station assuming to give a complete carburetor service, other than mere adjustments, could successfully carry on its business or render to the public the kind of service which the special service stations have long given without carrying a stock of carburetors, parts, and replacements from petitioner's products.

The long established custom of the special service stations has been to offer carburetor service on all popular makes and models of automobiles in current use and to carry in stock and deal in competing lines of standard equipment. Although there are some 60,000 independent automobile repair shops and garages in the country, the specialized service stations, found to be about 7,000 in number, occupy a position in the business as an outlet for petitioner's goods and render a service to the public which is of paramount importance in the industry, and petitioner has long had the choice of all these specialty organizations and the bulk of their desirable equipment accounts. A large part of the business of the service stations has consisted in servicing the Carter carburetors and any new line, under the circumstances which have prevailed, has offered small opportunity of immediate profit to the

service stations. The necessary effect of petitioner's action in promulgating and enforcing its General Bulletin No. 134 was to coerce and compel the service stations which had invested in stocks of the new line of carburetors and parts to dispose of the same and refuse to purchase more, or to cease to display them and conceal them where they would not be observed by petitioner's field men and distributors' solicitors. Undoubtedly petitioner's action deterred many service stations from buying stocks forbidden them in the bulletin. The effects upon the industry of the bulletin and its enforcement by petitioner were not limited to the commerce carried on by service stations but necessarily reached the original equipment branch of the business. The great measure of reliance put by nearly all the automobile manufacturers upon the equipment manufacturers for warranty service, and after the warranty period for service supplemental to that given by the automobile dealers, is fully shown. The equipment manufacturers have their lists of official service stations and all the automobile dealers get such lists and depend upon them.

It follows that practices of a dominant carburetor manufacturer which are designed to and do prevent a new manufacturer from obtaining a foothold in the service field will handicap the new manufacturer in selling his carburetors for original equipment and may prevent him from marketing a superior product at an equal or lower price. The petitioner's restraint upon competition works in a vicious circle since service sales on any carburetor normally depend upon the number of automobiles equipped with that carburetor, and loss of service sales and distribution by the carburetor manufacturer in turn affects his ability to meet price competition and service requirements in offering his product for original equipment.

We hold that the effect of the action of petitioner here complained of was to lessen competition within the prohibition of section 3. In *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451; *Vitagraph, Inc.* v. *Perelman*, 3 Cir., 95 F. (2d) 142; *Butterick Co.* v. *Federal Trade Commission*, 2 Cir., 4 F. (2d) 910, the accused contracts were made directly by the manufacturing company with the dealers and the manufacturer-controlled distributor was not present as a conduit of the goods like in this case, but the principles laid down in those cases none the less control decision here.

The action of petitioner also tends to create monopoly. Although at the time Bulletin No. 134 was promulgated it was undoubtedly directed principally against the competition of the Chandler-Groves Co., it was made applicable to "any other carburetor put on the market since publication of our bulletin No. 77." It must be deemed to have established petitioner's policy to exclude new competition from the carburetor field which if vindicated may be extended to complete monopoly. That

petitioner's action has not affected complete monopoly, and that it still does not control all or nearly all of the carburetor business is not determinative. Sections 2 and 3 of the Clayton Act reflect the intent of Congress to prevent courses of action having a tendency to create a monopoly before actual monopoly has been accomplished and the Federal Trade Commission Act supplies means to effectuate the intent. By its accused action petitioner has attempted to control the carburetor business of practically all service stations specializing in carburetor and ig[734]nition service, and they, as observed, perform a vital function in the distribution of carburetors and in meeting the requirements of the public using the carburetors. Hitherto they have serviced the various makes of carburetors. The petitioner attempts to confine them to its own products and so comes within the statute.

It is neither necessary nor relevant to belittle the work petitioner has done in giving instruction and information concerning the complicated mechanism into which its carburetors have been developed; nor to ignore its research and engineering activities or its outlay for advertising and disseminating current advices. It has made great expenditures of time and money to such ends. It results in an ability on the part of the special service stations to render better service to the public. But it does not result in vesting in petitioner a right to dictate conditions in the sale of its goods which are forbidden by section 3. It is true, as contended by petitioner, that its competitors are left free to go among the 60,000 service stations and to build up new special service stations to compete with those already established by handling products other than petitioner's product. It is also true that the outlays that have been made by petitioner have given the established special service stations some advantages that they avail of when they service products of petitioner's competitors, and such competitors indirectly secure a benefit in that way. It is possible that some stations have made unfair substitutions of Chandler-Groves products in some instances—though we do not so decide. But there is no way by which every bit of the fruit of such large-scale dissemination of information and knowledge as petitioner has carried on can be prevented from spreading out onto the common. Educating remains merely an incident of petitioner's business. The substantial character of its business continues to be the manufacturing and selling of carburetors. The Commission properly found that petitioner's attempt to coerce the service stations into handling no goods but its own tends to create monopoly within the prohibition of the act.

(*d*) *Unfair competition* (*Sec. 5, Federal Trade Commission Act*).—The record fully sustains the Commission's conclusion that petitioner has engaged in acts and practices in the conduct of its interstate business which have been and are to the prejudice of the public and of

petitioner's competitors and constitute unfair methods of competition in commerce within the intent and meaning of the act.

Petitioner has interfered with and diverted the business of a competitor, the Chandler-Groves Co., by inducing, coercing and compelling many independent automobile service stations to cancel existing sales contracts with such competitor and to cease and refuse to deal in the products of such competitor. Several service station operators testified as to the coercive effect of the conditions imposed by petitioner, and that solely as a result of such conditions they cancelled their official service station contracts with Chandler-Groves and returned or concealed their Chandler-Groves stock. Petitioner not only threatened to cancel the service station contracts of, and reduce the discounts available to service stations found to be dealing in the Chandler-Groves line, but also threatened to remove such service stations from its mailing list and to discontinue distribution to them of its service and sales bulletins, which it is agreed are valuable and necessary to the service stations.

As stated by the witness Nilsen:

> The few parts we had in stock we kept, but we did not talk about it or try to push the line. We felt that we could not go ahead. At first, of course, we thought we might make a business of that along with the other, but naturally when we were told that that was not agreeable to Carter, we simply did nothing about it, did not talk about it, did not try to sell the carburetor, did not do anything.

This witness further stated that it had always been his practice to handle all lines of standard automobile equipment so far as he was able to do so; that

> as a service station in carburetors, unless you can give service on all cars, it is pretty hard to maintain men who specialize in carburetors, have enough work for them. If you are going to single out one or two lines, it is pretty hard to keep a first-class man on the pay roll. You need service on all makes of carburetors in a small town like we are, to get volume, to maintain a carburetor department. (Oak Park, Ill., where Nilsen is located, has a population of 64,000.)
>
> Q. Why did you choose to give up Chandler-Groves and retain Carter?—A. Because Carter was established with us, and was a profitable line. Chandler-Groves, we felt, had value mainly in the future.

[735] This testimony is characteristic of that given by other service station operators. As a result of petitioner's activities, many service stations which would otherwise have continued to carry both lines canceled their Chandler-Groves contracts and returned their stocks to the Chandler-Groves distributor. Others, like Nilsen (who also canceled his contract), did not return their stock but thereafter did not display Chandler-Groves carburetors or push the line.

Petitioner directly and consistently interfered with the contract relationships of its competitor, Chandler-Groves Co. Petitioner obtained a list of official Chandler-Groves contract service stations and used this

list as a basis for approaching, and for having its distributors approach, service stations which were then representing both Chandler-Groves and Carter. A list of Chandler-Groves service stations in a Carter distributor's territory was sent to the distributor with instructions to have the distributor's salesmen "check with every service account as they go through the territory" and "insist" that the service stations give up the Chandler-Groves line.

The Carter Detroit distributor repeatedly urged the Chandler-Groves Detroit distributor to give up his Chandler-Groves representation after the latter's Carter contract had been canceled, and stated that a discount of 50 percent and 10 percent was being offered to service stations "who would go with Carter and throw out Chandler-Groves." A similar proposition was made by one of petitioner's field men to the Chandler-Groves Fort Wayne, Ind., distributor, with the alternative of a cut to 25 percent. Another instance of this practice was with Kritchmer Motor Service of Philadelphia.

On May 22, 1937, petitioner wrote to its Cincinnati distributor stating:

> So long as they [service stations] insist on handling C-G material, whether carburetors or parts, we will cancel, and we will recover consignment material such as display stands, cabinets, counterbinder, service station sign, etc., and their future discount will be 25 percent. There will be no exception in this matter, and we expect distributors to police the situation for us.

The activities of the Detroit distributor in enforcing the policy inaugurated by Bulletin No. 134 are described by his testimony. After receiving the confidential letter and telegram he telephoned the service stations known to be carrying the Chandler-Groves line, read excerpts from the telegram, and told them that they would have to choose between Chandler-Groves and Carter. He then called his salesmen together and instructed them to carry out petitioner's policy and to look for Chandler-Groves products when visiting the service stations. No distinction was made between carburetors and parts, although Chandler-Groves parts are noncompetitive with Carter parts. The service stations were asked to state their decision in writing. Copies of the letters received were forwarded by the distributor to petitioner.

The method used by petitioner in concert with its distributors and field men go further than a mere refusal to deal, and in that respect are similar to the methods which were used by the Beech-Nut Co. in compelling adherence to its resale prices—methods which were declared to be in restraint of trade, and an unfair method of competition in *Federal Trade Commission* v. *Beech-Nut Packing Company*, 257 U. S. 441. In that case the competition affected was price competition in the resale of Beech-Nut products. In the present proceedings the restraint upon interstate trade is much more direct and obvious. The reasoning of the Supreme Court in the Beech-Nut

case in holding that the Beech-Nut system unreasonably restrained trade applies equally to the acts and practices of petitioner here, and this case presents a plainer case of unfair competition than was there dealt with by the court. We think the following expressions of the court in that case are directly applicable here:

> The system here disclosed necessarily constitutes a scheme which restrains the natural flow of commerce and the freedom of competition in the channels of interstate trade which it has been the purpose of all the antitrust acts to maintain. In its principal operation it necessarily constrains the trader, if he would have the products of the Beech-Nut Co., to maintain the prices "suggested" by it. If he fails to do so, he is subject to be reported to the company either by special agents, numerous and active in that behalf, or by dealers whose aid is enlisted in maintaining the system and the prices fixed by it. *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441, 453; *Whole*[736]*sale Grocers Association* v. *Federal Trade Commission*, 277 Fed. 657, 664; *Standard Oil Co.* v. *Federal Trade Commission*, 282 Fed. 81, 87; *L. B. Silver Co.* v. *Federal Trade Commission*, 289 Fed. 985, 990.

(*e*) *The public interest.*—The point is urged that these proceedings in the Federal Trade Commission are not in the public interest and should therefore be dismissed. Petitioner contends in substance that it simply took steps which were necessary on its part to be taken, to meet and protect itself against unfair trade practices and methods of competition pursued by the Chandler-Groves Co. It presents that its General Bulletin No. 134 was directed against that company and was to meet and counteract its wrongful actions, and that the public interest was not intended to be and in fact was not harmfully affected, and "may not be" so harmfully affected within the purview of the Federal Trade Commission Act. But we think the contentions should not be sustained. We need not decide whether the Chandler-Groves Co. has also offended against the act. The mere fact that its competition with petitioner had reached sufficient importance to make it the more immediate target of petitioner's attack is not controlling. Petitioner's policy was not limited to one competitor. It extended to any new line made after June 23, 1934. It seems clear to us upon the proof in the record that petitioner's course of action is pursued by it by combined and concerted action with its numerous distributors and individual agents, that such combined and concerted action is oppressive and wrongful towards the thousands of independent service stations whose business it directly and immediately restricts and interferes with, and that the public interest is thereby wrongfully and injuriously affected. As was said by the Supreme Court in *Eastern States Lumber Association* v. *United States*, 234 U. S. 600, 613:

> The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of

interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted.

And again in *Sugar Institute* v. *United States*, 297 U. S. 553, 599,

The freedom of concerted action to improve conditions has an obvious limitation. The end does not justify illegal means. The endeavor to put a stop to illicit practices must not itself become illicit. 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.

See *Vitagraph, Inc.* v. *Perelman*, 95 F. (2d) 142, supra.

Petitioner has laid stress and reliance upon *Curtis Publishing Co.* v. *Federal Trade Commission*, 270 Fed. 881, affirmed, *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568; and *Pictorial Review Co.* v. *Curtis Publishing Co.*, 255 Fed. 206, but we find those cases inapplicable here and to be distinguished on the facts. It was there recognized that where a producer has built up his business by creating an organization of salesmen devoting their time exclusively to the distribution of his products, he may lawfully maintain the integrity of the organization as an exclusive selling agency. But in this case, the thousands of service stations involved are established independent outlets where the public has been accustomed to go for service on all makes of carburetors and other automobile equipment. Their specialization in ignition service ante-dated the specializing in carburetors. They are not and have never constituted an exclusive selling agency for Carter products. The action of the petitioner was taken to coerce and compel them to change their character and to narrow and limit their customary service to the public and to lessen, restrain and ultimately prevent the legitimate commerce of competitors whose goods were and had been moving in interstate commerce through this important outlet.

In *Journal of Commerce Pub. Co.* v. *Chicago Tribune Co.*, 286 Fed. 111, cited by petitioner, it was held that under the circumstances there shown the Tribune company was properly not enjoined from requiring the carriers of its paper over exclusive routes that it had built up by means referred to in the opinion, to handle the Tribune exclusively. The court noted that "each carrier, though owning his own [737] 'route' and buying outright from day to day his copies of the paper, recognized that the Tribune Co. had at least a moral right to a voice in controlling the methods and personnel of the carriers." We think the situation there presented was not analogous to that involved here. Here the public has an interest in the continued independence of the service stations and in fair competition in the carburetor industry, and it is the duty of the court to protect such interest by enforcing the lawful order of the Commission.

The findings and conclusions of the Federal Trade Commission are sustained and the clerk of this court is directed to enter the order of this Court against petitioner in form as ordered by the Commission.

ALLEN B. WRISLEY COMPANY ET AL. v. FEDERAL TRADE COMMISSION[1]

No. 6980

(Circuit Court of Appeals, Seventh Circuit. June 12, 1940)

FINDINGS OF COMMISSION—WHERE SUPPORTED BY EVIDENCE.

Findings of the Federal Trade Commission are conclusive if supported by substantial evidence. Federal Trade Commission Act of 1914, sec. 5, 15 U. S. C. A. sec. 45.

CEASE AND DESIST ORDERS—BRANDS AND LABELS—"OLIVE OIL SOAP" FOR SOAP COMPOSED OF OILS OTHER THAN OLIVE OIL ONLY.

Evidence *held* to authorize finding by Federal Trade Commission, as basis for cease and desist order against labeling a soap comprising other oils as an "olive oil soap," that an "olive oil soap" is one containing olive oil as its fatty ingredient to the exclusion of all other oils or fats.

CEASE AND DESIST ORDERS—BRANDS AND LABELS—"PALM AND OLIVE OIL SOAP" FOR SOAP COMPOSED OF OILS OTHER THAN OLIVE OIL ONLY—EVIDENCE—STIPULATIONS—WHERE CONTRADICTED BY UNANIMOUS PERSONAL TESTIMONY TO CONTRARY.

A stipulation, that 24 out of 30 members of the consuming public would testify that the label "Palm and Olive Oil Soap" would lead them to believe that the soap contained 100 percent olive oil, could not be said to be substantial in view of unanimous testimony to the contrary by witnesses appearing personally, and did not authorize cease and desist order against use of the quoted label and similar labels.

CEASE AND DESIST ORDERS—BRANDS AND LABELS—"OLIV-ILO" FOR SOAP COMPOSED OF OILS OTHER THAN OLIVE OIL ONLY.

Evidence *held* to sustain finding by Federal Trade Commission, as basis for cease and desist order against use of such labels as "Oliv-ilo" and the like for soap containing other fatty ingredients than olive oil, that such labels led the public to believe that the soap contained 100 percent olive oil.

FEDERAL TRADE COMMISSION ACT—SECTION 5—PROCEDURE AND PROCEEDINGS—PLEADINGS—ANSWERS—ADMISSIONS—COMPETITION CONCEDED—AS NOT NECESSARILY BARRING ISSUE UNFAIR COMPETITIVE EFFECT.

In proceeding by Federal Trade Commission, admission, in answer of allegation, that soap dealers complained against were both of the two classes of dealers in which the soap industry was divided, authorized finding that dealers of both such classes were among the competitors but did not preclude presentation of issue whether unfair methods were employed affecting competition.

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[1] Reported in 113 F. (2d) 437. For case before Commission, see 28 F. T. C. 1368.

UNFAIR METHODS OF COMPETITION—WHETHER METHOD UNFAIR—CRITERIA—DIVERSION OF TRADE AND DAMAGE OR INJURY TO COMPETITOR.

One of the tests to be applied in determining if method of competition is "unfair" is diversion of trade, and damage or injury to competitor.

UNFAIR METHODS OF COMPETITION—UNFAIR TRADE METHODS—WHETHER UNFAIR METHODS, ETC., PER SE.

Unfair trade methods are not per se "unfair methods of competition," since the word "competition" imports existence of present or potential competitors and the unfair methods must be such as injuriously affect or tend thus to affect business of those competitors.

BRANDS AND LABELS—OLIVE OIL ONLY SOAP FOR SOAP COMPOSED OF OILS OTHER THAN.

The use of brands and labels falsely representing that soap was 100 percent olive oil was an "unfair method of competition" as to that class of competitors engaged in manufacture and sale of 100 percent olive oil soap.

PUBLIC INTEREST—BRANDS AND LABELS—OLIVE OIL ONLY SOAP FOR SOAP COMPOSED OF OILS OTHER THAN.

A proceeding by Federal Trade Commission for cease and desist order against labeling of soap so as to falsely represent that the soap was 100 percent olive oil was in the public interest.

CEASE AND DESIST ORDERS—SCOPE—AS EXCEEDING ISSUE TENDERED BY COMPLAINT—TRADE DESIGNATIONS—"OLIVE OIL" FOR SOAPS COMPOSED IN PART ONLY OF—WHERE PROHIBITION, UNLESS ACCOMPANIED BY EQUALLY CONSPICUOUS EXPOSITION OF OTHER OIL CONTENT, AND UNFAIRNESS, AS ALLEGED, WITH DEALERS IN GENUINE OLIVE OIL SOAP AND DEALERS IN PRODUCT COMPOSED IN PART ONLY OF.

A cease and desist order prohibiting manufacturers of soap from using the word "olive," or similar words, unless words truthfully describing and designating each [438] constituent oil were also used, went beyond issues raised by petition alleging merely unfair competition with dealers in genuine olive oil soap and dealers truthfully representing that their products were only partially olive oil soap, and should merely require use of name of another oil or other words clearly indicating that soap was not made wholly of olive oil.

(The syllabus, with substituted captions, is taken from 113 F. (2d) 437.)

On petition by Wrisley Co. and others to review cease and desist order of Commission directing petitioners to cease and desist from alleged unfair competition, order set aside, with permission to present a substitute order.

Mr. F. W. Sullivan, of Chicago, Ill., for petitioners.

Mr. W. T. Kelley, chief counsel, and *Mr. Martin A. Morrison*, assistant chief counsel, both of Washington, D. C., *Mr. Eugene Carmichael, Jr.*, of Chicago, Ill., *Mr. DeWitt T. Puckett* and *Mr. James W. Nichol*, special attorneys, Federal Trade Commission, both of Washington, D. C., for the Commission.

Before SPARKS, MAJOR, and TREANOR, Circuit Judges; TREANOR, C. J., dissenting in part.

MAJOR, *Circuit Judge:*

This is a petition to review and set aside a cease and desist order entered April 6, 1939, by the Federal Trade Commission (hereinafter referred to as the "Commission") against petitioners.

On December 24, 1936, the Commission issued its complaint pursuant to section 5 of the Federal Trade Commission Act of 1914, 15 U. S. C. A. Sec. 45, alleging, in substance, that petitioners were engaged in the business of manufacturing soap and in the distribution thereof in interstate commerce; that petitioners were in substantial competition with those engaged in the manufacture and sale of genuine olive soap, and those engaged in the manufacture and sale of soap, the oil content of which is not wholly olive oil; that in the course and conduct of such business, petitioners sold many kinds of soap, some of which were branded, labeled, and otherwise advertised and represented as olive oil soap.[1]

It was alleged that the oil or fat ingredient of the soap thus labeled and branded was not wholly olive oil; that genuine olive oil soap is one, the oil ingredient of which always has been and now is olive oil to the exclusion of all other oils and fats; that said soap had for many years been sold and used by the purchasing public throughout the United States and that because of its qualities had long been considered as a high quality soap, free from substances harmful to the human skin or delicate fabrics, and possessing desirable qualities not contained in other soaps; that a substantial portion of the purchasing and consuming public preferred to purchase and use soap, the oil content of which was wholly olive oil. It was alleged that petitioners were enabled to sell their soaps at prices substantially lower than its competitors who import or manufacture and sell genuine olive oil soap, and that the practices complained of have the capacity and tendency to cause and do cause the trade and public to purchase petitioners' said soap as and for genuine olive oil soap in preference to the more costly genuine olive oil soap sold by its competitors. It was further alleged that such practices had a tendency to mislead and deceive a substantial portion of the trade and purchasing public into the erroneous belief that such representations were true, and into the purchase of substantial quantities of petitioners' said soap because of such erroneous belief, and that as a result thereof, trade was unfairly diverted from those competitors dealing in the genuine olive oil soap, as well as those dealing in soap not wholly olive oil, but who truthfully advertised their soap, resulting in substantial injury to competition.

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[1] Among the brands and labels used by the petitioners as alleged in the complaint, are: "Wrisley's Oliv-ilo pronounced Oliv-eye-lo," "Purito Olive Oil Castile," "Wrisley's Oliv Skin pure Toilet Soap," "Royale Olive Oil Pure," "Allen B. Wrisley Co., Chicago," "Palm and Olive Soap Regal Soap Co.," and "Palm and Olive Oil Soap."

The acts, practices and methods of petitioners were alleged to injure and prejudice the public and petitioners' competitors, and to constitute an unfair method of competition within the meaning and intent of the act.

[439] Petitioners' answer admitted competition and that the soaps labeled and branded as alleged in the complaint were not wholly olive oil, but denied that the use of the words "Olive Oil" in describing soap, connotes to the trade or the purchasing public that it is a soap, the oil content of which is 100 percent olive oil. The answer admits that some of petitioners' competitors dealing in soap, the oil content of which is not wholly olive oil, truthfully advertise the same. A general denial was made of other allegations of the complaint.

The Commission, after hearing, made its findings of fact, which generally follow the allegations of the complaint. We set forth in a footnote [2] such of the specific findings as appear to be material. Predicated upon such findings, the Commission entered the order here involved, which we shall discuss hereafter.

The principal contested issues are:

(1) Is it an unfair method of competition to brand and label soaps as charged in the complaint and found by the Commission which do not contain 100 percent olive oil as their fat or oil content, but which do contain olive oil in lesser amounts?

(2) Is there any specific and substantial public interest in the subject matter of the complaint which should be protected by the Commission?

(3) Is there substantial evidence to support the Commission's finding that a substantial portion of the trade and purchasing public have been misled and deceived by use of the brands and labels set forth in

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[2] "Olive oil soap is a soap containing olive oil as its fatty ingredient, to the exclusion of all other oils or fats. Some of the brand names and labels used by respondents in advertising their soap have led a substantial number of the trade and purchasing public to believe that the soap so labeled, branded and otherwise advertised is olive oil soap.

"* * * For many purposes, a substantial portion of the purchasing and consuming public prefer to purchase and use soap, the oil content of which is wholly olive oil. Said olive oil soap has long been and is now considered by the medical profession to have the qualities requisite and desirable for bathing infants, sick and ailing persons, and is used in medicinal preparations. Said soap has long been, and is now, prescribed and recommended by the medical profession for said purposes.

"Olive oil has been higher in price than other oils and fats commonly used in the manufacture of soap, and genuine olive oil soap is more costly to manufacture than respondents' said soaps, and respondents are enabled to, and do, sell their soaps at prices substantially less than respondents' competitors who import, or manufacture, and sell genuine olive oil soap, can and do sell the same.

"There are a substantial number of the consuming public who understand an olive oil soap to be a soap containing 100% olive oil as its oil or fat content, and prefer to buy and use said soaps.

"* * * There are among the competitors of respondents manufacturers and distributors of genuine olive oil soap and manufacturers and distributors of soap, the oil content of which is not wholly olive oil, who truthfully advertise, sell and distribute their soaps among the various states of the United States. By the use of the representations aforesaid, trade is unfairly diverted to respondents from such competitors, thereby, substantial injury is being and has been done by the respondents to competition in commerce as herein set forth."

the complaint which has resulted in a diversion of trade to petitioners and from their competitors?

(4) Is the evidence sufficient to disclose any substantial competition between petitioners' products labeled and branded as described in the complaint, and those containing olive oil as their sole oil or fat ingredient?

The first two issues, so it is contended, raise questions of law to be determined by the court and not by the Commission. *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427; *International Shoe Co.* v. *Federal Trade Commission*, 280 U. S. 291, 298. Petitioners concede the well established rule that the findings of the Commission are conclusive if supported by substantial evidence.

In considering the contentions of the respective parties, it is important to keep in mind that the Commission's case as revealed by the pleadings, the hearing and its argument here, is predicated upon the theory that petitioners untruthfully and falsely represented their soaps as containing 100 percent olive oil; that by reason of this misrepresentation alone, a substantial portion of the public was induced to purchase such soap; that it was deceived thereby and, as a result of such deception, both a substantial portion of the public and petition[440]ers' competitors were injured or damaged. In considering the alleged misrepresentation on the part of petitioners, it also must be borne in mind that they consist entirely of the brands and labels set forth in the complaint. True, the Commission in its findings referred to the "soap so labeled, branded, and otherwise advertised as olive oil soap." What is meant by the words "otherwise advertised" we do not know, as we do not find a scintilla of evidence in the record that petitioners' soap was advertised, or that the alleged misrepresentation consisted of anything other than the brand or label itself.

One of the highly controverted questions at the hearing was, what is an "Olive Oil soap"? It is petitioners' contention that such soap is usually and generally classified by the manufacturer, retailer and the public into three classes, (1) those soaps which are genuine, 100 percent pure olive oil, (2) those soaps in which the olive oil content predominates, and (3) types of olive oil soaps which are for general toilet purposes and contain olive oil in lesser quantities. The soaps in question are included in the third classification. The record discloses that petitioners introduced a large amount of credible testimony sustaining its theory in this respect. On the other hand, the Commission specifically found that an olive oil soap is one containing olive oil as its fatty ingredient to the exclusion of all other oils or fats.

We think there is substantial testimony in support thereof. Under such circumstances, we are not permitted to weigh the evidence and must accept the finding in this respect.

In our judgment, the important, if not controlling, question is not whether an olive oil soap is one, the contents of which are 100 percent olive oil, but whether the labels and brands used by the petitioners constitute a representation that the soaps so branded and labeled were pure olive oil soaps, as that term is defined by the Commission. The case of the Commission must stand or fall upon the answer to that question. It thus becomes essential to consider the brands and labels in question, with a view of ascertaining if such constitute a misrepresentation, deceptive to a substantial portion of the public, keeping in mind the theory of the case that the public was deceived only because it was falsely led to believe it was obtaining a 100 percent olive oil soap.

One of the brands named in the complaint and the findings is, "Palm and Olive Oil Soap." Was the use of such brand and label a representation that it was a 100 percent olive oil soap, and does the evidence substantially support a finding to that effect? There was testimony by a number of witnesses, including some of the witnesses for the Commission, who testified it would mean to them a soap, the contents of which included, at least, both palm oil and olive oil. The only evidence to the contrary, upon which the Commission is forced to rely, is found in a stipulation between counsel for the respective parties entered into during the course of the hearing. It was stipulated and agreed that if 30 members of the consuming public were called to testify, they would give certain testimony regarding various matters in controversy. Included in such matters was that "sixteen of said thirty persons would testify that they understand olive oil soap to be one, the oil content of which is 100 percent olive oil," while 14 would testify to the contrary, and 24 of said 30 persons would testify that use of the expression "palm and olive oil soap" would lead them to believe that said soap is an olive oil soap, i. e., one containing 100 percent olive oil. In our judgment, such a stipulation can be given little, if any, weight, and cannot be said to be substantial in view of the unanimous testimony to the contrary given by witnesses who appeared personally. How a person with any intelligence could look at the label or brand upon a cake of soap or the wrapper thereof, containing the two descriptive words "palm and olive" oil and be misled into believing that such words meant 100 percent olive oil, is so incredible as to be unbelievable. We suppose that by the same process of mental reaction, such witness would believe that the words "goose grease and lard" mean 100 percent lard and no goose grease, or that if shown a picture of a cow and a horse, would be led to believe he had seen a picture of two horses.

What we have said with reference to palm and olive oil soap likewise applies to the brands and labels "Palm and Olive Soap" and

"Oliv-Palm Complexion Soap." That the Commission had little faith in its contention as to these particular brands and labels is apparent, we think, from the exception contained in its cease and desist order which will be referred to hereafter.

[441] Of the other labels and brands, namely, "Oliv-ilo," "Royal Olive Oil Pure," "Purito Olive Oil Castile," "Olive-Skin Pure Toilet Soap" and "Del Gloria Castile Made with Pure Olive Oil," the Commission found that such brands and labels represent, and lead the public to believe, that they are a 100 percent olive oil soap. Provisions of the stipulation referred to heretofore furnish some support for such a finding, but as to each of these labels and brands, there is the testimony of witnesses who appeared personally, furnishing additional support. While in some instances such testimony is not of a convincing nature, yet we think it is sufficient to sustain the finding.

At this point it seems appropriate to make reference to the decision of this court in *Kirk & Co.* v. *Federal Trade Commission*, 59 F. (2d) 179 (certiorari denied 278 U. S. 663), and which petitioners argue is controlling here. While the language in that opinion apparently affords some support for petitioners' argument, we do not agree that it is controlling. There the order of the Commission was directed at the word "Castile" when used in connection with soap. It was there argued by the Commission, as here, that such soap is one in which olive oil constitutes the sole oily or fatty ingredient. The opinion comments upon the contrariety of opinion disclosed by the record and holds, in effect, that the evidence supports the finding that the use of the word "Castile" had the capacity to deceive. The court, however, regarded as decisive a bulletin promulgated by the United States Department of Commerce, Bureau of Standards, which defined the term "Castile" as applied to a soap, to include those made from oils other than olive. In other words, the definition thus given was inconsistent with that contended for by the Commission, and the court set aside the cease and desist order. Subsequently, the Supreme Court in *Federal Trade Commission* v. *Algoma Co.*, 291 U. S. 67, 75, appears to have decided the effect to be given a promulgation of the Bureau of Standards contrary to that given by this court in the Kirk case, and, therefore, our holding there is unavailing here.

Petitioners also argue that, as a matter of law, the Commission was without jurisdiction on account of the lack of substantial competition. The Commission replies that the question of substantial competition is foreclosed by the pleadings. It seems pertinent to point out that the record discloses, without dispute, that the soap industry is generally divided into two classes, one of which is concerned with a 100 percent olive oil content, and the other with a lesser content of olive oil.. The former has a more limited or special use, employed largely

on a physician's advice in connection with the hospitals and the sick, and is also used in certain industrial activities. The latter consists of those dealing with what is termed a general purpose soap, which includes most of the ordinary toilet soaps and its utility is far greater than the other. Petitioners were engaged in the manufacture and sale of both classes of soap. The complaint alleged that petitioners were in substantial competition with both classes of soap dealers, which allegation was admitted by the answer. We do not think such admission precludes the issue now presented. Of course, petitioners were in competition with both classes and that would be true irrespective of whether they were engaged in a legitimate business or otherwise. The question at issue is not merely one of competition, but whether unfair methods were employed which affected that competition. The Commission has found that among the competitors of petitioners are, those who manufacture and sell a 100 percent olive oil soap and those who manufacture and sell a soap, the oil content of which is not wholly olive oil, but who truthfully advertise, sell and distribute the same. We think there can be no question regarding the validity of such finding—in fact, it is admitted by petitioners' answer. The Commission then finds that by the use of the labels and brands as charged, trade is unfairly diverted to petitioners from such competitors and that, thereby, substantial injury has been done to competition in commerce. It would seem that the result which must follow from an unfair method of competition is diversion of trade, damage or injury to a competitor—in fact, that is one of the tests to be applied in determining if the method is unfair.

As was said in *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 649:

> * * * Unfair trade methods are not per se unfair methods of competition. It is obvious that the word "competition" imports the existence of present or poten[442]tial competitors, and the unfair methods must be such as injuriously affect or tend thus to affect the business of these competitors—that is to say, the trader whose methods are assailed as unfair must have present or potential rivals in trade whose business will be, or is likely to be, lessened or otherwise injured. * * *

We have no difficulty in concluding that the use of brands and labels, which falsely represented that such soap was 100 percent olive oil, was an unfair method of competition as to the class of competitors engaged in the manufacture and sale of 100 percent olive oil soap. When the public was induced to purchase by reason of such deception, it would seem to necessarily follow that trade was diverted to petitioners from its competitors who were engaged in the manufacture and sale of 100 percent olive oil soap, and to the detriment of the latter. It is more difficult to see, however, under the issue presented by the pleadings, how petitioners' unfair method could have resulted in any damage or

injury to that class of competitors engaged in the manufacture and sale of general purpose soaps containing less than 100 percent olive oil. The reasoning in this respect must proceed upon the theory that such purchasers desired a special purpose soap as distinguished from a general purpose soap. Being deceived, the competitor dealing in the special purpose soap was deprived of their trade. This same public, however, who desired the special purpose soap, had it not been deceived, would not and could not have purchased from the dealer in general purpose soap. How, then, could there have been any business diverted or any injury or damage sustained by the latter class of competitors? Our discussion in this respect is perhaps immaterial except as it concerns the provisions of the cease and desist order.

We are of the opinion there is no merit to petitioners' argument that the proceeding was not in the public interest. As pointed out heretofore, the Commission found that petitioners, by the use of certain brands and labels, misled and deceived the public into purchasing its product. The Court, in *Federal Trade Commission* v. *Royal Milling Co., et al.*, 288 U. S. 212, 217, said:

> * * * The result of respondents' acts is that such purchasers are deceived into purchasing an article which they do not wish or intend to buy, and which they might or might not buy if correctly informed as to its origin. We are of opinion that the purchasing public is entitled to be protected against that species of deception, and that its interest in such protection is specific and substantial. * * *

We now come to the challenged order itself, which, we think, is broader than the issue tendered by the complaint, and the theory on which the case was tried. As was said in *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427:

> * * * Such an order should follow the complaint; otherwise it is improvident and, when challenged, will be annulled by the court.

Petitioners are ordered to cease and desist from "using the word 'olive' or any other word or words or any combination of words or parts thereof or any device of similar import or meaning to describe, designate, or in any way refer to soap, the oil or fatty content of which is not wholly olive oil, except that in the case of soap containing olive oil and other oils as the fatty content, the word 'olive' may be used as descriptive of the olive oil 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 oil in the order of its predominance by volume, beginning with the largest single oil constituent, and provided that if any particular oil in said soap is not present in an amount sufficient substantially to effect its detergent or other qualities, the percentage in which such oil is present shall then be specifically disclosed."

Various oils and fats are used in the manufacture of soap, such as olive, palm, tallow, white grease, olive oil foots, etc. Where the soap contains a number of oils, the order, as we understand it, would require that the name of each be included in the brand or label name. This would seem highly impractical, which perhaps is immaterial, but the essential objection is that such a requirement is beyond the involved issue. The sole issue, as stated heretofore, was that the representation of a 100 percent olive oil soap was an unfair method of competition. If it failed to meet that requirement, it was immaterial and beside the issue as to what other ingredient it might include. It was that representation which deceived the public. The purpose of the order is to prevent such deception. In or[443]der to accomplish such purpose, the public, who has been deceived, needs be informed only that petitioners' soap is less than 100 percent olive oil. With that information, the public who demands a 100 percent olive oil soap will no longer be interested in petitioners' product, or its contents.

We have pointed out some of the names complained of which we have found not to misrepresent, and which obviously should not be included in the order. Using the brand "Oliv-Ilo" as illustrative of the names which we hold to misrepresent, we think the order should go no further than to forbid their use except in connection with the name of another oil or by some other word or words clearly indicating that such soap is not made wholly of olive oil. (e. g., part olive oil.) *Federal Trade Commission* v. *Winsted Co.*, 258 U. S. 483, 490.

The order to cease and desist is therefore set aside, with permission to the Commission, if it shall so desire, to present an order consistent with this opinion.

TREANOR, *Circuit Judge*, concurring in part and dissenting in part.

Petitioners stipulated that each of the names, or brands, involved in this proceeding meant to a majority of the purchasing public an "olive oil soap"; and petitioners further stipulated that to a majority of the purchasing public an "olive oil soap" means "one, the content of which is 100 percent olive oil." It is true, as pointed out in the majority opinion, that there was testimony to the contrary by witnesses who appeared personally. Petitioners, however, were in a position to have special knowledge of the reaction of the purchasing public to the trade names, or brands, which identified their soaps. No doubt few people would be misled who analyzed the trade name with knowledge that palm oil and olive oil are distinct types of oil. We are not in a position to know how widespread among the purchasing public is the knowledge of the difference between palm and olive oils; nor are we informed what percent of the soap purchasing

public analyzes trade names, or brands. No doubt petitioners have considerable knowledge respecting the psychology of advertising and they have stipulated that the majority of the soap purchasing public would understand that the names, or brands, in question mean that the soaps bearing such names are olive oil soaps containing 100 percent olive oil. Such stipulation furnished substantial evidence for a finding that a substantial portion of the purchasing public was deceived by the names, or brands, used by petitioners.

Also I am of the opinion that the Commission's order is warranted by the facts and that the provisions of the order do not go beyond the requirements of adequate protection to the public and the prevention of evasion.

DECREE [1]

The petitioners herein, having filed with this Court on, to wit, June 2, 1939, their petition to review and set aside an order to cease and desist issued by the Federal Trade Commission, respondent herein, under date of April 6, 1939, under the provisions 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 the report and order of said respondent; and the matter having been heard by this Court on briefs and argument of counsel; and this Court thereafter, on June 12, 1940, having rendered its decision setting aside the order of said respondent, with permission to said respondent, if it shall so desire, to present an order consistent with the opinion of this Court; and said respondent having presented to this Court an order consistent with said opinion—

Now, therefore, it is hereby ordered, adjudged, and decreed that said order to cease and desist, issued by the Federal Trade Commission, respondent herein, under date of April 6, 1939, be, and the same hereby is reversed and set aside, and the following order is affirmed by this Court and its enforcement directed:

"*It is ordered*, That the respondents [petitioners before this Court], Allen B. Wrisley Co. and Allen B. Wrisley Distributing Co., also trading under the name Regal Soap Co., their officers, representatives, agents, and employees, directly or through any corporate or other device, and Karl Mayer, George A. Wrisley, and Wrisley B. Oleson, copartners trading as Karl Mayer & Co., or trading under any other name, their agents, representatives and employees, in connection with the offering for sale, sale, and distribution of soap in interstate com-

[1] Entered July 18, 1940.

merce or in the District of Columbia, do forthwith cease and desist from:

1. Representing in any manner that a soap which does not contain olive oil to the exclusion of all other oils is an olive oil soap.

2. Using the brand names or labels "Olivilo," "Royal Olive Oil Pure," "Purito Olive Oil Castile," "Olive-Skin Pure Toilet Soap," or "Del Gloria Castile Made With Pure Olive Oil," or other brand names or labels of similar import or meaning containing the word "Olive" or the letters "oliv" or any equivalent term, to describe, designate or in any way refer to soap the oil content of which is not wholly olive oil. Nothing contained herein shall prevent the respondents from using brand names containing the word "olive," or any derivative thereof or other word or words of similar import or meaning, to describe or designate a soap containing olive oil combined with other oil or oils, if respondent shall, clearly, conspicuously, and truthfully designate that such soap is not made wholly of olive oil, and if olive oil is present in said soap in an amount sufficient substantially to effect its detergent or other qualities. The prohibition of this order shall not apply to the trade names or labels "Palm and Olive Oil Soap," "Palm and Olive Soap," and "Oliv-Palm Complexion Soap."

And it is hereby further ordered, adjudged, and decreed, That the petitioners herein 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 they have 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.

SHEFFIELD SILVER COMPANY, INC. v. FEDERAL TRADE COMMISSION [1]

(Circuit Court of Appeals, Second Circuit. June 19, 1940)

Order denying motion for injunction to restrain Commission from proceeding against petitioner under Commission's complaint in the matter of Sheffield Silver Co., Docket 4000, for alleged misleading use of word "Sheffield" in connection with its offer and sale of silver plated hollow ware (not made and fabricated in Sheffield, England, as alleged, but by petitioner at its place of business in New Jersey), on the ground that the matter at issue was *res judicata* by reason of decision of court in *Sheffield Silver Company, Inc.* v. *Federal Trade Commission,* July 18, 1938, 98 F. (2d) 676, 27 F. T. C. 1689.

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[1] Not reported in Federal Reporter.

Mr. Jay Leo Rothschild, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Cyrus B. Austin*, special attorney, both of Washington, D. C., for the Commission.

Petitioner in the foregoing matter, in its answer to Commission's complaint, dated February 29, 1940, set up as a defense, in addition to denial of various allegations of the complaint, that matter at issue was *res judicata* by reason of decision of court above cited.

Thereafter, on April 16, petitioner moved the Commission to dismiss its said complaint and proceeding, by reason of the decision of the court as above set forth, and its ensuing order vacating the Commission's prior cease and desist order in Sheffield Silver Co., Inc., Docket 2638, 26 F. T. C. 713, 719.

Said motion was denied by the Commission on May 1, "without prejudice to the right of the respondent [petitioner herein] to renew said motion and to argue it before the Commission on the date of final argument herein."

Petitioner's motion to the court, which included in its recital matters above set forth, and following the filing with the court of a "Memorandum on Behalf of the Federal Trade Commission," was denied by the court without opinion, "it having been shown to the satisfaction of the court that its jurisdiction under the Federal Trade Commission Act is limited to the review of *final* orders to cease and desist, and to the affirmance, modification, or setting aside of such orders, and that it has no power under the statute to interfere with 'the taking of testimony and the finding of facts essential to the making of such an order as shall ultimately be passed upon by the Circuit Court of Appeals.'

"It was also shown that there were fundamental differences between the two proceedings, the former case, charging unfair methods of competition, having been brought under the original 1914 statute, and the latter, based not upon injury to competitors, but upon misrepresentation and tendency to mislead and deceive the public, having been brought under the amended statute of 1938."[2]

[2] Statement by compiler, with the exception of matter quoted in last two paragraphs, which was taken from the Commission's 1940 annual report, at page 92.

FEDERAL TRADE COMMISSION v. A. McLEAN & SON[1]

No. 5796

(Circuit Court of Appeals, Seventh Circuit. July 19, 1940)

Order, by Circuit Judges Evan A. Evans, William M. Sparks, and Walter C. Lindley, modifying, as below set forth, upon motion of Commission, court's prior decree of July 1, 1936, in *Federal Trade Commission* v. *A. McLean & Son*, which followed its opinion and decision in *Federal Trade Commission* v. *A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co., and The Bonita Co.*, July 1, 1936, 84 F. (2d) 910, 22 F. T. C. 1149, and was entered in response to Commission's application to enforce its cease and desist order in D. 2264, 20 F. T. C. 468, prohibiting sale of candy by lottery schemes or devices.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, special attorney, both of Washington, D. C., for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

ORDER

Upon the motion of the Federal Trade Commission, petitioner herein—

It is hereby ordered, That the decree of this court entered herein on July 1, 1936, be modified by inserting after the words "it is ordered, adjudged and decreed by this Court that the said respondent, A. McLean & Son, a corporation, its representatives, agents, servants, employees, and successors" the following, "in the manufacture, sale, and distribution in interstate commerce of candy and candy products," and made a part of this decree.

NOTE: Complete decree, as thus modified, follows:

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit: February 29, 1936, an application for an enforcement of an order to cease and desist, issued by it against respondent in this cause, under date of June 21, 1935, the said petitioner having also certified and filed herein a transcript of the record and proceedings lately pending before it, in which said order to cease and desist was entered; and the said respondent subsequently having filed its answer to said application for enforcement, and the matter having been heard by this court on said transcript of record, answer of respondent, briefs of counsel, and oral arguments of counsel; and this court thereafter, to wit: On July 1, 1936, having filed its opinion, and entered an order that the said order to cease and desist be modified, and as modified be affirmed.

Thereupon, It is ordered, adjudged, and decreed by this court that the said respondent, A. McLean & Sons, a corporation, its representatives, agents, servants, employees, and successors, in the manufacture, sale, and distribution in interstate commerce of candy and candy products, forever cease and desist from:

[1] Not reported in Federal Reporter.

1. Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or are designed to be made by means of a lottery, gaming device, or gift enterprise.

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

3. Packing or assembling in the same package of candy, for sale to the public at retail, pieces of candy of uniform size, shape, and quality, having centers of a different color; together with larger pieces of candy, or small boxes of candy, or other articles of merchandise, which said larger pieces of candy, or small boxes of candy, or other articles or merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

4. Furnishing to wholesale dealers and jobbers, display cards, either with assortments of candy or candy products, or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

5. Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger piece of candy or small box of candy or another article of merchandise will be given free to said purchaser.

It is hereby ordered, adjudged, and decreed that the said respondent, A. McLean & Son, a corporation, shall within 30 days after the service upon him of a copy of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

FEDERAL TRADE COMMISSION v. M. J. HOLLOWAY & COMPANY[1]

No. 5797

(Circuit Court of Appeals, Seventh Circuit. July 19, 1940)

Order, by Circuit Judges Evan A. Evans, William M. Sparks, and Walter C. Lindley, modifying, as below set forth, upon motion of Commission, court's prior decree of July 1, 1936, in *Federal Trade Commission* v. *M. J. Holloway & Co.*, which followed its opinion and decision in *Federal Trade Commission* v. *A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co., and The Bonita Co.*, July 1, 1936, 84 F. (2d) 910, 22 F. T. C. 1149, and was entered in response to Commission's application to enforce its cease and desist order in D. 2265, 21 F. T. C. 79, prohibiting sale of candy by lottery schemes or devices.

[1] Not reported in Federal Reporter.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, special attorney, both of Washington, D. C., for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

ORDER

Upon the motion of the Federal Trade Commission, Petitioner herein—

It is hereby ordered, That the decree of this court entered herein on July 1, 1936, be modified by inserting after the words "it is ordered, adjudged and decreed by this Court that the said respondent, M. J. Holloway & Company, its representatives, agents, servants, employees, and successors" the following, "in the manufacture, sale, and distribution in interstate commerce of candy and candy products," and by the substitution of the following paragraphs:

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

5. Furnishing to wholesale dealers and jobbers a device commonly called a push card or a punchboard either with packages or assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

in lieu of paragraphs (4) and (5) appearing in the decree of this court reading as follows:

4. Furnishing to wholesale dealers and jobbers, display cards either with assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

5. Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger piece of candy or small box of candy or another article of merchandise will be given free to said purchaser.

and made a part of said decree.

NOTE: Complete decree, as thus modified, follows:

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit: February 29, 1936, an application for an enforcement of an order to cease and desist, issued by it against respondent in this cause, under date of June 25, 1935, the said petitioner having also certified and filed herein a transcript of the record and proceedings lately pending before it, in which said order to cease and desist was entered; and the said respondent subsequently having filed its answer to said application for enforcement, and the matter having been heard by this court on said transcript of record, answer of respondent, briefs of counsel and oral arguments of counsel; and this court thereafter, to wit: on July 1, 1936, having filed its opinion, and entered an order that the said order to cease and desist be modified, and as modified be affirmed.

Thereupon, it is ordered, adjudged, and decreed by this court that the said respondent, M. J. Holloway & Co., a corporation, its representatives, agents, servants, employees, and successors, in the manufacture, sale, and distribution in interstate commerce of candy and candy products, forever cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or are designed to be made by means of a lottery, gaming device, or gift enterprise.

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

3. Packing or assembling in the same package of candy, for sale to the public at retail, pieces of candy of uniform size, shape, and quality, having centers of a different color, together with larger pieces of candy, or small boxes of candy, or other articles of merchandise, which said larger pieces of candy, or small boxes of candy, or other articles or merchandise are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

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

5. Furnishing to wholesale dealers and jobbers a device commonly called a push card or a punchboard either with packages or assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is hereby ordered, adjudged, and decreed that the said respondent, M. J. Holloway & Co., a corporation, shall within 30 days after the service upon him of a copy of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

FEDERAL TRADE COMMISSION v. QUEEN ANNE CANDY COMPANY[1]

No. 5798

(Circuit Court of Appeals, Seventh Circuit. July 19, 1940)

Order, by Circuit Judges Evan A. Evans, William M. Sparks, and Walter C. Lindley, modifying, as below set forth, upon motion of Commission, court's prior decree of July 1, 1936, in *Federal Trade Commission* v. *Queen Anne Candy Co.*, which followed its opinion and decision in *Federal Trade Commission* v. *A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co., and The Bonita Co.*, July 1, 1936, 84 F. (2d) 910, 22 F. T. C. 1149, and was entered in response to Commission's application to enforce its cease and desist order in D. 2277, 21 F. T. C. 102, prohibiting sale of candy by lottery schemes or devices.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, special attorney, both of Washington, D. C., for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

ORDER

Upon the motion of the Federal Trade Commission, Petitioner herein—

It is hereby ordered, That the decree of this court entered herein on July 1, 1936, be modified by inserting after the words "it is ordered, adjudged, and decreed by this court that the said respondent, Queen Anne Candy Company, a corporation, its representatives, agents, servants, employees, and successors" the following, "in the manufacture, sale and distribution in interstate commerce of candy and candy products," and by the substitution of the following paragraphs:

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape, and quality having centers of a different color, together with larger pieces of candy which larger pieces of candy are to be given as prizes to the person procuring a piece of candy with a center of a particular color.

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

5. Furnishing to wholesale dealers and jobbers a device commonly called a push card or a punchboard either with packages or assort-

[1] Not reported in Federal Reporter.

ments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

in lieu of paragraphs (3), (4), and (5) appearing in the decree of this court reading as follows:

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape, and quality, having centers of a different color, together with larger pieces of candy, or small boxes of candy or other articles of merchandise, which said larger pieces of candy or small boxes of candy or other articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color.

4. Furnishing to wholesale dealers and jobbers, display cards either with assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

5. Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger piece of candy or small box of candy or another article of merchandise will be given free to said purchaser.

and made a part of said decree.

NOTE: Complete decree as thus modified, follows:

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit: February 29, 1936, an application for an enforcement of an order to cease and desist, issued by it against respondent in this cause, under date of June 25, 1935, the said petitioner having also certified and filed herein a transcript of the record and proceedings lately pending before it, in which said order to cease and desist was entered; and the said respondent subsequently having filed its answer to said application for enforcement, and the matter having been heard by this court on said transcript of record, answer of respondent, briefs of counsel and oral arguments of counsel; and this court thereafter, to wit: On July 1, 1936, having filed its opinion, and entered an order that the said order to cease and desist be modified, and as modified be affirmed.

Thereupon, it is ordered, adjudged, and decreed by this court that the said respondent, Queen Anne Candy Co., a corporation, its representatives, agents, servants, employees, and successors, in the manufacture, sale, and distribution

in interstate commerce of candy and candy products, forever cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or are designed to be made by means of a lottery, gaming device, or gift enterprise.

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

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape, and quality having centers of a different color, together with larger pieces of candy which larger pieces of candy are to be given as prizes to the person procuring a piece of candy with a center of a particular color.

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

5. Furnishing to wholesale dealers and jobbers a device commonly called a push card or a punchboard either with packages or assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

It is hereby ordered, adjudged, and decreed that the said respondent, Queen Anne Candy Co., a corporation, shall within 30 days after the service upon him of a copy of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

FEDERAL TRADE COMMISSION v. BONITA COMPANY[1]

No. 5799

(Circuit Court of Appeals, Seventh Circuit. July 19, 1940)

Order, by Circuit Judges Evan A. Evans, William M. Sparks, and Walter C. Lindley, modifying, as below set forth, upon motion of Commission, court's prior decree of July 1, 1936, in *Federal Trade Commission* v. *Bonita Co.*, which followed its opinion and decision in *Federal Trade Commission* v. *A. McLean & Son, M. J. Holloway & Co., Queen Anne Candy Co., and The Bonita Co.*, July 1, 1936, 84 F. (2d) 910, 22 F. T. C. 1149, and was entered in response to Commission's application to enforce its cease and desist order, in D. 2263, 20 F. T. C. 454, prohibiting sale of candy by lottery schemes or devices.

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[1] Not reported in Federal Reporter.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Earl J. Kolb*, special attorney, both of Washington, D. C., for the Commission.

Beach, Fathchild & Scofield, of Chicago, Ill., for respondent.

Order

Upon the motion of the Federal Trade Commission, Petitioner herein—

It is hereby ordered, That the decree of this court entered herein on July 1, 1936, be modified as follows: (*a*) By inserting after the words "it is ordered, adjudged and decreed by this Court that the said respondent, Bonita Company, a corporation, its representatives, agents, servants, employees, and successors" the following, "in the manufacture, sale and distribution in interstate commerce of candy and candy products,"; (*b*) By the substitution of the following paragraph:

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape, and quality having centers of a different color or being of a different color and contained within wrappers, together with larger pieces of candy which said larger pieces of candy are to be given as prizes to the person procuring a piece of candy with a center of a particular color or a piece of candy of a particular color.

in lieu of paragraph (3) appearing in the decree of this court reading as follows:

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape, and quality, having centers of a different color, together with larger pieces of candy, or small boxes of candy or other articles of merchandise, which said larger pieces of candy or small boxes of candy or other articles of merchandise, are to be given as prizes to the purchaser procuring a piece of candy with a center of a particular color,

and (c) by including in said decree paragraphs 4 and 5 of the order entered by the Commission reading as follows:

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

5. Furnishing to wholesale dealers and jobbers a device commonly called a push card or punchboard either with packages or assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

NOTE: Complete decree, as thus modified, follows:

The Federal Trade Commission, petitioner herein, having filed with this court on, to wit: February 29, 1936, an application for an enforcement of an order to cease and desist, issued by it against respondent in this cause, under date of June 21, 1935, the said petitioner having also certified and filed herein a transcript of the record and proceedings lately pending before it, in which said order to cease and desist was entered; and the said respondent subsequently having filed its answer to said application for enforcement, and the matter having been heard by this court on said transcript of record, answer of respondent, briefs of counsel and oral arguments of counsel; and this court thereafter, to wit: On July 1, 1936, having filed its opinion, and entered an order that the said order to cease and desist be modified, and as modified be affirmed.

Thereupon, it is ordered, adjudged, and decreed by this court that the said respondent, The Bonita Co., a corporation, its representatives, agents, servants, employees, and successors, in the manufacture, sale and distribution in interstate commerce of candy and candy products, forever cease and desist from:

1. Selling and distributing to jobbers and wholesale dealers, for resale to retail dealers, candy so packed and assembled that sales of such candy to the general public are to be made or are designed to be made by means of a lottery, gaming device, or gift enterprise.

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

3. Packing or assembling in the same package or assortment of candy for sale to the public at retail, pieces of candy of uniform size, shape, and quality having centers of a different color or being of a different color and contained within wrappers, together with larger pieces of candy which said larger pieces of candy are to be given as prizes to the person procuring a piece of candy with a center of a particular color or a piece of candy of a particular color.

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

5. Furnishing to wholesale dealers and jobbers a device commonly called a push card or a punchboard either with packages or assortments of candy or candy products or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

6. Furnishing to wholesale dealers and jobbers, display cards, either with assortments of candy or candy products, or separately, bearing a legend or legends or statements informing the purchaser that the candy or candy products are being sold to the public by lot or chance or in accordance with a sales plan which constitutes a lottery, gaming device, or gift enterprise.

7. Furnishing to wholesale dealers and jobbers display cards or other printed matter for use in connection with the sale of candy or candy products, which said advertising literature informs the purchasing public that upon the obtaining by the ultimate purchaser of a piece of candy of a particular colored center, a larger

piece of candy, or small box of candy, or another article of merchandise will be given free to said purchaser.

It is hereby ordered, adjudged, and decreed that the said respondent, The Bonita Company, a corporation, shall within 30 days after the service upon him of a copy of this decree, file with the Federal Trade Commission a report in writing setting forth in detail the manner and form in which it has complied with this decree.

FASHION ORIGINATORS GUILD OF AMERICA, INC., ET AL. v. FEDERAL TRADE COMMISSION [1]

No. 312

(Circuit Court of Appeals, Second Circuit. July 22, 1940)

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE—REJECTION BEFORE COMMISSION—APPLICATION TO COURT FOR LEAVE TO ADDUCE—WHETHER PRIOR FAILURE TO MAKE, WAIVER ON APPEAL ON CONCLUSION CASE.

The fact that dressmakers' guild failed to apply to Circuit Court of Appeals for leave to adduce additional evidence before the Federal Trade Commission did not cause guild to lose its only opportunity to question or correct any rulings made by commission during hearing at which commission made a "cease and desist" order, on ground that the guild's only remedy under statute dealing with unfair methods of competition and prevention of them by commission was to make such application, since the presupposition on which the statute was drawn was that the court shall have no jurisdiction over the proceedings until the commission has concluded the case. Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45.

DESIGNS—DRESS AND FABRIC—RIGHTS IN—AUTHOR'S.

The author of a design for a dress should be deemed to be on the same footing as the author of a drawing or a picture, and to have a "common-law property" in the reproduction of the dress.

DESIGNS—DRESS AND FABRIC—RIGHTS IN —REGISTRATION BY OWNERS—WHERE "PUBLICATION."

Regardless of whether designs of dressmakers' guild could be registered or not, "publication" of them was a surrender of all "common-law property" of the guild in them.

DESIGNS—DRESS AND FABRIC—RIGHTS IN—IN GENERAL.

[81] Until the copyright law is changed or until the copyright office can be induced to register designs for dresses and fabrics as copyrightable under the existing statute, they fall into the public demesne without reserve.

BOYCOTTS—REFUSAL TO DEAL, CONCERTEDLY—LEGALITY PRIMA FACIE.

A combined refusal to deal with anyone as a means of preventing him from dealing with a third person, against whom the combined action is directed, is a "boycott," and, because a boycott is prima facie unlawful, it must be justified.

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[1] Reported in 114 F. (2d) 80. For case before Commission, see 28 F. T. C. 430. The Supreme Court on March 3, 1941, affirmed decision in instant case, 61 S. Ct. 703.

BOYCOTTS—REFUSAL TO DEAL, CONCERTEDLY—BUYERS FROM COPYISTS, UNAUTHORIZED, OF DESIGNS OF OWNERS' GUILD—WHETHER "UNPUBLISHED" OR "PUBLISHED" AS CRITERION.

Though it would be lawful for dressmakers' guild to refuse to deal with a retailer who knowingly bought dresses from one who copied the guild's "unpublished" designs without consent, however the copier gained access to them, that excuse would not extend to a boycott of retailers who bought dresses copied from "published" designs of the guild.

CONCERT OF ACTION — TRADE COMBINATIONS — LEGALITY — OBJECTIVES — TRADE "ABUSES" PREVENTION.

Many trade combinations which affect competition are lawful, when they are designed to prevent trade "abuses."

CONCERT OF ACTION — TRADE COMBINATIONS — LEGALITY — OBJECTIVES — TRADE "ABUSES" PREVENTION—REASONABLENESS AS CRITERION.

The lawfulness of every trade combination does not depend on whether it reasonably corrects trade "abuses," since there are some combinations that nothing will excuse.

CONCERT OF ACTION—TRADE COMBINATIONS—LEGALITY—WHERE MEANS UNLAWFUL PER SE.

Where the means of a trade combination are unlawful per se, the purposes of the confederates will not justify the means.

CONCERT OF ACTION—TRADE COMBINATIONS—LEGALITY—WHERE MEANS UNLAWFUL PER SE—PRICE FIXING AND INTEREST OF CONSUMER—RULE OF REASON.

Price fixing by a trade combination is not the only means unlawful per se, and the interest of the consumer is not all that determines the "reasonableness" of a contract "in restraint of trade."

CONCERT OF ACTION—TRADE COMBINATIONS—LEGALITY—CUTTING OFF COMPETITORS' ACCESS TO CUSTOMERS OR MARKET—WHERE BENEFIT TO CONSUMER OR UNEXCLUDED PRODUCERS.

To exclude from the market any of those who supply it, assuming that there is no independent reason by virtue of their conduct to justify the exclusion, is unlawful, and it is no excuse for doing so that the exclusion will result in benefits to the consumers or to the producers who remain.

CONCERT OF ACTION—TRADE COMBINATIONS—LEGALITY—CUTTING OFF COMPETITORS' ACCESS TO CUSTOMERS OR MARKET—WHERE MARKET ALSO SUPPLIED BY OTHER THAN MOVING PARTIES—WOMEN'S DRESSES.

The fact that dressmakers' guild did not supply the whole market for women's dresses was of no consequence in determining whether the guild was guilty of unfair trade practices.

MONOPOLIES—DRESS DESIGNS—REPRODUCTION—CONCERT OF ACTION TO CONTROL ALL.

To attempt to gather to one's self all possible reproductions of a given dress design is to attempt to create a monopoly.

FEDERAL TRADE COMMISSION ACT—SECTION 5—PROCEDURE AND PROCEEDINGS—EVIDENCE.—REJECTION BEFORE COMMISSION—WHERE COMBINATION TO MONOPOLIZE MARKET FOR DRESS DESIGNS UNLAWFUL PER SE—PROFFERED EVIDENCE TO EXCUSE.

Where combination was unlawful per se because it attempted to establish a monopoly in market for certain dress designs, the Federal Trade

Commission was right in refusing to hear any evidence to excuse combination's actions, since it could have no excuse.

(The syllabus, with substituted captions, is taken from 114 F. (2d) 80)

On petition by Fashion Originators Guild of America, Inc., and others, to review cease and desist order of Commission, order affirmed.

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 petitioners.

Mr. Everett F. Haycraft, of Washington, D. C., for Commission.

Before L. HAND, AUGUSTUS N. HAND, and CHASE, Circuit Judges.

L. HAND, *Circuit Judge:*

This case comes before us on petition to review an order of the Federal Trade Commission, directing the petitioners to "cease and desist" from certain "unfair trade practices" in interstate commerce. The principal respondent below, the Fashion Originators Guild, and its members sell medium and high priced women's dresses to retailers, who select from designs exhibited in show rooms in New York City. The members make their dresses from what [82] they assert to be "original designs" of their own, to protect which the Guild was organized in 1932, though the designs are neither patented nor copyrighted. About a fourth of all women's dresses made in this country sell for more than $10.75, and the Guild (disregarding whether they were members for the whole year) in 1935 sold 42 percent of these; their sales of cheaper dresses were less, though in the next lowest grade, $6.75 to $10.75, they were 10 percent of the total sales in that class. (The Commission found much higher percentages than these; but for the purposes of the case it is not necessary to do more than to take the Guild's own figures.) In order to prevent what the Guild calls "style piracy," that is, the copying of their "original designs," the Guild and its members refuse in combination to sell any dresses to retailers who purchase, or order to be manufactured, dresses which the Guild finds embody copies of its designs. For that purpose it has set up a "Piracy Committee" which decides which of the designs "registered" by its members, are "originals"; it employs shoppers in various parts of the country who visit the shops of retailers and report delinquents; if a retailer is found to be selling "pirated designs," he must stop doing so, or he will get no more dresses of any sort from the Guild; nor will he be allowed to see the designs exhibited in its New York show rooms. Retailers who cooperate with the Guild must agree to accept the decision of the "Piracy Committee," and must return to sellers any dresses that have been "pirated"; they must also agree to abide by the Guild's

regulations. Furthermore, in their sales they must warrant to the customer that the designs of the dresses they sell have not been "pirated." The Guild keeps a card index in which it enters upon red cards the names of those retailers who fail in any of these regards. It also maintains a group known as the "Textile Affiliates or Associates" whose members register textile designs with the "National Federation of Textiles, Inc.," and the dressmaker members of the Guild agree that they will not buy "unregistered" fabrics; conversely, textile members of the Guild agree to sell only to dressmakers who are parties to the combination. About twelve thousand retailers had signed the agreement by the end of the year 1935, and were cooperating with the Guild. Besides the Guild proper, several other subsidiary organizations were made parties to the proceeding, as well as their officers and members and those of the Guild: it is not necessary, however, to describe the relations of the subsidiaries to the parent. The Commission, having found the foregoing facts, made an order appropriate to break up the combination, which the respondents petitioned to review.

The findings are supported by an abundance of evidence and are indisputable; they do not go beyond the conceded purposes of the Guild, which does not indeed deny them, but on the contrary seeks to justify the combination. It says that the sanctions which it imposes were necessary to protect the industry as a whole from "demoralization" and the "property" of its members from appropriation. In great detail it offered to prove what were the results of allowing "style piracy" to continue; how disastrous it was to all those in the business—manufacturers, retailers and customers—how "style pirates" in some instances gained access to their designs by bribery, burglary and other crimes; how the Guild had benefited the whole industry by the elimination of such evil practices. The Commission refused to receive any evidence of the kind; it held that the combination was unlawful *per se;* thereby, by implication ruling that even though the combined interests of all those affected made "style piracy" an evil, the manufacturers could not lawfully unite to suppress it by the means employed.

At the outset a preliminary question arises which we must dispose of before we proceed to the merits. The Commission asks us not to consider the proffered evidence on the ground that the Guild's only remedy was under section 5 of the act; that is, having failed to "apply to the court for leave to adduce additional evidence," it lost its only opportunity to question or correct any ruling made during the hearing. This argument rests upon an obvious misunderstanding of the section, and would incidentally result in a procedure that would greatly hamper, if it did not destroy, the effectiveness of the Commission itself. Section five is not directed to the correction of errors committed by the Commission during its proceedings or

at any other time; it is analogous to a motion for a new trial upon newly discovered evidence. This appears from its very language, which makes it a condition upon the relief granted that "there were reasonable grounds for the failure to adduce such evidence in the pro[83]ceeding before the Commission." It is absurd to speak of the exclusion of evidence as a "failure to adduce" it. Moreover, the notion that every time an examiner erroneously rules out evidence at a hearing, the respondent must apply first to the Commission, and then to the court, to correct his error at the risk of forfeiting all right to complain, scarcely needs to be stated to be answered. It contradicts the whole presupposition on which the statute was drawn; i. e., that the court shall have no jurisdiction over the proceedings until the Commission has concluded the case. *Chamber of Commerce* v. *Federal Trade Commission*, 280 Fed. 45, 48 (C. C. A. 8). Cf. *Federal Power Commission* v. *Edison Co.*, 304 U. S. 375, 384, 385; *Jones* v. *Securities & Exchange Commission*, 79 F. (2d) 617, 619 (C. C. A. 2). We must therefore decide the case as though the Guild had proved what it offered to prove; that is, we must decide whether its offer was relevant. If it was, the case must go back for further hearing, because the examiner made it plain that he would hear nothing of the kind suggested; and his refusal absolved the Guild from the idle ceremony of swearing witnesses and questioning them. We proceed therefore to the merits.

The author of a design for a dress should be deemed to be on the same footing as the author of a drawing or a picture; and the author of a drawing or a picture has a "common-law property" in its reproduction. *Prince Albert* v. *Strange*, 1 McN. & G. 25, 43; *Turner* v. *Robinson*, 10 Ir. Ch. 121; S. C. on appeal, 10 Ir. Ch. 510; *Parton* v. *Prang*, Fed. Cas. 10,784; *Oertel* v. *Wood*, 40 How. Pr. (N. Y.) 10; *Oertal* v. *Jacoby*, 44 How. Pr. (N. Y.) 179. The controversy as to whether "intellectual property" is lost by "publication" goes back to the Eighteenth Century. The great case of *Donaldson* v. *Beckitt*, 4 Burr. 2408, decided, although by a narrow vote, that it is not so lost; but it also decided that the statute destroyed the "property" itself; and the result in most cases was therefore the same as though publication was an abandonment, since the act applied only to published works. It would follow, if *Donaldson* v. *Beckitt*, *supra* (4 Burr. 2408) remains law in all that it held, that so far as the statute does not cover such property, "publication" does not destroy it, and that it is therefore perpetual. Mr. Drone in his well-known work (A Treatise on the Law of Property in Intellectual Productions, 1879) insists that this is the only proper result (pp. 116–118); but his opinion was obviously much colored by his passionate disapproval of *Donaldson* v. *Beckitt*, *supra* (4 Burr. 2408) anyway; and we think

that the logic, if inexorably applied, is overwhelmed by the practical absurdity of the result. It would certainly be a strangely perverse anomaly that turned the grant of statutory copyright into a detriment to the "author"; yet it would be hard to prove that the statutory remedies conferred made up for the limitation of the monopoly. Omission of property from the act would be a bonanza to those who possessed property of that kind. Although it is true that when *Donaldson* v. *Beckitt*, *supra* (4 Burr. 2408) was decided, there was considerable "intellectual property" which the statute did not cover, we do not believe that the judges would have countenanced such a result, and the implications of *Turner* v. *Robinson*, *supra* (10 Ir. Ch. 121, S. C. 10 Ir. Ch. 510) were very clearly to the contrary. When in this country the Constitution (sec. 8, cl. 8, art. 1) gave to Congress power to "secure" to authors the "exclusive Right to their * * * Writings," it was to be only "for limited Times," and did not allow a perpetual copyright. The purpose so disclosed is certainly inconsistent with the assumption that an author—notwithstanding publication and full enjoyment of his "common-law property"—might maintain his monopoly for "unlimited Times." While we have been unable to discover any case which squarely presented the situation—that is in which "intellectual property," not covered by the copyright act then in existence, was challenged because of its "publication"—there are plenty of general expressions in the books that the "common-law property" does not survive. *Wheaton* v. *Peters*, 8 Pet. 591, 658; *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339, 347; *American Tobacco Co.* v. *Werckmeister*, 207 U. S. 284, 299, 300; *Caliga* v. *Inter Ocean Newspaper*, 215 U. S. 182, 188; *Werckmeister* v. *American Lithographic Co.*, 134 Fed. 321, 324–326 (C. C. A. 2); *Parton* v. *Prang*, *supra*, 18 Fed. Cas. 1273, page 1277, No. 10,784; *Palmer* v. *DeWitt*, 47 N. Y. 532, 536–538; *Jewelers Mer. Agency* v. *Jewelers Publishing Co.*, 155 N. Y. 241; *Oertel* v. *Jacoby*, *supra*, p. 188 (44 How. Pr. 179); [84] *Waring* v. *WDAS Broadcasting Station*, 194 Atl. 631, 635, 636 (Pa.); *Chamber of Commerce* v. *Wells*, 100 Minn. 205 (111 N. W. 157, 159). We conclude therefore that, regardless of whether the Guild's designs could be registered or not, "publication" of them was a surrender of all its "common-law property" in them.

To embody a design in a dress or a fabric, and offer the dress for general sale was such a "publication" nothing more could be done to bring it into the public demesne. It may be unfortunate—it may indeed be unjust—that the law should not thereafter distinguish between "originals" and copies; but until the copyright law is changed, or until the Copyright Office can be induced to register such designs as copyrightable under the existing statute, they both fall into the public demesne without reserve. *Cheney Bros.* v. *Doris Silk Corpora-*

tion, 35 F. (2d) 279 (C. C. A. 2). The Guild has therefore no more excuse for preventing other dressmakers from copying one than the other. Indeed, it is conceivable that those who might go to the trouble and expense of seeking out the best-known dressmakers of Paris, and of copying their models and designs—as was frequently done—should assert that by investing so much, they too acquired a "property" in the designs they brought back which ought to be protected against all but the author himself. We are therefore to judge the Guild as a combination seeking to exclude outsiders from a market to which they have as lawful access as it has itself.

A combined refusal to deal with anyone as a means of preventing him from dealing with a third person, against whom the combined action is directed, is a boycott; and a boycott is *prima facie* unlawful; it must be justified. *United States* v. *American Livestock Co.*, 279 U. S. 435, 437; *Restatement of Torts*, §765 (1). That it can be justified we have indeed very recently said in *Millinery Creators' Guild* v. *Federal Trade Commission*, 109 F. (2d) 175, 176; and in the case at bar for example, it would be a lawful form of self-help for members of the Guild to refuse in combination to deal with retailers who knowingly bought dresses of those who had stolen "unpublished" designs; or who got access to them by any other crime, or by a breach of promise not to use them; further, it would be lawful to refuse to deal with a retailer who knowingly bought of one who copied "unpublished" designs, without the author's consent, however the copier gained access to them. But that excuse does not extend to a boycott of retailers who buy dresses copied from "published" designs; if that is to be justified, the excuse must be found elsewhere. Many trade combinations which affect competition are lawful, when they are designed to prevent trade "abuses"; they are "reasonable," though perhaps to say so is no more than to state the problem. *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 374; *Sugar Institute* v. *United States*, 297 U. S. 553, 598. Certainly it is not true that the lawfulness of every combination depends upon whether it "reasonably" corrects trade "abuses"; there are some combinations that nothing will excuse. The accepted rubric for this is that when the means are unlawful *per se*, the purposes of the confederates will not justify them. *Sugar Institute* v. *United States*, *supra*, 599 (297 U. S. 553). The most recent example of this is the Supreme Court's reaffirmation of the unconditional illegality of price-fixing, in spite of the probability that the combination in fact benefited the industry. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150. However grave the industrial disorders, that remedy was not permissible; the industry may restore itself by many devices, but not by all.

The case at bar is not one of price-fixing, and for that reason *United States* v. *Socony-Vacuum Oil Co.*, *supra*, does not control, for the members of the Guild are free to compete with each other in price or in any other way they choose. The purpose was no more than to exclude "piratical" dressmakers from any share in the market for "original" designs; all else was left open. Success in that purpose might, or might not, result in an increase in price to the consumer, or in that stabilization of prices which *United States* v. *Socony-Vacuum Oil Co.*, *supra*, condemned. Nobody can tell what will be its effect because, although the exclusion of the "piratical" dressmakers will reduce the supply and price is normally a function of supply, it does not appear that the Guild has not a reserve of producing power equal to what it excludes. If so, it may well be able to take up the slack, so to say, created [85] by its efforts, and free competition among the members may keep prices as low and as wayward as they were before. Price fixing is not, however, the only means unlawful *per se;* the interest of the consumer is not all that determines the "reasonableness" of a contract "in restraint of trade." It is also unlawful to exclude from the market any of those who supply it—assuming that there is no independent reason by virtue of their conduct to justify their exclusion—and it is no excuse for doing so that their exclusion will result in benefits to consumers, or to the producers who remain. *W. W. Montague & Co.* v. *Lowry*, 193 U. S. 38, 47; *Eastern States Retail Lumber Dealers Association* v. *United States*, 234 U. S. 600, 611; *Binderup* v. *Pathé Exchange*, 263 U. S. 291, 311, 312; *Anderson* v. *Shipowners Association*, 272 U. S. 359, 363; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutter's Association*, 274 U. S. 37, 54; *Paramount Famous Corporation* v. *United States*, 282 U. S. 30, 43, 44; *United States* v. *First National Pictures, Inc.*, 282 U. S. 44, 54; *National Harness Association* v. *Federal Trade Commission*, 268 Fed. 705, 712 (C. C. A. 6); *Wholesale Grocers Association* v. *Federal Trade Commission*, 277 Fed. 657, 663 (C. C. A. 5); *Butterick Publishing Co.* v. *Federal Trade Commission*, 85 F. (2d) 522 (C. C. A. 2). There is another reason supporting this conclusion. A successful combination among a part of the producers to exclude others, even when not accompanied by an agreement fixing prices, puts into their hands collectively the power to control the supply and with it the price. The fact that that power is not at the moment exercised is no assurance that it may not be; if the effort succeeds and the combination is not disrupted, it may at any time be used, and there will then be no protection to the consumer.

Finally, it is of no consequence that the Guild does not supply the whole market for women's dresses; it aims at a monopoly however small its share of total sales. The reason is as follows. Although all dresses made after one design are fungibles, the different designs them-

selves are not fungibles. Each has its own attraction for buyers; each is unique, however trifling the basis for preferring it may be. Hence to attempt to gather to oneself all possible reproductions of a given design is to attempt to create a monopoly, as at once appears from the fact that a copyright for it—and *à fortiori* a design patent upon it—would be ranked as a monopoly. It is true that the sanction of that monopoly may be very weak; it depends upon the design's attractions above over designs, often not a very important margin of advantage. But the same is true of nearly all monopolies, for there are substitutes for most goods. As to each design therefore the Guild is seeking to establish a monopoly; and it is unimportant whether its gross sales are large or small, as compared with those of all women's dresses. For these reasons the combination was unlawful *per se;* the Commission was right in refusing to hear any evidence in its excuse, for it could have no excuse; the case is the same as *Millinery Creators' Guild* v. *Federal Trade Commission*, *supra* (109 F. (2d) 175). Similarly the conduct of the examiner in shutting off cross-examination and the like—of which the Guild urgently complains—was proper; the case stood admitted, no defense was possible; indeed, so far as the Guild has any complaint whatever, it is that the hearings against it were drawn out most unnecessarily.

In 1937 the First Circuit did indeed affirm a decree which dismissed a bill in equity brought against the Guild by a retailer. *Wm. Filene's Sons Co.* v. *Fashion Originators Guild*, 90 F. (2d) 556. We cannot find any distinction between the facts as there found and those which we feel bound here to take as though proved; and it follows from what we have already said that we are unwillingly forced to a different conclusion. That difference lies in the fact that, as we have said, we do not understand that a court will inquire into whether a combination benefits an industry when the means used are themselves unlawful; and that to try altogether to exclude others from manufacturing what they are free to make, is an unlawful means. If on the other hand the First Circuit believed that the "originator" of a design has an interest to protect greater than one who has merely appropriated an existing design at his own labor and expense, we cannot agree as to that either.

The order will therefore be affirmed, except that—as in *Butterick Publishing Co.* v. *Federal Trade Commission*, *supra*, 526, 527 (85 F. (2d) 522)—it will not be understood to apply to cases in which a re[86]tailer, knowingly buys dresses, access to the design of which has been procured (1) by fraud, bribery or any other crime, (2) through some breach of contract, or (3) before the design has by "publication" come into the public demesne.

Order affirmed.

GEORGE H. LEE COMPANY v. FEDERAL TRADE COMMISSION [1]

No. 419

(Circuit Court of Appeals, Eighth Circuit. July 23, 1940)

RES JUDICATA—IN GENERAL.

Where the underlying issue of two suits is the same, the adjudication of the issue in the first suit is determinative of the same issue in the second suit.

RES JUDICATA—GOVERNMENT SUITS—WHERE RELITIGATION OF SAME ISSUE BY DIFFERENT OFFICER.

A privity exists between officers of the same government so that a judgment in a suit between a party and a representative of the United States is "res judicata" in relitigation of the same issue between that party and another officer of the government.

SUITS AND ADJUDICATIONS—WHERE GOVERNMENT BOUND—AS BINDING OFFICIALS OF, ALSO.

Where a suit binds the United States it binds its subordinate officials.

RES JUDICATA—GOVERNMENT SUITS—WHERE THERETOFORE LIBEL PROCEEDING FOR MISBRANDING SAME PRODUCT LITIGATED.

The United States may not relitigate the same issue in successive libel proceedings for condemnation of goods on ground that they are misbranded in violation of Food and Drugs Act, which involve different quantities of the same product, nor may it relitigate the same issue in any proceedings in which the parties are the same and the product is the same. Food and Drugs Act, sec. 8, par. 3, as amended, 21 U. S. C. A. sec. 10, par. 3.

RES JUDICATA—WHERE RIGHT, QUESTION OR FACT DISTINCTLY PUT IN ISSUE AND DIRECTLY DETERMINED, ETC.—IF SECOND SUIT FOR DIFFERENT CAUSE OF ACTION BY SAME PARTIES OR THEIR PRIVIES.

A right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery cannot be disputed in a subsequent suit between the same parties or their privies, and even if the second suit is for a different cause of action, the right, question, or fact once determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified.

RES JUDICATA—WHERE RIGHT, QUESTION OR FACT DISTINCTLY PUT IN ISSUE AND DIRECTLY DETERMINED, ETC.—IF SECOND SUIT FOR DIFFERENT CAUSE OF ACTION BY SAME PARTIES OR THEIR PRIVIES—LIBEL PROCEEDING UNDER FOOD AND DRUGS ACT AGAINST POULTRY VERMIFUGE AS MISBRANDED, AS THEREAFTER BARRING SUBSEQUENT PROCEEDING BY COMMISSION AGAINST PRODUCT'S MANUFACTURER FOR FALSE REPRESENTATION THEREOF IN RESPECT IN WHICH THERETOFORE IN ISSUE.

Where government brought libel for condemnation of a quantity of product sold as remedy for worms in poultry, on ground that product was mis-

[1] Reported in 113 F. (2d) 583. For case before Commission, see 27 F. T. C. 314. Petition for rehearing was denied August 28, 1940.

branded and that representations by manufacturer on labels and circulars were false, judgment for the manufacturer was "res judicata" on issue of falsity of the representations which were in issue in the libel, and was not subject to collateral attack in proceeding by Federal Trade Commission charging manufacturer with use of unfair methods of competition in interstate commerce by soliciting sale of its product through deceptive, misleading, and false statements. Federal Trade Commission Act, 15 U. S. C. A., secs. 41-58; Food and Drugs Act, sec. 8, par. 3, as amended, 21 U. S. C. A., sec. 10, par. 3.

(The syllabus, with substituted captions, is taken from 113 F. (2d) 583)

On petition for review of Commission's order requiring it to cease and desist from making certain representations concerning product produced by it, order vacated without prejudice to such further proceedings as are not inconsistent with opinion.

Mr. Donald J. Burke, of Omaha, Neb., for petitioner.

Mr. William T. Chantland, special attorney, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. James W. Nichol*, special attorney, all of Washington, D. C., on the brief), for Commission.

Before GARDNER and SANBORN, Circuit Judges, and COLLET, District Judge.

SANBORN, *Circuit Judge.*

The petitioner, a Nebraska corporation engaged in advertising, distributing and selling in interstate commerce a product called "Gizzard Capsules" as a remedy or vermifuge for worms in poultry, has petitioned for the review of an order of the Federal Trade Commission requiring that petitioner "cease and desist from representing: (1) that said product is a remedy or vermifuge for all three kinds of worms in poultry; (2) that said product will remove pinworms from poultry; (3) that said product will remove tapeworms from poultry unless it be represented with equal conspicuousness that this product merely shears off the strobilae or chain of segments of the tapeworm, leaving the head of [584] the worm, capable of growing new segments, attached to the intestines of the fowl."

The petitioner challenges this order upon one ground, which is that the representations which the Commission found to be false and misleading and which are prohibited by its order, had previously been adjudicated by a court of competent jurisdiction not to be false representations, in a libel proceeding brought by the Government to condemn 47 packages of "Gizzard Capsules," which adjudication it is claimed was binding upon the Commission.

The libel proceeding was instituted on August 8, 1934, in the United States District Court for the Western District of Missouri.

The United States in that proceeding charged that this same product was "misbranded in violation of the Food and Drugs Act, section 8 as amended, Paragraph Third, 21 U. S. C. A. sec. 10, in the case of drugs, in that the following statements, appearing upon and within the package of the product, are statements regarding the curative or therapeutic effect of the article and are false and fraudulent, in this, that the article contains no ingredient or combination of ingredients capable of producing the effect claimed, and that the same were applied to the said article knowingly and in reckless and wanton disregard of their truth or falsity: (Package label—same for all sizes) 'For * * * Large Tape Worms and Pin (Ceca) Worms in Chickens and Turkeys * * * For the Removal of * * * Large Tape and Pin (Ceca) Worms in Poultry * * * delivers the medicine, undiluted, fresh and full strength directly upon the worms in the intestines. * * *' (Circular) 'For * * * Large Tape and Pin Worms in Chickens and Turkeys * * * To lay well, hens must be reasonably free from worms * * * Worm your flock with Gizzard Capsules; * * * to expel the worms * * * the exact full strength dose of worm medicine is emptied into the intestines and reaches the worms. * * *'"

The petitioner, as claimant and manufacturer of the product, defended the libel proceeding. It denied that the labels or circulars contained false statements as alleged by the government, and denied that its statements were either false or fraudulent or that the capsules were incapable of producing the effects that it was represented they would produce. There were, then, two issues of fact presented for determination in the libel proceeding: (1) Were the challenged statements contained in the labels and circulars false? (2) Was the petitioner guilty of fraud in making such statements? After a trial, the court resolved both of these issues in favor of the petitioner and entered a decree dismissing the proceeding. The government took no appeal, and the decree became final.

Thereafter on June 11, 1936, the Federal Trade Commission issued its complaint charging petitioner with the use of unfair methods of competition in interstate commerce within the meaning of the "Federal Trade Commission Act," sections 41–58, U. S. C. title 15, to the injury of competitors, by soliciting the sale of and selling "Gizzard Capsules" upon "extravagant, deceptive, misleading, and false statements regarding the therapeutic value, efficacy, and effect" of its product in advertisements on labels and in pamphlets, newspapers, and magazines. The Commission further charged that "as a result thereof, substantial injury has been, and is now being, done by respondent [petitioner here] to substantial competition in commerce among and between the various States of the United States and in the District of Columbia."

The petitioner moved to strike so much of the complaint as was based upon representations as to the efficacy of its product for the treatment of large roundworms, large tapeworms, and pinworms in poultry, on the ground that in the libel proceeding the falsity of such representations was in issue, and that the court in its decree had determined that they were not false, and, in so doing, had necessarily determined the product to be efficacious for the purposes for which it was intended and sold. The motion to strike was denied, and the petitioner filed its answer denying the allegations of the complaint and asserting the defense of res judicata. The Commission overruled that defense, apparently upon the theory that the decree in the libel proceeding was not binding upon it; and, after extended hearings, it was found that petitioner, in advertising its product, represented that it was a single remedy for the several kinds of worms in poultry and that this single remedy for all kinds of worms was better than separate remedies for each kind of worm; and also found "that respondent's [petitioner's] product is not an [585] effective vermifuge for all three kinds of worms, nor is it better than separate remedies for each kind of pinworms or for tapeworms in poultry.. When administered to fowl infested with tapeworms this product tends to shear off the tapeworm strobilae or chain of segments, leaving the tapeworm heads attached to the intestines of the fowl. These heads are capable of growing, and do quickly grow, new segments." The Commission further found that: "Respondent's representations, herein described, have had and now have a tendency and capacity to, and do, mislead and deceive the purchasing public into an erroneous and mistaken belief concerning the therapeutic value, efficacy and effect of 'Gizzard Capsules.' A substantial portion of the purchasing public, as a direct result of said mistaken and erroneous belief, have purchased respondent's product with the result that trade has been diverted unfairly to the respondent from competitors likewise engaged in the business of selling and distributing products designed for similar use, who truthfully advertise and represent the properties of their respective products and the results that may be obtained from their use. As a result thereof, substantial injury has been done and is now being done by respondent to competition in commerce among and between various states of the United States and in the District of Columbia." The Commission concluded that the acts and practices of petitioner complained of were all to the prejudice of the public and of petitioner's competitors and constituted unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. It thereupon entered the order complained of.

The petitioner has not included in its record in this court the testimony taken before the Commission and concedes that, unless the Com-

mission was precluded from entering its order because of the decree in the libel proceeding, the order must stand. It denies the right of the Commission to relitigate any issues which were determined in the libel proceeding, and to make its findings on such issues, either in whole or in part, the basis for its order.

There is force in respondent's contention that the issues tried and determined in the proceedings initiated by and had before it differed in essential particulars from those tried and determined by the court in the libel proceeding. It is apparent, however, that the Government—having failed, in the libel proceeding, to secure a determination that the "Gizzard Capsules" were misbranded and that the representations made by the petitioner on labels and circulars were false on the ground that the product, which concededly would remove large roundworms from poultry, would not completely remove large tapeworms or pinworms—then initiated this proceeding through the Federal Trade Commission to secure a determination that the same or substantially the same representations which were asserted to be false and fraudulent in the libel proceeding were in truth and fact false and misleading and therefore constituted an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act. Although the remedies sought by the Government in the two proceedings were different—condemnation in the first, and a cease and desist order in the second—it is obvious that the alleged falsity of the representations of the petitioner with respect to the therapeutic value and effectiveness of its product constituted the main basis for each of the proceedings; that in the libel proceeding the court determined that the representations that the product was a remedy for tapeworms and pinworms as well as large roundworms were not false, while the Commission later determined that the representations with respect to pinworms and large tapeworms were false and misleading. It is equally obvious that the Commission completely disregarded the effect of the decree entered in the libel case on conducting its proceedings and in making its findings of fact, conclusions of law, and order.

Where the underlying issue in two suits is the same, the adjudication of the issue in the first suit is determinative of the same issue in the second suit, *Sunshine Anthracite Coal Co.* v. *Adkins*, 60 S. Ct. 907, 916. "There is privity between officers of the same Government so that a judgment in a suit between a party and a representative of the United States is *res judicata* in relitigation of the same issue between that party and another officer of the Government. See *Tait* v. *Western Maryland Railway Co.*, 289 U. S. 620." *Sunshine Anthracite Coal Co.* v. *Adkins*, *supra* (p. 917 of 60 S. Ct.). "Where a suit binds the United States, it binds its subordinate officials," *Sunshine Anthra*[586]*cite Coal Co.* v. *Adkins*, *supra*, (p. 917 of 60 S. Ct.). The United States may not relitigate the same issue in successive libel

proceedings involving different quantities of the same product (*George H. Lee Co.* v. *United States*, 9 Cir., 41 F. (2d) 460), nor may it relitigate the same issue in any proceeding in which the parties are the same and the product is the same. The rule is "that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified," *Southern Pac. R. Co.* v. *United States*, 168 U. S. 1, 48; *Mitchell* v. *First National Bank*, 180 U. S. 471, 480–481; *Tait* v. *Western Maryland Railway Co.*, 289 U. S. 620, 623.

Unless a question which a court or an administrative board has power to decide is to be regarded as conclusively settled as between the parties by the final decree of the court or the final order of the board, there can be no end to a controversy except as the result of the financial disability of one of the parties. If the question of the falsity of the representations of the petitioner contained on its labels and circulars had been determined adversely to the petitioner in the libel proceeding, it could not have been heard to say in the proceedings instituted by the Commission that such representations were true. By the same token, the United States and its instrumentality, the Commission, were not, after the decree in the libel proceeding, entitled to say that the representations made by the petitioner which had been finally adjudged not to be false, were in fact false. The Government had had its full day in court on that issue, had lost its case, and could not collaterally attack, either directly or indirectly, the decree entered against it.

The contentions of the respondent that the court in the libel proceeding merely determined that the petitioner had not intentionally misrepresented the therapeutic qualities of its product, whereas the Commission in the proceeding before it rules that the petitioner's representations were untrue and misleading, is not borne out by the record. The court in the libel proceeding determined that the representations, directly challenged and distinctly put in issue by the government, were not false, and, in doing so, necessarily determined that the product of the petitioner was a remedy for the three kinds of worms in poultry. The Commission, on the other hand, has determined that the representations upon which the libel proceeding was based were in fact false and misleading. The main underlying issue in both the proceedings was the same, namely—Are the representations made by the petitioner false because the product has not the therapeutic qualities claimed for it?

Whether the Commission, if it had accepted as a fact that the representations which had been alleged to be false in the libel proceeding were not false, could have found other representations in the advertising of the petitioner which would have justified findings and conclusions that petitioner had been guilty of unfair competition in interstate commerce, we are not asked to decide, and manifestly could not decide upon the record presented. The order of the Commission is based, in large part at least, upon its finding that the representations that petitioner's product was an effective remedy or vermifuge for all three kinds of worms were untrue. The Commission thus plainly failed to accord to the decree in the libel proceeding the effect to which it was entitled. The Commission redetermined an issue which was already settled by a court of competent jurisdiction and reached a contrary conclusion. Under the circumstances, we think that its order cannot stand.

The order is vacated without prejudice to such further proceedings as are not inconsistent with this opinion.

GENERAL MOTORS CORPORATION ET AL. v. FEDERAL TRADE COMMISSION [1]

No. 404

(Circuit Court of Appeals, Second Circuit. Aug. 12, 1940)

CEASE AND DESIST ORDERS—ADVERTISING FALSELY OR MISLEADINGLY—INSTALLMENT SALES—MOTOR VEHICLES—"SIX PER CENT." PLAN.

On petition to review Federal Trade Commission's order to cease and desist from advertising of installment sales of motor vehicles, evidence *held* to support Commission's finding that such advertising tended to mislead and deceive substantial part of purchasing public into belief that defendant's "six per cent." finance plan contemplated simple interest charge of six per cent. per annum on unpaid balances of purchase price of vehicles sold, so as to require denial of petition and affirmance of order.

JURISDICTION — INTERSTATE COMMERCE — PARTIES — SUBSIDIARIES — WHERE LOCAL FINANCE COMPANY ENGAGED IN UNFAIR PLAN WITH ASSOCIATE SUBSIDIARY AND MANUFACTURING PRINCIPAL OF SELLING IN INTERSTATE COMMERCE THROUGH FALSE AND MISLEADING ADVERTISING OF INSTALLMENT SALES PLAN.

The Federal Trade Commission had jurisdiction to order automobile manufacturing corporation and its wholly owned subsidiary sales corporation and acceptance corporation, acting as manufacturing corporation's agents in unified plan of selling and financing automobiles shipped in interstate commerce, to cease and desist from certain advertising of installment sales of motor vehicles, as against contention that acceptance corporation was not

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[1] Reported in 114 F. (2d) 33. For case before Commission, see 30 F. T. C. 34. The Supreme Court, on January 20, 1941, denied certiorari in this case.

engaged in interstate commerce, though it acted primarily as local finance company.

(The syllabus, with substituted captions, is taken from 114 F. (2d) 33)

On petition by General Motors Corporation, the General Motors Sales Corporation, and the General Motors Acceptance Corporation, to review Commission's order requiring them to cease and desist from using certain forms of advertising in connection with installment sales of motor vehicles, petition denied and order affirmed.

Mr. John Thomas Smith, of New York City (*Mr. Anthony J. Russo*, of New York City, of counsel), for petitioners.

Mr. W. T. Kelley, chief counsel, *Mr. Martin A. Morrison*, assistant chief counsel, *Mr. James M. Hammond*, and *Mr. James W. Nichol*, all of Washington, D. C., for the Commission.

Before AUGUSTUS N. HAND and CHASE, Circuit Judges, and LEIBELL, District Judge.

AUGUSTUS N. HAND, *Circuit Judge:*

This is a petition by the General Motors Corporation and two of its wholly owned subsidiaries, General Motors Sales Corporation and General Motors Acceptance Corporation, to cease and desist from the use of the so-called 6-percent plan in marketing automobiles manufactured by General Motors Corporation and sold on installment to the public. At first the cars made by the latter corporation were sold by it to its five subsidiaries, Chevrolet Motor Co., Olds Motor Works, Pontiac Motor Co., Buick Motor Co. and Cadillac Motor Co. and then sold by them to dealers in the various states, who in turn sold to the public. The Federal Trade Commission issued a complaint against General Motors Corporation, General Motors Acceptance Corporation, and the above five subsidiaries of the former who had been selling cars to dealers who used the Acceptance Corporation's 6-percent plan. Shortly afterwards these five companies were dissolved and General Motors Sales Corporation took their place as a wholesale instrumentality in marketing the cars, and was then made a party to the proceeding.

The general course of business was (1) manufacture of the cars by the General Motors Corporation, (2) transfer and sale of the cars to the one of the five subsidiary companies whose name was identified with the model sold, and (3) sale by the latter to the dealers. After General Motors Sales Corporation was organized and the above five subsidiaries were dissolved, the Sales Corporation took the place of each one of the companies as transferee of title and possession and acted as selling agent for General Motors Corporation to the dealers.

In connection with the sales by the five subsidiaries and afterwards by the subsidiary Sales Corporation the so-called 6-percent plan was used in most cases where the purchasing public bought cars under the installment plan. The General Motors Acceptance Corporation (hereafter referred to as GMAC) was organized by General Motors to finance retail installment (time) sales made by dealers to retail buyers. It financed not only installment purchases of cars but also purchases of other products in the automobile business which were manufactured by General Motors. It did this by making a contract with the dealer whereby [34] the balance due under the installment contract was secured by a conditional sale agreement and payments in reduction of the balance were made monthly over a series of from 6 to 18 months. In the autumn of 1935 the plan of financing the purchase of the several brands of motor vehicles on the 6-percent installment payment plan was first advertised through General Motors Acceptance Corporation in the newspapers. The Commission made the following findings as to the plan here involved:

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

*In some States a small legal documentary fee is required.

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 own funds or from a fund known as the "dealers' fund," which was collected and controlled by the [35] 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 of 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.

On succeeding the five dissolved corporations, the General Motors Sales Corporation carried on their business as before, the business of the dissolved companies being the work of divisions of the Sales Corporation.

The Commission found that there was a regular flow of commerce in motor vehicles from the factories of General Motors in Michigan

to the retail purchasers in other States, carried out first by the five dissolved companies and subsequently by their successor, and that this movement was assisted by the acts of GMAC. It accordingly made an order directing General Motors Corporation, General Motors Sales Corporation and General Motors Acceptance Corporation to cease and desist from the form of advertising which they had pursued under the plan.[1] We think the order was right and should be affirmed and the petition to review be denied.

There was evidence before the Commission to support its finding that the advertisements referred to "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 per cent per annum upon the deferred and unpaid balance of the purchase price of the motor vehicles sold * * * , 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 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."

That the rate of interest is actually almost double 6 percent simple interest, as found by the Commission, is shown by Commission's Exhibit 66, which is a booklet issued by GMAC, and is not contested by General Motors or its subsidiaries. That the rate is so much greater than 6 percent is because the GMAC time payment plan of financing involves a 6 percent 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."

While we do not regard the plan used here as inevitably misleading, we think that in a good many cases it would be likely to cause the

[1] The order directed General Motors and its subsidiaries to cease and desist from: (1) Using the word "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% 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.

purchaser of a car to believe that he was paying an interest rate of 6 percent per annum upon his deferred installments and that under it he was afforded the convenience of financing through the agency that sold the car at as good rates as he could obtain by borrowing from his bank and paying for the car in full.

It is argued that the advertisement we have quoted could not mislead. The advertisement stated on its face: "It is not 6% interest, but simply a convenient multiplier anyone can use and understand." Never[36]theless the calculation of the difference between a rate of 6 percent per annum and the amount payable under the plan would not be easy for the ignorant, as was demonstrated by the inability of at least one witness to make the calculation. Nor would the distinction be observed by the careless. The words in the fourth line of the advertisement: "With a new 6% plan," arrest the attention immediately and many a purchaser would not continue to read the rest of the advertisements or digest the warning statement that the 6 percent was not interest, but merely a multiplier. Moreover, there was a body of advertising matter on billboards and on window posters in which no such guarded statement was made and in which the attention of the public was directed pointedly to the unexplained symbol "6%."

It is noteworthy that the plan involved such competitive advantages that rival companies doing a large proportion of the business of the country felt obliged to adopt and to advertise it with emphasis on the "6%" symbol. It is objected by the petitioners that the reason the plan appealed to the public and was adopted by competitors is only that the mode of calculating the installment payments is very simple and that under the plan the finance cost of an installment purchase is less than formerly. This really does not affect the issue of the propriety of the advertising. That, under the plan, GMAC was offering to finance installment purchases at lower costs than before does not justify a form of advertising which has been found by the Commission, upon substantial evidence, to result in deception of the public. It may be that there was no intention to mislead and that only the careless or the incompetent could be misled. But if the Commission, having discretion to deal with these matters, thinks it best to insist upon a form of advertising clear enough so that, in the words of the prophet Isaiah, "wayfaring men, though fools, shall not err therein," it is not for the courts to revise their judgment.

As a practical matter we suggest that the order cannot be one grievously interfering with the only convenient mode of computing monthly installment payments on unpaid balances, since several competitors with a great business abandoned advertising, similar to

that we have been considering, when it was challenged by the Commission.

The contention that the Commission is without jurisdiction because GMAC was not engaged in interstate commerce is without merit. While GMAC was primarily acting as a local finance company, it was wholly owned by General Motors, and, with the Sales Corporation, acted as an agent of General Motors in a unified plan of selling and financing cars shipped in interstate commerce. Under the decision of the Supreme Court in *Trade Commission* v. *Education Society*, 302 U. S. 112, 120, there was jurisdiction. Cf. *National Harness Manufacturers' Ass'n* v. *Federal Trade Comm.*, 268 Fed. 705, 709 (C. C. A. 6).

Petition denied and order of the Commission affirmed.

QUALITY BAKERS OF AMERICA ET AL. v. FEDERAL TRADE COMMISSION ET AL.[1]

No. 3481

(Circuit Court of Appeals, First Circuit. Sept. 6, 1940)

EVIDENCE—COURT LIMITATIONS—WHERE FINDINGS SUPPORTED.

The statutory provision that the findings of the Federal Trade Commission as to facts, if supported by evidence, shall be conclusive, cannot be ignored by the courts, and the courts cannot pick and choose bits of evidence to make findings of fact contrary to the findings of the commission. Federal Trade Commission Act, sec. 5 (c), 15 U. S. C. A. sec. 45 (c).

EVIDENCE—COURT LIMITATIONS—WEIGHT AND INFERENCES.

The weight to be given evidence, as well as the inferences reasonably to be drawn from it, are for the Federal Trade Commission.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS OR TO BUYER AGENTS OF REPRESENTATIVES—BROKER-BUYER FOR BUYING STOCKHOLDER OWNERS—IF FEES FROM OTHER STATE SELLERS TO BROKER-BUYER TRANSMITTED IN OTHER THAN CASH, MOSTLY, TO STOCKHOLDER BUYER OWNERS AND TRADE ASSOCIATION MEMBERS.

Where corporation acting as agent for its stockholders, who were members of an association of bakers, engaged in extensive transactions involving the purchase of merchandise for its stockholders, and collected commissions or brokerage fees from sellers of the merchandise, which were transmitted from other states to the corporation and then transmitted to the stockholders, though for the most part in a form other than cash, there was a violation of the statute prohibiting the payment or acceptance of commission, brokerage, or other compensation, except for services rendered. Clayton Act, sec. 2 (c), as amended by Robinson-Patman Price Discrimination Act, sec. 1, 15 U. S. C. A., sec. 13 (c).

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[1] Reported in 114 F. (2d) 393. For case before Commission, see 29 F. T. C. 1328.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—"SERVICES RENDERED" CLAUSE.

The statute prohibiting the payment or acceptance of commission, brokerage, or other compensation, except for services rendered, was framed to prohibit the payment of brokerage in any guise by one party to the other, or the other's agent, at the same time expressly recognizing and saving the right of either party to pay his own agent for services rendered in connection with the sale or purchase.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS OR TO BUYER AGENTS OR REPRESENTATIVES—BROKER-BUYER FOR BUYING STOCKHOLDER OWNERS—IF SERVICES BY CORPORATE BROKER AGENT TO SELLERS UNDER AGREEMENT FOR.

Even if corporation, which was agent for its stockholders who were members of an association of bakers, in extensive purchases of merchandise, also rendered services to sellers under agreement to do so, the corporation could not under the statute prohibiting the payment or acceptance of commission, brokerage, or other compensation, except for services rendered, lawfully collect brokerage fees from the sellers, since the corporation was acting as agent for the purchasers.

INTERSTATE COMMERCE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS OR TO BUYER AGENTS OR REPRESENTATIVES—BROKER-BUYER FOR BUYING STOCKHOLDER OWNERS—IF FEES FROM OTHER STATE SELLERS TO BROKER-BUYER TRANSMITTED IN OTHER THAN CASH, MOSTLY, TO STOCKHOLDER BUYER OWNERS AND TRADE ASSOCIATION MEMBERS—WHETHER PARTIES IN INTERSTATE COMMERCE.

Where corporation acting as agent for its stockholders, who were members of an association of bakers, engaged in extensive transactions involving purchase of merchandise for its stockholders, and collected commissions or brokerage fees from sellers of the merchandise, which were transmitted from other states to the corporation and then transmitted to the stockholders, though for the most part in a form other than cash, the parties were engaged in "interstate commerce" so as to render applicable the statute prohibiting the payment or acceptance of commission, brokerage, or other compensation, except for services rendered, by a person engaged in "interstate commerce."

INTERSTATE COMMERCE—REGULATION—POWER—IF INTRASTATE AND INTERSTATE TRANSACTIONS COMMINGLED.

The fact that intrastate and interstate transactions may be commingled does not restrict the power of Congress to protect and control what is committed to its care.

INTERSTATE COMMERCE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—SELLER TO BUYER PAYMENTS OR TO BUYER AGENTS OR REPRESENTATIVES—BROKER-BUYER FOR BUYING STOCKHOLDER OWNERS—IF FEES FROM OTHER STATE SELLERS TO BROKER-BUYER TRANSMITTED IN OTHER THAN CASH, MOSTLY, TO STOCKHOLDER BUYER OWNERS AND TRADE ASSOCIATION MEMBERS—ASSOCIATION, MEMBERS OF WHICH THUS ENGAGED, AS "INSTRUMENTALITY IN THE CURRENT OF COMMERCE."

Where corporation acting as agent for its stockholders, who were members of an association of bakers, engaged in extensive transactions involving the purchase of merchandise for its stockholders, and col[394]lected commissions or brokerage fees from sellers of the merchandise, which were trans-

mitted from other states to the corporation and then transmitted to the stockholders, though in a form other than cash for the most part, association of bakers, though it did not itself engage in commerce, was an "instrumentality in the current of commerce" so as to be subject to the statute prohibiting the payment or acceptance of commission, brokerage, or other compensation, except for services rendered.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—COOPERATIVE EXCEPTIONS OF SECTION 4 OF ROBINSON-PATMAN ACT—APPLICABILITY.

The statute providing that nothing in the act dealing with commerce and trade shall prevent a co-operative association from returning to its members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association, does not authorize co-operative associations to engage in practices forbidden by the statute prohibiting the payment or acceptance of commission, brokerage, or other compensation except for services rendered. Robinson-Patman Price Discrimination Act, sec. 4, 15 U. S. C. A. sec. 13b.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (c)—BROKERAGE AND COMMISSION PROVISIONS—VALIDITY.

The statute prohibiting the payment or acceptance of commission, brokerage, or other compensation except for services rendered is constitutional.

(The syllabus, with substituted captions, is taken from 114 F. (2d) 393)

On petition by Quality Bakers of America, an unincorporated association, and Quality Bakers of America, Inc., and certain baking companies, members of association, against Commission, to review and set aside its order directing named petitioners to cease and desist from accepting brokerage fees, or allowances in lieu thereof, and from paying same, directly or indirectly, to their members and stockholders, and directing other petitioners to cease and desist from accepting fees or allowances in any form, either from sellers from whom they purchased, or from named petitioners, decree entered affirming and enforcing Commission's order.

Mr. Guy C. Heater, of New York City (*Mr. Oscar B. Frazer*, *Mr. Arnold L. Davis*, and *Davis, Wagner, Heater & Hallett*, all of New York City, on the brief), for petitioners.

Mr. Allen C. Phelps, special attorney, Federal Trade Commission, of Washington, D. C. (*Mr. W. T. Kelley*, chief counsel, Federal Trade Commission, of Washington, D. C., on the brief), for the Commission.

Before MAGRUDER and MAHONEY, Circuit Judges, and PETERS, District Judge.

PETERS, *District Judge:*

This is a petition to review and set aside an order of the Federal Trade Commission directing petitioners, Quality Bakers of America, an unincorporated association, and Quality Bakers of America, Inc.,

a corporation, in connection with the purchase of commodities in interstate commerce by any member of the former or stockholder of the latter, to cease and desist from accepting brokerage fees, or allowances in lieu thereof, and from paying the same, directly or indirectly, to their members and stockholders; and directing other petitioners, certain baking companies, members of the said association, in connection with their purchases of commodities in interstate commerce, to cease and desist from accepting such fees or allowances, in any form, either from sellers from whom they purchase, or from the petitioners, Quality Bakers of America or Quality Bakers of America, Inc.

The order of the Commission was based upon its findings of facts and conclusion that the facts showed a violation of Section 2 (c) of the Clayton Act, as amended by the Robinson-Patman Act (49 Stat. [395] 1527), which reads as follows:

> It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

The complaint of the Commission, initiating the proceeding, alleged that Quality Bakers of America, Inc., accepted for the benefit of its members, respondents in the complaint, and petitioners herein, prohibited brokerage fees and allowances from various sellers of merchandise, including certain flour-mill companies, also named as respondents in the complaint. Subsequently, the Commission dismissed its complaint as against the flour-mill companies for the stated reason that some of them had gone out of business and others had ceased their alleged improper practices and there was no reason to apprehend that they would be renewed, and those companies are no longer parties to the proceeding.

The petitioners, in their answer to the complaint, denied that their business practices constituted any violation of the Clayton Act as amended and also claimed to be exempted from its provisions by section 4 of the Robinson-Patman Act which provides that a cooperative association shall not be prevented from returning to its members any part of its net earnings in proportion to the business done by them. Constitutionality of the Act as well as the jurisdiction of the Commission is also attacked.

From findings as to the facts made by the Commission, it appears that the voluntary, unincorporated association known as "Quality Bakers of America," having its headquarters in New York City,

has a membership comprising some seventy wholesale baking concerns located in various parts of the country, who are and agree to be non-competitive among themselves so long as their membership continues.

The active, operating agent of the association of bakers, referred to as the Association, is a Delaware corporation, organized under the mercantile corporation law of that State and called Quality Bakers of America, Inc. The officers of the corporation and of the Association are the same persons. All the stock of the corporation is owned by members of the Association and cannot be otherwise owned without the consent of the corporation.

The corporation, referred to as the Service Company, acts as purchasing agent for the members of the Association and also renders them various other services and benefits, including assistance in management and services in connection with production, engineering, accounting, and advertising.

The lines of merchandise purchased by the Service Company for its stockholders include flour and other food materials, as well as machinery and a variety of equipment and supplies used in the manufacture, storage and distribution of wholesale bakery products. Some of the merchandise is bought outright by the Service Company and resold to its stockholders. In other cases the Service Company as a broker effects the purchase in behalf of the stockholders.

The stockholders of the Service Company, a representative group of whom, together with the corporation and the Association, and their officers, are named as respondents in the complaint of the Commission, are found by the Commission to be, severally:

* * * engaged in purchasing commodities from sellers located in States other than the States in which such Service Company and said stockholders individually maintain their respective principal places of business. Said stockholders, or some of them, daily transmit orders for the purchase of merchandise to respondent Service Company and such orders in nearly every case are transmitted by mail or other means of communication across State lines. In executing said orders and in purchasing the commodities specified therein, respondent Quality Bakers of America, Inc., transmits such orders and purchases commodities from one or more of a group of over 200 manufacturers, processors, producers, or distributors, located in many different States, and who in a large ma[396]jority of cases are located in a State other than the State of New York, where the Service Company has its principal office and place of business. As a result of such purchase and sale transactions, respondent Quality Bakers of America, Inc., and each of its said stockholders transport or cause to be transported baker's supplies and commodities from the sellers thereof, located in many different States, to, through and into States other than the State of origin or shipment of such commodities. Said stockholders habitually transmit money or the equivalent thereof in payment of the purchase price for such commodities by United States mail and other means, from their individual places of business, usually across State lines, to the sellers of such merchandise and products, and the Service Company daily receives brokerage fees on purchases made by its stockholders through it, which are transmitted to it by such sellers located in

States other than the State of New York, through the medium of the United States mails and otherwise, most of such remittances crossing State lines between the offices of such sellers and the offices of the Service Company. Such purchases by the Service Company's stockholders through the Service Company, and the collection of such brokerage fees by said Service Company, in the manner stated, cannot be accomplished or brought about and is not effectuated except by the use of interstate channels of communication, nor are such commodities so purchased obtained, nor can they be obtained in most cases except by the transportation of the same, at the instance and request of the Service Company and its stockholders, from one State to, into, or through other States of the United States. In using such methods of ordering, purchasing, and making payment for commodities so purchased and in obtaining and collecting such brokerage fees, respondent Service Company and its stockholders operate in the channels of interstate commerce and are engaged in such commerce. Respondent Service Company is an indispensable interrelated instrumentality in the course of such commerce, and its operations cannot be conducted except by means of the use of facilities available in the channels of interstate trade, communication, and commerce. * * * The operations of respondent Service Company are centered in its offices in New York, but extend into every State in which one or more of its stockholders and the sellers of commodities with whom it negotiates purchases of commodities are located. The plan of operation of the Service Company and its stockholders, above described, is an integral whole which cannot be separated into constituent parts without destroying the whole. Said plan of operation contemplates the use of and uses the facilities and instrumentalities of interstate commerce and is effectuated almost entirely through the means and channels of traffic and commerce among and between the several States.

Brokerage fees and commissions collected by the Service Company from the concerns selling merchandise to it or to its stockholders on its order are not paid over to the stockholders directly, the procedure being substantially as follows: The stockholders, members of the Association, agree to pay to the Service Company certain dues, measured by the baking capacity of the member's plant, the minimum being $25 per week. These dues are charged to the several stockholders on the books of the Service Company. The stockholders are also charged with the price of services and benefits rendered to them by the Service Company, including the use of its purchasing department and certain other special services of value to the bakers.

The brokerage fees and commissions collected by the Service Company from the sellers of merchandise, are applied in accordance with the provisions of a so-called membership and service agreement entered into between each member of the Association and the Association and Service Company as follows:

That all brokerage, selling, and commissions, selling discounts or other amounts allowed by suppliers of materials, manufactured advertising, machinery, and equipment and collected by the Quality Bakers of America, Inc., shall be applied one-half to the credit of the Member's dues on whose business the brokerage or allowance originated, and the remaining half shall be applied by the Board of Directors in such manner as it shall determine, for service purposes for the benefit of the members of the Quality Bakers of America.

Under the above arrangement, in each case, one-half of the brokerage fee collected by the Service Company is credited on its books to the stockholder whose buying order produced the fee. The other half is used by the Service Company to pay a dividend of 8 percent on the stock and the operating expenses of the com[397]pany including the expense of furnishing to its stockholders the services and benefits above-mentioned.

On the evidence before it, the Commission found that during the year ending July 1, 1937, preceding the service of the complaint in August of that year, the Service Company executed approximately 13,500 orders for the purchase of commodities on a brokerage-fee basis for its stockholders, the purchase price of such commodities being estimated to be between $5,500,000 and $5,900,000 in amount. On such purchases the Service Company received brokerage fees from the sellers of such commodities totaling $163,933.84. The Commission also found that since July 1, 1937, the Service Company has continued to purchase commodities on a brokerage-fee basis for its stockholders in the same manner and using the same methods as before. The Commission also found:

> In 1936, the dues actually charged to stockholders ranged from nothing for suspended members to $5,920, the latter figure being for a stockholder with five plants. In 1936, of 69 member-stockholders, 36 were credited with more than one-half of the brokerage fees collected by the Service Company on their purchases than the dues charged against them amounted to. In the cases of all but ten of said stockholders, the total brokerage fees collected on purchases made by them through the Service Company exceeded the amount of dues charged against them. During the year 1936 the total amount of brokerage fees collected by the Service Company amounted to $181,528.20; of the amount, $90,760.10 was credited by the Service Company to the respective accounts of its member-stockholders. Dues charged against all the stockholders during 1936 amounted to $79,556.

It also found:

> All of the profits of said company inure to the benefit of the stockholders in the form of money and credits and valuable benefits and services. In all matters and transactions in which the Service Company negotiates or deals with sellers in connection with the purchase of commodities by its stockholders, such Service Company is the agent and representative of such stockholders, acts in fact for them, and in their behalf, and is subject to their direct control.

The conclusion of the Commission was in substance that Quality Bakers of America, Inc., and its stockholders are engaged in interstate commerce "in all material aspects of the practices involved herein"; that in the course of such commerce the corporation is and has been accepting brokerage fees from sellers on purchases of commodities made by its stockholders through it, while acting as the agent for them and in their behalf and while owned and controlled by such stockholders; that the stockholders receive such brokerage fees in the

form of money, credits, benefits and services paid for by such fees; that neither the Service Company nor the stockholder renders any service, in connection with the sale commodities, to any seller so paying such fees; that the Association is an organization designed and used to facilitate and further the objectives and operations of the Service Company and its stockholders; that the corporation is not a cooperative association within the meaning of section 4 of the Robinson-Patman Act; that the plan of operation and practices of the Association and the corporation and their members result in the transmission of brokerage fees from sellers to buyers on transactions involving the purchase and sale of commodities in the course of interstate commerce and "that such acts, practices, and policies are violative of the provisions of paragraph (c) of Section 2 of the Clayton Act, as amended."

As a result of its conclusion, the Commission issued the cease and desist order complained of.

The petitioners take exception to some of the findings of fact made by the Commission.

The act establishing the Federal Trade Commission and providing for a revision of its order specifies that "The findings of the Commission as to the facts, if supported by evidence, shall be conclusive." (U. S. C. A. Tit. 15, Sec. 45 (c).)

The language of that statute is plain enough and the courts have no right to ignore it. "The courts cannot pick and choose bits of evidence to make findings of fact contrary to the findings of the Commission." *Federal Trade Commission* v. *Standard Education Soc.*, 302 U. S. 112, 117.

The weight to be given the evidence as well as the inferences reasonably to be drawn from it, is for the Commission. *Federal Trade Commission* v. *Pa*[398]*cific Paper Ass'n*, 273 U. S. 52, 63; *Federal Trade Commission* v. *Artloom Corp.*, 69 F. (2d) 36.

In view of the above rule and of our desire to curtail this opinion, we deem it unnecessary to discuss all the findings which are objected to, and, where not mentioned, it may be understood that we consider that findings are supported by evidence.

Although challenged by the petitioners, it hardly can be questioned, in view of the evidence before the Commission, that the corporation, referred to as the Service Company, has been acting as agent for its stockholders, members of the Association, in extensive transactions involving the purchase of merchandise; that it has been the practice of the Service Company to collect commissions or brokerage fees from the sellers of the merchandise, which are transmitted from other States to the Service Company in New York, which transmits them to the member-stockholders. The stockholders, controlling the corporation, elect to receive the greater part of the brokerage in a form other than

cash; but they receive it nevertheless. Such a proceeding (in interstate commerce) is precisely what is prohibited by the statute.

It is contended that the petitioners, so far as the acts complained of here are concerned, are not engaged in interstate commerce, but are engaged in rendering a contractual service that is not interstate commerce. The contractual service referred to is one alleged to be rendered the sellers of merchandise in connection with the sale and purchase of goods, which the petitioners also claim is permissible by the language of the statute.

The only petitioner collecting anything in the nature of a commission directly from the sellers being the Service Company, it is, presumably, that company which is referred to as rendering services under contract. The Commission has found unequivocally that "There is no evidence in the record that the Service Company has contracted with any seller to render him any service in connection with the sale of his commodities or to find buyers for him or to promote the sale of his merchandise." This finding is disputed by the petitioners, but in view of the evidence we think it must stand.

It can be reasonably concluded from the evidence before the Commission that the Service Company was the purchasing agent of the buyers and in that capacity dealt with the sellers. Undoubtedly the sellers received valuable benefits and advantages from the business given them by the Service Company, other than the ordinary profits on the sales. For instance—they were saved the expense incident to obtaining the business and dealing separately with numerous customers taking a large amount of merchandise. In that way and to that extent the Service Company rendered services and had contractual relationship with the sellers. For those benefits the sellers were willing to pay and did pay and, no doubt, after such a course of dealing had been established, it was considered by all parties that there was an implied agreement to pay, but it is a mistake to assume that the payments made were other than essentially commissions on the sales or to suppose that such a practice was lawful after the passage of the Robinson-Patman Act.

The petitioners contend that by the language in paragraph (c), above quoted, reading "except for services rendered in connection with the sale or purchase of goods," the Congress recognizes that a buyer, or his agent, may perform services for the seller in connection with the transaction for which the seller may pay and the buyer or his agent receive compensation by way of a brokerage fee or commission on the sale. We do not take such a view of the paragraph. The construction contended for makes much of its language meaningless; it does violence to the purpose of the Act and has been explicitly rejected in other circuits. It is plain enough that the paragraph, taken as a whole, is framed to prohibit the payment of brokerage in any guise by one party

to the other, or the other's agent, at the same time expressly recognizing and saving the right of either party to pay his own agent for services rendered in connection with the sale or purchase.

The committee reporting the bill to the H. of R. stated that paragraph—

> (c) * * * permits the payment of compensation by a seller to his broker or agent for services actually rendered in his behalf: Likewise by a buyer to his broker or agent for services in connection with the purchase of goods actually rendered in [399] his behalf; but it prohibits the direct or indirect payment of brokerage except for such services rendered. It prohibits its allowance by the buyer direct to the seller, or by the seller direct to the buyer; and it prohibits its payment by either to an agent or intermediary acting in fact for or in behalf, or subject to the direct or indirect control, of the other. Report No. 2287, 74th Congress, 2d. Session, March 31, 1936.

This is the view prevailing in other circuits. *Great Atlantic and Pacific Tea Co.* v. *Federal Trade Commission*, 106 F. (2d) 667; *Biddle Purchasing Co.* v. *Federal Trade Commission*, 96 F. (2d) 687; *Oliver Bros.* v. *Federal Trade Commission*, 102 F. (2d) 763; *Webb-Crawford* v. *Federal Trade Commission*, 109 F. (2d) 268.

Even if the Service Company here renders services to the sellers under agreement to do so, as claimed by petitioners, it cannot lawfully collect brokerage fees from the sellers since it is acting as agent for the purchasers. As was stated in the *Great Atlantic and Pacific Company case*, "The agent cannot serve two masters, simultaneously rendering services in an arm's length transaction to both."

The petitioners also argue that the statute is not applicable to them, and that the Commission was without jurisdiction, because, as they say, the Commission's complaint was based upon payment made by the sellers to the Service Company for services rendered; that such services were rendered by agreement and that the sale of services is not interstate commerce. Several cases, including *Hopkins et al.* v. *United States*, 171 U. S. 578, are cited in support of the proposition that "the service contract is separate and distinct from the actual sale in interstate commerce" and not a part of it. The argument proceeds upon a wrong basis. It is misleading to say that the complaint is for accepting money for services rendered. There is no prohibition against an agent's accepting money for services rendered his principal. In fact it is expressly provided for by the language in the statute. The objection is to the acceptance of money for the other party's principal. That is what the complaint charges. Brokerage fees and commissions, so described and admittedly paid before the passage of the Robinson-Patman Act, are not changed in nature by calling them something else, nor made legal by an agreement for their payment.

The point in this connection is whether the parties were engaged in interstate commerce and whether the payments in question were

made in the course of such commerce. As to that there can be no serious question. The purchasing stockholders are located in twenty-five different States. The sellers of the commodities purchased are 200 in number and located all over the country. The Service Company either buys outright and re-sells to the stockholders or places orders with the sellers for shipment direct to the purchasers. It all contemplates and requires interstate transportation of merchandise. The fact that intrastate and interstate transactions may be commingled does not restrict the power of Congress to protect and control what is committed to its care. *Currin* v. *Wallace*, 306 U. S. 1.

Objection is made that the unincorporated association, Quality Bakers of America, is not itself engaged in interstate commerce and should not be included in the cease and desist order.

It is true that it does not appear that the Association as such is engaged in commerce, but its members are so engaged, and the Association as an instrumentality in the current of commerce is within the regulatory power of Congress and was properly included in the order. *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673, 684.

The objection to the jurisdiction of the Commission on the ground that the respondents in the complaint were not engaged in interstate commerce is not well taken.

The petitioners claim to be exempted from the provisions of paragraph (c), above referred to, by Section 4 of the Robinson-Patman Act (49 Stat. 1528), which reads as follows:

> Nothing in the act * * * shall prevent a cooperative association from returning to its members, producers, or consumers the whole or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association.

The petitioners contend that both the unincorporated association, Quality [400] Bakers of America, and the corporation, Quality Bakers of America, Inc., are cooperative associations within the meaning of the above-quoted section of the statute and have supported their contention with argument, both before the Commission and in this court, but we deem it not necessary to consider whether either or both of the organizations mentioned are cooperatives within the meaning of the statute because we hold that Section 4 does not authorize cooperative associations to engage in the practices forbidden by Section 2 (c) of the act, nor except them from its provisions. There is nothing in the language of the statute which warrants such a conclusion or such a forced construction. The action and debates in Congress to which we have been referred so indicate. Cong. R. Vol. 80, page 8452. See also page 9561.

Paragraph (c) is a distinct and complete provision in itself making illegal the giving or taking of commissions or their equivalent

under the circumstances mentioned in the text. There are also in the act other provisions making other practices illegal as unfair trade practices, but, as it was put by the court in the *Oliver case:*

> No reason suggests itself why the limitations and provisions relating to one should be read into those relating to the other.

There are no provisions in Section 4 exempting cooperative associations from the penalties imposed for violation of Section 2 (c).

The constitutionality of Section 2 (c) as we have interpreted it is not open to serious question. *Great Atlantic and Pacific Tea Co.* v. *Federal Trade Commission*, 106 F. (2d) 667; *Biddle Purchasing Co.* v. *Federal Trade Commission*, 96 F. (2d) 687; *Oliver Bros.* v. *Federal Trade Commission*, 102 F. (2d) 763; *Webb-Crawford* v. *Commission*, 109 F. (2d) 268.

In view of the adequate discussion of the constitutional question in these cases, further elaboration of this point would be superfluous.

Some other points made against the action of the Commission have been argued and considered by us but are not regarded as having sufficient merit to require further discussion or to change our conclusion, which is that the order of the Commission should be sustained and the performance of it commanded.

A decree will be entered affirming and enforcing the order of the Federal Trade Commission.

YARDLEY OF LONDON, INC. v. FEDERAL TRADE COMMISSION [1]

(Circuit Court of Appeals, Second Circuit. Sept. 13, 1940)

Order, in accordance with stipulation, as below set forth, withdrawing petition to review order of Commission in Docket 2330, 30 F. T. C. 156, 165, directing respondent, its officers, etc., in connection with offer, etc., of toilet requisites and cosmetics, to cease and desist from representing falsely, through use of words "London," "English," or "Old English," etc., as therein set forth, that its toilet requisites and cosmetics, made, compounded, diluted or bottled in the United States or elsewhere than England, were made, etc., in said country or were of English origin, and using such terms or phrases as "33 Old Bond Street," etc., to refer to any of its said products, or word "London" as part of its corporate name, in connection with offer, etc., of such products, as in said order variously set forth.

Mr. Dallas S. Townsend, of New York City, for petitioner.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Morton Nesmith*, special attorney, both of Washington, D. C., for the Commission.

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[1] Not reported in Federal Reporter.

STIPULATION AND ORDER

The above proceeding having been adjusted, it is hereby stipulated and agreed by and between Dallas S. Townsend, Esq., counsel for the petitioner herein, Yardley of London, Inc., and Morton Nesmith, Esq., counsel for the respondent, Federal Trade Commission, that the petition heretofore filed herein by said petitioner to review the order of said respondent dated December 20, 1939, be and hereby is withdrawn, without costs to either party as against the other, and that an order to such effect may be entered without further notice.

Dated September 9, 1940.

(S) DALLAS S. TOWNSEND,
Counsel for Petitioner,
Yardley of London, Inc.

(S) MORTON NESMITH,
Counsel for Respondent,
Federal Trade Commission.

Approved:
(S) W. T. KELLEY, *Chief Counsel.*

So ordered:
(S) D. E. ROBERTS, *Clerk.*

SEPTEMBER 13, 1940.

CALIFORNIA LUMBERMEN'S COUNCIL ET AL. v. FEDERAL TRADE COMMISSION [1]

No. 8984

(Circuit Court of Appeals, Ninth Circuit. Oct. 1, 1940)

FEDERAL TRADE COMMISSION ACT—SECTION 5—JURISDICTION—PARTIES.

In proceeding before the Federal Trade Commission, as in any in personam action, there must be jurisdiction over the parties sought to be affected by any order of the Commission. Federal Trade Commission Act, sec. 5, 15 U. S. C. A. sec. 45.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—COMMISSION JURISDICTION—RESPONDENTS—SERVICE—APPEARANCE COUNSEL BEFORE COMMISSION AND COURT AS FOR ALL.

In proceeding to review a cease and desist order of Federal Trade Commission, wherein petitioners urged that Commission was without jurisdiction over any of the petitioners not served with copy of complaint, attorney who in an affidavit and during trial before examiner stated that he appeared for all petitioners, and who had appeared before the Commission and the Circuit Court of Appeals ostensibly representing some one or more of the petitioners, would be held to have appeared generally for all petitioners, since, if he intended to limit his appearance as representing less than all petitioners, he should have so informed examiner and court at earliest time practicable.

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[1] Reported in 115 F. (2d) 178. For case before Commission, see 27 F. T. C. 515. Petition for rehearing in this case was denied on November 19, 1940. The Supreme Court, on March 31, 1941, denied certiorari in this case. 61 S. Ct. 827.

FEDERAL TRADE COMMISSION ACT—SECTION 5—PROCEDURE AND PROCEEDINGS—EVIDENCE—PRESENTATION ORDER.

In Federal Trade Commission proceeding, although it is customary for a defendant's case to be presented after that of plaintiff's, there is nothing to prevent the taking of testimony out of such regular order where there is reason therefor.

FEDERAL TRADE COMMISSION ACT—SECTION 5—PROCEDURE AND PROCEEDINGS—EVIDENCE—PRESENTATION ORDER—WHERE RESPONDENTS REQUIRED, ABSENT NECESSARY TESTIMONY OF CERTAIN WITNESSES OF, TO PRESENT CASE IN ADVANCE OF GOVERNMENT CLOSING—PROPRIETY.

The action of examiner in Federal Trade Commission proceeding in requiring respondents to present their case prior to closing of Government's case, where taking of testimony of Government's witness was not feasible until after testimony of two of respondent's witnesses who had failed to respond to subpoenas, was proper and did not prejudice respondents who urged, on review of cease and desist order, that they were denied a fair trial.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE BEFORE COMMISSION—EXCLUSION OF RESPONDENTS' PROFFERED—WHETHER GROUND FOR ORDER'S NULLIFICATION FOR UNFAIR TRIAL, ABSENT SHOWING OF MATERIALITY OR PREJUDICE.

In proceeding to review cease and desist order of Federal Trade Commission, wherein petitioners sought to nullify order on ground of unfair trial because of examiner's exclusion of evidence from the record, petitioners should have applied to the court under statutory provision authorizing court to order additional evidence to be taken before Commission, for leave to produce the evidence deemed to have been wrongfully excluded, and, where petitioners failed to do so and to show materiality of the excluded evidence or to show wherein they were prejudiced, relief would be denied.

CEASE AND DESIST ORDERS—APPELLATE PROCEDURE AND PROCEEDINGS—EVIDENCE BEFORE COMMISSION—COMMISSION DENIAL MOTION TO REQUIRE OFFICIAL REPORTER TO PREPARE AND FILE WITH COMMISSION TRUE, FULL AND CORRECT TRANSCRIPT OF ENTIRE RECORD—WHETHER GROUND FOR ORDER'S NULLIFICATION FOR UNFAIR TRIAL, ABSENT SHOWING OF MATERIALITY OR PREJUDICE.

In proceeding to review cease and desist order of Federal Trade Commission, wherein petitioners alleged that evidence was improperly excluded from the record, court would not nullify the order because of Commission's denial of motion for an order requiring official reporter to prepare and file with Commission a true, full and correct transcript of the entire record including all evidence taken in the proceeding, where petitioners could have proceeded by appropriate application under statute authorizing court to order additional evidence to be taken before Commission, and petitioners failed to show materiality of the alleged excluded evidence or to show wherein they were prejudiced.

FEDERAL TRADE COMMISSION ACT—SECTION 5—PROCEDURE AND PROCEEDINGS—HEARINGS—WHETHER REQUIRED BEFORE ENTIRE COMMISSION.

Under Federal Trade Commission Act, the hearing in proceeding for cease and desist order was not required to be before entire board but could be before an examiner appointed by the Commission to hear evidence and rule on evidentiary points and to thus make a record of the testimony to be filed in office of Commission. Federal Trade Commission Act, secs. 2, 5, 15 U. S. C. A. secs. 42, 45.

FEDERAL TRADE COMMISSION ACT—SECTION 5—PROCEDURE AND PROCEEDINGS—EVIDENCE—CROSS EXAMINATION—WHERE UNNECESSARY DENIAL OR RESTRICTION, ABSENT PREJUDICE.

[179] In Federal Trade Commission proceeding commenced in 1936 for cease and desist order against lumbermen's organizations, wherein a witness for government testified to acts of trade restriction by respondents from 1929 to time of trial, respondents were entitled to cross-examine the witness with respect to National Industrial Recovery Act codes during period in 1933 and 1934 in which the codes were in effect, but examiner's unnecessary restriction of such cross-examination were not prejudicial to respondents, since cease and desist order was directed only to continuation of acts practiced and threatened and the codes could not be a defense to unlawful acts after codes became ineffective.

CEASE AND DESIST ORDERS—SCOPE, IN GENERAL—PURPOSE AS PREVENTIVE.

The purpose of a cease and desist order by Federal Trade Commission against unfair methods of competition is not to punish for past acts, but to prevent the occurrence or the threatened continuance of illegal acts.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—PRICE FIXING, FIXING OF QUOTAS, BOYCOTTS AND OTHER ACTS.

Price fixing, fixing of quotas, boycotts, and other acts the doing of which lumbermen's organizations were ordered to cease and desist, constituted "unfair competition" within meaning of Federal Trade Commission Act authorizing Commission to issue cease and desist order.

CEASE AND DESIST ORDERS—VALIDITY, IN GENERAL—WHETHER VAGUE, INDEFINITE AND OBSCURE—PROHIBITIONS, IN CONNECTION WITH PURCHASE "AND" SALE, OF SPECIFIED ACTS, INCLUDING "UNFAIR, DISCRIMINATORY, OR PROHIBITIVE TERMS AND CONDITIONS," ETC., AND THOSE "UNLAWFULLY" RESTRICTING SALE, ETC.

Order of Federal Trade Commission that respondents, in connection with the purchase "and" sale of lumber and building materials in interstate commerce, cease and desist specified acts, including the imposition upon manufacturers of "unfair, discriminatory, or prohibitive terms and conditions", and specified acts "unlawfully" restricting sale and distribution of lumber and building materials, was not invalid as being vague, indefinite, and obscure, where substance of order when read as a whole left no question but that acts were prohibited in the case of purchase or sale, either separately or together, and left no question as to meaning of the quoted words and phrases.

CEASE AND DESIST ORDERS—METHODS, ACTS AND PRACTICES—LISTS OF MEMBERS PUBLISHED BY TRADE ORGANIZATIONS TO OPERATE AS BLACK OR WHITE LISTS.

The publishing by lumbermen's organizations of lists of members, so as to thereby indicate that business could be done with such members or that other persons should not be dealt with, constituted "unfair competition" which could be prohibited by Federal Trade Commission by cease and desist order.

CEASE AND DESIST ORDERS—VALIDITY, IN GENERAL—INTERSTATE COMMERCE—WHETHER LIMITATION TO—PRELIMINARY PROVISION AS SO LIMITING SPECIFIC FOLLOWING.

Federal Trade Commission's cease and desist order which contained preliminary provision ordering that respondents, in connection with the purchase and sale of lumber and building materials in interstate commerce, cease and desist specified acts, was not invalid on ground that the restric-

tions of the order were not limited to interstate commerce, since each of the provisions of the order was necessarily limited to interstate commerce by the preliminary provision.

(The syllabus, with substituted captions, is taken from 115 F. (2d) 178)

On petition to review cease and desist order issued by Commission under Federal Trade Commission Act, sec. 5, order held proper, and relief under petition denied.

Mr. Morgan J. Doyle, of San Francisco, Calif., for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Daniel J. Murphy* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for Commission.

[180] Before GARRECHT, HANEY, and STEPHENS, Circuit Judges.

STEPHENS, *Circuit Judge:*

This is a petition to review an order issued by the Federal Trade Commission against petitioners in which petitioners are ordered to cease and desist the doing of certain acts. (15 U. S. C. A. sec. 45.)

On August 14, 1936, the Commission issued a complaint against the petitioners alleging a violation of fair methods of competition in interstate commerce in the manner following: The petitioners, as it was alleged and found to be true, were organized in the State of California for the purpose of engaging in carrying out a program, policies and aims of the California Lumbermen's Council, composed of affiliates under different names or titles, which affiliates include "Petitioners." The California Lumbermen's Council and affiliated organizations have as their membership retail dealers in, and vendors of, lumber and building materials. Such dealers and vendors are persons, partnerships, and corporations who, as dealers and vendors, are engaged in the business of buying, selling, and distributing to contractors, builders, dealers, consumers, and other purchasers, lumber, and building materials. Petitioners in the course and conduct of their business purchase lumber and building materials from manufacturers, producers, and distributors in various States and cause such lumber and building materials to be shipped and transported to warehouses, places of business, and to customers from points in one State to points in the same State, and from points in one State to points in another State.

The petitioners constitute a large portion of those conducting the building material and lumber business in Pacific coast and contiguous States, and are and have been in actual and potential competition with each other and with nonmembers dealing in the same type of materials. That this group of petitioners constitute such an influence in the trade of such materials in interstate commerce that they are enabled to and do promote and enhance their own volume of trade and

profit by confining the sale and distribution of such materials largely to the petitioners and members thereof; to induce, require and compel manufacturers and producers of said materials to refrain and to cease and desist from selling or distributing said materials to others and affiliates; thereby compelling nonmembers to purchase said materials through members of petitioner's organizations upon terms and conditions imposed by petitioners. The petitioners, by combining, confederating and conspiring together, have interfered with trade in interstate commerce in an unfair and unlawful manner by limiting trade to members; boycotting and threatening to boycott manufacturers and producers dealing with nonmembers; issuing quotas of sales for members within certain districts; imposing fines and penalties for violation of the orders of the petitioners; controlling prices by issuing uniform price lists to members thereby enhancing the natural and normal profit ordinarily obtained through free competition.

Issue was formed by the filing of an answer and evidence was taken before a trial examiner designated for this purpose by the Commission. A transcript of the trial was filed with the Commission and after examination thereof findings of fact, generally in accordance with the complaint, and an order for the petitioners to cease and desist in their practices and policies were made by the Commission. The petitioners do not attack the sufficiency of the evidence to support the findings of fact but petitioners claim that the transcript of the record is not a complete or a sufficient record of the proceedings. The order itself is attacked.

Following the filing of petitioners' petition for a review in this court, the Commission filed a transcript of record and petitioners filed a motion for an order to:

(*a*) strike from the files the transcript of the record filed by the Commission. (*b*) require the Commission to file a complete and entire record of the proceedings below, or in the alternative, vacate the cease and desist order made by the Commission.

A like motion had been filed with the Commission and had been denied. This court denied the motion (103 F. (2d) 304).

Subsequently, another motion by petitioners requesting an order commanding the Commission to file a supplemental transcript of record was denied by this court (104 F. (2d) 855).

The points relied upon in the petition for review will be taken up in the order of their statement in petitioners' opening brief.

The first point raised is: "The Commission was without power or jurisdiction **[181]** to issue the cease and desist order against any of the petitioners who were not served with a copy of the complaint."

The statute, 15 U. S. C. A. sec. 45, is relied upon as requiring proof of service as a jurisdictional requisite. As in any in personam action there must be jurisdiction over the parties sought to be affected by

any order of the Commission. In answer to this point, the counsel for the Commission takes no issue with the cases relied upon by petitioners but claims there is sufficient proof of service and that the record shows that a general appearance of Morgan J. Doyle as their attorney for all petitioners. That such an appearance has been made is made clear by an examination of the record.

The complaint by which the original proceeding was instituted before the Federal Trade Commission is entitled "In the Matter of California Lumbermen's Council" (then follows other names). In the body of the complaint those charged with violating the Federal Trade Act are referred to as "respondents." The answer does not designate the "respondents" answering but states as follows:

> Now comes each and all the respondents *heretofore served* with copies of the complaint herein, and for answer to the complaint of the Commission herein, admit, deny and aver as follows * * *. [Italics ours.]

Whether or not this appearance can be construed as appearance for all "respondents" need not be decided.[1]

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[1] Subsequent to the oral hearing in this court, certificate has been filed as follows. Appended to this certificate is a list of the names of those against whom the order is directed with the exception of Ralph P. Duncan and Charles G. Bird:

> I, Joe L. Evins, Acting Secretary of the Federal Trade Commission, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of return receipt cards showing service of complaint in Docket 2898, in the matter of California Lumbermen's Council, et al., on the following respondents:

Registry No.	Respondent served
370005	California Lumbermen's Council.
370006	George N. Ley.
370008	George C. Burnett (Cal. Lumbermen's Council).
370010	J. H. Kirk (Cal. Lumbermen's Council).
370011	Warren Tillson.
370012	S. P. Ross.
370013	I. E. Horton.
370014	A. S. Hatch.
370015	E. S. McBride (Cal. Lumbermen's Council).
370016	James Tully.
370017	Coast Counties Lumbermen's Club.
370018	Wiley Masengill.
370019	W. H. Enlow.
370020	J. H. Kirk (Coast Counties Lumbermen's Club).
370021	C. S. Tripler.
370022	Central Valley Lumbermen's Club.
370023	C. C. Moorhead.
370024	W. O. Mashek.
370026	Thomas L. Gardner.
370027	Northern Counties Lumbermen's Club.
370028	George K. Adams.
370029	E. S. McBride (Northern Counties Lumbermen's Club).
370030	C. D. LeMaster.
370031	Peninsula Lumbermen's Club.
370032	San Joaquin Lumbermen's Club.
370033	George C. Burnett (San Joaquin Lumbermen's Club).
370034	F. Dean Prescott.
370036	Bernard B. Barber.

The receipt cards referred to, however, do not show that the complaint was in the envelope receipted for.

The counsel appearing for an undisclosed number of respondents by filing the answer executed an "Affidavit in Support of Motion Before Federal Trade Commission" and therein states "That he is an attorney at law, a member of the State Bar of the State of California, and is the attorney for Respondents in the proceeding pending before the Federal Trade Commission, and entitled 'In the Matter of California Lumbermen's Council, Docket No. 2898,' that he has been the attorney of record in said proceeding Docket No. 2898 continuously since the inception of said proceedings and the filing of the answer therein; * * *"

During the taking of evidence in the trial before the examiner, the following colloquy took place between counsel and the examiner:

Trial Examiner DIGGS. Mr. Doyle, I understand that you are counsel for Mr. LeMaster, is that correct?

Mr. DOYLE. I am appearing for all respondents.

[182] In both of these instances the counsel has referred to the parties he represents as "respondents" rather than in the limited manner in which the answer was drawn. Up to the time of the above colloquy the case appears to have been proceeding under the assumption that Mr. Doyle was representing all respondents, and therefore the case was conducted under the same assumption.

Now after the trial has been completed and litigation has proceeded through several hearings in this court, counsel for the first time reveals his intention of relying upon the strictest limitation upon his appearance, i. e., that he appears only for those respondents whom the Commission can prove were legally served. He appeared before the Commission and this court ostensibly representing some one or more of the respondents. It is the right of the examiner to know whom counsel represents and not alone those who may come under some uncertain category. When the examiner attempts to make certain whom counsel represents he answers, "All respondents." We are loath to believe that counsel whom this court knows as an able lawyer in good standing at the California State bar and the bar of the Federal courts means to rely upon the equivocal position these facts suggest. We think he represented that he appeared for all respondents and that it was his duty to inform the examiner and this court at the earliest time practicable, whom he appeared for if he meant to appear for less than all respondents. In the circumstances, we hold that counsel represented that he appeared generally for all respondents.

The second point raised is that the cease and desist order is invalid and void because petitioners were denied and deprived of a fair trial. Several separate considerations in support of the general statement are made, the first of which is that counsel for respondents was required to put on his case prior to the closing of the case for the Government; and upon his refusal to further pro-

ceed the trial examiner declared the case of respondents closed and proceeded to the hearing of the Government's case. There is no authority cited by petitioner to the effect that a change in the order of presentation of a case deprives either side of a fair hearing and constitutes a ground for reversible error. While it is customary for the defendant's case to be presented after that of the plaintiff's, there is nothing to prevent the taking of testimony out of such regular order where there is reason therefor. Petitioners' point is based upon the following events, the record reading:

Trial Examiner DIGGS. This witness, whose testimony, you say, will have reference to the testimony of the two Respondent witnesses who did not appear, will it be possible to put that testimony on before these Respondent witnesses testify?

Mr. MURPHY (for government). No. Possible, but not feasible.

Trial Examiner DIGGS. In view of the fact that the inability of counsel for the Commission to actually announce the close of his case is due to the failure of certain Respondents to appear in response to subpoenas, I rule that Respondent will begin the taking of its testimony at 10:00 o'clock a. m., * * * and that when the attorney for the Commission shall have concluded the introduction of the testimony indicated by him, that at that time, the Respondent will be offered an opportunity to rebut the testimony so offered.

Mr. DOYLE. We object and protest against the ruling of the Examiner compelling us to proceed with the presentation of our defense prior to the time the Commission's case is closed. We claim and insist that to compel us to do so constitutes a denial to us of due process; that it is not in accordance with the rules of the Commission's established practice and customs.

On the next day the petitioner was called upon to present his case, and the record shows what transpired:

Mr. DOYLE. I again say, Mr. Examiner, we decline to proceed any further with the presentation of the defense in this matter, until the government's case is in and closed, and an announcement to that effect made.

Trial Examiner DIGGS. Then I announce that the taking of testimony in the Respondent's case is closed.

Later in the proceedings of the case, and at the time of the closing of the case for the Government, the following took place:

Mr. SADLER. Mr. Examiner, the Government will now rest its case.

Examiner VICINI. Well, you haven't anything further then?

Mr. SADLER. No; the Government now rests its case.

Examiner VICINI (addressing petitioners). You haven't anything?

[183] Mr. DOYLE. There is an order here barring us from putting in testimony.

Examiner VICINI. Yes; I understood there was.

Mr. DOYLE. So under that order, we are not permitted to put in any testimony.

Examiner VICINI. Mr. Diggs made that order and presented it on June 7th, I believe.

Mr. DOYLE. I don't recall the date; it was discussed a number of times.

Examiner VICINI. June the 7th. Well, if there is no other testimony to be offered, the evidence being complete, it is ordered that the formal order of closing the case be referred to the Chief Trial Examiner. That will be the order, that we stand adjourned.

The action of the examiner was correct and reasonable. It may be added that in any event there does not seem to have been any prejudice to petitioner.

Other claimed instances of an unfair trial relate to rulings upon the admission of evidence which resulted in the rejection or the striking from the record of evidence admitted. Petitioner claims the ruling of the Commission should be nullified because of such rulings by the examiner. But petitioner should have applied to the court for leave to produce the evidence deemed to have been wrongly kept out of the record. The statute provides:

If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such a manner and upon such terms and conditions as to the court may seem proper.

In a proper case where the evidence sought to be adduced is material the order will be granted. (See *Consolidated Edison Co. of New York* v. *N. L. R. B.*, 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126, Dec. 5, 1938 which construes a similar provision in the N. L. R. B. Act, 29 U. S. C. A. 160 (e).

The other asserted errors under this general point of unfair trial could have been passed upon by appropriate petition as provided for and construed above and suggested in the earlier opinion reported in 103 F. (2d) 304. Here, however, the counsel pressing this point of error has not even attempted to show the materiality of the excluded portions or wherein petitioners have been prejudiced.

The next point relied upon is that after the hearings below were closed, the Commission denied respondents' motion for an order requiring the official reporter to prepare and file with the Commission, a true, full, and correct transcript of the entire record in the proceeding including all the evidence taken therein. This point is sufficiently answered by the comment just concluded.

The point is made by the appellant that the Commission is without power to appoint an examiner to hear evidence and rule on evidentiary points thus making a record of the "testimony". The wording of the act itself precludes any such construction. The act states (15 U. S. C. A. 45):

* * * The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. * * * The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the

Commission shall be of the opinion that the method of competition in question is prohibited by this subdivision of this chapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served * * *.

There is no requirement in the act that the hearing be before the entire board. The requirement is only that testimony be taken in a hearing provided for by the board and when reduced to writing, filed in the office of the Commission. The report made by the Commission is clearly made upon the basis of the written facts as so filed and that this is the method intended is shown from the treatment in the statute of these two subjects; i. e., first the filing of the written testimony as produced at the hearing, and then the report based upon such hearing (as shown by the filed transcript of the trial.) The act provides specifically for Examiners (15 U. S. C. A. 42).

The next claimed error is that appellants were prohibited from cross ex[184]amining one of the government's witnesses as to the N. I. R. A. codes. The fact is that this witness testified to acts of trade restriction by the clubs or associations, termed respondents, from 1929 until the present time. The period of 1929 and 1930 was inquired into for the purpose of showing the manner in which the respondents operated, as well as to show restrictive acts. The witness was particularly fitted to testify as to the period for at that time he was an officer of one of the organizations and had knowledge of the others as well. The acts constituting restraint of trade in violation of law were of a continuing type and continued from the time of this witness's membership in the organization to the date of the trial. The cross examination as to the N. I. R. A. codes was of course limited to the period from Oct. 15, 1933 to May 1, 1934 for that was the period in which the codes were in effect. [*Schechter Corporation* v. *United States*, 295 U. S. 495, 723, 55 S. Ct. 837, 79 L. Ed. 1570.] We agree with counsel for respondents that the cross examination at this point was unnecessarily restricted. We think, however, that no harm was done.

The purpose of a cease and desist order is not to punish for past acts, but to prevent the occurrence or the threatened continuance of illegal acts. Even though such codes could be relied upon as a defense to the period over which they were in force, which we do not decide, they could be no defense to acts violating the law after they had been declared a nullity, and the evidence goes that far. It is to the continuation of acts shown to have been practiced and threatened that this order is directed.

The next point made by appellant is that the cease and desist order of the Commission should be dissolved for the reason that certain portions thereof are in excess of the powers of the Commission and that various acts prohibited by said order do not constitute unfair

methods of competition in commerce.[2] We set out provisions of the case and desist order in the margin.[3] Under this point it is claimed that the order is vague, indefinite and obscure to an extent of invalidity. The portion objected to is as follows:

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[2] [15 U. S. C. A. 45]

"Power to Prohibit. The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce." See amendment of June 23, 1938. Change of no importance here.

That these acts have been held to constitute unfair competition within the meaning of the act has been established by the following cases among others:

Agreement between dealers not to trade with customer—*Western Sugar Refinery Co.* v. *Federal Trade Commission* (C. C. A.), 1921, 275 Fed. 725.

Fixing resale prices—*Moir* v. *Federal Trade Commission* (C. C. A., 1926), 12 F. (2d) 22; *Federal Trade Commission* v. *Beech-Nut Packing Co.*, 257 U. S. 441, 42 S. Ct. 150; *Q. R. S. Music Co.* v. *Federal Trade Commission* (C. C. A., 1926), 12 F. (2d) 730.

Conspiracies by wholesalers to prevent sales by manufacturers to competitors—*Wholesale Grocers' Association* (C. C. A., 1922), 277 F. 657.

Use by wholesalers of price lists fixed by agreement in selling outside State—*Federal Trade Commission* v. *Pacific States Paper Trade Association*, 1927, 273 U. S. 52, 47 S. Ct. 255.

Boycott—*Chamber of Commerce of Minneapolis* v. *Federal Trade Commission* (C. C. A., 1926), 13 F. (2d) 673.

[3] (1) Preparing and publishing rosters or lists containing the names of respondent dealer members of respondent organizations and distributing the same among manufacturers, producers, and wholesalers, or their representatives, of lumber and building materials, for the purpose, or with the effect of, indicating that the specified persons or concerns are entitled to buy direct from said manufacturers, producers, and wholesalers, or that other persons or concerns, not included therein, are not so entitled.

(2) Soliciting, accepting, or acting upon, information as to sales, proposed sales, or contracts of sale, by manufacturers, producers, and wholesalers, of lumber and building materials to nondealer members of respondent organizations or other purchasers, for the purpose of preventing further dealing between such buyers and the said manufacturers, producers, and wholesalers.

(3) Using boycott, threats of boycott, either with or without other coercive methods, to persuade, induce, or compel manufacturers, producers, and wholesalers to refrain from selling lumber and building materials to non-member dealers of respondent organizations or other purchasers, or to refrain from so selling, except on unfair, discriminatory, or prohibitive terms and conditions fixed by respondents.

(4) Representing, directly or indirectly, to manufacturers, producers, and wholesalers that the members of the respondent organizations would withhold or withdraw their patronage if said manufacturers, producers, and wholesalers sold to competing dealers in lumber and building materials, or to others whose names were not listed on the respondents' rosters.

(5) Fixing or establishing uniform prices at which members of respondent organizations should sell lumber or building materials in particular trade areas.

(6) Fixing or determining the quotas of business in the sale and distribution of lumber and building materials which manufacturers, producers, wholesalers, and dealer members may do in particular trade areas which, thereby, unlawfully restricts or hinders the sale and distribution of lumber and building materials in interstate commerce.

(7) Demanding or exacting penalties or commissions from manufacturers, producers, and wholesalers on sales of lumber and building materials made by said manufacturers, producers, and wholesalers to purchasers other than the members of respondent organizations.

(8) Demanding or exacting penalties or commissions from dealer members, or other dealers, on sales of lumber and building materials, made by said dealer members or other dealers, in trade areas where other dealer members have their places of business which, thereby, unlawfully restricts or hinders the sale of lumber and building materials in interstate commerce.

(9) Holding meetings to devise means for making effective the aforesaid programs and policies, or similar programs and policies.

(10) Employing other cooperative or coercive acts and methods in promoting and carrying out the aforesaid programs and policies, or similar programs and policies.

It is or[185]dered that Respondents (naming petitioners) in connection with the purchase and the offering for sale, sale and distribution of lumber and building materials, in interstate commerce do forthwith cease and desist, etc.

The objection by petitioner is best shown by quoting from his brief, p. 49:

It will be observed that the language of the injunction is in the conjunctive—that is, that the petitioners are ordered to cease and desist "in connection with the purchase *and* the offering for sale", etc., etc.

Assuming that petitioners did the forbidden acts in connection with or in relation to the purchase only. Would that constitute a violation of the order and leave them subject to a penalty?

Or assume that they did *not* do any of the forbidden acts in connection with the purchase of lumber, but *did* do the forbidden acts in connection with the sale of lumber. Would that constitute a violation of the order and leave petitioners subject to punishment?

The Commission and this court are interested in the substance of the order, and when the order is read as a complete article there is no question but that the acts prohibited are prohibited in the case of purchase and sale or the purchase or sale, separately or together.

It is also argued that the order prohibits the petitioners from imposing upon manufacturers "unfair, discriminatory, or prohibitive terms and conditions." The fact is that this reference to a portion of paragraph three of the order must be considered in conjunction with the whole of said paragraph and the meaning is not questionable when it is so read. This same type of objection made to paragraphs six and eight of the order wherein the word "unlawfully" is claimed to be equivocal is answered by the same reasoning, that is, that the fixing and determining of quotas and exacting penalties are unlawful and prohibited when affecting interstate commerce.

It is stated by appellant that some of the acts prohibited are not unlawful and one of such is claimed to be the prohibited publishing of lists of members with the effect of indicating such concerns may be dealt with or that other persons should not be dealt with. That this is a proper prohibition was settled in the case of *Eastern States Lumber Association* v. *United States*, 234 U. S. 600, 612, and the reasons there given apply equally here.

Further it is contended that the restrictions of the order are restraints upon intrastate commerce and not limited to interstate commerce. Each of the provisions of the order are necessarily limited to interstate commerce by the preliminary provision of the order which states: "in connection with the purchase and the offering for sale, sale, and distribution of lumber [186] and building materials, in interstate commerce, do forthwith cease and desist," etc.

The order of the Commission is proper and relief under this petition is denied.

HANEY, *Circuit Judge*, concurs in the result.

RADIO WIRE TELEVISION, INC., OF NEW YORK, ET AL. v. FEDERAL TRADE COMMISSION[1]

No. 17279

(Circuit Court of Appeals, Second Circuit. Oct. 2, 1940)

Order, in accordance with stipulation, as below set forth, withdrawing petitioners' motion to review Commission's denial of their petition (without prejudice to renewal thereof on presentation of case to Commission) to dismiss Commission complaint against them in Docket 3722—which charged petitioner corporations (under their prior corporate names) and petitioner individuals, respondents before Commission, engaged in mail-order business for sale and distribution of radios and radio parts, with places of business in five States, with advertising, falsely and misleadingly, their prices as wholesale and themselves as wholesalers—on the grounds, among others, as set forth in said motion, that testimony for Commission did not sustain charges of complaint and that none of petitioners' acts and practices constituted unfair methods of competition or unfair or deceptive acts and practices in commerce within the statute.

Carb, Reichman & Luria, of New York City, for petitioners.

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, *Mr. Martin A. Morrison*, assistant chief counsel, and *Mr. Carrel F. Rhodes* and *Mr. James W. Nichol*, special attorneys, all of Washington, D. C., for the Commission.

Stipulation and Order

It is hereby stipulated and agreed, That petitioners' petition to review the respondent's (Commission's) order of May 31, 1940, denying petitioners' (respondents before the Commission) motion to dismiss the respondent's (Commission's) complaint herein, be and the same hereby is withdrawn, without prejudice.

Dated September 16, 1940.

(S) Carb, Reichman & Luria,
Attorneys for Petitioners.

(S) W. T. Kelley,
W. T. Kelley,
Chief Counsel,
Federal Trade Commission.

So ordered:
D. E. Roberts, *Clerk.*
October 2, 1940.

[1] Not reported in Federal Reporter.

FORD MOTOR COMPANY v. FEDERAL TRADE COMMISSION[1]

No. 8510

(Circuit Court of Appeals, Sixth Circuit. Oct. 18, 1940)

Order denying, as below set forth, motion of petitioner, incident to its petition to review order of Commission in Docket 3005, 30 F. T. C. 49, 63 (requiring it, its officers, etc., in connection with offer, etc., of motor vehicles in interstate commerce, etc., to cease and desist from using word "six per cent" or figure and symbol "6%", etc., to describe installment payment plan, as therein set forth, or acting concertedly or in cooperation with any company, etc., in aforesaid connection, to further sale of motor vehicles), for an order requiring Commission to certify and file in court trial examiner's report upon the evidence.

Bodman, Longley, Bogle, Middleton & Farley, of Detroit, Mich., for petitioner.

Mr. Richard P. Whiteley, acting chief counsel, Federal Trade Commission, and *Mr. James W. Nichol*, special attorney, both of Washington, D. C., for the Commission.

Before HICKS, SIMONS, and ALLEN, Circuit Judges.

The motion of the petitioner for an order requiring the respondent to certify and file in this court the trial examiner's report upon the evidence, dated July 27, 1938, and the exceptions taken thereto by the respondent and the Commission is overruled.

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[1] Not reported in Federal Reporter.

RESTRAINING AND INJUNCTIVE ORDERS OF THE COURTS UNDER THE PROVISIONS OF SECTION 13 OF THE FEDERAL TRADE COMMISSION ACT [1]

FEDERAL TRADE COMMISSION v. LENARD GOTLIEB AND SARAH GOTLIEB, TRADING AS REED'S CUT RATE DRUG STORE AND AS FOUNTAIN CUT RATE DRUG STORES [1]

File No. 104-C

(District Court, Northern District of West Virginia. July 20, 1940)

Order for 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, advertisement of defendants' drug-containing preparation for women, under designations "Prescription Female Capsules" and "Lady Lydia Capsules," also designated as "Prescription Female Capsules—Double Strength," "Prescription Female Capsules—Triple Strength," and as "Lady Lydia Female Capsules—Double Strength" and "Lady Lydia Female Capsules—Triple Strength"; pending issuance of complaint by Commission against defendants under Section 5 of Federal Trade Commission Act, and disposition of such complaint, as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Abner E. Lipscomb*, special attorney, both of Washington, D. C., for the Commission.

Mr. J. C. McManaway, of Clarksburg, W. Va., 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, Lenard Gotlieb and Sarah Gotlieb, individuals, trading as Reed's Cut Rate Drug Store and as Fountain Cut Rate Drug Stores, and the plaintiff appearing by its attorney, Abner E. Lipscomb, and the defendants appearing by their attorney, James C. McManaway, and the defendants having waived hearing herein, and having consented that this decree be entered forthwith, and the

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Lenard Gotlieb and Sarah Gotlieb, trading as Reed's Cut Rate Drug Store, etc., Docket 4211, and was followed by order to cease and desist issued as of October 16, 1940. See *ante*, p. 1134.

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 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 defendants; and

It appearing to the court, That said defendants are engaged in the sale and distribution of a drug preparation advertised as Prescription Female Capsules and as Lady Lydia Capsules, also designated as Prescription Female Capsules—Double Strength; Prescription Female Capsules—Triple Strength; and as Lady Lydia Female Capsules—Double Strength and Lady Lydia 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 defendants have disseminated or are now disseminating, and have caused and are now causing the dissemination of, false advertisements concerning their 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 defendants have falsely represented that said preparation advertised as Prescription Female Capsules and as Lady Lydia Capsules, also designated as Prescription Female Capsules—Double Strength; Prescription Female Capsules—Triple Strength, and as Lady Lydia Female Capsules—Double Strength and Lady Lydia 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 Prescription Female Capsules and as Lady Lydia Capsules, also designated as Prescription Female Capsules—Double Strength; Prescription Female Capsules—Triple Strength, and as Lady Lydia Female Capsules—Double Strength and Lady Lydia 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 gastro-intestinal disturbances such as catharisis, 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 Prescription Female Capsules and as Lady Lydia Capsules, also designated as Prescription Female Capsules—Double Strength; Prescription Female Capsules—Triple Strength, and as Lady Lydia Female Capsules—Double Strength and Lady Lydia 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 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, Lenard Gotlieb and Sarah Gotlieb, individuals, trading as Reed's Cut Rate Drug Store and as Fountain Cut Rate Drug Stores, their 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 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 the said drug preparation advertised as "Prescription Female Capsules" and as "Lady Lydia Capsules," also designated as "Prescription Female Capsules—Double Strength"; "Prescription Female Capsules—Triple Strength," and as "Lady Lydia Female Capsules—Double Strength" and "Lady Lydia 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, 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 adver-

tisements 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 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 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 defendants named herein.

FEDERAL TRADE COMMISSION v. HOWARD DECKELBAUM, TRADING AS SUN CUT RATE DRUG STORE[1]

File No. 128

(District Court, Southern District of West Virginia. July 24, 1940)

Order for 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, advertisement of defendant's drug-containing preparation for women, under designations "Harmless Prescription Capsules" and "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription Female Capsules—Triple Strength"; pending issuance of complaint by Commission against defendant under Section 5 of Federal Trade Commission Act, and disposition of such complaint, as in said order set forth.[2]

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 Deckelbaum, of Huntington, W. Va., *pro se*.

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, Howard Deckelbaum, an individual, trading as Sun Cut Rate Drug Store, and the plaintiff appearing by its attorney, Abner E. Lipscomb, and the defendant appearing and having waived hearing herein, and having consented that this decree be

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Howard Deckelbaum, trading as Sun Cut Rate Store, Docket 4213, and was followed by order to cease and desist issued as of October 21, 1940. See *ante*, p. 1183.

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 Southern 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 "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription 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 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 Harmless Prescription Capsules and as Special Prescription Capsules, otherwise designated as Prescription Female Capsules—Double Strength and as Prescription 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 Harmless Prescription Capsules and as Special Prescription Capsules, otherwise designated as Prescription Female Capsules—Double Strength and as Prescription 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 gastro-intestinal 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 Harmless Prescription Capsules and as Special Pre-

scription Capsules, otherwise designated as Prescription Female Capsules—Double Strength and as Prescription 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 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, Howard Deckelbaum, an individual, trading as Sun Cut Rate Drug Store, his 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 "Harmless Prescription Capsules" and as "Special Prescription Capsules," otherwise designated as "Prescription Female Capsules—Double Strength" and as "Prescription 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, 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 an 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. D. J. MAHLER COMPANY, INC.[1]

No. 67

(District Court, District of Rhode Island. July 31, 1940)

Order for preliminary injunction by District Judge John P. Hartigan, 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 "Mahler Electrolysis Apparatus" for removal of superfluous hair by individual self-application in the home; pending issuance of complaint by Commission against defendant under Section 5 of Federal Trade Commission Act, and disposition of such complaint, as in said order set forth.[2]

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. Hugh F. O'Donnell, of New York City, 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, D. J. Mahler Co., Inc., a corporation, and the plaintiff appearing by its attorney, Abner E. Lipscomb, and the defendant appearing by its attorney, Hugh F. O'Donnell, and the defendant having waived 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 District of Rhode Island; 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

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[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of D. J. Mahler Co., Inc., Docket 4228, on August 7, 1940, and is now pending.

It appearing to the court, That said defendant is engaged in the sale and distribution of a device or apparatus, designated as the Mahler Electrolysis Apparatus, 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 defendant has disseminated and is now disseminating, and has caused and is 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 defendant has falsely represented that the Mahler Method of electrolytic removal of superfluous hair from the human body by means of the Mahler Electrolysis Apparatus is a safe method which may be employed by individual self-application in the home; that the use of the said Mahler Method or Mahler Electrolysis Apparatus is an effective and efficient method for the permanent removal of superfluous hair from the human body; and that said device or apparatus can be successfully operated with ordinary care and skill; 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 stains, or permanent pitting and disfigurement; that when such infection occurs in the nose, on the upper lip or over the glabella, it may result in serious illness or death, and in those instances where the device and method are applied to cancerous or syphilitic lesions, not recognizable as such by the layman, fatal consequences may also result; 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 D. J. Mahler Co., Inc., a corporation, its officers, 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 Mahler Electrolysis Apparatus, for use in the electrolytic removal of superfluous hair from the human body by individual self-application in the home, advertised as the Mahler Method, 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 Mahler Method of electrolytic removal of superfluous hair from the human body by means of the Mahler Electrolysis Apparatus is a safe method which may be employed by individual self-application in the home, or that the use of the said Mahler Method or Mahler Electrolysis Apparatus is an effective and efficient method for the permanent removal of superfluous hair from the human body, or that said device or apparatus can be successfully operated with ordinary care and skill, 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 permanent disfigurement, physical injury, and in serious, 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, and that a copy of this order be served upon the defendant named herein.

FEDERAL TRADE COMMISSION v. RENE P. BALDITT, TRADING AS CLITO COMPANY[1]

No. 142

(District Court, Western District of Texas. Aug. 8, 1940)

Order for preliminary injunction by District Judge Robert J. McMillan, 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 preparation for women, under designations "Clito" and "Clito Emmenagogue Capsules"; pending issuance of complaint by Commission against defendant under section 5 of Federal Trade Commission Act, and disposition of such complaint as in said order set forth.[2]

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. Rene P. Balditt, of San Antonio, Texas, *pro se*.

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, Rene P. Balditt, an individual trading as Clito Co., and the plaintiff appearing by its attorney, Abner E. Lipscomb, and the defendant 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 defendant is domiciled and transacts business in the Western District of Texas; 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 "Clito" also designated as "Clito Emmenagogue 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 or is now disseminating, and has caused and is now causing the dis-

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Rene P. Balditt, trading as Clito Co., Docket 4262, and was followed by order to cease and desist issued as of October 23, 1940. See *ante*, p. 1217.

semination 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 "Clito" also designated as "Clito Emmenagogue Capsules" is a safe, competent, or effective preparation for use in the treatment of delayed menstruation; or that there is no risk from its use and that it does not interfere with one's work; or that it is an effective remedy for long standing and obstinate cases of delayed menstruation; and

It appearing to the court, That the use of said preparation, advertised as "Clito" also designated as "Clito Emmenagogue Capsules," as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce in nonpregnant women gastro-intestinal 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 "Clito" also designated as "Clito Emmenagogue Capsules," 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 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, Rene P. Balditt, an individual, trading as Clito Co., his 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, 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 an 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, from:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said drug preparation advertised as "Clito" also designated as "Clito Emmenagogue Capsules" is a safe, competent, or effective preparation for use in the treatment of delayed menstruation; or that there is no risk from its use and that it does not interfere with one's work; or that it is an effective remedy for long standing and obstinate cases of delayed menstruation; or which advertisement fails to reveal that the use of 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.

2. 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 advertisement represents, directly or through inference, that said drug preparation advertised as "Clito" also designated as "Clito Emmenagogue Capsules" is a safe, competent, or effective preparation for use in the treatment of delayed menstruation; or that there is no risk from its use and that it does not interfere with one's work; or that it is an effective remedy for long standing and obstinate cases of delayed menstruation; or which advertisement fails to reveal that the use of 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.

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. JACOB L. GOLDMAN, ALIAS J. L. COLEMAN, TRADING AS ATLAS HEALTH APPLIANCE COMPANY[1]

No. 1095RJ

(District Court, Southern District of California. Aug. 12, 1940)

Decree of preliminary injunction by District Judge H. A. Hollzer, 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 "Atlas Short Wave Diathermy" device or apparatus recommended to unskilled lay public for individual self-application in the home in cure or treatment of self-diagnosed diseases and ailments; pending issuance of complaint by Commission against defendant under Section 5 of Federal Trade Commission Act, and disposition of such complaint, as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. Gerard A. Rault*, 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, Jacob L. Goldman, alias J. L. Coleman, an individual, trading as Atlas Health Appliance Co., and the plaintiff appearing by its attorney, Gerard A. Rault; 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 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 defendant; and

It appearing to the court, That said defendant is engaged in the sale and distribution of a device or apparatus, designated as Atlas Short Wave Diathermy, recommended to the unskilled lay public for individual self-application in the home in the cure or treatment of self-diagnosed diseases and ailments of the human body, in commerce, between and among the various States of the United States and in the District of Columbia; and

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[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Jacob L. Goldman, alias J. L. Coleman trading as Atlas Health Appliance Co., Docket 4291, and was followed by order to cease and desist issued as of December 4, 1940. See 32 F. T. C.

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 his said device by the United States mails and by various 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 that the defendant has also disseminated and is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said device, by various means, for the purpose of inducing, and which are likely to induce, directly or indirectly, the purchase of his said device or apparatus in commerce, as commerce is defined in the Federal Trade Commission Act, in violation of said Federal Trade Commission Act, by means of which advertising the defendant has falsely represented that the use of said device or apparatus, designated as Atlas Short Wave Diathermy, by the unskilled lay public is a scientific, safe, harmless, and effective means and method for individual self-application in the home in the cure or treatment of self-diagnosed diseases and ailments of the human body, and that its use will have no ill effects upon the human body; and

It appearing to the court, That said advertisements are also false in that they fail to reveal that the use of said device by laymen or by persons not trained in physical therapy, or in the technique of diagnosing and treating pathological conditions of the human body by the application of short wave diathermy, 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; and

It appearing to the court, That by reason of technical inexperience on the part of the layman, an improperly adjusted electrode may produce a spark gap between the electrode and the skin, causing a severe electric burn; 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 peritonitis, blood poisoning, or both, when applied in conditions of acute inflammation, such as boils, carbuncles, acute arthritis due to infection, acute pelvic infections in the female, acute cystitis, acute sinus infections, tonsillitis, lung abscess, appendicitis, and acute prostatitis; serious or fatal hemorrhage when applied in any condition where there is a tendency to hemorrhage, or in which congestion of the blood would aggravate existing troubles, such as varicose veins, gastric ulcer, ulcerative colitis, menstruation, and female disorders such as menorrhagea, dysmenorrhea from retroversion or anteversion of the uterus, subinvolution of the uterus from any cause, uterine infections and chronic pelvic inflammatory disease; abortion, followed by subinvolution, putrefaction or

infection with disastrous results in most cases when said device is applied by the layman during pregnancy; stimulating the growth of cancerous cells, metastasis or in spreading the trouble to other tissues when diathermy is applied to areas which may be affected by malignant tumors; that in those areas of the skin where the sense of heat has been lost due to injury or impairment of the peripheral nerves, the application of diathermy may result in tissue destruction and severe burns; 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, Jacob L. Goldman, alias J. L. Coleman, an individual, trading as Atlas Health Appliance 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 device or apparatus, designated as Atlas Short Wave Diathermy, recommended to the unskilled lay public for individual self-application in the home in the cure or treatment of self-diagnosed disease and ailments of the human body, 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 the unskilled lay public is a scientific, safe, harmless, and effective means and method for the cure or treatment of self-diagnosed diseases and ailments of the human body by individual self-application in the home; 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 laymen or by persons not trained in physical therapy, or in the technique of diagnosing and treating pathological

conditions of the human body by the application of short-wave diathermy, 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.

FEDERAL TRADE COMMISSION v. MAX CAPLAN, TRADING AND DOING BUSINESS AS CAPITAL DRUG COMPANY[1]

File No. 39

(District Court, Western District of Virginia. Sept. 5, 1940)

Order for preliminary injunction by District Judge John Paul, 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 preparation for women, under designation "Mrs. Bee Femo Caps"; pending issuance of complaint by Commission against defendant under Section 5 of Federal Trade Commission Act, and disposition of such complaint, as in said order set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. C. Robert Mathis, Jr.*, special attorney, both of Washington, D. C., for the Commission.

Mr. Max Caplan, of Roanoke, Va., *pro se*.

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, Max Caplan, an individual trading and doing business as Capital Drug Co., and the plaintiff appearing by its attorney, C. Robert Mathis, Jr., and the defendant 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

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[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Max Caplan, trading and doing business as Capital Drug Co., Docket 4343, on October 10, 1940, and is now pending.

It appearing to the court, That the defendant is domiciled and transacts business in the Western District of 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 "Mrs. Bee Femo Caps," 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 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 "Mrs. Bee Femo Caps" is a safe, competent, and effective preparation for use in the treatment of delayed menstruation; that there is no risk in its use and that it does not cause the user discomfort or inconvenience; and it is effective in obstinate, unnatural, and suppressed cases of delayed menstruation; and

It appearing to the court, That the use of the said preparation, advertised as "Mrs. Bee Femo Caps," as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce in nonpregnant women gastro-intestinal 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 "Mrs. Bee Femo Caps," as prescribed in said advertisements or its use under such conditions as are customary or usual, may produce in pregnant women an abortion or premature labor which may be followed by pelvic infection and general peritonitis, 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 dis-

missed 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, Max Caplan, an individual trading and doing business as Capital Drug Co., his 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, 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 an 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, from:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said drug preparation advertised as "Mrs. Bee Femo Caps" is a safe, competent, and effective preparation for use in the treatment of delayed menstruation; that there is no risk in its use and that it does not cause the user discomfort or inconvenience; and it is effective in obstinate, unnatural, and suppressed cases of delayed menstruation, or which advertisements fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual, and that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 advertisement violates any of the prohibitions contained in paragraph 1 hereof.

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. SHERRY'S CUT RATE DRUG COMPANY, INC.[1]

No. 116

(District Court, Southern District of West Virginia. Sept. 6, 1940)

Order for preliminary injunction by District Judge Geo. M. McClintic, 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 women, designated as "Mrs. Bee Femo Caps"; pending issuance of complaint by Commission against defendant under Section 5 of Federal Trade Commission Act, and disposition of such complaint, as in said order set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. C. Robert Mathis, Jr.*, special attorney, both of Washington, D. C., for the Commission.

Mr. Abram J. Lubliner, of Bluefield, 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, Sherry's Cut Rate Drug Co., Inc., a corporation, and the plaintiff appearing by its attorney C. Robert Mathis, Jr., and the defendant appearing by its attorney, Abram J. Lubliner, and the court having read the sworn pleadings of the plaintiff and of the defendant, and the affidavits filed with and in support thereof, and having heard and duly considered both the evidence offered by the plaintiff and by the defendant, and the argument of counsel, and now being fully advised in the premises, 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 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 "Mrs. Bee Femo Caps," 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 or is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said prepara-

[1] Not reported in Federal Reporter.

[2] Such complaint duly issued in the matter of Sherry's Cut Rate Drug Co., Inc, Docket 4345, on October 10, 1940, and is now pending.

tion 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 "Mrs. Bee Femo Caps" is a safe, competent and effective preparation for use in the treatment of delayed menstruation; that there is no risk from its use; that it does not cause the user discomfort or inconvenience; and that it is effective for delayed, unnatural, suppressed menstruation; and

It appearing to the court, That the use of the said preparation, advertised as "Mrs. Bee Femo Caps," as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce in nonpregnant women gastro-intestinal 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 "Mrs. Bee Femo Caps," as prescribed in said advertisements or its use under such conditions as are customary or usual, may produce in pregnant women an abortion or premature labor which may be followed by pelvic infection and general peritonitis, 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 thereon has become final within the meaning of section 5 of said act:

It is hereby ordered, adjudged, and decreed, That the defendant, Sherry's Cut Rate Drug Co., Inc., a corporation, its officers, directors, 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, 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 an 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, from:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said drug preparation advertised as "Mrs. Bee Femo Caps" is a safe, competent, or effective preparation for use in the treatment of delayed menstruation; or that there is no risk from its use and that it does not cause the user discomfort or inconvenience; or that it is an effective remedy for delayed, unnatural, suppressed menstruation, or which advertisements fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of the preparation to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual, and that the use of said preparation may result in serious and irreparable injury to the health of the user.

2. 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 advertisement violates any of the prohibitions contained in paragraph 1 above.

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. ALLIED PHARMACAL COMPANY, INC., TRADING UNDER ITS OWN NAME AND ALSO TRADING AND DOING BUSINESS AS ERIE LABORATORIES, INC., MACK PHARMACAL PRODUCTS CO., AND MRS. BEE LABORATORIES [1]

No. 20494

(District Court, Northern District of Ohio. Sept. 21, 1940)

Order for 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 defendant's drug-containing preparation for women, under designations "Mrs. Bee Femo Caps" and "Mrs. Bee Femo Pills," "Femo Caps," "Femo Pills," "Bee Caps" and "Bee Pills"; pending issuance of complaint

[1] Not reported in Federal Reporter.

by Commission against defendant under Section 5 of Federal Trade Commission Act, and disposition of such complaint, as in said order set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. C. Robert Mathis, Jr.*, special attorney, both of Washington, D. C., for the Commission.

Mr. Eugene R. Wolf, of Cleveland, Ohio, 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, Allied Pharmacal Co., Inc., a corporation, trading under its own name and also trading and doing business as Erie Laboratories, Inc., a corporation, as Mack Pharmacal Products Co., and as Mrs. Bee Laboratories, and the plaintiff appearing by its attorney, C. Robert Mathis, Jr., and the defendant 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 defendant is domiciled and transacts business in the Northern District of Ohio; and

It appearing to the court, That it has jurisdiction over the parties and subject matter hereof, and 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 "Mrs. Bee Femo Caps," and sometimes designated as "Mrs. Bee Femo Pills," "Femo Caps," "Femo Pills," "Bee Caps," and "Bee Pills," in commerce between and among the various States of the United States and in the District of Columbia; and

It appearing to the court, That said defendant has disseminated or is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning its said preparations 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

[2] Such complaint duly issued in the matter of Erie Laboratories, Inc., etc., et al., Docket 4382, on November 20, 1940, and is now pending.

Trade Commission Act, by means of which advertising the defendant has falsely represented that said preparations advertised as "Mrs. Bee Femo Caps," and sometimes designated as "Mrs. Bee Femo Pills," "Femo Caps," "Femo Pills," "Bee Caps," and "Bee Pills," are safe, competent and effective preparations for use in the treatment of delayed menstruation; that there is no risk from their use; that they do not cause the user discomfort or inconvenience; and that they are effective for delayed, unnatural, suppressed menstruation; and

It appearing to the court, That the use of the said preparations, advertised as "Mrs. Bee Femo Caps," and sometimes designated as "Mrs. Bee Femo Pills," "Femo Caps," "Femo Pills," "Bee Caps," and "Bee Pills," as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, may produce in non-pregnant women gastro-intestinal 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 preparations, advertised as "Mrs. Bee Femo Caps," and sometimes designated as "Mrs. Bee Femo Pills," "Femo Caps," "Femo Pills," "Bee Caps," and "Bee Pills," as prescribed in said advertisements or its use under such conditions as are customary or usual, may produce in pregnant women an abortion or premature labor which may be followed by pelvic infection and general peritonitis, 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 thereon has become final within the meaning of section 5 of said act;

It is hereby ordered, adjudged, and decreed, That the defendant, Allied Pharmacal Co., Inc., a corporation, trading under its own name and also trading and doing business as Erie Laboratories, Inc., a corporation, as Mack Pharmacal Products Co., and as Mrs. Bee Laboratories, its officers, directors, 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, 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, from:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said drug preparations advertised as "Mrs. Bee Femo Caps," and sometimes designated as "Mrs. Bee Femo Pills," "Femo Caps," "Femo Pills," "Bee Caps," and "Bee Pills," are safe, competent, and effective preparations for use in the treatment of delayed menstruation; that there is no risk in their use and that they do not cause the user discomfort or inconvenience; and they are effective in obstinate, unnatural, and suppressed cases of delayed menstruation, or which advertisements fail to reveal all facts material in the light of such representations or material with respect to consequences which may result from the use of the preparations to which the advertisements relate under the conditions prescribed in said advertisements or under such conditions as are customary or usual, and that the use of said preparations may result in serious and irreparable injury to the health of the user.

2. 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 advertisement violates any of the prohibitions contained in paragraph 1 hereof.

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. JULIUS MILLER, TRADING AS MILLER DRUG COMPANY[1]

No. ——

(District Court, Western District of New York. Oct. 9, 1940)

Decree of preliminary injunction by District Judge Harold P. Burke, 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 drug preparation variously designated as "Belite," "Reducers" and "Miller's Reducing Prescription"; pending issuance of complaint by Commission against defendant under Section 5 of Federal

[1] Not reported in Federal Reporter.

Trade Commission Act, and disposition of such complaint as in said decree set forth.[2]

Mr. W. T. Kelley, chief counsel, Federal Trade Commission, and *Mr. James L. Baker*, special attorney, both of Washington, D. C., for the Commission.

Mr. Julius Miller, of Rochester, N. Y., *pro se.*

DECREE OF 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, Julius Miller, an individual trading and doing business as Miller Drug Co., and the plaintiff appearing by its attorney, James L. Baker, and the defendant 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 defendant is domiciled and transacts business in the Western 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 defendant; and

It appearing to the court, That said defendant is engaged in the sale and distribution of a drug preparation advertised as "Belite," "Reducers" and as "Miller's Reducing Prescription," 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 or is now disseminating, and has caused and is now causing the dissemination of, false advertisements concerning his said product by United States mails and by other means in commerce, as "commerce" is defined in the Federal Trade Commission Act, and that the defendant has also 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 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 "Belite,"

[2] Such complaint duly issued in the matter of Julius Miller and Jessie Miller, trading as Miller Drug Co., Docket 4363, and was followed by order to cease and desist issued as of December 12, 1940.

"Reducers," and as "Miller's Reducing Prescription" is a cure or remedy for obesity and constitutes a safe, competent, or effective treatment for obesity and the reduction of bodily weight; and

It appearing to the court, That the use of said preparation advertised as "Belite," "Reducers," and as "Miller's Reducing Prescription," as prescribed in the aforesaid advertisements, or its use under such conditions as are customary or usual, accelerates the rate of metabolism, thereby burning the body tissues in excess of that which is normal, and may produce nausea, vomiting, headaches, 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 the Federal Trade Commission Act;

It is hereby ordered, adjudged, and decreed, That the defendant, Julius Miller, an individual trading and doing business as Miller Drug Co., his 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, 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 thereon has become final within the meaning of section 5 of said act, from:

1. Disseminating or causing to be disseminated any advertisement (*a*) by means of the United States mails or (*b*) by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or through inference, that said drug preparation advertised as "Belite," "Reducers," and as "Miller's Reducing Prescription" is a cure or remedy for obesity or constitutes a safe, competent or effective treatment for obesity or the reduction of bodily weight, or which advertisement fails to reveal

that the use of said preparation, under the conditions prescribed in said advertisement or under such conditions as are customary or usual, may result in serious or irreparable injury to health in that it accelerates the rate of metabolism, thereby burning the body tissues in excess of that which is normal, causing permanent injury to the heart, thyroid gland, and other vital organs.

2. 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 advertisement violates any of the prohibitions contained in subparagraph 1 hereof.

It is further ordered, That this decree of injunction be issued without bond, and that a copy of this order be served upon the defendant named herein.

PENALTY PROCEEDINGS

During the period covered by this volume, i. e., June 1, 1940 to November 30, 1940, settlement was made of penalty proceeding in the matter of *U. S.* v. *George Earl McKewen et al., trading as Herbal Medicine Co.*, in the United States District Court for the District of Maryland.

Said civil proceeding was brought under the provisions of Paragraph (1) of Section 5 of the Federal Trade Commission Act for violation of a cease and desist order made by the Commission in the matter of *George Earl McKewen, et al., doing business as Herbal Medicine Company and Natex Company*, Docket 3075, November 3, 1937, 25 F. T. C. 1296, in which the Commission ordered respondents George Earl Mcpewen and several partners, doing business as Herbal Medicine Co. and Natex Co., their representatives, etc., in connection with the offer, etc., in interstate commerce or in the District of Columbia, of their medicinal preparations designated "Herb Doctor", "Herb Doctor Compound" and "Natex," or similar preparations, to cease and desist from:

1. Representing that said preparations, or any of them, are competent or effective cures, remedies, or treatments for stomach troubles, rheumatism, neuritis, liver troubles, deranged kidney, nervousness, general run-down condition, indigestion, dizziness, gastritis, colds, biliousness, and other similar maladies, ailments, and conditions of the human body; or that said preparations, or any of them, will cure constipation or headaches due to constipation.

2. Representing that said preparations, or any of them, are new remedies.

Judgment was entered in said civil proceeding on September 27, 1940, for $100 and costs, which were paid, and order issued satisfying judgment on November 21, 1940.

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Earnings or profits *1730* (0561), *1733* (02580), *1739*, *1748* (02607), *1756* (02619), *1761* (02629), *1770*, *1780* (02657)

Securing agents or representatives falsely or misleadingly—Continued. Page
Through misrepresenting as to—Continued.
Opportunities in product or service..... *1730* (0561), *1733* (02580), *1748* (02607), *1756* (02619), *1761* (02629), *1783* (02662), *1784* (02665)
Terms and conditions—
Booklets or instructions..... *1761* (02629)
Competition..... *1733* (02580)
Exclusive territory..... *1730* (0561)
Free product—
In general..... *1770*
Price of which included in charge or service otherwise demanded..... 1708
House-to-house canvassing..... *1761* (02629)
Investment required..... *1733* (02580), *1756* (02619)
Simulating:
Trade name, mark or label of competitor..... 1658 (2906), 1665 (2911), 1674
Unfair methods of competition, etc., condemned in this volume. (*See*—
Advertising falsely or misleadingly.
Assuming or using misleading trade or corporate name.
Claiming or using indorsements or testimonials falsely or misleadingly.
Disparaging or misrepresenting competitors or their products.
Furnishing means and instrumentalities of misrepresentation and deception.
Misbranding or mislabeling.
Misrepresenting business status, advantages or connections.
Misrepresenting orally, by self or representatives.
Misrepresenting prices.
Misrepresenting product.
Neglecting, unfairly or deceptively, to make material disclosure.
Offering deceptive inducements to purchase.
Removing or concealing mark of foreign origin.
Securing agents or representatives falsely or misleadingly.
Simulating.
Using lottery schemes in merchandising.
Using misleading product name or title.
Using lottery scheme in merchandising..... 1654, 1717 (2985), *1771*
Using misleading product name or title:
As to—
Composition..... 1609 (2833), 1612 (2837), 1615, 1628 (2862), 1662, 1671 (2920), 1675 (2925), 1688, 1706 (2967), 1707, 1715, *1736* (02587), *1772* (02643).
Doctor's design or supervision..... 1611, 1630 (2866), 1650 (2891)
History—
In general..... 1704
Doctor's design or supervision..... 1611, 1630 (2866), 1650 (2891)
Nature of—
Manufacture or preparation—
In general..... 1728 (3002)
Doctor's design or supervision..... 1611, 1630 (2886), 1650 (2891)

STIPULATIONS

Using misleading product name or title—Continued. Page
As to—Continued.
Nature of—Continued.
Manufacture or preparation—Continued.
"Home made" 1728 (3003)
Separate preparation 1671 (2921)
Product 1609 (2833), 1610, 1628 (2861, 2862), 1671 (2921), 1715, 1728 (3002), *1734* (02583), *1739*, *1749*, *1750*, *1752*, *1759* (02625), *1770*
Qualities, properties or results—
Auxiliary, improving and supplementary 1641 (2878), 1647
Cosmetic, toilet and beautifying 1648
Durability or permanence 1696 (2950)
Economizing or saving *1783* (02662)
Functional effectiveness, operation or scope, in general *1739*
Insecticidal, vermicidal, and related *1738* (02591)
Medicinal, therapeutic, remedial, and healthful 1630 (2866), 1641 (2878), 1647, 1724, *1741* (02597), *1743*, *1768* (02638), *1771*, *1772* (02642), *1781* (02659.)
Nutritive 1641 (2878), 1647, 1671 (2921)
Reducing *1754*
Renewing and restoring 1662
Stimulating and developing 1662, *1742* (02599), *1758* (02623), *1771*
Quality 1680 (2930, 2931)
Source or origin—
Maker 1658 (2906), 1665 (2911), 1674, 1704, 1710
Place—
In general 1620 (2851), 1671 (2920)
Foreign 1680 (2930, 2931), 1715
Success, use or standing 1704
Type or grade 1680 (2930, 2931)
Value *1770*

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